

NEWZTEL NEWS: RNZ "KIM HILL"

THURSDAY 26 FEBRUARY 1998

(B)

PRESENTER (KIM HILL): AUSTRALIAN JUDGE, MICHAEL KIRBY, DESCRIBED BY "BULLETIN" MAGAZINE LAST YEAR AS ONE OF THE COUNTRY'S TEN MOST CREATIVE MINDS IS IN NEW ZEALAND AS A KEYNOTE SPEAKER AT A MEETING OF THE NEW ZEALAND NATIONAL COMMISSION FOR UNESCO. JUSTICE KIRBY IS ONE OF SEVEN JUSTICES OF THE HIGH COURT IN AUSTRALIA. HE'S HAD A LONG INVOLVEMENT WITH UNESCO, MOST RECENTLY ON THE NATIONAL BIO ETHICS COMMITTEE WHICH DRAFTED THE UNIVERSAL DECLARATION ON THE HUMAN GENOME AND HUMAN RIGHTS. IT AIMS TO SET ETHICAL STANDARDS ON GENETIC RESEARCH. JUSTICE KIRBY IS ALSO INTERESTED IN... PRACTICALLY EVERYTHING REALLY, THE ISSUE OF SELF DETERMINATION AND THE ISSUE OF PRIVACY IN THE TECHNOLOGICAL AGE. AND HE JOINS ME NOW. GOOD MORNING.

JUSTICE KIRBY (AUSTRALIAN JUDGE): GOOD MORNING.

PRESENTER: BUT FIRST WE SHOULD TALK ABOUT DECRIMINALISATION OF MARIJUANA.

KIRBY: (LAUGHS)...

PRESENTER: BECAUSE AUSTRALIA SO OFTEN YOU KNOW FLIRTS WITH THE CONCEPT AND WELL, AND THEY'VE COME CLOSER TO IT THAN WE HAVE?

KIRBY: WELL I THINK IT'S BEEN TALKED OF AND CERTAINLY THERE'S A LOT OF SCIENTIFIC SUPPORT FOR THE IDEA OF DECRIMINALISATION AND IN SOME JURISDICTIONS, SOUTH AUSTRALIA AND THE ACT, THERE'S BEEN A MEASURE OF DECRIMINALISATION, YOU GET ON THE SPOT FINE TYPE RESPONSES. BUT THERE'S STILL A LOT OF RESISTANCE ON THE BASIS THAT IT MIGHT BE LESS OBJECTIONABLE THAN CIGARETTES AND TOBACCO BUT THAT DOESN'T MAKE IT SOMETHING WE SHOULD ENCOURAGE AND THAT'S THE SORT OF AREA OF DEBATE. BUT I WOULD THINK THERE IS A GENERAL SHIFT TOWARDS HARM MINIMISATION RATHER THAN PUNISHMENT AND IF YOU SIT THERE SENTENCING OR CONFIRMING SENTENCES ON PEOPLE FOR DRUGS, IT CONCENTRATES THE MIND ENORMOUSLY AS TO THE RIGHT OF SOCIETY TO TRY BY LAW TO FORCE PEOPLE INTO PRIVATE BEHAVIOUR, WHICH MAY ONLY BE AFFECTING THEMSELVES.

PRESENTER: I MEAN I OFTEN WONDER WHETHER THE REAL THRUST FOR DECRIMINALISATION IS GOING TO COME FROM THE JUDICIARY AND THE... FROM LAWYERS WHO ARE CONFRONTED WITH HORRENDOUS CRIMES EVERY DAY AND YET HAVE TO DEAL WITH SOMETHING THAT IS ESSENTIALLY VICTIMLESS?

KIRBY: I WOULDN'T COUNT ON THAT BECAUSE YOU SEE IT'S THE DUTY OF JUDGES TO ENFORCE THE LAW AS MADE BY PARLIAMENT.

PRESENTER: MMHM...

KIRBY: AND WHEN I SAT IN THE COURT OF CRIMINAL APPEAL IN NEW SOUTH WALES BEFORE MY PRESENT APPOINTMENT, I WOULD NEVER INDULGE IN THE...

THIS IS HEINOUS, THIS IS WICKED, THIS IS OUTRAGEOUS BUT I WOULD OBEY THE LAW MADE BY PARLIAMENT AND I THINK THAT WOULD BE THE ATTITUDE OF ALL JUDGES I KNOW, SO THAT THE REAL THRUST FOR REFORM IF IT'S TO COME ANYWHERE HAS TO COME FROM THE PEOPLE. THEY HAVE TO REALISE THAT CANNABIS OR OTHER DRUGS MAY NOT BE GOOD THINGS BUT THAT LAW CAN'T SOLVE ALL PROBLEMS AND IT TENDS TO FALL VERY HEAVILY ON THE YOUNG. IT TENDS TO INCREASE THE POWER OF THE STATE BUT WE'VE GOT CAUGHT UP IN AN INTERNATIONAL REGIME WHICH IS LARGELY FIRED BY THE AMERICANS WHO HAVING GIVEN AWAY THEIR OWN NATIONAL PROHIBITION, HAVE REALLY PUT IN PLACE THIS SERIES OF CONVENTIONS WHICH BIND COUNTRIES LIKE AUSTRALIA AND NEW ZEALAND TO TOW THE LINE AND TO ENFORCE SUPPLY... CONTROL DRUG STRATEGIES WHICH REALLY ARE NOT VERY EFFECTIVE.

PRESENTER: MMM... TALKING ABOUT INTERNATIONAL CONVENTIONS THEN. HOW EFFECTIVE DO YOU THINK THAT THE DECLARATION ON THE HUMAN GENOME AND HUMAN RIGHTS WILL BE? HAS ANYBODY SIGNED UP TO IT YET?

KIRBY: WELL IT'S ONLY JUST BEEN ADOPTED BY THE GENERAL CONFERENCE OF UNESCO AND...

PRESENTER: HOW LONG DID IT TAKE...

KIRBY: IT'S A FIRST STEP.

PRESENTER: YES...

KIRBY: IF YOU ACTUALLY LOOK AT THE... SAY THE DECLARATION OF HUMAN RIGHTS, WHICH IS CELEBRATING ITS 50TH ANNIVERSARY THIS YEAR, WHAT TENDS TO HAPPEN IN THE INTERNATIONAL COMMUNITY IS, YOU GET A DECLARATION AND THEN EX YEARS LATER YOU GET A CONVENTION WHICH IS A TREATY WITH BINDING OBLIGATIONS, SO THAT THIS IS THE FIRST STEP AND I WOULD THINK IT WILL LEAD ONTO A... AN INTERNATIONAL CONVENTION BUT IT'S DESIGNED TO START PEOPLE TALKING ABOUT THE ETHICAL AND LEGAL ISSUES THAT ARE RAISED BY THIS MOST CREATIVE, ENORMOUSLY EXCITING BUT SOMEWHAT WORRYING PROJECT OF THE HUMAN GENOME.

PRESENTER: IT TOOK YOU QUITE A WHILE DIDN'T IT TO COME OUT WITH THAT? I IMAGINE THE MOST DIFFICULT THING IS TO BALANCE THE HUMAN CONSIDERATIONS AGAINST THE NEED FOR SCIENTIFIC PROGRESS?

KIRBY: YES. HUMAN, ETHICAL AND FINANCIAL, I MEAN THIS IS AN AREA OF MEGABUCKS WE'RE TALKING ABOUT. WE'RE TALKING ABOUT THE FUTURE OF MEDICAL SCIENCE. IT'S MAPPING THE GENES OF EVERY HUMAN BODY IN THE WORLD. IT WILL BE THE ENCYCLOPAEDIA OF MEDICINE FOR THE NEXT CENTURY. BUT COMING OVER HERE I WAS READING THE "NEW YORKER", THE LATEST NEW YORKER WHICH HAS THE STORY OF A WOMAN WHOSE MOTHER AND SISTER HAD BEEN FOUND TO HAVE THE GENE FOR BREAST CANCER. AND THE QUESTION WAS, WOULD SHE TAKE THE GENE TEST TO FIND OUT WHETHER SHE HAD IT? ULTIMATELY SHE DID BECAUSE SHE COULDN'T LIVE WITH THE UNCERTAINTY AND SHE DID HAVE THE GENE. SHE WAS CARRYING THE GENE AND THEN THE QUESTION WAS, WOULD SHE HAVE BOTH BREASTS OFF AND THE

OVARIES REMOVED? TREMENDOUS PROBLEMS THAT IN A SENSE WE WERE
PROTECTED IN THE PAST BY OUR IGNORANCE...

PRESENTER: MMM...

KIRBY: BUT THE FIRST STEP TO TREATMENT IS GOING TO BE TO FIND THE
FACTS AND TO FIND THE GENE, TO FIND THE MARKER THAT CAUSES
ALZHEIMERS, HUNTINGTON'S AND SO ON AND THEN...

PRESENTER; AND THEN DECIDE WHETHER YOU'RE GOING TO GIVE IT TO THE
INSURANCE COMPANY.

KIRBY: WELL THAT'S ONE PROBLEM. ANOTHER... BUT THE REAL ISSUE IS,
HAVING FOUND THE MARKER, CAN YOU PUT THE MONEY IN IT AND WILL THE
MONEY TURN UP THE CURE OR WILL THE MONEY TURN UP SOME PROCEDURE
THAT WILL ARREST THE DEVELOPMENT OF THE GENE?

PRESENTER: SCIENCE IS ALWAYS LIKE THAT THOUGH, ISN'T IT, YOU END UP
KNOWING MORE THAN YOU CAN DO ANYTHING USEFUL WITH?

KIRBY: IMMEDIATELY, YES THAT'S TRUE. BUT IT'S LIKE HIV, THE FIRST
STEP ON THE ROAD TO THE CURE OF HIV OR IF NOT CURE AT LEAST
CONTROLLING IT, AS WE DO DIABETES, WAS TO FIND THE MARKER, TO FIND
THE VIRUS. AND SIMILARLY WITH GENETIC DISORDERS, SUCH AS
HUNTINGTON OR ALZHEIMERS, THE FIRST STEP ON THE PATH TO A
SCIENTIFIC RESPONSE WILL BE TO FIND THE MARKER, TO FIND THE GENE

THAT CARRIES IT. BUT OF COURSE IN THE INTERIM BETWEEN FINDING IT AND THE CURE OR THE CONTROL, YOU'VE GOT A TREMENDOUS LOT OF PAIN AND PEOPLE HAVE TO LIVE WITH THE AGONY AS THIS WOMAN DOES IN AMERICA AND I'M SURE IN NEW ZEALAND AND AUSTRALIA THAT THE GENE SHOWS YOU HAVE A CONDITION, THERE'S NOT ALL THAT MUCH YOU CAN DO ABOUT IT ACCEPT THE MOST RADICAL STEPS OF POISONING IT OR RADIATING IT OR REMOVING IT. THEY'RE THE THREE COURSES THAT AT THE MOMENT ARE AVAILABLE.

PRESENTER: MMM.. IT'S STRANGE ISN'T IT, YOU WOULD HAVE THOUGHT.. I MEAN A LONG TIME AGO ONE WOULD HAVE THOUGHT THAT THE MORE YOU KNOW THE BETTER OFF YOU ARE?

KIRBY: I THINK IN THE LONG TERM THAT IS THE WAY OF THE CREATIVITY OF THE HUMAN CONDITION, THAT WE ARE ON THE EVOLUTIONARY MARCH HERE. WE ARE FINDING THINGS ALL THE TIME. THIS IS THE WONDERFUL THING ABOUT UNESCO. IT'S THE THINK TANK OF THE UNITED NATIONS AND IT WORKS CONSTANTLY IN AREAS SUCH AS INFORMATION TECHNOLOGY, SUCH AS GENETIC TECHNOLOGY. AND IN THE FIFTIETH ANNIVERSARY OF THE HUMAN RIGHTS DECLARATION, WHICH WAS ESTABLISHED BY MRS ROOSEVELT AND HER COLLEAGUES JUST AFTER THE WAR, THEY WERE DEALING WITH THE PROBLEMS OF HUMAN RIGHTS AT THAT TIME BUT THE PROBLEMS OF HUMAN RIGHTS IN THE NEXT MILLENNIUM ARE GOING TO BE INCREASINGLY THE PROBLEMS PRESENTED BY THE COMPUTER, BY THE INTERNET, BY GENETIC ENGINEERING, BY CLONING AND SO ON. SO THAT'S THE PROBLEM OF TOMORROW AND WE'VE REALLY JUST GOT TO ADDRESS IT. UNESCO IS HELPING TO DO THAT.

PRESENTER: JUST AS A MATTER OF INTEREST, RELATING BACK TO THE PREVIOUS INTERVIEW WHERE WE HEARD THE CLAIM FROM THE DEPUTY LEADER OF THE NEW SCIENTIST MAGAZINE, THAT THE WHO HAD BEEN IN SOME WAY LENT ON BY CERTAIN INTERESTS IN ORDER TO DROP THE LESS DAMAGING CLAIMS ABOUT CANNABIS, DID YOU FIND WHEN YOU WERE DRAFTING THIS UNIVERSAL DECLARATION ON THE HUMAN GENOME AND HUMAN RIGHTS, THAT THE HUGE INTEREST IN HAVING A FAIRLY LOOSE REGIME IN THIS KIND OF RESEARCH LENT ON YOU AT ALL?

KIRBY: NO I DIDN'T FIND THAT, ON THE CONTRARY, IF ANYTHING I FOUND THAT THE COMMITTEE WAS A LITTLE BIT SHALL WE SAY ANXIOUS TO MOVE INTO BANNING CLONING BECAUSE THE G7 POLITICIANS HAD DECLARED THAT IT WAS TOTALLY UNACCEPTABLE. THE DIRECTOR-GENERAL OF UNESCO DECLARED IT WAS UNACCEPTABLE AND SO IT... AT A VERY LATE STAGE IT SLIPPED INTO THE DECLARATION AND IT'S THERE AS SOMETHING WHICH SHOULD BE PROHIBITED. NOW MY EARLY EXPERIENCE TWENTY YEARS AGO IN THE AREA OF IVF TAUGHT ME... THE GREAT PAIN THAT PEOPLE GO THROUGH WHO CAN'T HAVE GENETICALLY RELATED PROGENY AND IT MAY BE THAT THE PROPONENTS OF CLONES SAY, WELL THIS MAY BE A WAY OF RELIEVING THAT IN THEIR CASE. I'M NOT SAYING THAT THAT IS A VIEW WHICH WE SHOULD EMBRACE BUT IT SEEMS TO ME THAT IN ALL OF THESE VERY DIFFICULT ETHICAL QUESTIONS THEY'RE NOT TO BE DETERMINED SIMPLY BY INSTINCT. THEY'VE GOT TO BE DETERMINED BY THOUGHT ANALYSIS AND A LOT OF DISCUSSION.

PRESENTER: IS AUSTRALIA GOING TO BE A REPUBLIC?

KIRBY: WELL THAT'S ...

PRESENTER: IT'S EASY TO CHANGE A SUBJECT WITH YOU BECAUSE YOU'RE INVOLVED IN SO MANY THINGS YOU SEE.

KIRBY: WELL THAT'S A QUESTION WHICH WILL ULTIMATELY BE DECIDED BY THE PEOPLE.

PRESENTER: YOU ARE AGAINST THE CONCEPT OR AT LEAST YOU USED TO BE DIDN'T YOU?

KIRBY: WELL IN THE OLD DAYS WHEN I WAS FREER I WAS...

PRESENTER: (LAUGHS)...

KIRBY: I SAW A CERTAIN ADVANTAGE IN HAVING A HEAD OF STATE WHO WAS A LONG WAY AWAY. HAVING WORKED IN MANY COUNTRIES FOR THE UNITED NATIONS AND SEEING HEADS OF STATE AT HOME WITH THEIR FLAG WAVING CROWDS AND SO ON, THE FIRST LADY AND ALL OF THAT BUSINESS, I SAW THE ADVANTAGE OF HAVING A HEAD OF STATE WHO CAME WHEN INVITED, DIDN'T COME WHEN NOT INVITED..

PRESENTER: DIDN'T STAY FOR VERY LONG.

KIRBY: DIDN'T STAY FOR TOO LONG AND ... BUT THERE IS A VERY SERIOUS DEBATE IN AUSTRALIA AND OF COURSE THE MAIN ARGUMENT THAT IS PROPOUNDED CONSTANTLY IS, WE SHOULD HAVE A HEAD OF STATE WHO LIVES AMONGST US AND IS ONE OF US.

PRESENTER: BUT ACCORDING TO THIS REFERENDUM WILL NOT BE ELECTED BY YOU?

KIRBY: WELL THE GOVERNOR GENERAL OF COURSE, NEITHER OF NEW ZEALAND NOR OF AUSTRALIA IS ELECTED.

PRESENTER: WELL NO. QED... THAT'S WHY YOU'RE GETTING RID OF IT ISN'T IT, PARTLY? I WOULD HAVE THOUGHT... YOU SEE ONE COMMENTATOR POINTED OUT THAT THE WEIRD THING ABOUT THE REFERENDUM IS THAT... THE REFERENDUM ON WHETHER TO BREAK TIES WITH THE MONARCHY AND MOST AUSTRALIANS WANT THAT BUT THE REFERENDUM WILL ALSO MEAN MORE POWER CENTRALISED TO MAJOR PARTIES AND MOST AUSTRALIANS DON'T WANT THAT.

KIRBY: YES IT'S A DIFFICULT QUANDARY ...

PRESENTER: YEAH...

KIRBY: AND THE RECENT CONVENTION IN CANBERRA REALLY HIGHLIGHTED THAT QUANDARY BUT IT'S A HEALTHY THING ISN'T IT, THAT WE LIVE IN SOCIETIES IN AUSTRALIA AND NEW ZEALAND WHERE WE CAN HAVE THESE DEBATES, I THINK THAT'S A WONDERFUL THING. WHEN YOU SAY... YOU

COMPARE IT TO WHAT I'VE SEEN IN CAMBODIA WHERE THERE WERE SO MANY HOPES OF HUMAN RIGHTS AND FREEDOM... AND FREEDOM OF EXPRESSION. IN MANY COUNTRIES OF THE WORLD THEY'RE DASHED BUT IN AUSTRALIA AND NEW ZEALAND WE ARE STILL FREE. WE ARE FREE PEOPLE. WE CAN STATE OUR POINT OF VIEW. WE CAN EVEN SAY WE SHOULD COMPLETELY AND FUNDAMENTALLY CHANGE OUR POLITICAL SYSTEM AND OUR CONSTITUTION. NOW THAT'S A WONDERFUL FREEDOM THAT WE HAVE. WHETHER WE WILL DO IT... I MEAN IN AUSTRALIA WE'VE HAD, I THINK FORTY-THREE PROPOSALS TO CHANGE THE CONSTITUTION. IT REQUIRES A REFERENDUM OF THE PEOPLE AND ONLY SIX HAVE SUCCEEDED SO IT'S NOT A VERY COMMON SUCCESS STORY. AUSTRALIANS ARE LIKE NEW ZEALANDERS I THINK IN FUNDAMENTAL THINGS, RATHER CONSERVATIVE. AND IF YOU HAVE A SOCIETY OF FREEDOM THAT'S NOT A BAD WAY TO BE...

PRESENTER: MMM... YOU MENTIONED CAMBODIA. YOU WERE INVOLVED IN CAMBODIA AND ITS KIND OF EVOLUTION FROM THE WAR ZONE, IT SEEMS TO HAVE SLIPPED BACK THERE CONSIDERABLY. WERE ALL THOSE EFFORTS COMPLETELY FRUITLESS?

KIRBY: OH NO, I DON'T THINK SO. THE WONDERFUL FOUNDATION FOR THE FUTURE LIES IN THE NGO'S, THE NON GOVERNMENTAL ORGANISATIONS AND IN THE WORK OF WHAT I'LL CALL GRASS ROOTS UN ACTIVITY, SUCH AS WHO WORKING ON THE ERADICATION OF MALARIA, THE UNESCO WORKING IN THE TRAINING OF JOURNALISTS TO BE ABLE TO SORT OUT FACT FROM OPINION. AND ILO WORKING ON WORK CREATION SCHEMES AND SO ON. YOU... THESE ARE PEOPLE WHO YOU'LL NEVER SEE STATUES TO, THEY'LL NEVER BE THE HEROES

OF THE HISTORY BOOKS BUT THAT'S WHERE REALLY GOOD WORK IS BEING DONE, IN THE HEARTS OF THE PEOPLE AND IN THE MINDS OF THE NEXT GENERATION OF CAMBODIANS, SO IN THE LONG HAUL I'M OPTIMISTIC BUT IT TAKES A WHILE TO CHANGE A COUNTRY THAT'S GONE THROUGH A TERRIBLE GENOCIDE AND WAR, REVOLUTION, BOMBING, TO CHANGE IT TO A MODERN MULTIPARTY DEMOCRACY. IT'S AN UNCOMFORTABLE ROCKY JOURNEY. AS YOU SAY A LOT OF... SOME OF THE RECENT INDICATIONS HAVE NOT BEEN TOO GOOD.

PRESENTER: TAKES GENERATIONS ...

KIRBY: YES, WELL IF WE LOOK IN AUSTRALIA AND NEW ZEALAND WE ARE THE PRODUCT OF THE GENERATIONS OF THE CONSTITUTIONAL STRUGGLES THAT TOOK CENTURIES IN ENGLAND. I MEAN I WAS LOOKING THE OTHER DAY, NEXT JANUARY WILL BE THE 350TH ANNIVERSARY OF THE CUTTING OFF OF THE HEAD OF KING CHARLES THE 1ST WHICH IN A FUNNY WAY IN ENGLAND WAS THE BEGINNING OF THE ASSERTION THAT ULTIMATELY THE PEOPLE CONTROL GOVERNMENT, NOT KINGS, NOT MINISTERS, NOT PRIME MINISTERS, IN THE END WE ARE THE PEOPLE WHO CONTROL OUR DESTINY AND THAT'S AS IT SHOULD BE AND IT'S A WONDERFUL HERITAGE WE HAVE. UNFORTUNATELY A LOT OF COUNTRIES DON'T HAVE IT.

PRESENTER: NICE TO TALK TO YOU. THANK YOU. AUSTRALIAN JUDGE, MICHAEL KIRBY, WHO IS IN NEW ZEALAND AS KEYNOTE SPEAKER AT A MEETING OF THE NEW ZEALAND NATIONAL COMMISSION FOR UNESCO.

ENDS.