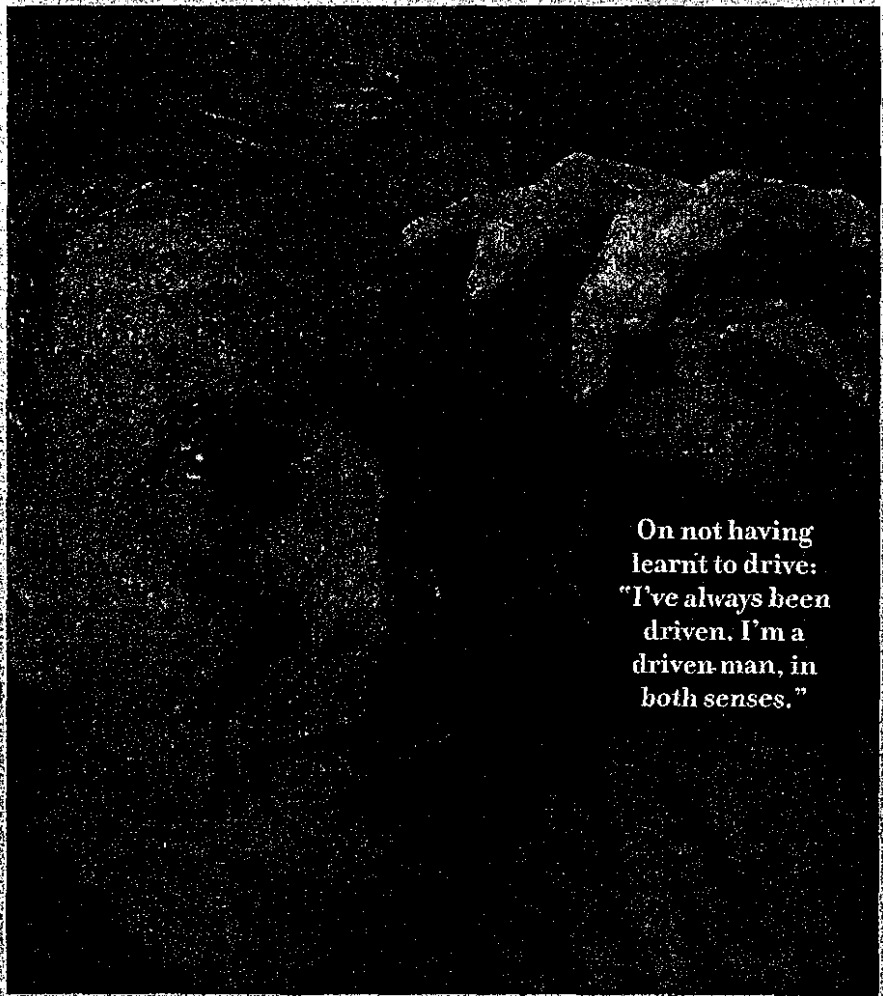


"Much of the response was supportive, much of it was sheer boredom, some of it was scarcely-veiled hate, and all of those are elements of the experience of every homosexual person."

Characteristically Informal
S. Kirby in his Sydney Chambers.

...of a court that is scruti-
 ...the Chinese government,
 ...his hints and signals. Professor
 ...Craven, dean and professor of
 ...Paris's Notre Dame Univer-
 ...Kirby critic, but an admirer.
 ...One of his strengths is his
 ...Craven said. "I think he
 ...quite clearly and in a relatively
 ...ing way, and that's quite a
 ...strength for a judge because it
 ...his judgments attractive."
 ...the other side. "I think probably
 ...is that he is prepared
 ...beyond what I suppose the
 ...vision of the judicial
 ...would be." Craven believes
 ...things fascinate Kirby's
 ...a judge. "One is the
 ...human rights and how
 ...protected judicially
 ...liamentary democracy
 ...thing that he's always
 ...ated with is the idea of
 ...dependence."
 ...nd believes it is too early
 ...Kirby's contribution to
 ...Court. "He will be
 ...in keeping the humanist
 ...stitutional flame burn-
 ...Court where the
 ...the... (incredibly
 ...and liberals," he said.
 ...quality is his judicial
 ...literary and legal
 ...of an ordinary judicial
 ...stands out."
 ...Kirby is a mass of
 ...workaholic radical
 ...humanist
 ...eracious, working-
 ...omplacated. He loves
 ...He has pictures of almost
 ...he meets, pulling out one
 ...many cameras at the end of
 ...ions and asking someone
 ...one of his staff members
 ...another picture to add to the
 ...albums that sit on the
 ...board of his Canberra cham-
 ...He is an actor by heart (he
 ...to hold court). If he were on
 ...it would be Sir Lawrence
 ...not a minor bit-part actor,
 ...to Jessica Milner Davis.
 ...he never learned to drive ("I've
 ...been driven. I'm a driven
 ...in both senses") and he says he
 ...really like to be a professor of
 ...("I regret spending most of
 ...time reading these books," he
 ...pointing to the law books
 ...his shelves, "and not reading



On not having
 learnt to drive:
 "I've always been
 driven. I'm a
 driven man, in
 both senses."

...history and literature)
 ...All of which is to suggest there
 ...is not a single personality behind
 ...the soft, almost gentle exterior. Or
 ...that any of the strands of person-
 ...ity, other than the judicial one, are
 ...easy to penetrate. But he says a clue
 ...in this rare moment of introspection
 ...years ago in a book called *Half-Time
 ...Perspectives Of A Mid-Life*. "I don't
 ...look forward with relish and I look
 ...back at my life as one of sacrifice
 ...and devotion to study, and I often
 ...sit here in this wonderful office and
 ...with magnificent views of a
 ...sparkling harbour, all week working
 ...away on reserve judgments. I reflect

...upon these people, ourselves, on
 ...their heads and think that I may
 ...be having more fun than I am."
 ...don't think I was ever young.
 ...Integral to Kirby's personality
 ...is also his passionate advocacy of
 ...human rights in every form. He is
 ...active internationally on numerous
 ...fronts: a special UN representative
 ...on human rights in Cambodia, a
 ...member of the Global Commission
 ...on AIDS, part of a mission to
 ...investigate South Africa's labour
 ...laws in the early '90s, and a member
 ...of the international jury for the
 ...UNESCO prize for the teaching of
 ...human rights.

...What then are the...
 ...mainly...
 ...Although he declines to enter the
 ...current republican debate because
 ...of its political sensitivity, his views
 ...have been so forcefully expressed in
 ...the past that it seems inconceivable
 ...they could have changed.
 ...The notion that we should
 ...change our constitution and replace
 ...our dutiful head of state to fit in
 ...with the timetable of a sporting
 ...jamboree or to pander to millennial
 ...madness is unworthy of serious
 ...contemplation," he argued in a
 ...speech entitled 'Keeping Calm
 ...About The Crown' at Wagga Wagga

1999. The Olympic Games will come and go. The century will turn. The centenary of the constitution will pass. Heady though all of those events will doubtless be, they are not the occasion for needless change in our constitution, to meet some body else's agenda or to soften the knee pride of those whose minds are locked into the nationalistic vision of the 19th century and must have a local and none other, to be their bet. To them I say: "Grow up!"

Describing himself "in a sense, as an average Australian", Kirby can only be referring to his origins, because being a High Court judge is as far from being an average Australian as anything in Australia. It is ceaselessly and intellectually never stops. The judges are responsible for delivering some of the most difficult cases which are

the most legally challenging and important. "As I walk from my apartment in Kingston to the High Court in the morning, and at night turning over the problems of the day, they never really leave you," said Kirby. "I find it difficult to go to the opera or theatre, which I love, because my mind is always ticking over a case."

What about the private life of a judge? "When I was first appointed I was told you can't go to pubs," Kirby recalled. "But as I didn't really go to pubs anyway, it didn't create any problems. There are some inhibitions on living an ordinary life, and one of these is just the sheer hard work of the judicial life. But, he insisted, judges are still human beings. Judges for the most part have children, they go to supermarkets, they have points of view, they have families and they have personal lives and marriage breakdown and all the phenomena of social life today."

Kirby lists work as his recre-

ation in *Who's Who*. He starts recreating every morning at around 6.30, weekdays and weekends, working either from his Canberra chambers if the court is sitting or from his spacious chambers in the Sydney High Court building in Phillip Street, with its views of the art gallery, the finger wharf and Hyde Park. Both his chambers combine judicial seriousness — walls of bookshelves containing perfectly bound sets of laws and statutes and cases — with Kirby's own personal flavour — dozens of framed pictures of him with notables, judges from everywhere including his brother, a NSW supreme court judge, the Dalai Lama with a Tibetan inscription even a few politicians.

High Court judges have two main functions: hearing cases and writing opinions. The process starts when the judges get their reading — the appeal books, court transcripts, written submissions and, in constitutional cases, the opinions of the state solicitors general. This

reading forms the basis of the questions judges put to the barristers in the courtroom, with the aim of producing, in Kirby's words, a "hot court" in which the judges "grill" the lawyers.

After the case is heard the painstaking task of writing the opinion begins. Kirby's *modus operandi* starts with a rough outline written during the court hearing (so that "court time is not wasted time") and a speedy dictation. This is followed by up to 10 drafts, a process that includes an associate checking the statutes (each High Court judge has two associates) and final proofing by the court staff. It is a patient, meticulous, time-consuming regimen because "we cannot delegate... It's unlike any other job in Canberra". Justice Anthony Kennedy, of the US Supreme Court described it this way: "You have your law clerks and your colleagues and the lawyers and the briefs, but in the last analysis it's your own morality, your own sense

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law, your own ethics, your own commitment as a judge, your own oath to the constitution.

When I asked Kirby what judges could possibly be passionate in their pursuit, he agreed that the modern appreciation of psychology tells you that you look at facts and read them as part of your preconceptions, but that three judges should hang over the door: a judge goes down in his life, independent, professional and



The swearing in of Justice Michael Kirby, centre, leaning forwards, as President of the Court of Appeal, Supreme Court of NSW, September 1984.

is fascinated by the role of the judiciary in modern times. The perennial question about judges should wear robes (High Court judges, not lower judges, still do), the judge I think journalists are more fascinated with robes than the ordinary citizen. Sometimes suspect there may be a bit of jealousy there that I can go around wearing a rather odd and antiquated robe, but they have their own funny ways, nobody who goes to a public event in Australia knows the way to dress down. They enter the scene with their robes and their robes are not hard to come by. How a court could do more in dress than the High Court. Australia, could you possibly design, if you sat down with a robe, more plain and ordinary and unbecoming, a reasonable even than the robes you have to wear. I asked him if he supposed a system of robes and to the committee that he had to be a judge, it is not the responsibility of the robes, it is like a bus driver in uniform. Yes, though not like many bus drivers wearing more engaging uniforms than they have.

His views on modernising the robes are well known, it is irritating to many of his fellow judges and lawyers. As an

advocate of technological change, he is an advocate of revising the court's proceedings. He cannot believe that the coming century judges will not be able to hold out. The introduction of electronic media in his view is consistent with Kirby's long-term interest in and commitment to technology as a momentous influence on society.

When I first went to work for him in the Court of Appeal, the law was still very much a paper-based profession, a skills former associate David Harrington. She was one of the first people to completely computerise his office. He is just a very visionary guy to recognise the importance of how technology changes the law.

As for the fact that judges earn considerably less than most of the \$8,000-a-day high-class barristers who appear before them (High Court judges earn \$230,300 annually), Kirby is quite relaxed. "Having left the legal profession 25 years ago I've forgotten about the buckets of gold of those who appear before us," he muses. "I think the rewards you get in life are very much a personal matter. Would any lawyer refuse a High Court judge's job because of the money? I really don't think so, it is a tremendous privilege."

Kirby illustrates his enthusiasm about the law when he is not working in his court by roaming the world, not in search of exclusive pleasure or relaxation, but making speeches, giving lectures and attending conferences. So far this year — a year no different from the past 20, he says — Kirby has delivered no fewer than 36 speech-

(eight weeks a year), and are paid for by his hosts. Generally he zips in and out of countries in a day or two, just enough time to attend a conference or deliver a thoughtful and/or provocative speech.

I asked him if he ever took real holidays. Yes, he said, he took a week last year but found it boring. Which is more than anyone could possibly say of the distinctly unbor-ing judge who was nicknamed 'one grab Kirby' in his younger days; the judge who in a speech last year described his job as "a highly moral and, even at times an inspiring vocation"; the judge whom his good friend Jessica Milne Davis believes would make a wonderful first president of Australia; if he could bring himself to replace the Queen?

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