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*Columbus School of Law
Office of the Faculty
Washington, D.C. 20064
(202) 319-5140*



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REMARKS OF PROFESSOR GEORGE P. SMITH, II, FACULTY EDITOR-IN-CHIEF, *Journal of Contemporary Health Law and Policy*, Catholic University Law School, on the occasion of the dinner honoring Justice Michael D. Kirby, President, Court of Appeal, Supreme Court of New South Wales, Sydney, Australia, the dedicatee of volume nine of the *Journal*, on March 3, 1992, Washington, D.C., at The National Press Club in the presence of Ambassador Michael J. Cook and Mrs. Cook of Australia, Dr. Rosemary Donley, S.C., Executive Vice President of The Catholic University of America; Msgr. John F. Wipple, Academic Vice President of The Catholic University of America; Dean Mary Jean Flaherty, S.C., Dean of The School of Nursing, The Catholic University of America; Judge Stephen Schweibel of The International Court of Justice, The Netherlands; William Fishman, Esquire of Virginia and William Butler, Esquire, of New York City and others.

Regrets from William H. Rehnquist, Chief Justice of The United States; Justice Byron White, Associate Justice of The United States Supreme Court; Professor Thomas Burgenthal, former President of The Inter-American Court of Human Rights; Brother President Patrick Ellis, President of The Catholic University of America and Dean Ralph J. Rohner, Dean of The Catholic University School of Law.

It gives me great personal pleasure to both welcome and salute our dear friend and colleague from Australia, Michael D. Kirby. You have come half way around the world to be with us and we are honored by your presence, Michael.

As is the custom, I shall now proceed to "eulogize" (I mean pay a brief tribute to) you. I will alternate between the third person, the second person, and the first person--just for literary flavor.

Before assuming the President of The Court of Appeal of The Supreme Court of New South Wales, Michael D. Kirby served with national and international distinction as Chairman of The Law Reform Commission of Australia and as a Deputy President of the Australian Conciliation and Arbitration Commission. It was in his capacity as Chairman of The Law Reform Commission that he began to address the problems of law in action and its need to serve the ends of Justice--and especially so in developing a framework for principled decision making for advances within the New Biology. Owing to this early leadership, the Australian government now holds an enviable

reputation as the leader in the law reform movement of the biotechnology revolution.

From 1964 to 1969, Justice Kirby was a member of the Faculty of Law of Sydney University. He served as Deputy Chancellor at The University of Newcastle from 1978 to 1983. Subsequently, he assumed the duties of Chancellor at Macquarie University in Sydney in 1984 and continues those duties to this day. In 1987, the University of Newcastle conferred on him the honorary degree of Doctor of Letters.

In Blackacre, 1990, the student yearbook of the Faculty of Law at Sydney University, you reminisced about your pathway to the Law, Michael, and remarked that while a vocational test determined early in your career that you would have been an absolutely splendid bridge engineer (probably along the lines of Paul Hogan!), you wanted either to be a judge or a bishop. You stated, "One way or another I . . . was determined to get into fancy dress and realized that I didn't have a great deal of modesty." Doubtless, you continued, "this is the reason why I went into the Law rather than the Church, where humility is of course at a premium. It is not a premium in the Law...I hope I have become more humble since." Of course, your reference in this quotation is to the Anglican Church and certainly not the Roman Church!

In 1983, Lord Scarman said of you, Michael, that you had one of the liveliest minds active in the field of law reform. Specifically, he stated that "...you have an all-embracing, universal approach to law reform that admits nothing is too great or too small to tackle in a creative manner." While the broad Kirby approach to law reform has been termed by some as a mischievous folie de grandeur, I fell rather confident that this characterization of what you are about, Michael, pleases you greatly.

The former Governor-General of Australia, Sir Zelman Cowen, writing in his dedicatory essay to you that appears in volume nine of the Health Law Journal, acknowledges your enthusiasm and commitment to your mission as a judge, Michael--truly a judge who not only judges but educates. Indeed, as I have suggested to you on a

number of occasions, I really think you are more a professor--forever teaching-- than a judge making final decisions. There can be no argument with Sir Zelman when he praises your great breadth of vision and lively social awareness.

Today, as a wise, distinguished and courageous jurist, Justice Kirby continues as an eloquent voice in educating from and off the bench, as an internationally regarded commentator and teacher--educating, as such, to both the perils and the opportunities of the new and daunting biotechnology and the compelling need to recognize humanness as an indispensable component of enlightened action. His unflagging commitment to education through full public discourse and his indefatigable pursuit of truth--without polemicizing it--was acknowledged recently by his recognition in the Australian Press as one of the thirteen men and women on the Australian Continent (of some seventeen million people) who has made a significant and enduring contribution to the growth of Australia as a Nation. Truly, in Justice Kirby, one sees the quintessential judicial role model who, in his judging, follows the admonition of Socrates to hear courteously, answer wisely, consider soberly and decide impartially.

With Mr. Justice Kirby maintaining his visible strength and, indeed, vigilance in the vanguard of the New Biology, the pathway for resolving the myriad and complex bioethical conundrums is a pathway that has been cleared and is being expanded--as it is marked--with illuminating guideposts. It remains for those traveling the pathway to but read, understand and react in a positive and humane way to these road signs which he has designed.

You have cautioned, Justice Kirby, that "if democracy is to be more than a myth and a shibboleth in the age of mature science and technology" a new, educated and institutional response is demanded. And, if that response is not forthcoming, "we resign ourselves to being taken where the scientists and technologists imagination leads."

I agree with your conclusion, Michael, that "It is for our society to decide whether there is an alternative or whether the dilemmas posed by modern science and

technology, particularly in the field of bioethics, are just too painful, technical, complicated, sensitive and controversial for our institutions of government." In any event, TIME is surely of the essence!

Now, Michael, I yield the floor to you for your response and general observations.