

ARTICLE ON MEDICAL CONFIDENTIALITY

BY

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MEDICAL CONFIDENTIALITY

Federal High Court Judge, Justice Michael Kirby, believes the computerisation of medical records and the confidentiality of HIV/AIDS patients deserve serious political and legal debate.

Judge was speaking to members of the Sydney People With AIDS Day Centre in Woolloomooloo. During a lunch-time address to members of the centre, Mr Justice Kirby accepted an invitation to become patron of the centre and offered to help and support them in any way he could. Speaking less than a month after his elevation to Australia's highest court, he also took the opportunity to raise a number of legal and moral issues that touch on the medical treatment of people with HIV/AIDS.

"Simple truths in the struggle against HIV/AIDS have to keep being said," he told the packed gathering. Addressing what he termed 'the AIDS Paradox', Mr Justice Kirby said support, compassion and justice for all 'at risk' groups is vital to the fight against AIDS. But so too is changed behaviour. "You have to get into the minds of people and change the behaviour of those people most at risk. We've all got to do our part in fighting injustice".

The renowned defender of human rights focussed his attention on the issue of confidentiality. Generally speaking, the "confidence" belongs to the patient or client, he said. It's their information, the details and they could be said to own it. Patients, therefore, have both a right of access to the information and a right to be held about them, and a right to confidentiality.

He said the law generally protects confidentiality between a patient and doctor, or a client and lawyer for example. But he said the issue also poses interesting moral dilemmas.

What of the doctor who knows an HIV positive patient has not informed their partner, and is very likely to put them at risk of HIV infection?" he asked. "Does a higher moral obligation to protect a partner that outweighs the

obligation on the doctor to maintain confidentiality?"

But the flip side of that question is what happens if a doctor undermines the confidentiality of a patient. Especially in an area like HIV/AIDS, if you undermine confidentiality in one case, you undermine the whole concept of confidentiality for all patients when they go to their doctor. "It's very difficult to decide where the line should be drawn. It's a legal minefield, and one that parliament should decide through a law reform inquiry."

Mr Justice Kirby said the computerisation

of records also leads to people feeling they have no real right or control over information stored about them. "It's important that people have access to the information stored about them on computers...particularly in matters that are important to our sense of identity, or things that are very personal to us".

The Co-ordinator of the Sydney People with AIDS Day Centre - Frank Guy - said he was delighted the Judge had agreed to become the centre's patron.

"It's very exciting for the centre and the clients that he'd take time out of his



From left to right: Sydney PWA Day Centre Coordinator, Frank Guy; Federal High Court Judge & PWA Centre Patron, Mr Justice Michael Kirby; PWA Centre Cook, Herman Arizabal, & PWA Centre Project Officer, Robert Atwood.

of medical records also causes problems of confidentiality. When information haemorrhages from the system, it's very difficult to get it back and contain it, he said.

"I've occasionally been to dinner with members of the medical profession, and heard things which I don't think I should have heard. Often prejudice attaches itself to these haemorrhages of information", he said. "It's therefore important to keep all data on medical records tightly restricted to those people who have a right and a need to know.

incredibly busy schedule to share his thoughts about the law and it's role in a progressive society," said Guy. "But it's also great to have someone as eminent as Justice Michael Kirby who's said he's happy to help and support us in any way."

For more information about the centre, contact coordinator Frank Guy on 357 3011

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