

AUSTRALIAN LAW REFORM COMMISSION 20TH ANNIVERSARY DINNER
TRANSCRIPT OF REMARKS BY SENATOR GARETH EVANS, ANU, CANBERRA,
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I will be delighted to know tonight that I came here on the promise that I was only going to say a few words: if I had known Elle McFeast was going to be here it would have been even better. My only qualification to say even that many words is that I was in fact there, at the Commission, twenty years ago. I have to say I wasn't very long there. I don't know whether those things have been documented or not, but I think I must hold the record for the shortest tenure on the Law Reform Commission during its whole twenty years: I was appointed for exactly three weeks full-time in the middle of 1975, while we were doing the last writing of the Criminal Investigation Report.

I also think it's the case that I've probably had the shortest overall tenure as a part-time member of the Law Reform Commission: I came in in February 1975, and resigned in November 1975 in order to engage in a thoroughly quixotic pursuit of an unwinnable Senate seat in an unwinnable election. What happened thereafter is that it was suggested to Bob Ellicott that, in a spirit of bipartisanship, me having made such a mighty contribution to the Commission in its first year, it really would be appropriate for me to be reappointed: I had only resigned after all, because the Constitution said I had to. Well, Bob Ellicott showed about as much bipartisanship as John Howard and Alexander Downer have been showing on the question of French nuclear tests and Indonesian ambassadors and the like. He said "Get

I just want to make the point that I am not the sort of politician who holds grudges. There are two sorts of politicians: those who are very volatile and tend to make enemies as a product of their volatility, but then compound the felony by immediately forgetting that they have made the enemy; the other side, the more familiar side, are the ones that don't make quite as many enemies, tend not to identify themselves as being anyone's enemy, and then get even, often many years later. Well, I just want to make it absolutely clear that, although I don't normally hold grudges, I do still hold a grudge against Bob Ellicott. And I want everyone here tonight, in the spirit that motivated you all to come to this 20th Anniversary celebration, to make sure when you are go back to Sydney to tell him just that!

I was a valiant little band of warriors that started out in the Law Reform Commission. Above all, of course, there was Michael Kirby: a really quite extraordinary character, then as now, a man of extraordinary intellectual ability, extraordinary energy and industry, extraordinary creativity and flair and wit, and also extraordinary *gravitas*, *dignitas*, and *pietas* - although I'm not quite sure about the *pietas*. Michael Kirby is one of those people, and you probably know a few like him, who are born fifty years old: way back then, in 1975, he looked almost indistinguishable from the way he looks now. Indeed, when I first met him in student politics at about the age of eighteen, he also looked indistinguishable.

Then there was Gordon Hawkins, Professor of Criminology at Sydney University: a very laid-back, laconic kind of a character for whom no good thing in life was ever compromised. He enjoyed people, was very wise about crime and human behaviour, and was - needless to

... very good company. Then there was Alex Castles, an exuberant, bubbly Professor of Legal History - not in his case a contradiction in terms - from the University of Adelaide.

There was John Cain, representing the solicitors from Victoria - and probably still rather young he was back there, after his subsequent triumphs and traumas in Victorian politics. John was full of sturdy common sense, a sterling solicitor who knew his way around the world of the courts and wasn't terribly impressed with much of the high theory that I would pronounce from time to time. When we were engaged in our meetings he tended to prefer sandwiches and water - or orange juice on a good day - for lunch, when the rest of us wanted rather more to get out and have a sybaritic wallow somewhere. The ironies of political life...

And then there was the President of the Queensland Bar Association, a bloke called Gerry Brennan. Gerry, who went on to rather greater things, had a real passion for what he used to call rationality and balance - but what I used to call, with a marked lack of deference, leucical casuistry. I've never come across anyone in my life who, once his mind was made up, combined in such Gothic proportions, charm and immovability. And then, of course there was one: brash and rather noisy I seem to remember, and probably as generally all-around appalling as Elle McFeast...

But what did we actually do, what did we accomplish, in that first year? Apart from a huge amount of camaraderie, and increasing our waistlines (when John Cain allowed us to), we did, I think, produce two very good reports, reports in fact that were prepared in a huge white heat: we had our first reference, after being established early in 1975, in May and actually reported in August with a 235 page volume on Criminal Investigation and one about half that size on Complaints against Police. The occasion for the urgency and the effort we put into it was the intended establishment of the Australian Federal Police. The desire was to get them off on a good footing with an immediate process available for complaining against them, and also a set of ground rules for how they should behave in dealing with criminal suspects.

The Complaints against Police report, for which Michael Kirby did the primary writing, was in fact pretty well endorsed in its entirety, with some subsequent variations, in national legislation, and has been picked up elsewhere as well. Indeed I understand it's back before the Commission now, twenty years later; what was so accepted, and acceptable, twenty years ago, seems now to be medieval orthodoxy, and I guess it will have to be treated now accordingly.

The Criminal Investigation Report, for which I was largely, I guess, responsible - although I had a huge number of inputs, not only from Michael Kirby and my fellow Commissioners, (when Gerry Brennan would let them) but about one hundred other witnesses who appeared before us in the multiple hearings we had right around the country, has not been, by contrast, one of the great conspicuous successes in terms of the recommendations that have actually been picked up.

I like to think that, notwithstanding all that, my contribution to the Law Reform Commission was like that of a kind of meteor burning brilliantly against the dark night sky - and tailing out accordingly. A more apt analogy to describe the Commission's work, though, might be one I used a few years ago now to describe the work of Senate Committees and the Senators labouring on them: I called them the 'Portnoys' of the parliamentary system, engaged in activity that was extremely tiring, only marginally satisfying and extremely unproductive. But I suppose that is a very 1960s reference, and most of you haven't a clue what I am talking about.

What the first Law Reform Commission actually did, though, particularly in those first couple of references, was to attract a lot of publicity and a lot of enthusiastic attention at least from the press. It put law reform on the map. It did involve getting out to the cutting edge of issues with which politicians and the public generally, media certainly, were genuinely concerned. It compared with the sort of things that up until then Law Reform Commissions - part-time all of them I think - had been doing. I compare, for example, my experience in the ALRC with, I think, the two years I spent on the Chief Justice Law Reform Committee in Victoria in which, as I recall it, the only product of that two years labour was one half-completed report on the subject of 'Cattle Trespass'. This is, you will appreciate Jan Wade's idea of law reform heaven.

The other thing we actually did was, I think, to really go out and grasp, right from the outset, on the Commission, some really big and difficult issues of principle. That set a role for the Commission which thereafter - and still I hope to this day - has never been reluctant to grapple with those issues. I know that in years to follow things like tissue transplants, defamation and privacy, Aboriginal customary law, multiculturalism and the law, were all issues that the Commission was prepared to tackle.

Not that grasping and tackling those big issues of principle is always something that, frankly, appeals very much to politicians who at the end of the day have to implement these sorts of proposals. I think the best description of the relationship between politicians and principle was that offered to me last year in a phone conversation I had with my former colleague Jim Baker in Washington in the latter part of last year. His photo had been in the press that day as a result of him going to a fundraising function the night before for Ollie North, who was running as a Senate candidate for Virginia. I said to him 'Jim, I saw your photo all over the papers today, I know you are harbouring presidential ambitions, and I know you've got to appeal to the mad dog right, but really don't you think you'll have to draw the line somewhere?' There was a little pause at the other end of the phone and he said 'Well Gareth, sometimes in politics you just have to rise above principle!'

If there was any one individual who put law reform on the map it was of course, far more than anyone else, the first Chairman of the Commission, Michael Kirby, who occupied both honourably and brilliantly, that position from 1975 all the way through to 1984. He does apologise for his non-appearance - he was to be here tonight but he is stuck in Sydney, most unhappily. He was of course succeeded by some excellent subsequent Chairpersons - there was Murray Wilcox, Xavier Connor, Elizabeth Evatt, and of course now Alan Rose. I don't want to be taken as making any point at all about those who followed when I say that I do think it appropriate, on this occasion of the 20th Anniversary, that we pay particular recognition to the role that was played by Michael Kirby. I would like to finish by proposing a toast, accordingly, to not only 20 years of success for the Australian Law Reform Commission, and a toast to its future success of prosperity and longevity of us, to the Foundation Chairman of the Law Reform Commission, His Honour Justice Michael Kirby.