



Another day of adulation: Michael Kirby swamped by students at Deakin University, Burwood

KIRBY INC

Eight months after his retirement from the High Court, the *LJ* has found the Michael Kirby festival rolls on and on and on.

Australia's longest serving judicial officer is not enjoying a very peaceful retirement.

Michael Kirby is yet to have a work-free day since retiring from the High Court Bench on 2 February, and a solidly booked seven-day-a-week schedule will see him traverse the world for engagements almost non-stop for another year.

Mr Kirby said his partner, Johan van Vloten, "who has suffered for 40 years with my A-type personality", still feels like he is living in a waiting room.

"He says 'I am waiting for you to breeze in and breeze out. Why don't you slow down and enjoy life. Have some quiet time, read books, smell the roses'.

"And I say, 'damn the roses, I am not interested in the roses. I am interested in people and ideas'.

"He says, 'how long do you think you will be alive for?'

"And I say, 'my father is still alive and driving at 94'."

On Wednesday, 20 October, Mr Kirby flew from Sydney to Perth to launch a book and film festival and deliver the inaugural Michael Kirby Lecture at Murdoch University before catching the redeye flight to Melbourne.

There was hardly a spare seat at the 70-year-old's three public appearances the following day, squeezed between 11am and 3.45pm and spread over 20km, and by 6pm he was soaring high above Bass Strait heading to Hobart.

By Friday afternoon the man formerly known as "the rock star of the Bench" would be back in Sydney, and within a week his passport would be scanned in Asia and

London for more gigs before his return to Australia for even more.

Welcome to the life of Mr Kirby, circa 2009 post-retirement, and a glimpse of the celebrity that has given this Sydneysider more fame, in certain circles, than some politicians, pop idols and royals.

Mr Kirby said when he retired he had no firm plans and his jet-setting lifestyle "has all just unfolded".

"I do not seek out or generate these invitations, they flood in every day. I like meeting people; I always get new ideas and a sense of what really matters in law and life," he said.

"But I like to be as free as a breeze and I do what I enjoy and don't do what I don't enjoy,

"[However], my big interest in culture is music and I would like to be able to go to concerts and not to be thinking of tomorrow's engagements."



Mr Kirby said he was far busier now than when on the Bench, especially after losing his staff.

He said Kirby Inc has been reduced to a two-person operation, himself and his personal assistant, and the occasional volunteer researcher.

His calendar is filled by accepting an invitation in some place, on some day, at some time and then telling others who have requested Kirby time that he will be in their town.

New events are then organised around his movements.

But for those who miss an appearance, he is preparing to upload his diary to www.michaelkirby.com.au.

And all this is coordinated without him owning a mobile phone or laptop.

"I don't want to be a slave. I can always check out where other people are but they cannot check up on me."

His three Melbourne appearances were at Victoria [which asked first and got the precious lunchtime slot], La Trobe and Deakin Universities, and after each occasion fans mobbed Mr Kirby.

He was asked to sign autographs (sometimes in the Annotated Constitution), posed for photographs, and his presence influenced grown men to tell bad jokes and young women to giggle excitedly.

Clutching gifts he would pile into a waiting taxi, now the commonwealth car is a thing of the past, to be whisked away to his next appointment.

Interestingly, he is variously addressed as Justice, Professor, your Honour and Mr Kirby, or "I just say call me Michael".

"I love the students and they seem to like me. We have a mutual appreciation society," he said.

And they must. Most were on study leave that day and made a special trip to sit on the floor or in the aisle for a glimpse and to listen.

Mr Kirby revealed to the *LIJ* that he plans to scale back his travel schedule and spend more time at the nine universities at which he is an honorary professor, speaking or lecturing, from late next year.

"I have always been a friend to law schools and am proud that when on the Bench I advertised widely and employed associates from universities in each state."



Michael Kirby and hip hop artist Elf Tranzporter at the launch of the Victorian Arts Law Week in 2007

Students say they love that he writes the way he speaks, making his judgments easily digestible. But deeper than that, he has not come from the Old School Tie stock of many of his judicial contemporaries or conformed to the judicial stereotype.

In fact, he has done more to link the judiciary with the common man than any Australian judge in living memory.

On a personal level, he connects with and inspires his audience as he delivers ad lib speeches (working off the dot points scratched out on the pages directing him to that engagement) with equal parts seriousness, humour and swagger.

He speaks to them as equals. He was himself a student activist, has been openly gay since 1999, is pro Republic and "the great dissenter".

Although he believes he could have worked harder at convincing his colleagues of his point-of-view, "I had to respect their opinions".

"Being a lawyer trains the mind to think inside the square and in many ways I have been very orthodox," he said.

In fact, the *Oxford Companion to the High Court* has noted strong, conservative elements in his judicial views.

"Perhaps I should have been more questioning of received legal wisdom, but the questions I have asked will have to do for now."

Despite this self-assessment Michael Kirby is a risk-taker.

It was during a visit to Melbourne in May 2007 that he surprised the legal world by helping to launch the Victorian Arts Law Week with the once-in-a-lifetime collaboration with dreadlocked hip hop artist Elf Tranzporter.

The then Justice Kirby wore a bright yellow blazer that day and recited WB Yeat's poem "He Wishes for the Cloths of Heaven" while Mr Tranzporter beat-boxed in the background.

He then told the audience he was preparing for life after the Bench "when I'm going to become the Jerry Springer of Australia".

On 22 October, Mr Kirby told the budding lawyers that they live in "an age of big legislation" and "interpreting ambiguous words of statute is now the main game of the law".

But he advised them to interpret words in the context of the entire work and not take words in isolation.

"It is what we do in life and that is how we should be interpreting statutes," he said.

Mr Kirby then told them he would look forward to his dissenting opinions being used in future court cases, at whatever level.

Over the years, many Kirby devotees have been won over by his defence of those with little voice, such as gays and other minorities.

"When I was a judge, I knew the rules and observed them [in speaking publicly]. With my retirement, the rules have changed, but there are still inhibitions that I respect and I have not usually regretted not speaking out.

"I don't let things bother me. I have never had trouble sleeping. I don't just sit here worrying but get on with useful activities. How you see a problem shapes the way you deal with it."

And useful he has been.

A glance at Mr Kirby's curriculum vitae shows that between 1975 and 1996 he was variously Australian Conciliation and Arbitration Commission deputy president, inaugural chair of the



“Sexuality is not a big deal and if you think it is, then take an aspirin and have a lie down.” MICHAEL KIRBY

Australian Law Reform Commission and president of the NSW and Solomon Islands Courts of Appeal.

He still serves in many international United Nations and World Health Organisation positions, was president of the International Commission of Jurists, Macquarie University Chancellor and holds honorary degrees from 12 universities.

In 1996 he joined the High Court.

He said the big issues currently facing humanity were global warming, alternative energy, HIV/AIDS, access to water, poverty, housing, education and defence of human rights.

However, closer to home, “one issue that needs questioning is the approach of society and the law to illegal drug use”.

“There is a role for positive discrimination in Australia to correct longstanding inequalities and injustices. Getting more

Aboriginals into higher education is an urgent requirement.

“It was so when I was at university and remains so to this day. It is a national disgrace, and so are problems of Indigenous health and housing.”

He bought into two current political issues and said: “We need to keep telling ourselves that Australia has the barest trickle of refugee applicants, compared to Western Europe.

“The ancestors of most of us in Australia were queue jumpers for economic reasons.”

And we should be teaching human rights values in our schools “better than we do and perhaps a Charter of Rights will help”.

He believes “Australia’s obsession with sport needs to be rethought”.

Mr Kirby said there were loads of rules in the law needing re-examination, such as the approach to the “proviso” in criminal appeals, the obscure notion of “jurisdictional error” in administrative law, and the way refugee applicants “get caught up in a sometimes hostile spiral of litigation”.

But while the law has been Mr Kirby’s life, his heroes nowadays tend to be non-lawyers, such as ADF-trained “Shorty” Coleman who he met clearing landmines in Cambodia.

Or scientists like Luc Montagnier, Nobel Laureate for discovering the AIDS virus and Craig Venter, for his work in the mapping of the human genome.

“I can tell you that scientific conferences are much more interesting than most legal conferences. Less gossip and trivia, more curiosity,” he said.

On that note Mr Kirby, who claims on his website to have invented the blog, is slowly becoming an “e-monster” after former High Court Chief Justice Murray Gleeson

introduced him to daily news e-noticeboards a few years back.

But while he believes the internet is wonderfully instantaneous and informative, he is less enamoured with how it can consume people’s lives and descends into triviality.

“But we have recently seen the value of Twitter in [Burma and Iran] in mobilising people and sending videos and photos around the world. It has become a very important force.”

Mr Kirby then becomes visibly angry in citing the incorrect allegations made in 2002 by Liberal Senator Bill Heffernan that the then Justice Kirby was misusing a commonwealth car.

“That was not a very nice time and it was a very wrong thing in the relationship between the Court and the Parliament.

“And the sad thing from my point of view is that if you go to Wikipedia and Google I will forever be linked to that attack by Senator Heffernan.

“In the old days mistakes of that kind would be wrapped up in the fish and chips paper and thrown out and forgotten about. But no way in the internet age . . . it will always come out, so there is no way I can get clear of that.

“Sexuality is not a big deal and if you think it is, then take an aspirin and have a lie down.”

As for the evolution of Michael Kirby AC CMG, professionally he is the Australian Institute of Mediators and Arbitrators (AIMA) president and intends on working in that area in about 12 months time.

“Luckily I recently passed [the test]. It would have been no good had the AIMA president failed the test,” he laughs.

Besides that, “I will just continue to be myself”.

Earlier this year, Law Council of Australia president John Corcoran told Mr Kirby’s High Court farewell he hoped that, during the next phase of [Mr Kirby’s] life, “you do get an opportunity to spend more time with your partner and family”.

Maybe in the next phase. ●

JASON GREGORY

ALWAYS EVENTFUL

Even a drive from Burwood to Tullamarine Airport could not be uneventful for Mr Kirby who was involved in a road rage incident during which his taxi was struck by a van and forced from the road.

Mr Kirby said he became concerned the event would end in physical violence when the two male occupants of the van confronted the taxi driver who had left the vehicle.

“I was also concerned that I would miss my plane connection and urged [the driver] to leave the scene. I do not know what caused such violent conduct. It was a hot afternoon. I caught my plane. I gave [the driver] a tip,” he said.



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