

WILLIAM & LONSDALE – Lives in the Law

E012: Hon Frank Vincent QC, AO

Voiceover [00:00:02] This is William and Lonsdale, a podcast about the legal eco system in Victoria and the fascinating people and stories that make it tick. Today, your host, Michael Green speaks with the honorable Frank Vincent. From humble and sometimes challenging beginnings, Frank became a renowned criminal barrister, a justice of the Supreme Court, chancellor of Victoria University and chair of the Adult Parole Board. He also spent much of his career traveling back and forth to the Northern Territory, working with the Central Australian Aboriginal Legal Aid Service. Throughout his many and varied roles, Frank has always been driven by a keen sense of justice, even when that meant putting his own reputation on the line.

Frank Vincent [00:00:41] She was charged with some drug trafficking offenses. There was not a lot understood in the community generally and certainly among the judiciary about the use and abuse of drugs and their effects and so forth. They certainly knew nothing of the chemistry of drugs and so forth. I'm not sure all that many of them do even now. But on this occasion, what I didn't know was that my young client who had been on bail, had been hitting right until just prior to coming to court. So, she got through the first day of the hearing and at the end of it, the judge decided to revoke her bail. Now, this meant that she started to withdraw pretty badly by the following morning. She was in a bad way when I saw her at the court and I asked the judge to adjourn proceeding to get some assistance for her. He wasn't a nasty man, but he really didn't understand what was happening in front of him and said, "oh, I know she'll be okay. Let's keep going". Well, after a period of time, this girl collapsed. And so, he adjourned the case to the following day. They took her off to the Fairlea, I think, which was a women's prison at the time. And she came back the next morning and she was in a really bad way. Again, applied to the judge to adjourn the proceeding. And again, he insisted on going ahead quite unsympathetically to her plight because his view of drugs and drug addiction and a lack of understanding of what he was looking at. So, it was stood down again for the third day. And I was really quite angry about this. I arrived at the court on the morning of the third day and I found her curled up on the floor of the cell behind the court, dry retching into the corner. And I lost it. And I said that I could bring the judge into court because I was ready to deliver my plea. The judge came in and sat on the bench. I picked up this girl who weighed almost nothing, very, very angry. And I carried her into the court and delivered my plea while holding her in my arms. At the end of my comments, "I said, that's it. You can bloody well sentence her now", I laid her on the bar table. And I walked out. I was sure I was going to be in terrible, terrible trouble. Nothing was ever said about it. Not a word. It was it became a source of such terrible embarrassment.

Michael Green [00:03:42] And we had a better educated judge within our system. I'm sure.

Frank Vincent [00:03:45] I went for some period of time wondering when the axe was going to fall on me for this egregious piece of behavior. But I just thought this was barbaric and I just couldn't be a part of it.

Michael Green [00:04:22] This morning, we're welcoming Frank Vincent retired Supreme Court judge to talk about his life in the law. Good morning, Frank, and thanks very much for coming.

Frank Vincent [00:04:29] Good morning,

Michael Green [00:04:30] Frank. We'll go back to the early days where you grew up, Tasmania and Victoria, you're one of three children. Your parents, like probably most Australians at that time, had battled through the Depression and the Depression, had a great influence on the formation of your parents. What was it like growing up in those times? In those circumstances?

Frank Vincent [00:04:49] Externally, people would say it was very tough. From my personal perspective, that was not the case. I lived in a family which was close and loving. I didn't know about the affluence of other people. Most of the people who surrounded us had very little anyway, so there was nothing to compare adversely. And I regarded my childhood essentially a fairly happy one in that circumstance probably became more difficult for people later with television, greater exposure to what was available to others that they didn't have. But if these things were so far out of your frame of reference, you never even thought about them. It didn't pose a problem.

Michael Green [00:05:41] We'll get to your formal legal education a bit later. But it seems to me you had a wonderful practical education in preparation for becoming a lawyer. You had dancing classes and you acted in the amateur theatricals as a young boy. And you actually did clerical work helping your father with matters for him because he was not a well-educated man. And you even helped your father's friends who had little or no education, prepare tax returns, and things like that. In hindsight, were they important part of your preparation to become a lawyer, particularly the amateur theatricals? That one intrigues me.

Frank Vincent [00:06:11] I think the theater work certainly did. I had to learn scripts. I had to learn how to publicly present and how to project. All of those things became very valuable in a later stage. And, of course, I very, very early lost any fear of public performance.

Michael Green [00:06:30] Would it be reasonable to compare barristers and actors?

Frank Vincent [00:06:33] Oh, entirely yes. Court presentation is unfortunately in many senses a form of theater. Your job is to persuade the judge or the jury to have regard to the propositions that you're advancing. Presentational skills are quite important in relation to that activity.

Michael Green [00:06:54] And maybe especially so in doing criminal law when you've got a jury as your audience.

Frank Vincent [00:06:58] And that can be a very discerning audience. You can't approach juries on the basis that somehow or other you are cleverer than they are or that your wonderful forensic and acting abilities will enrapturing and capture them. That's very foolish. You must assume that there are people on that jury who will see exactly what you're doing and understand the various techniques you're employing. You think you can con 12 people who you've never met in your life before, hearing facts that they have never had to deal with before. You've got another thing coming.

Michael Green [00:07:40] When you were 17, the family come back to Melbourne from Tasmania and you stayed at a place called Camp Pell. Now I'm a child of the 50s in Melbourne and I've never heard of Camp Pell. And I assume our listeners are the same. What was Camp Pell and what was it like to grow up there or to live there?

Frank Vincent [00:07:55] Camp Pell had been constructed on Royal Park generally in the area where the Children's Hospital now stands. It was established as an army base for American soldiers. And after the war, the old army huts were divided by thin partitions into eight sections each, and people who had no housing at all were accommodated on an emergency basis. People who went to Camp Pell were caught in the postwar housing crisis. My own family were among them. It was a difficult place where there was poverty and crime and it had a dreadful reputation. There was also considerable amount of disease in the place that so Camp Pell was pretty close to being as down-market as you could be in our society.

Michael Green [00:08:50] And you mentioned that you had a couple of run ins with the police in walking home from Melbourne University to Camp Pell. And even once when you were a barrister, the police stopped you and effectively harassed you?

Frank Vincent [00:09:01] The encounters with the police resulted from the fact that I had no place to study at home. So, I would work in the library until it closed at 10 o'clock and then walk down past Uni High across to Royal Park where we were living. The police used to patrol this area very considerably because of its nature as a violent, crime ridden place. And they would regularly stop me as I was walking home. Most of the time, it would be just a little bit of rough handling and some questions. Occasionally I was thrown against a fence or two and my bag would be opened and they would joke about the fact that they were law students' stuff and they tip it out on the ground. And I would take them home and I'd wipe the mud off my notes for the next day. Didn't endear me to the police. Of course,

Michael Green [00:09:59] That's interesting, Frank. I mean, clearly, Melbourne was a very different place in the 1950s. What was university like in those days, particularly the Melbourne University Law School?

Frank Vincent [00:10:07] Most people look at universities as periods of great joy. For me, it was not a particularly pleasant place at all. It wasn't too many waterfront kids living in places like Camp Pell and the Housing Commission in the Law School. So, although I had some friends there, I was pretty isolated. I had, however, the tremendous advantage of absolutely excellent teachers, including one who became a lifelong friend. And that was Zelman Cowan,

Michael Green [00:10:41] A former Governor-General of the Commonwealth of Australia, as well as head of the Melbourne Law School when I was a student there.

Frank Vincent [00:10:47] He was pretty supportive of me as a as a young kid.

Michael Green [00:10:52] As an admitted lawyer started at Holding Ryan. And you begin making appearances, minor appearances in the local court of Petty Sessions, currently called a Magistrates Court. On one occasion, you ran across a family member at the Port Melbourne Court of Petty Sessions. What happened there?

Frank Vincent [00:11:06] It was an unfortunate experience. I was handling some small criminal offense down there and I heard a call from the cells behind the court, Franky, Franky. I looked around and there was a cousin. He was an unfortunate fellow. He had cerebral meningitis, suffered significant brain damage. As a consequence, he had been stopped by a rather un insightful policeman, put it that way, who was a bit puzzled by his strange appearance and so forth. And of course, my cousin panicked and being grabbed

like that, and he found himself charged with a whole bunch of offenses. When I saw him at the court, I found out what had transpired and, just called him to give evidence. And of course, as soon as the magistrate saw unfortunate man, he just abused the copper and threw it out.

Michael Green [00:12:03] Actually, some very practical justice is. Now Holding Redlich, Holding Ryan, sorry as it was then giving you legal experience. But really the most important event there was meeting a young secretary named Dawn. Yeah. So, what flowed from that fortuitous meeting with Dawn?

Frank Vincent [00:12:19] Well, I thought Dawn was gorgeous. In fact, I still do. And we had a surprising amount in common. Her family had had a great deal of difficulty over the years. Dawn had contracted polio as a young girl and had really struggled because of that for a long time, her family also like mine, had been homeless and lived in Camp Pell. So somehow that we meshed very easily and very quickly and we still do.

Michael Green [00:12:55] Things were difficult when you started at the bar, you didn't come with the background of many connections among the legal world who could brief you. You shared Chambers with another luminary of the Victorian Bar, Fred James. What was it like for a young barrister starting out without the connections of a private school background, etc.?

Frank Vincent [00:13:19] Well, it was difficult, basically, because if you knew people, then there were some reasonable chance, if you had any ability at all to get some work. But when you had no such links. Life was much more tenuous, as it were. And that was the situation for Fred and myself. And we would sit together by our telephones because the process of getting work in those days was again more difficult. If you were relying upon your clerk to try and give you floaters, then you had to be in your room by your telephone. So, Fred and I would turn up 8:30 in the morning when the clerk's office opened. And we would sit there until five thirty in the afternoon when the clerk's office closed. And I actually sat there for three weeks once with that phone ringing, and think of what that does to your morale.

Michael Green [00:14:35] I believe in one of those occasions when you were sitting and waiting for the phone to ring, the legendary Frank Galbally rang your clerk and needed a young barrister to do a last-minute thing...

Frank Vincent [00:14:46] Frank Galbally was an incredible showman, and he found out from the clerk that I was available to do this job and then rang me with this client present in his office. And he said, look, I know, Frank, how terribly, terribly busy you are. And I just wonder if it might be possible for you to fit this client into your schedule and being very deferential, certainly, Mr. Galbally. And he said to this poor unfortunate in his room, HE CAN! So, the poor client believed he was getting some forensic genius representing him and he was getting a kid out of work.

Michael Green [00:15:30] But it did lead to more work, I think, from that firm Galbally O'Bryan?

Frank Vincent [00:15:35] It did. I worked on the basis that if I had no contact, no support, then I had to be seen. And every time I got a job, I would approach it as if it was the most important piece of work in the world. But one of the things that I learned very early was the

importance of respecting the solicitor who briefs you. They had to come to two views. Firstly, that you need your job. And secondly, you weren't a bad bloke.

Michael Green [00:16:04] Exactly. That you'd look after their client.

Frank Vincent [00:16:07] I'm not sure all barristers understand that.

Michael Green [00:16:09] You might be right there, Frank. You might be right back then. Crime wasn't a glamorous part of the legal profession or a glamorous part of the bar. I don't think there was a dedicated crime bar like there is now with distinguished silks heading that part of the bar.

Frank Vincent [00:16:24] Well, that to stop with the other point, there was no criminal bar association, of course, that was established by four of us, five of us, actually, John Phillips, who later became Chief Justice, Colin Lovett, John Hasset, John Coldrey and myself. And we established the Criminal Bar Association. And we set it up because we really had the view that crime had such low status in the work of the bar generally, that the bar council, as it was constituted, at the time was simply not interested in us at all. But when I started, a great deal of the criminal work was dealt with by solicitors. Frank Galbally was one of them. Ray Dunn, a legendary individual in this area was another. There was very limited legal aid. Murders, for example, were allocated out to the Silk's by Legal Aid, it being regarded as obligatory for each silk to accept a murder trial from time to time as part of their duty.

Michael Green [00:17:33] And the silk might be his... And it would be only his I guess it would have been no female Silks at the time, I think

Frank Vincent [00:17:39] No, there were none. There weren't any for a very long time.

Michael Green [00:17:42] And these silks would have been people who specialize in commercial law or personal injury law or other areas of the law. But they still, on a rotational basis, did a murder trial?

Frank Vincent [00:17:53] Yeah. And some of them were extremely good. One person in particular, who I always respected as a criminal silk was Oscar Nash and Oscar Nash was a man who worked in family law.

Michael Green [00:18:07] Yeah.

Frank Vincent [00:18:08] Many of them, however, were quite, quite bad. I often wonder about the injustices that may have resulted from that. That was one of the basic reasons that I came to be accepted running homicide trials from a very, very early time at the bar.

Michael Green [00:18:25] Frank, you say injustices may have flown from or flowed from Silk's not being criminal law specialist. And yet I've heard many criminal law barristers swear by the jury system and say that juries very rarely get it wrong.

Frank Vincent [00:18:39] I agree with that. I certainly agree with that, that the juries get it wrong if the stuff is put before them.

Michael Green [00:18:47] Wrongly. Yeah.

Michael Green [00:18:51] You had had a brief foray into doing workers compensation work for your old firm Holding Ryan, but you quickly came back to crime because you said that in the then worker's compensation system, the system benefited the operators more than the clients.

Frank Vincent [00:19:05] Well, to give you an idea the way in which it worked, I would get to thirty dollars a day more for doing a public solicitor murder trial, than I would get for running one worker's compensation case and I could do three workers compensation cases a day and there would be settlements made within very, very limited ranges. I just sat in the coffee shop. It really was a bit of a racket from the perspective of the practitioners who are engaged in it. When I went into compo, I did so because all of a sudden, I found myself with the opportunity of making a lot of money and I seized that. But then after a while, I just couldn't cope with it. So, I gave it away.

Michael Green [00:19:54] You come back to your first love in the law being criminal law, really at the top of the criminal law tree, doing regular murder trials. A jury advocate. What do you think an advocate, what skills does an advocate need to engage a jury to get the jury to buy into and accept your story or your version of these events?

Frank Vincent [00:20:15] Well, firstly, you need a psychologically viable narrative. If you're putting forward a version anticipating someone might reasonably consider it a possibility, then that version has to accord not only with the externally established material, but it has to correspond to people's perceptions of the way in which the world functions and human beings interact. In other words, it's got to possess both a factual and a psychological consistency. Now, your job as counsel. Is confined within that framework, your skill as an advocate, what are required to enable you to get the jury to see that potential reality. That's not just conning them or anything of that kind, that's by putting something before them that they can say, yes, maybe that did happen that way. That's realistic. That accords with what I know to have happened, but I am satisfied has happened. And I can then interpret it in ways which are meaningful, comprehensible. It is a sophisticated process.

Michael Green [00:21:34] Does it help to be what I've termed in the past in looking at barristers, an "everyman", somebody that the 12 people sitting in the jury box coming from their various walks of life can identify with?

Frank Vincent [00:21:47] The advocate constitutes a link between the jury and the accused. And what you do is try and link the jury to the accused so that they can get a sense of the perspective as viewed from that position as well as their position. So, the advocate has to be someone who the jury can accept as being not too dissimilar from themselves, trained and experienced and all the rest of it. I had a very good friend who became a senator, Barney Cooney. Barney worked in the area of civil injuries. And one judge said to me on one occasion, I don't understand how it is that Barney gets all these fantastic results. He can't string two good sentences together. I said, the thing is, you don't understand. Barney communicates with these juries, not a question of technical skills or that it's a question of real communication.

Michael Green [00:22:53] Well, speaking of that real communication, looking back at your career back in 74, you have a good friend, Geoff Eames, later to be on the Supreme Court with you, was a senior lawyer at the recently established Central Australian Aboriginal Legal Aid Service. And he asked you to represent the accused in the services first murder trial in the Northern Territory. You go and do the trial, and then for many years, you spend a significant part of your time, maybe up to six months a year in the Northern Territory

representing people in murder trials. What drew you to the territory and to keep going back? And what was it like to practice as a barrister in the Territory?

Frank Vincent [00:23:29] I wasn't all that keen on going after the territory, but I did that Geoff's request. And when I got there, I encountered the people in Aboriginal Legal Aid. It was brand new. These were people trying to develop some system of justice for some of the most underprivileged people in our society. Aboriginal people living under sheets of tin in the bed of the Todd River with it was my first impression when I arrived there. These people were really doing great work and committing themselves. And Geoff had taken his wife and two kids from Melbourne. He was running a successful civil practice down here do this work, I felt that I could not do otherwise than try and assist them if I could. But then once I started in that area, it became an integral part of my life for the next 10 years.

Michael Green [00:24:29] Was there a difference in having Aboriginal clients as opposed to having whitefella clients here in Melbourne?

Frank Vincent [00:24:36] Yes, there was some difference, but I used to be hesitant and still am hesitant, and I would say. A black bum against a remand yard wall is no different from a white bum, your job was exactly the same. It was just that your clients were less equipped in the Northern Territory, if they were Aboriginal people and in other parts of the country to operate within that system. They just didn't have the knowledge, the experience of handling those kinds of situations that White accused would have, the ability to exercise their rights was almost non-existent.

Michael Green [00:25:15] Did the system treat them fairly?

Frank Vincent [00:25:16] Oh, no way. It was dreadful. That was one of the things that really kept me going back. There was no Aboriginal legal aid service until 1974. There was no health service until that same year. Might have been a few months earlier. There was nothing for these people. They would be just fronted up to court and taken off. It was only about three or four years prior. They had stopped walking the Aboriginal accused from the jail up through the streets to the court in coffles. I mean, these are very, very recent things.

Michael Green [00:25:51] Were juries the same up there as a jury in the south? Is a jury a jury, no matter where you are, I guess juries are people with their own prejudices and biases and influences upon them. Therefore, my right in assuming juries would be different from having been brought up in the territory as opposed to having brought up in the south of Australia.

Frank Vincent [00:26:08] The juries were initially very suspicious of people like me. I wondered whether we were mad rads or religious fanatics or what we were. It didn't matter very much. The fact is they assumed that we didn't know what their lives were like. There was a lot of difficulty which was created as a consequence of the poverty and dispossession of Aboriginal people. Crime, drunkenness, those sorts of consequences. These were the realities for the for the town folk in Alice Springs. And it's all very well for people outside to say this is the consequence of oppression. It's another thing for those who are living in that situation to have the same understanding view of it. You had to come to grips with that view of reality and once you did. And once you started to communicate with them, understanding their perspective about these things, then it opened up magically. I found that it was necessary to adopt a far more conversational approach to juries in the Northern Territory. They weren't interested in barristerial tricks or your fancy use of the English language or your massively skillful cross-examination, because they

could see themselves with no ability to cope in that in those that kind of situation. But remarkably, I found that learning to speak to them improved what I was doing down here because I started to develop techniques in jury addresses and approaches based upon what I was doing in the Northern Territory. It worked very, very well.

Michael Green [00:27:55] Now, after a couple of decades, I guess, of running murder trials consistently in 1985, the attorney general calls you and asked you, would you like to join the bench of the Supreme Court. As someone who'd been at that very sharp cutting edge of the law, I think anyway, in running murder trials all the time, and particularly for people who are in very difficult circumstances. Was it easy to walk away from that and to accept the position of becoming a Supreme Court judge? And when you became a judge, did you enjoy it or did you miss being a barrister for some time?

Frank Vincent [00:28:26] No, it wasn't hard to walk away. The reality was that that kind of work for that length of time imposes an incredible level of stress. And eventually I felt a bit like a boxer that didn't have to go into the ring again. It was almost a relief not to be subjected to that level of pressure because in the last several years, I was handling 20 murder trials a year...

Michael Green [00:28:55] You couldn't do it today.

Frank Vincent [00:28:57] It's an extraordinary number. And I was just handling them, you know, one after the other here or in the Northern Territory. And I would be absolutely, totally exhausted as a consequence. And you've also got to understand, for almost the entire time I was working in those areas, the death penalty was applying and then it was automatic life imprisonment. So, there was no plea, you know, no alternative. And I actually had three of my clients sentenced to death, but they were not executed, fortunately. I mean, that kind of work and that kind of pressure just can't be undertaken indefinitely.

Michael Green [00:29:38] And so there was a degree of release of the pressure, I guess, when you became a judge of the Supreme Court. But you didn't walk into an easy day at the office with your first trial. It was the Russell Street bombing of the police headquarters.

Frank Vincent [00:29:51] Well, that was a bit of a bit of a surprise. What had happened was the Chief Justice, Sir. John Young, said to me when I went into the into the Supreme Court, we don't have specialist judges, Frank. So, for some time, you are going to be allocated to civil work. I was appalled. I had absolutely no interest in this civil work and I hadn't done any for a very, very long time. Of course, I had the experience that many of the civil practitioners were totally aghast at seeing this character sitting on the bench dealing with their cases. And I was on the court for a little while when the Russell Street bomb was detonated and the Chief Justice said well, I was the most experienced person in heavy, really heavy criminal work around. So that was how I came to be allocated to that particular job.

Michael Green [00:30:48] Was it a difficult job? When you've got multiple accused, you've got to give directions to the jury on a lot of stuff, I assume. Did it cause you sleepless nights? I mean, coming in...

Frank Vincent [00:30:58] It was a monster of a thing. It took six months. The trial itself and the pressure during that time to keep everything under control was enormous. I'd come in to chambers in the morning and do some work before we started court after court, I'd stay

in chambers until about five o'clock in the afternoon. I would then go home, go for a run. I would then go back and I would work for three hours every night, Monday to Thursday, Friday night I had off, Saturday morning I would work, I'd have two hours off on Saturday afternoon and I would work some of Saturday night. I would work a Sunday morning. I would have two hours off for lunch. And then I would work on the rest of Sunday and Sunday night. And that went on for six months later on. As a judge, I would have I would have severed some of the counts

Michael Green [00:31:58] And had separate trials -

Frank Vincent [00:31:59] And had separate trials of some of the counts. But then I, I was not sufficiently experienced to do that. And so, I know that that game a lot harder than it had to be.

Voiceover [00:32:17] 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 [00:32:36] Frank, I'd just like to explore a little bit the role of a judge in a criminal trial, as I understand it, as not a criminal lawyer, but someone observing basically Judges in a narrow legal sense, decide questions of law, direct the jury. But I guess as a fellow human being participating in such a critically important part of our society, the judges impact is far more than just an automaton making these narrow decisions. What part does a judge play in a trial? And what do you think are the important qualities for a judge to have to be a good judge?

Frank Vincent [00:33:12] Well, firstly, your primary function as a Judge in a criminal trial is to enable the jury to do its job, not to do the job for them or to try and persuade them to a particular viewpoint, but to equip them to perform the role that they properly and constitutionally to perform. So that means that you have to ensure that the material which is given to them is in accordance with the law, properly explained to them, so that they understand what its significance is and how it all fits together. And generally, your job, you have to get them through the process as well as human beings who have not been exposed to that kind of situation in the past, who will be shocked, appalled, emotionally reacting to all kinds of things. So, your job, as I said, is to assist them as much as possible to do their job. And your job more generally is to ensure that everybody in this trial sees that it is a proper trial, not one in which the judge is pushing views or there's an imbalance which is somehow potentially productive, in justice viewed from one perspective to another, so that's your primary role. To perform that role, you have to be very, very mindful of the fact that you are sitting there effectively on stage. People are going to be looking for your responses, reactions, seeking guidance from you as to what they should do. And you have to be very, very careful about the nature of the guidance that you give them. That has to be essentially confined to principle, essentially directing the final decisions back to them and not manipulating them in any way, shape or form. So, you have to control your own emotional reactions. You have to be calm enough to avoid confrontations to the extent that you possibly can and be mindful that, as I said, this is a weird experience for everybody in that courtroom. And all except the most hardened, experienced witnesses are going to be under the pressures of one kind or another. And you can you can do a lot to try and ensure that this process functions properly.

Michael Green [00:35:51] Frank, at the top of the judicial tree, criminal justice tree is the Court of appeal. Do judges do their function, as you've explained it to us, completely oblivious to the fact that they may be overruled by the Court of Appeal. It may be an appeal from their decision in the Court of Appeal. Disagree with them? Or are judges sometimes conscious of the fact that they don't want to be publicly overturned by the High Court? The Court of Appeal

Frank Vincent [00:36:16] judges are any different from any other group or class in society. Nobody likes to be told that you're wrong. That's an understandable human failing. Some judges are very confident in the correctness of their own views, some with justifications, others more doubtfully so. And some are so concerned, as you might expect in any significantly large group of people to have great difficulty in actually coming to a view that might be perceived as popular or unpopular. All of these influences are there, and none of us are immune from them. All of us like to be liked and respected. And it is relatively easy then to rationalize your own decisions and your own behaviors, because apart from anything else, as an experienced lawyer and judge, you've got the skills to do that, to rationalize these things, to produce the desirable outcome. One of the... Real trick and the thing I think that judges really need to struggle for is to decide for themselves what is it that is actually influencing my decision here. That kind of judicial honesty, I think, marks the good judge

Michael Green [00:37:34] To know yourself,

Frank Vincent [00:37:35] To know yourself. To know what those pressures are and to ask yourself, am I actually doing this because, you know, I really think it has to be done or because I know that if I don't do this, I will be heavily criticized. I got myself into trouble at one stage by saying that there are a few kinds of judges. There are those who aren't too bright and they're not really nice people anyway and they're problem, but they make mistakes and that can be fixed up. There are those who are not too bright but are pretty good-hearted people. So, they're not going to do too much nasty to anyone. Really. Any inclinations are going to get them get them home safely. There are those judges who are really extremely bright but are not very nice personalities and they are a serious problem because they are very, very difficult to deal with. And the appellate level or any other level and the ones that you really aspire to be is one who's not too bad in the trams and trains department, but also is not a bad person. That's the aspiration.

Michael Green [00:38:47] I can understand you getting in trouble if you said that.

Michael Green [00:38:54] Frank, I mentioned the Court of Appeal, but certainly early days when you were first a judge, there was no court of appeal. It was called the full court of the Supreme Court. And that heard the appeals and judges like yourself did both trial work and appellate work. Did you enjoy the appellate work as opposed to the trial work?

Frank Vincent [00:39:12] Yes, I did. I found that it was quite a different dimension. And it was interesting to look at the work of other people, other judges, and that gave me a much broader impression of the functioning of the court and the different jurisdiction. So, I found that I was actually quite comfortable relatively early once I moved on to the Court of Appeal because it was new work entirely. See, to that stage, I'd also been teaching at law schools at Melbourne and at Monash and at Victoria University. So, I was I've been doing quite a lot of that academic side of it for a long time,

Michael Green [00:39:59] Teaching advocacy or teaching criminal law or different subjects?

Frank Vincent [00:40:02] I taught master's subjects in criminal law and criminology and evidence. So, I had been working in those sorts of areas, not being involved in law reform for very, very long time. I was on the original Law Reform Commission many years ago, so this was not stuff that was foreign to me and I was able to enjoy that different dimension to my work.

Michael Green [00:40:28] When you're finished on the court, was it difficult to step away from being a long-term practicing barrister, a long-term Supreme Court judge, to no longer having a daily life in the law?

Frank Vincent [00:40:42] Yes, in short, it was really, really difficult and it was made more difficult by virtue of the fact that almost none of my time on the bench had I performed only the single role of judge. For most of the period I had roles teaching at the universities. I went on to the parole board as deputy chair only a matter of months after I went on to the court, and then I became chair of the parole board, which I was operating the parole system throughout and with a variety of functions associated with that. So that there were at least two things I was doing and I was involved in other activities as well, including the establishment of programs for disadvantaged kids in the West and so forth. So, all of that was going on when I was working as a trial judge. When I went onto the Court of Appeal, I was involved in forensic science. I was also dealing with a lot of stuff from Victoria University because I became the chancellor there and I was doing that as well as all of my court work. And then I retired and I ceased to be the chancellor in the same week. And I suddenly found myself after years of multiple activities with nothing. Absolutely nothing.

Michael Green [00:42:10] Frank, just for clarity. Did you retire at age 70, 72?

Frank Vincent [00:42:14] 72, I was the last of the 72. So, then all of a sudden, I found myself with absolutely nothing to do. I was very depressed and really at a terrible loss. But then, like, I was effectively saved by a job, which was to investigate the circumstances surrounding the wrongful conviction of a young man named Farah Jama. And he had been convicted of rape on the basis of contaminated DNA evidence in circumstances where in objectively no rape had ever been committed by anybody. And it was just a dreadful, dreadful miscarriage of justice. So, I got this job to report on that. And then after that, I became involved in a series of different investigations. They included, I spent two years advising the parliamentary committee on child sexual abuse. That was the Victorian one. I spent a period of time acting commissioner for the young people. Then I spent some time investigating witness protection and suppression orders and other jobs. There were other jobs as well. So that bridge the period and sort of introduced what would not normally be regarded as a sense of normalcy in life, but was my normalcy.

Michael Green [00:43:41] I'd like to go back to the adult parole board where you work or you sat on the adult parole board for 16 years, maybe if you could tell us a little bit about the role of the parole board. And it now can be a controversial body, the whole issue of parole and who is given parole and who is let back into the community. And it's like your ideas on the whole concept of parole. Is it a necessity? Is it something which we as the community have to accept? There's a potential risk in it, but it needs to be done on in terms of fairness. So, I like to hear your thoughts a bit on the parole board and the role it plays in the criminal justice system.

Frank Vincent [00:44:16] I think the work I did in the parole board was probably much more important than the work ever did in the courts. Simple as that, the criminal justice system is a pretty crude instrument. And we need to operate it very sensitively and carefully. It's one thing to lock people up and say throw away the key, but the fact is we can't throw away the key. Eventually we are going to have to open the gate and let those people back into the community. Parole, properly operated, maximizes the prospects of successful reintegration of individuals into society that is not only in their interests, but it's in the interests of the society more broadly. And that has been so evident for a very, very long time. Of course, there are risks in releasing someone on parole, but there are equally risks in letting people run out of their sentences and then releasing them. The question is, which is the lesser, which is the most socially advantageous way of dealing with things. And I've always been very much in favor of parole. I'm not always enamored by the way, in which the system has been administered. In fact, I have some criticisms of it and I don't need to embark upon here. But I introduced a system when I was chair of the parole board. Of personally visiting every jail, at least a couple of times a year and interviewing offenders. Over the sixteen years, I would have conducted more than 2000 interviews of sex offenders, just gauging the level of individual risk of each of them, assisted by other people and by the work that was being done in order to make sensible, careful decisions about how we should operate. I regarded that work as terribly important. I still do. I don't believe that we made the world any safer for society by our hardening of our attitudes towards crime and parole and those things generally. Being tough on crime doesn't always mean that we have to impose heavy sentences. What we need to do is impose appropriate sentences. Sometimes they are heavy and must be in order to protect the community. That's regrettable, but it has to be done. I've encountered a significant number of people who evoked a deal of sympathy from me because of the terrible backgrounds and circumstances in which they'd come to be what they what they were. But what they had become was terribly dangerous and sympathetic as you might be. It was necessary to protect the community from them. Others didn't have to go down that path. And you could say avenues and opportunities and prospects for successful reintegration into the community. And they were the areas in which you could see real value for parole.

Michael Green [00:47:30] Frank, as a society, do you think that we allocate sufficient resources to the rehabilitation of offenders?

Frank Vincent [00:47:37] We don't and we never have. I saw in the papers that the government has finally decided to extend the welfare protection of children in care until they're 21. It has taken years and years of effort by concerned people to ensure that that was done. It's relevant in this context because the unfortunate experience has been kids have been coming out of care at 18, moving from that controlled society very quickly into prison. And that's been our responsibility we could have done a lot about. And we can do a lot of improvements, improving of the lives of those sorts of individuals and for vulnerable people in our society generally and reduce crime through that myth rather than the primitive notion that you can control the human forces by sheer weight of government activity.

Michael Green [00:48:38] Frank, you mentioned they used the term human forces throughout your, I don't think immense is too big a word, your immense experience in the criminal justice system, particularly with the most serious of crimes being murder. Are there any common factors you have seen among the people who have been offenders, among the circumstance that have given rise to the crime? Or is it a... It's obviously it's a part of human existence and will never go away. But is it a completely random thing or is it

something which there are factors that we can identify which we maybe should be trying to work at?

Frank Vincent [00:49:07] I mean, we have known for generations that poverty, lack of education, lack of opportunity and mental illness and social deprivation are triggers for crime. We know that. There's never been any mystery about that. It's not just anecdotal stuff or the assertion made by do gooders. This can be seen in criminal statistics. It is no coincidence that you see pockets of our society where crime rates are very much higher. It's no coincidence that you see it in areas like Broadmeadows, where those levels of disadvantage are probably as high as they are anywhere in Australia. But to do anything about it, that would require a reallocation of money and resources and time that we've never been prepared to expand.

Michael Green [00:50:02] It's a challenging sentiment, no doubt a true sentiment, but very challenging to us as a community.

Michael Green [00:50:10] In your working life, with the enormous pressures you worked under, one, do you think it takes a personal toll or took a personal toll, that horrendous workload that you worked under for decade after decade and two, what did you do about it?

Frank Vincent [00:50:25] Yeah, well, it did take a big toll. It really did take a big toll and at a personal level and in all kinds of areas of my life were impacted by it. Exercise became very, very important, actually. I started to run with Glen Huntley Athletic Club, never competed much with them at all because I couldn't train the level that was necessary for high level competition and because of the pressure of the work and traveling around doing all sorts of stuff. But I trained very regularly as to train with Ron Clark and the others. And Trevor Vincent, the steeplechaser, you know, really first-class athletes.

Michael Green [00:51:11] World class athletes

Frank Vincent [00:51:12] I used to use to run with them and we would do six to eight laps of Caulfield Racecourse most nights, which is just a bit between about eight and 10 miles. And we would go to Vernae Creek and run up and down the and the hills on Sunday mornings and they would be 17, 21, 23 and 26 mile runs. And that was what I think kept me in balance in some way and was important that these fellows had nothing to do with the legal system at all. They weren't remotely interested in that. And we didn't get in there rabbiting on about cases and so forth. And I say, well, I still run.

Michael Green [00:51:53] At Caulfield with the Glen Huntley Athletic Club, or around the streets at home?

Frank Vincent [00:51:57] No, I still run on Caulfield. I run there, I like to run barefoot so I can do that on the grass at Caulfield Racecourse

Michael Green [00:52:05] And obviously far better to run on grass than to run on bitumen.

Frank Vincent [00:52:09] That's the only reason I can run as an old bloke is the fact I've been running for years and years on grass barefoot.

Michael Green [00:52:15] Frank, on behalf of myself and our crew here this morning, I would like to thank you for giving us such a wonderful insight into the life of a barrister in

the life of a judge and the functioning of our criminal law system. And it's a privilege to have you here. Thank you very much.

Voiceover [00:52:31] If you would like to know more about Frank Vincent's Wonderful Life and career, you can read his memoir, "A Distant Time and Place", which has many more fascinating insights and stories from his life in the law and beyond. You can find a link to the book at greenslist.com.au/podcast. 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.