

Michael Kirby: Judge

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Mr Justice Michael Kirby, President of the Court of Appeal in NSW, was aged 55 when this interview was recorded. He has never married and has no children, yet places high value on family life, or at least the family life he knew as a child. The great affection Michael feels for his father, who is nearly eighty and whom Michael still sees every Sunday, was evident in his soft tone of voice and the gentle expression in his eyes when he spoke about him. Michael Kirby said he would never presume to judge his father, being still 'his father's child'.

My earliest memories of my father are of him reading fairy stories to me as a child - the Brothers Grimm. I have a very real recollection of him reading one in particular, which I think has affected my life, about the fisherwoman who urged her husband to become a local knight, and then she went back to beg a boon of the person who could give any boon. And the next boon was to become the local lord, and so it went on to become the local baron, and prince, and king, and ultimately, the emperor, and finally, the person aspired to some divinity, at which point the couple was sent back to their hovel in the poverty of being fisherpersons. I think the moral of the Brothers Grimm was that you should not overreach yourself, or aspire too high, or perhaps it was that people should not be greedy.

I remember my father reading these books. I would be sitting in bed and he would be reading on the end of the bed to me or my younger brothers or sister. I didn't really get Australian fairy stories - one of my judicial colleagues had to tell me about 'The Magic Pudding'. It was part of that broad European culture. There was another one about Rapunzel who had to let down her hair. My father was a marvellous story-teller and he would embroider the stories. He was a wonderful father. He's really a very saintly man, a very good man.

My father was very keenly interested in history so we got lots of history and poetry and literature. More than my mother, who was busy looking after four children, my father did take the time to read to us and was a very devoted father. He was an only child himself and he was keen to make the most of building a loving family life.

He would tell tremendously vivid stories about the sinking of the Titanic, and stories of the Kings of England, and from literature. That fired my imagination about literature and history, and in fact I went on to do very well, I came first in the state in the Leaving Certificate, and I attribute that to my father's passion for history.

Q What was your father's work?

A A clerk. He started as a salesman. He's a very salesman sort of person. Gets on very well with people and likes people, more so than myself. I'm more like my mother, keeping people at their distance. My father always said that was the influence of his family coming from the south of Ireland, whereas my mother's family had been from the north, originally from Scotland.

Both my parents were born in Australia but the culture when I was growing up was that we were simply British people living in Australia. And my father was, and is, proud of the British element in our culture, which is indelible.

He was very gregarious and a very good salesman of machine tools for private companies. Then he set up his own business selling woodworking machinery called jointers. He conceived an idea of a niche in the market and but for the recession in 1959 that might well have flourished, but he didn't have the capital to make his enterprise succeed. He exported a lot to India which was quite advanced. He called his business 'Pioneer Products' and with a bit of luck and more business acumen, certainly with more capital, he might well have done well and become a captain of industry, but that was not to be. I think part of his problem was that he was very devoted to his family. My parents were shattered by the death of one of their sons at the age of eighteen months. My father had been very lonely as a child. He was the result of a 'mixed marriage' as it was known then - his mother was Anglican and his father Catholic, and they divorced. He told me later of how his father had a very big Irish Catholic family, and he was excluded because he was the Protestant. I think his loneliness as a child, peeping through the fence to see this happy family, created both an image of his own deprivation and also a desire to make sure he would make up for that with his own children, that he would set a dutiful example, that he would never reject his children, never exclude them, and he would treat them with uniform kindness, which he did.

We used to test him as children. I used to say, "The Titanic has gone down, there is a boat and you've got all of us swimming around and you can only take one" and he would always insist that he loved us all the same. And still to this day, I don't know if he loves any of us any differently. I think he would put us all in the boat and be swimming outside. He was a pretty good swimmer.

Q Do you think that because he spent a lot of time and energy with his children he wasn't as materially successful as he might have been?

A I think so. He started his business in the garage of their home in Concord. He would have the embarrassment when he was trying to sell jointers to customers of having a snotty-nosed child come down and say he wanted to go to the toilet. That was difficult ... to reconcile his duties as a

parent and his duties to make his business a success. But if my father ever was faced by a choice between his duties as a parent and worldly possessions, he would always choose his loving kindness to his children. And I think we've all been influenced by that. I believe I'm a non-materialist person because of the example of my father. I'm not a thrusting money-maker, otherwise I wouldn't be a judge, I'd be out there making money. I'm not saying I haven't done well materially. I've done well because of my gifts of education, but I haven't done as well materially as I could have if I'd devoted myself to making money. It's not a real issue for me; it's not been a big drive in my life.

Q Are there any incidents you can remember when he chose you before business?

A No, not specifically. I can remember ... my parents didn't have a lot of friends or visitors. One rather eccentric woman, an amateur singer, would come to my parents' home and I would hear their laughter outside, and after I had switched off my crystal set, and it being all of 8.30 pm, I would go out and protest about the noise and I would be sent packing in no uncertain terms, for rudeness. He also would type his invoices and I remember being irritated and protesting about it, and I was told that that was what kept bread on the table and to get to bed, that I was a brat, and I was given a shove, and that was it.

It was a happy family. I'm really rather lucky. My father still to this day is rather a selfless man. He cared for his aunts and his mother. He's a thoughtful man, a good example to his children.

Q Having an Irish background, was he physically demonstrative to you as a child?

A Not really. I don't remember holding his hand, but I've seen photographs of it so I know I did. He was very encouraging to me when I happened to turn out to be a bright little swat in school. My father would give me bursts of history and poetry at night, and my mother would test me on my spelling, and hear me sing while she did the ironing. I went to opportunity school at the age of nine, which in some ways was a disaster, because it was long on Gilbert & Sullivan and short on mathematics. It encouraged you to grow intellectually by doing your own thing.

Q Do you think it was your father who gave you the phillip to achieve through education?

A Yes. Both my parents. My mother's father had been a journalist, her grandfather an archaeologist, and her grand aunts were painters whose works are in the National Gallery in Dublin. My father's family were not learned in the formal sense but they were extremely intelligent people and his mother's sisters were very bookish. My father's stories encouraged me to be interested in history and literature.

I now do a lot of writing outside the law and I make endless speeches to countless long-suffering audiences. I think my writing is profoundly influenced by my upbringing and literary education. My father bought records of Shakespeare for one of the earliest micro-groove systems in the gramophone and I would play 'Julius Caesar' for the Leaving Certificate. I can still spout reams of the play. He bought 'Richard III' one Christmas when he had no money - he was in overdraft - and he went to the bank manager to raise the money to buy a few presents, including 'Richard III'. I hope I'm not just a boring old lawyer, and I would not like anyone to think that my writing is not creative, as I draw for my writing on the literary education my father encouraged.

Q You say your father was selfless and caring. How important was religion to him?

A I was brought up as an Anglican, and went to Sunday school every week. My father goes to church every Sunday, but he didn't when I was a boy. He didn't really have the time. I became a member of the church choir and got used to the beautiful Anglican service. I still go to church occasionally, especially when I'm overseas, because it's a comforting return to the certainties of one's childhood. Again there's this magical mystery tour, supernatural, beyond ordinary, and the beauty of the language of the Book of Common Prayer, it's mysterious and beautiful to me. I remember one: "Oh Lord you ^{God} are ^{who} the author of peace and lover of ^{of} concord, in knowledge of whom stand ⁱⁿ our eternal life, ^{whose} services ^{is} perfect freedom", and I used to think as a child that the Lord had a special love of Concord, the suburb in which I grew up, only later did I discover that this was just a beautiful word for peace.

Q So both parents imbued in you certain spiritual values, caring for others?

A My father would have articulated it more; my mother would have lived it out in her daily life. She went to work too, once I reached an age, at high school, when the children could be trusted with me. One year she brought home discount fireworks, double bangers and Catherine wheels, from her work at Grace Brothers on Empire Day.

My father always said a very good thing when I was a child which has affected my life. He said that if anybody ever did any wrong within the family and they said later that they were sorry, they had to be forgiven. You had to banish it from your mind, which is an un-Irish thing to do. One shouldn't stereotype, but lots of Irish remember a slight or hurt and bear a grudge. I really think that instruction has affected my life - there is no-one in the world that I hate, no-one. I find it quite easy to forgive people who are nasty or cruel to me, of whom there have been quite a few in my life. I think hatred and cruelty are such destructive things, and it has been a very good instruction that my father gave to us all, to forgive. And by his

example, he doesn't hate anybody. I think if there was a criticism it would be that he has been devoted to every aunt, uncle, relative to the neglect of my mother. And I'm like him in that way, in that I'm more likely to be off speaking to the Rotary Club at Alice Springs, rather than spending my time with the relatively few people that I love. This is I imagine some gregarious gene working its way out in our system.

My father was not a drinker, or smoker. He would have one glass of beer at Christmas. I'll have a glass of champagne when I can, but I've only in my whole life been drunk once, after a dance when I was 28, which is a very late time to get intoxicated for the first time. I never saw my father drink; the very idea is shocking to me.

Q How did you learn the facts of life? Was it your father who told you?

A My father gave me a book called "The Guide to Virile Manhood" put out by the Family Planning Association when I was about eleven. It had in it pictures which I couldn't understand because they were pictures of uncircumcised penises. I had a circumcised penis like every Australian male of my generation. I couldn't understand what this funny thing was. It was extremely puzzling and confusing, but it didn't seem to me the right sort of thing to have a lengthy discussion about with my father, whom I had seen naked, and who seemed to have the same sort of thing as I had. So that book was not really a very helpful introduction. I think he was rather modest about sexual matters - I think that was a feature of the times. And at Fort Street - people tell you how they talked to their fellow schoolmates about sex - there was no mention whatsoever at Fort Street by teacher or fellow student about sex. It was just a non-discussed issue. I think my father would regard that as having been a sort of failing on his part, now, but I suspect that was just a feature of that generation and time.

Q So you were armed with this textbook then...?

A Yes. It was a modest textbook, about fifteen pages, most of it full of religious instruction about purity, saving yourself. I remember it had an orange cover with a picture of a young man in shorts, his hand held upwards, pointing into the future, with a look of inspiration on his face. And looking back at it, it wasn't really a terribly good preparation for sexuality.

Q And there was no practical advice from your father.

A None, but I don't think I was alone in that respect. Most boys had to find their own way.

Q You say your father might see it as a failing that he didn't tell you more, but you don't say you see it as a failing?

A I don't think it's for a child to judge his father.

Q But you're a man now.

A I'm a child to my father. I judge lots of other people. Tomorrow I'll be sitting in my crimson robes and I will be putting people in gaol for very long periods of time confirming their sentences. I can judge other people without a moment's loss of sleep because that's my job. Society has delegated me to do hard things on its behalf, generally to cruel people. But my father is far from a cruel person and I don't think it's my province to be his judge. I suppose if I'm objective I would have to say that giving a small boy a book with weird drawings in it which didn't relate to my body was not a very adequate way to prepare me for my sexual life, but on the other hand I suspect that in the environment in which I grew up at that time, he and I would both have been embarrassed to talk about it. He did talk generally from time to time about sexual matters but not in a way that was very explicit or direct.

Q This moves onto another question, and that is, whether you can recall a point in your relationship with your father in your adolescence when you challenged his authority?

A Never. I still wouldn't. I'm still a respectful and I hope dutiful faithful child to my father. I see no reason to challenge his authority. It has never been an oppression.

Q He's not an authoritarian person?

A No, he's a loving, giving, supporting person with strong values, some of which I don't agree with. He's quite clear in his own mind, is unapologetic and holds to them.

Q Is there any area of conflict in values where there has been some parting of the ways between you?

A No, my values are to a large extent values that were inculcated in me by him. It sounds boring, but I've never had a big fight with my father ever and I hold my father in great regard in respect of my life. I've now taken to embracing him, at the grand old age of 54. I think he's still a little embarrassed by this but I'm persisting.

Q And why have you decided to do that within the last year?

A Because I thought it was a bit artificial to go and embrace my mother and not embrace my father.

Q You wanted to?

A Yes, I thought that was the right thing to do.

Q How did he react to that?

A He was puzzled when I started but I think he's getting used to it.