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ORAL HISTORY SECTION

Australian Response to Aids Oral History Project

Recorded interview with
JUSTICE MICHAEL KIRBY
b. 1939

Interviewer: Daniel Connell
Date of Interview: 3 August 1993

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JUSTICE MICHAEL KIRBY

Interviewed by Daniel Connell

Daniel Connell: This is Tape One of the interview with Mr Justice Michael Kirby. The date is the 3rd of August 1993 and we're conducting the interview in his chambers in the Supreme Court Building in Sydney. End of identification.

Justice Kirby, perhaps if we could start out, if you could describe for me, from a personal point of view, what your involvement at the moment is with the whole question of dealing with the AIDS crisis, both... well depending on... this is a personal definition, so a national or an international level. I note in *Who's Who* there were a large number of international activities described. So if you could just describe for me what's happening now on that topic for you.

Justice Michael Kirby: Well, I suppose I could be described as an ancient relic of the early movement for an international response to HIV AIDS. I served for a time on the Global Commission on AIDS but when Jonathan Mann, who was the sponsor of that commission, fell out with the Director General of the WHO, Dr Nakajima, I was one of the first to be axed, and so I was. And therefore I'm not really involved very closely in the international regime at the moment.

Interestingly, this morning I received a letter from Professor Kalings, who is one of the Swedish experts who was on the Global Commission. He survived the change from Jonathan Mann. But he too is about to retire. So the old guard moves out and a new guard comes in. I suppose that's appropriate.

From time to time I get invitations to go to international meetings. I went to one only a month ago at Annecy in France. It was the third in a series, all of which I attended. Present were Dr Jonathan Mann and some of the old brigade from WHO, who were there in the early days of the international response to the epidemic.

Jonathan Mann is a charismatic and wonderful individual. He had a lot of his old team there and a few of the "old experts" who used to be involved, including me. I had to give the summing-up of the conference. It seems that it comes with judicial office. You often have to do the summing-up. And I did.

That really brought me up to date with some of the main developments in respect of AIDS. But institutionally I am not now involved in any international body relating to HIV AIDS. I'm just on the sidelines and occasionally wheeled out for a cameo appearance in the AIDS area.

Nationally, I was asked by Dr Blewett at one stage to become a member - I think it was chairman - of the national AIDS response. I declined to do that, though I said at the time that that was painful to refuse because I really did admire Dr Blewett's efforts. But I just have to learn in my life to say no from time to time. That was one of those occasions.

But I did serve at the invitation of Governor-General Sir Ninian Stephen on the AIDS Trust of Australia. I was a trustee from the beginning of that trust. But within the last couple of months I've resigned from that, largely because I just wasn't able to give it enough time. I regarded it as an important moral imperative to be more than just a name to be involved in it and actually be reading the papers carefully, considering the options for funding and actually doing a proper job as a trustee. So I've resigned. My place is being filled by Justice Jane Matthews, whom I suggested and who agreed to serve.

On an individual level, I have lost a number of friends as a result of HIV AIDS. I've learned of one very good friend, who is a very fine man and a very intelligent scientist, who has been working with Dr David Cooper in work in respect of HIV AIDS - scientific work - and he is very unwell at the moment. So that, on a personal level, I continue to get reminders of the terrible toll which AIDS takes on human beings. In the course of the epidemic I've lost a number of close and dear friends, and doubtless I'll continue to do so.

So they are the three levels at which I've operated, international and national and, most important of all, personal. And that's where I stand at the moment.

Daniel Connell: Well, just going back to the international for the moment. Often moments of clash, moments of conflict such as you briefly described, bring out fundamental issues in a way that the normal progress of events when things are calm doesn't bring out to the same extent. Perhaps could you describe for me the substance of the clash that resulted in the turnover in personnel that you described.

Justice Michael Kirby: Well, Dr Jonathan Mann is an extraordinary epidemiologist. He served for a time in Zaire. I think he was working there on something having nothing to do with HIV AIDS and suddenly this strange condition, the "slim condition", began to manifest itself. He became very concerned about it and very interested in AIDS. He was one of the early scientists who was involved in it.

He is a charismatic individual. He's a person with very great gifts of communication, both in English and French. His wife is French and therefore he has this dual language capacity which is relatively rare at a high level, amongst Anglophones. He was, of course, using that skill in Zaire, which is a French speaking, former Belgian colony.

So when AIDS came along Mann was recruited to the Global Programme on AIDS of WHO. He went to Geneva. He became the director of the Global Programme on AIDS. He saw very clearly, at a very early stage in the epidemic, a very simple truth. That was that, where we had no vaccine and no cure, the only effective strategy to fight HIV AIDS at this stage was to prevent its spread. And the only way in which we could do that was to spread the messages about the modes of infection and the ways of preventing it.

This sociological approach, if you like, to a great world epidemic was a very unusual response of WHO. WHO is housed in a huge building in Geneva which is peopled with scientists and doctors. It is a doctor organisation. It has tended in the past to be an organisation with a very great international reputation, built on vaccines, injections, mass immunisation, mass x-rays. It's done wonderful work. It's claimed many eradications of conditions such as smallpox. Therefore it's a very important doctors' organisation. And along comes a notable epidemiologist doctor who started to preach a gospel which was

new. It was the gospel of prevention, of sociological manipulation of people's lifestyles and habits. That led to a tension within the organisation: a tension between the medical approach and the non-medical.

Now, to this problem there was added the advent of a new Director General, which is the head executive officer. The former Director General of WHO, Dr Mahler, a Dane, was entirely supportive of Jonathan Mann. He supported this rather unconventional approach - unconventional for WHO. But then in the midst of the epidemic and at about the time of the Stockholm conference (which I think was in about 1985 or '86), Dr Mahler retired. He'd hoped for another term. But they elected a Japanese Deputy Director General, Dr Nakajima.

Dr Nakajima had a background of involvement in chemical treatment of conditions. He therefore brought a different approach to the office. He was much more inclined to an orthodox approach. He was much less sympathetic to Jonathan Mann's approach to the epidemic. He was much less accessible to Jonathan Mann - to such a point that important steps that Jonathan Mann wished to take or important issues he wished to raise, couldn't be raised because he couldn't get close to the Director General.

And the result of that was that Jonathan Mann ultimately gave an interview to *Le Monde*, the French newspaper with a large circulation, including in Geneva. He must have known when he did so that it would get to the notice of the Director General. It did. There was a clash. Jonathan Mann offered his resignation. It was accepted immediately. And he left, and that led to an Avignon.

There are now two popes. There is the pope in Geneva. And there is the pope in Boston. Because Jonathan Mann was immediately snapped up, offered a Chair of Public Health and Human Rights at Harvard University. That's where he is now. And he also was given a huge amount of money by a Swiss charitable foundation. So that he is there largely with his old team, most of whom also were given the bullet by Dr Nakajima. Another person, Dr Mike Mersen, an American – a good man but a rather more cautious and certainly less charismatic individual - was appointed as Director of the Global Programme on AIDS.

The next meeting of the Global Commission on AIDS which took place after these events, of course, there were hushed tones in the corridors. Dr Nakajima didn't appear as he had formerly done. Everything was done by Dr Mersen in rather more low key terms. Ultimately, a number of the members of the Commission were told that they would not [be reappointed] - that they would be the first to retire.

When we had been appointed a year earlier we had been told that every year after the third year of the Commission a number would retire. Of course that's entirely appropriate. But it was, I think, not coincidental that those who had been closest to, and most sympathetic to the approach which Jonathan Mann took, were the first to be given the bullet. I was one of those.

So I was put out to pasture as a member of the Global Commission on AIDS. Shortly afterwards the Global Commission itself was abolished. There is now a Council of Advice, which comprises some of the former members of the Global Commission on AIDS, including Dr Maureen Law as Chairman. She is a Canadian bureaucrat who has a skill in keeping on good sides with everybody. So that that is the score.

One last thing I would say on this. Jonathan Mann is Jewish. I think his Jewishness and his alertness to the risks of discrimination made him sensitive to the issues of HIV AIDS. He's also a United States citizen. So he would have been brought up in the milieu of a society which is right-asserting and which sees issues in terms of fundamental rights, as expressed in the Bill of Rights. So that from his Jewishness, and his American upbringing and his experience as an epidemiologist, he combined all these in a magical way. I regard him as one of the heroes of the global response to HIV AIDS.

It is remarkable that WHO adopted, and to a large extent still adopts, the strategy of prevention and not simply pill popping, given that at this stage there are no magic pills or pills which are only of indifferent success. It's logical. But logic doesn't always rule great bureaucracies. On this occasion, by dint of a remarkable individual, they did for a time. And I think the strategy was right. It's the strategy which has been adopted to a large

extent in Australia in a remarkable way. A lot of the credit for all that goes to Jonathan Mann and to his impact on local politicians such as Neal Blewett in Australia.

Daniel Connell: So, effectively, the price for adopting the policy was to get rid of the person who subjected people to the unpleasant experience of having to confront change. Is that one way of putting it?

Justice Michael Kirby: No, I don't think that would be right. I think there was a clash of personalities. Jonathan Mann is an exuberant, lively, energetic, intellectual, charismatic person. Dr Nakajima is a much more cautious, somewhat enigmatic person from a Confucian philosophy, who is much more medical oriented in his background. Even Japanese people apparently find Dr Nakajima difficult to understand. He is obscure in his own language. He's doubly obscure when he speaks in English. He is triply obscure when he speaks in French.

But there was an endeavour made this year to remove him, in the sense of not giving a second term. There was a very great push for that purpose from the Western countries. But the Japanese, in a ruthless move, made all sorts of steps to make sure that this person, who was the Japanese officer holding the highest United Nations post, was re-elected. And he was. And therefore we're stuck with Dr Nakajima for the foreseeable future.

The clash between Jonathan Mann and Hiroshi Nakajima is less important than the clash between the values of the preventive, sociological approach to medicine and epidemics, and especially the global epidemic of AIDS. But Jonathan Mann's strategy was not a solo, individual strategy. It was one which was arrived at by a lot of very intelligent people under his leadership in the Global Programme on AIDS. It hasn't been entirely eradicated. It can't be entirely eradicated until the doctors have a pill and an injection. There isn't a pill to pop or an injection shot to be given. So that they don't have a lot more going for them.

And therefore the strategy which was laid down during the period that Jonathan Mann was Director of GPA has continued to this day, though perhaps lacking that spark of

imagination that I detected in the strategies that Jonathan Mann was able to sell. He was indefatigable and imaginative and inspiring.

Daniel Connell: Is there another potential element in the situation - African feeling on the subject in that well, it might ... to some outside observers it would seem possible that the political implications of AIDS to African elites are quite profound, with the possibility in extreme circumstances of a number of nations being significantly destabilised by the extent of the impact of the disease, and consequently it being a rather difficult thing to really form an integrated response to that is actually practical in terms of acknowledging the size of the problem?

Justice Michael Kirby: There are a whole series of problems. At the recent meeting in Annecy that I mentioned, Professor Roy Anderson of London, who is an expert in the use of computers in plotting population movements and changes, pointed out that in large parts of Africa, especially in sub-Saharan Africa, population growth figures would be wiped out by AIDS. In fact there'd be negative growth.

So it's a very big problem for Africa. Africa is the continent which suffers the greatest scourge. As you say, it penetrates into the people they can least afford to lose, the mobile and often educated people in the urban societies. A couple of the presidents have lost their children to HIV AIDS. There'll no doubt be more.

But there are other levels of the problem. There have been people in many Western, some Western countries, who've tended to say, 'Well, all of this came from Africa'. There are some suggestions that they've found samples of blood from Zaire, taken in the 1960s, which were kept in Paris that have been analysed. And they want to blame Africa and stigmatise Africa and suggest that in some ways it is morally to blame. That makes the Africans extremely sensitive about the way in which they're being stigmatised.

Of course, it doesn't really matter where AIDS came from. It might've come from outer space, for all we know. But it is a human condition that is spread by humans everywhere. It's a problem of the whole human family.

But Africans are very sensitive on that level. I think Africa had a chance. The alternative to Dr Nakajima was a candidate from Algeria, I think, or Tunisia, who happened to also be at the Annecy meeting recently. He was a Deputy Director General of WHO for Africa, I believe, and a very distinguished epidemiologist. But Africa supported Dr Nakajima, largely because, I think, they had various heavy pressures applied to them by Japan, which was rather unsubtle on this occasion.

So HIV AIDS is an African problem and there are various tensions which lie behind the African response to it. But at the bottom line the Africans supported the establishment within WHO. That's why Dr Nakajima rules and Jonathan Mann is still out.

I wouldn't want to blow this into a proportion it doesn't have. We're dealing here with an epidemic which has already taken hold of millions of human beings. The petty squabbles in the corridors of Geneva have to be put in their proper perspective. And they're not really so important as perhaps this conversation might suggest.

But the fact is that the decisions in Geneva have influenced local ministers and bureaucrats to take decisions which, in some ways, are painful and, in some ways, morally threatening, in some ways the subject of religious opposition and requiring courage. And that I think has been the important role of the GPA, to stimulate local decision makers and to give them courage to take on their own people and bureaucracies in the preventative campaigns and to speak very candidly about sexual matters and about drug matters. Perhaps even to contemplate taking legislative, bureaucratic and other steps which wouldn't have been taken in the years before HIV AIDS. That certainly has happened in our own country.

Daniel Connell: One of the things I wanted to talk about which I think that leads on to is the idea that AIDS has in a sense, by increasing the cost to an extraordinary degree of old styles of prudery and bias and discrimination, and forcing a confrontation with the prospect that a greater degree of pragmatism, reality, detailed factual discussions in public, those sorts of things, that it has played an important role in actually transforming, generally, certain aspects of Australian society and the way in which people talk about all sorts of

problems. Because if you've got to talk about safe sex then maybe you can be more frank about people's political positions or their financial positions.

Justice Michael Kirby: Yes, I think there is a point in that. I certainly think there's much more candour in talk about sexual matters than there was. For example, one would never have heard on the television a few years back, before HIV came along, discussion of anal sex or so much discussion about young people having sex.

In a way this epidemic has broken down the naivety and, in a way, the modesty and simplicity of our society. Perhaps they were illusions. Perhaps the empirical data would've shown that young people, at increasingly younger ages, were going and having sexual encounters which, when AIDS came along, put them at a dreadful risk.

I have in a number of speeches tried to confront conservative audiences with the fact that when they say, well, they oppose this endeavour to have candid discussion about sexual matters and they resist the effort to give this information to young people, and that it is a parent's right to ensure whether their children will get this information, and that they object most profoundly to what they see as a gay conspiracy to remove the simple modesty and naivety of childhood and to impose upon children, whether they want it or not, knowledge about sexual matters long before they're really ready for it.

[I tell them] that really the equation is a very simple one. Given that we know that a lot of young children and young people do have sexual encounters, is it worth discarding those who do as a price that we are willing to pay in order to preserve (a) the naivety, simplicity, chastity and so-called religious values of the children who will not then be exposed too early to sexual thoughts, and (b) the emotional wellbeing of their parents?

It's an equation which I make them face up to quite bluntly. Because there would, of course, be some people in our society - fewer than in, I would think, the United States, but there would be some in Australian society - who would say, 'Well, I am willing to pay the price that a certain proportion of young homosexual people or drug taking people or people who have connection with sex workers, I'm willing to pay that price and in a sense discard

their lives because the price of taking the strategies which will prevent their becoming infected is to speak much more candidly and openly about sexual matters and drug use matters and sex workers than I want to do'.

Now, there will be people who will take that decision. Fortunately for Australia, our governments - and I speak of governments of different political persuasions - and most of our politicians have said, 'We are not prepared to pay that price'. It was the frank realisation of that equation that led them into much more candid discussion of issues of sexuality, in the media and in the classroom. And into strategies in relation to drug use and sex workers and homosexual issues, which perhaps would not have been taken so quickly (or not have taken at all) but for the advent of HIV AIDS.

Daniel Connell: Just to look at another major area which's involved the law, where there's some crossover on this subject, and that's the subject of drug taking. How significant do you think AIDS has been in forcing a reassessment on what you might call the simple prohibition approach to all sorts of illicit drugs?

Justice Michael Kirby: In the United States the drug use transmission of HIV AIDS is now increasingly the major mode of transmission. It's affecting large numbers of people in the ethnic communities in the big cities, in the ghettos of the big cities. At Annecy one of the participants, Dr Ernie Druker from New York, called them the Fourth World in the sense that they are really a Third World society living in a First World country. He presented terrible images and statistics about the penetration of the infection in the shooting galleries of New York and into the female population, through female population to neonates.

So that this is a major problem in the United States of America. Almost everywhere in the United States there is no needle exchange. The strategy has been the "just say no" strategy. There is now beginning a process for the provision of bleach and instruction in drug equipment.

But in Australia, from a relatively early stage, the governments, federal and state, have almost uniformly adopted the strategy of speaking frankly about these issues: providing sterile equipment in exchange for used equipment on the basis that, whilst we have a war against drugs and whilst we're against drugs, it's better that people not get infected.

So that we've taken that strategy. I believe - I don't have the latest figures but I believe - the result is that the penetration of HIV AIDS in the drug-using population in Australia is much lower than it is the United States. I would certainly hope so. Whether that continues from one year to another and as every new year brings more recruits into the field of drug use and as the cultural norms change, I'm not sure.

But certainly I believe that young drug-using people are very much aware of the dangers of HIV AIDS, of the need for the use of sterile equipment and of the procedures for getting sterile equipment and for cleaning it. The fact that they're aware of this is, I think, the beginning of wisdom in their appreciation of the risks that are associated with drug use.

Now, so far as society is concerned, there's no doubt that there's been a lot more discussion about drug policy since AIDS came along. It's possible that some of that would've happened anyway because, if you remember, the strategy of Prohibition in the United States, of which this is the counterpart and the continuation in a sense, was one which started in the 1840s or 1830s in the state of Maine. And it ultimately swept the whole country and gathered it up in the amendment to the Constitution. It then took a period of 15 years before the great experiment was seen to have failed. And then it came apart quite quickly.

Now, whether that's going to happen with other drugs and whether it will happen under the stimulus of AIDS, I'm not sure. But even in Australia there's much more talk of this issue than there was even a couple of years back.

For example, in a few months time I have to open a conference organised by the Law Society of New South Wales to consider new strategies for drugs. There are books published. I recently had to go down and speak at the inaugural meeting of a group of

politicians of all political parties from all parts of Australia, who have formed a group to lobby and fight for drug law reform. And one of the factors in the equation is undoubtedly the advent of HIV AIDS and the new realism that that's required.

But I wouldn't want to underestimate the problems, given Australia's adherence to international conventions, which are almost universal and which require the prohibition strategies. And, secondly, the general public support which I believe still exists for a punitive, prohibitionist approach to the use of illicit drugs. My own view is, naturally enough, not sympathetic to that. But that is the law as it is made at the moment and as I have to enforce it as a judge.

Daniel Connell: In terms of... you've talked of meeting politicians from a whole range of political parties. Thinking back to the early days, back in the early '80s, what are your memories there of politicians as they began to come to terms with what was obviously going to be a major topic, but which challenged them in their traditional attitudes?

Justice Michael Kirby: Most of them, I think, didn't want to talk about it or think about it, because this was a new condition that people hadn't really analysed and thought about. It involved gays, drug users and sex workers and it resulted, in many cases, in death. So that it wasn't a terribly palatable or popular subject. It required some very swift decisions to be made.

Fortunately, we had generals at the time who were capable of answering and sensitive to those questions. I believe they generally made very good decisions. There were goodies and baddies. The goodies certainly included Dr Blewett and Senator Peter Baume. The baddies, I suppose you would include people like Mr Wilson Tuckey, who was Shadow Minister for Health under Mr Howard's leadership of the Opposition.

Daniel Connell: This is the second tape of the interview with Mr Justice Michael Kirby. End of identification. Sorry, you were just about to mention that well-known character.

Justice Michael Kirby: I remember one incident which occurred when I attended the National AIDS Conference in Hobart and present on the same stage and speaking immediately before me was Wilson Tuckey. He was then Shadow Minister for Health. And he made a speech which was remarkably insensitive. He probably, in fairness to him, said what a lot of people in Australia were thinking: AIDS was a gay condition, that the gays should show more self-restraint, that anal intercourse was an unnatural way of penetrating another human being, that it caused the rupture of the body and the rapid infusion of the virus; and that there should be more self-restraint on the part of gay people, and that to some extent they were only bringing the problem of HIV AIDS upon themselves.

It was a very insensitive speech, and especially in the audience to which it was given. This was largely made up of people who'd been in the front line, either because they were themselves gay and had lost friends or were themselves infected, or because, as medical practitioners and health workers, they'd been actually working with people who were very ill or dying or had died of AIDS.

I remember two wonderful results that occurred. One of them was Professor John Dwyer, who I'll never forget for this. He leapt to his feet and he said, 'We do not expect in Australia very much from our politicians. But we do expect from a politician who might within a week be the Minister of Health of our country that, before he comes to a national conference and speaks about AIDS, he informs himself about the basic rudiments of the modes of transmission, of the steps that've been taken and of the strategies that are available'.

I was tremendously impressed with his courage. It was electric, of course, because the whole audience was in a seething rage at the end of Wilson Tuckey's speech.

And to some extent you have to give full marks to Mr Tuckey for his courage because he would've known full well what he was bargaining for. He was, of course, a slightly confrontationist politician - do I say slightly? He was a man who had a lot of confidence in his own judgment. He went down there and stuck his neck out. And Professor Dwyer [responded and] made a really electric speech.

The other speech was made by a plump, middle-aged woman at the back of the hall. She said, 'Well, I just want you to know, Mr Tuckey, that you have just said some tremendously cruel and hurtful things. I've lost my son to HIV AIDS and I've done so recently. I didn't expect to come to this conference to hear a person who was in a position of national responsibility saying such cruel and insensitive things. And I believe that you've not only hurt me, you've hurt everybody in this audience'.

So when she finished that I then had to make my speech, and it was a rather difficult situation to deal with. So I resorted to what I often do in such situations, a period of meditation and a sonnet of Shakespeare, which broke the spell of this anger through the magic of our language and [the reminder] of eternal things.

Daniel Connell: Do you remember the sonnet?

Justice Michael Kirby: Oh yes, I do. Of course.

When in disgrace with fortune and men's eyes
I all alone beweep my outcast state
and trouble deaf Heaven with my bootless cries
and look upon myself and curse my fate.
Wishing me like to one more rich in hope
featured like him, like him with friends possessed
desiring this man's art and that man's scope
with what I most enjoy contented least;
yet in these thoughts myself almost despising
hap'ly I think on thee - and then my state
(like to the lark at break of day arising
from sullen earth) sings hymns at heaven's gate
for thy sweet love remembered such wealth brings
that then I scorn to change my state with kings.

So I said that. And I think the audience settled down. Then I made my general speech. Basically, it was a speech appealing for continuation of bipartisan strategies and the strategies that Dr Blewett and Dr Baume had worked out. And within a few days Mr Wilson Tuckey was relieved of his post as Shadow Minister. And the bipartisan strategy went on.

Daniel Connell: How did Wilson Tuckey take the night?

Justice Michael Kirby: I have only a dim recollection. My brother has a wonderful recollection of facts. I have an adult brain so can remember some things but not things of this kind. I'd never be able to write Mr Crossman's diaries, I'd have to keep very detailed notes of such things. But I have a dim recollection that Wilson Tuckey didn't stay: that he made his speech and like so many politicians, busy men and women, he just swept away and the storm erupted around him soon afterwards. But that's just my general recollection.

Myself, I'm not for political correctness. I think the magic of democracy is the right to differ, not the right to toe the party line and agree on everything. (That's one of the reasons why I object to the way in which the republic is being forced on us at the moment. People have a right to diversity of opinion.)

But I think the legitimate criticism was the one that Professor Dwyer made of Wilson Tuckey. That it's all very well for people in the suburbs to have views of the kind that he expressed. There may even be some elements of truth in the views that he expressed, such as the need for greater responsibility amongst people in their sexual activity.

But it was the way he did it and the way he went about it, and the confrontationist way (and the almost populist way) in which he was trying, in a very desperate situation, where calm thinking and clear strategies were required, to appeal to popular sentiment. That really wasn't constructive in dealing with the epidemic.

So that... I don't criticise him for having his say and not toeing the party line and disagreeing with what people have said, including famous scientists. Galileo is a warning

to us about orthodoxy and everybody agreeing. But it was really a self-evidently ignorant speech.

Again, one shouldn't blow this into an importance. These are but vignettes. What was it after all? It was a speech at a conference of a lot conference-goers, committed people. So that no mortal damage was done to them. Mr Howard took the responsible step, removed him from the shadow post. Is he still in Federal Parliament? I don't know. We haven't heard much of Mr Wilson Tuckey since.

So that it doesn't really matter all that much. But it was something which, had there been a lot of Wilson Tuckeys in Parliament (as there certainly were in the Australian community), and had we not had leaders of the kind like Neal Blewett and Peter Baume and others in the federal and state spheres, then we would've been in a much worse position than we are.

Daniel Connell: It's been mentioned to me... I mean, on one level what you're saying is obviously correct. The big story makes that a very small part of it, but it's been put to me, that particular incident has been put to me as an important - perhaps symbol is the right word, but moment in the development of a bipartisan approach on both sides of politics. Because AIDS is something that it could've become a partisan issue. If a very cynical approach was taken by an opposition there might've been the calculation that there were votes in the, you know, Wilson Tuckey line. And it's been suggested to me that it is an important symbol of the maturity of the approach of Australian political elites to the whole problem.

Justice Michael Kirby: That might be so, but I think another factor in Australia is what I would call the decline of religiosity. I believe that in the United States religious leaders and churches are still much more potent than they are in Australia. They have tended to be something of an obstruction to a sensible approach to AIDS, given the few weapons that we have in the strategies that are [presently] available. The churches in the United States, especially under a Republican president, Reagan and then Bush, have, I think, been an impediment to the kind of strategies that we've had in Australia.

There's been something of a similar response in the Call to Australia Party to that which one has seen in the United States: resisting the candour about sexuality.

I emphasise [that these opinions are expressed] out of a completely sincere view. [They feel that] these are things that are destroying the beauty and simplicity of their vision of society. But we didn't have such potent forces ranged against the sort of strategy that was adopted. I think that that is a very important feature in Australia's response.

You say it shows great maturity on the part of the elites. Well, they...

Daniel Connell: I put it at as question.

Justice Michael Kirby: Maybe it does. I'm so discouraged by maturity on the part of the elites in Australia that I hesitate to acknowledge it. I think we were just very fortunate that there just happened to be in the position as Health Minister a person who had a genuine background in civil liberties, who in the long years of opposition had been a spokesman on civil liberties. [A person] who had a political science background and an appreciation of what could and what could not be done. Who had a personality which was malleable in the sense that he was an approachable person and who adopted towards his portfolio generally, but on this issue in particular, a desire to rope in others and to get them to see it as a national issue.

And then there were fortunately some people in the Opposition, including Dr Baume, Senator Baume, who had a authentic legitimacy himself as a medical man, who gave strength at the federal level to this approach. That then started to gather in people on a bipartisan basis throughout the country. It's true it could've all come unstuck. But I think even Bjelke-Petersen's Queensland came along to a large extent. That was itself remarkable. So that it does command analysis. I hate to say that it was because of the maturity of our elites.

Daniel Connell: Perhaps taking a different approach, and this is being very speculative and stepping back to a different type of topic, but staying with the Australian-American

comparison, thinking of the very surprising referendum result when there was an attempt to ban the Communist Party in '51. There could be no suggestion that the Australian public wasn't strongly anti-Communist and yet, for various reasons, and there are all sorts of reasons, in a fairly short period of time a majority, a narrow majority was marshalled against that referendum. In terms of - I don't know. Well, do you think there are any parallels at all that can be drawn, in terms of tolerance, pragmatism?

Justice Michael Kirby: I'm not too sure about that. I've had to read about the Communism referendum because I've done some papers and speeches about the role of Dr Evatt. Again, I have to say I think it was just the fluke that we happened to have a person in office, in a federal office which was relevant, namely the Leader of the Opposition, who happened to have been a distinguished lawyer and Past President of the General Assembly of the United Nations, who happened to have a commitment to fundamental liberties and a belief that, in the long run, they will protect us adequately.

He led a very reluctant Labor Party into battle against the referendum proposal and did so at a great price because, as you remember, the Labor Party divided. The Anti-Communist Labor Party was formed, later the DLP. It kept the Labor Party in Opposition for 15 years.

So that a great price was paid for this. [However], it was the fluke that there happened to be [the right] person on the spot. I would like to say, 'Well, this was the sign of the fair-go society and the tolerant Australia which will allow people to have views and be what they like and do what... so long as they don't frighten the horses'. But I'm not sure that that was so.

As I understand the campaign (and I've read the press of the time for I was only a boy at the time), my recollection is that what Evatt played on during the campaign was that - and he had the support of a lot of the churches - the way in which the referendum was worded, to allow the Parliament to ban communists and ban communism and the Communist Party, could explode into dealing with people for their thoughts rather than for their deeds. That this was something which had potential that the people couldn't initially clearly see.

But it was that risk that ultimately swung the vote and by a whisker - because [the campaign] was only won by a whisker - the campaign against the referendum was won and the referendum was defeated.

It passed in three States. It got 59.4 percent of the popular vote. It only had to rope in one more State and a couple more percentage [points] and it would've carried. But it was a remarkable feat of a leader. He was flawed but, on this occasion, [he] played a real important instrumental role, largely in playing on fear, I think.

Now, Dr Blewett, who had in some ways a similar philosophy and background [to Dr Gralt], who had libertarian views generally and who had personal sympathy for the strategy which was being adopted in WHO and urged on the world in respect HIV AIDS, had a similar catalyst role, I think.

I've told him I think his action as a catalyst, without which we may not have adopted this policy, has saved thousands of lives [in Australia]. That's a wonderful thing for a politician. Very few can say that. But he has definitely done it, and he deserves full credit, in my view. I believe he's a hero of the Australian political scene of the 1980s.

Daniel Connell: Do you remember... well, I'm sure you remember, but referring back to the innuendo that developed against Dr Blewett connected with the AMA to some extent, did you have any discussions with people at that time? Did you observe any of that from a fairly close point of view?

Justice Michael Kirby: No. I don't know Neal Blewett very closely. I've met him in meetings... conferences when he was in Opposition and meetings when he was Minister. Not very many. And I've spoken to him a few times on the phone when he's tried to inveigle me into national service. There was not much I could've denied him because I really do, as you would've gathered, admire him.

I only know of that what I have read in the newspapers and heard in the media, and I regarded it as pretty scurrilous and scruffy at the time. And I felt very sorry for him

because the issue was bigger than Neal Blewett or his personal life. Everybody, even a politician, is entitled to a personal life.

But his important contribution, I think, was that there were in the Labor Party, as there are in every party reflecting the general community, a number of homophobic people. I think Mr Hawke, for example, was a homophobic person generally. Certainly I don't think he had anything like the sympathy for homosexual reform, say, that Mr Keating has shown, in his very resolute action in respect of equal opportunity in the defence forces.

But Blewett was able to carry the Labor Party and tap its reserves, which are deep, of [a commitment to] justice and fairness to all citizens. That was a very important thing. Of course, he didn't do it alone. He had his supporters. He had his personal staff who were very important. I'm thinking especially of Bill Bowtell, who served with him for a time. And he would be able to tell you much more about Neal Blewett as the man and as the person and his role in it. I've heard some people say, "Oh well, Blewitt was the front of house and he had people in his office who were committed on the HIV AIDS front and that Bill Bowtell was one of them". He'll be able to tell you more about that.

But without the politician, without the person who was willing to take the public face and the public opprobrium and face down those who appealed to the sort of rustic elements in the [Australian] community, then we wouldn't have had the political decisions made which were courageous at the time and right.

Daniel Connell: Just perhaps coming back to your own personal experiences, thinking back to the early '80s, the first inklings that you had that there was something major about to happen. It's the sort of question that I ask everybody. A personal question.

Justice Michael Kirby: I suppose the first thing I saw of it was in some of the gay newspapers. You would see mention of this unusual condition which had begun to emerge in the United States, thought generally to be associated with the use of amyl nitrate and poppers. This was what I first began to see. And then one heard discussion about this in the general media. And then concern escalated and it became a matter of national concern.

And then that was followed by friends announcing that they had been diagnosed, or they were ill.

There are some friends - or there is one - whom I know who became very ill before AIDS became generally known. I sometimes look back on that. He was my age and I'd known him at [Sydney] university. I sometimes wonder whether he was an early person who had become infected and died of it. His death was thought at the time to be due to melanoma. But whether this was really connected with HIV AIDS, [I don't know].

So that was the course of it. I imagine it was not all that different to a lot of people hearing about these first reports. Then hearing of how much more serious this was than just a condition that affected a very few people who happened to use amyl nitrate. Oh, that it could have been so simple!

Daniel Connell: Thinking about the legal significance of AIDS, the legal implications of it, there've been a number of other major public health diseases of public health significance, very communicable diseases such as TB, Spanish flu, various diseases like that. From a legal point of view, would you put AIDS in a separate category or would you put it in the same category as some of the other major diseases that have plagued humanity over the centuries?

Justice Michael Kirby: It's obviously in some ways similar and in other ways different. It's similar to some of the earlier venereal or sexually transmitted diseases. I mean, it's now suggested that syphilis came to Europe with Columbus's sailors back from the Americas. So that we've gone through this. It came up through Naples and swept up into northern Europe and into Scotland very quickly and [then] England. So that it's not new in that sense.

Nature, in its mischievous way, uses sexual intercourse as a means of transmitting these terrible epidemics. There are, of course, some similarities between syphilis with its [various] stages, with the early brutal modes of treatment and its modes of transmission, that draw similarities between the syphilis epidemics and the epidemic of HIV AIDS.

The Spanish 'flu and other global epidemics don't quite have the stigma attached to them that AIDS has. It is a stigma based to some extent on false notions of human life [and value] and on hypocrisy about sexuality.

But, as well as that, you then had to lump in with AIDS the problem of its association with illegal drug taking and with the sex industry, which is illegal in some parts, most parts of the world. And with transmission accidentally to the haemophiliac population.

And so that you got these patterns which are similar to some earlier epidemics. But the features of HIV AIDS which were peculiar were features which made it difficult for politicians and for society to accept, because of its involvement in these matters which could only be talked about in hushed tones.

So this was the problem. We had the instruments, with the media, of communicating knowledge about HIV AIDS quickly. And, I think, in the world, we've done that pretty well. But we also had these impediments of attitudes and inhibitions, some of them legal, to talking frankly and acting boldly to contain the epidemic. Yet in Australia we did better than most countries. I hope that doesn't sound self-satisfied, because I believe every new year that kids come out of school there is a further fresh challenge to reinforce the messages that we've tried to get over to the population.

Daniel Connell: Just perhaps... syphilis occurred in a situation that was politically and legally very different, of course. Thinking of more recent situations such as leprosy and TB, the whole business of rights and obligations for people who are suffering from these diseases, the business of compulsory testing, incarceration, separation, all those sorts of things. Do you think that... well, from a legal point of view do you think AIDS is in that category or not?

Justice Michael Kirby: When the questions of the early strategy arose in the Global Commission on AIDS, the Russian expert (who was then the Soviet expert) was there listened to us all talking about the strategies which Jonathan Mann was urging and which

Australia was taking. And he said to me privately once with a very anxious look on his face, 'I hear what is being said and I suppose we will go along with it, but I hope we're right, because if we're not right then a terrible price will be paid'.

I suppose he was effectively saying: at this stage the Soviet Union is really almost AIDS free - this was, of course, back in 1985 or so - and if we could only put up a big barrier and adopt strategies of quarantine for the numbers who were then infected, we would either cease or cut down significantly the global impact of this.

And it may be even that at one point in the epidemic, at the very earliest phase, if only one could've detected, rounded up and isolated the relatively few people who were infected, from a global point of view [that would have been an understandable strategy]. Certainly if you happen to be living in a country like Nepal, that would've been a sensible strategy. And, of course, it was the strategy which Cuba, and to some extent, Romania adopted.

But the problem was that the virus spread. We have the rapid means of transport in the world. The Soviet Union collapsed. We just don't have enough barbed wire to keep all the people who would have to be kept in gaol or isolated or quarantined, away from others. Especially in respect of the sorts of activities which spread the epidemic.

As well as that, there were human rights imperatives that such people were no risk to others so long as they didn't engage in activities which had the risk of spreading the epidemic. Therefore it would be disproportional – a disproportional impact upon their civil liberties to isolate them when, for 99 percent of their lives, they were entirely safe to the community and indeed valuable members of it for many years of their life.

That was the problem. But the Russian scientist was essentially saying to me what was undoubtedly true. If, say, in 1978 we had only been able to have a sure test and we'd been able to isolate the people, then from a global point of view of stopping the spread of an epidemic which some estimate will be a hundred million people by the end of the century, a great deal of suffering might've been stopped.

But we're not now in a position to do that, and we haven't been for many years. Therefore, we've got to adopt different strategies. And I think everyone realises now that the quarantine strategy is really not on. It's not on in human rights terms and it's not on in purely pragmatic terms.

Daniel Connell: At the time, how did you feel about the dispute that got... well, it got some distance and then it was solved, but the business about donating blood... at-risk groups donating blood to the Red Cross?

Justice Michael Kirby: I didn't really feel very strong about that at the time. There was a dichotomy between our strategy and the strategy which was adopted in other countries. For example, in France people were positively encouraged to come forward and donate blood and were told that you will be tested for that purpose. Now, I always thought that to be a very unwise strategy, because there would be some people who were in the window period, when the tests were only to the antibodies, who would be then encouraged to come forward for the purpose of getting a test and who might be passing on the virus. So I never thought the French strategy was very sensible.

The problem with the Australian strategy was that it did present some particular practical problems. For example, the football team who went to give their blood, and how does the one member of the football team who might be gay and who doesn't want to admit it and who might be infected, how does that person say, "No, I don't want to do that", if that is the responsible action to take?

And at the time, I believe I wrote to the Red Cross in Australia suggesting that they should adopt a system whereby people could tick a square saying that their samples were only to be used for "scientific" or "research" purposes. That would permit people, without embarrassment or public refusal of testing, to indicate that there might be some need for caution in respect of their blood.

But, given the state of knowledge at the time, given the desire to avoid spreading the virus, given the kind of test that was available and given what we now know is what happened in

France with the spread of the virus and the continued spread of the virus and the relatively good record that followed in Australia, I don't think it was irresponsible. I don't think most people thought it was irresponsible for the blood bank to take a cautious view. I don't, for example, think that most gay people would think that to have been responsible because there were a lot of people at that time who didn't know (and maybe didn't want to know) their HIV status and therefore didn't go and [discover] their own position.

So that I thought that that was a responsibility. It's a pity that the French blood bank didn't show a greater responsibility. If they had, maybe the director wouldn't be in gaol at this moment.

Daniel Connell: The situation that occurred in Sydney of a prostitute continuing to act as a prostitute. That's another...

Daniel Connell: This is Tape three with the interview with Mr Justice Michael Kirby. End of identification. Yes, the situation that occurred a while ago here in Sydney of a prostitute who continued to practise as a prostitute after it was quite clear that she was positive. Is that a situation that involved... was that basically a political crisis for the departments that were involved, or were there legal problems in sorting out what to do there? I mean, there certainly seemed to be some sort of problem but I'm just not sure what sort it was.

Justice Michael Kirby: I suppose it was a political and legal problem - crisis might put it a little high. There are legal regulations in New South Wales, as in most jurisdictions, which empower a government to incarcerate a person or hold them in [custody] in order to prevent them spreading an infectious or epidemic condition. So the law was there. But the problem is using the law in a way that is proportionate again. In other words, to keep a proportion between what you're trying to do and what you do to the individual who's affected.

At the time I remember reading of the tremendous agony that the politicians had over the issue and the various suggestions that were advanced. Some people said, "Well, of course if a person goes on spreading a condition like HIV AIDS that may lead to death, then it's the duty of public health authorities to step in and prevent it".

On the other hand others said, 'We all know about HIV AIDS by now. People who have sex with sex workers know about it. It's up to them to protect themselves. People should be responsible and exercise self-protection'. Back came the answer, 'Yes, well, that is as it ought to be, but a lot of people don't, and therefore we've got to face the fact that this is a person who's a menace and a risk'.

And some at the time suggested, 'Well, it would be better for society, both in moral terms and in terms of them spreading a fatal or usually fatal condition and also in economic terms, in the tremendous health costs that are involved in people who become infected, for us to give this person a pension to live in the south of France for the rest of their life'.

So that there were lots of controversy. I remember being shocked at the time by that last suggestion and thinking, "That is absurd". But if you merely looked at the issue in purely pragmatic terms, you may not want to send them to the south of France, perhaps you'd send them up to Queensland with Joh's white shoe brigade up there, to keep them out of mischief.

But that was the debate at the time. It seemed to have all faded away. I don't know what [will happen ultimately] with [this person with] HIV AIDS. I suppose these problems ultimately do fade away because the people get sick and they can't continue their work and therefore they disappear. But the problem is, how do you protect others in the meantime? My understanding was that they were going to work on this person to counsel her - I think it was a transsexual prostitute - for the purpose of ensuring that she took precautions and protected clients.

But I do myself feel that every effort should be made in the sex industry to encourage safe sex. Every effort should be made in society to warn people of the need to protect themselves, and by protecting themselves protect others, by the use of condoms. It seems to be remarkable, if it is still the fact, that people do have sex with sex workers without the use of condoms, if it's penetrative sex. They should use condoms. Everybody should know that by now. But it seems that that is not universally the case, and hence the problem.

[There are] no easy solutions to problems of that kind. But the key to the solution is to keep a proportion between the diminution of the liberty of the individual who is allegedly causing the risk, and of the other steps that can be taken to prevent the spread of the risk, in proper harmony with the protection of society against proved risk to society. This is the proportion that we need to observe. There's no doubt that the law is there for use in such occasions. It's not been used very much, because, of course, it's often very difficult to prove that a person is exposing others to a health risk.

Daniel Connell: In terms of, in a sense, going along the spectrum and finding cases that are progressively harder, the whole business of due care and the responsibility of governments to protect the public from people who provide a risk. Institutions - I'm

thinking of both gaols and psychiatric institutions. What's the situation? Is it clear or is it something that needs to be defined, in some way or other, more than it has been? What the responsibility might be, say, in a psychiatric institution where there'd be in many cases a serious argument that none of the parties involved perhaps had the capacity to make informed decisions. Does this bring a legal onus to governments that they haven't yet confronted?

Justice Michael Kirby: There's no doubt that governments, if they are aware of conditions which expose people in their custody and care to risks, and if there are steps that they could take which would prevent the risk leading to damage and if it's reasonably foreseeable that the risks may lead to damage, then they've got a duty - so long as it's reasonable for them to do so - to take steps to prevent the cause of the damage. That's been held in many cases.

It simply would be a matter of working out in the particular fact situation whether or not, in those circumstances, it was reasonable to impose upon the State the obligation to protect those in their care from this risk of the spread of HIV AIDS.

The fact is that, once infected, there is no treatment or no cure, there's no treatment that cures the condition and none in prospect that will palliate the condition and prevent its normal result in death. For these reasons it would be a very high obligation on the State to ensure [as far as reasonably possible] against the spread of the epidemic or the spread of the virus to people in its care.

But one of the problems is that, in some State instrumentalities, there's been resistance. For example, in the prison system there's been quite a lot of resistance, mainly by prison unions, prison officer unions, to the taking of steps which the WHO and others urge should be taken to protect people who are in custody from becoming infected. Infected through unconsentual or consentual sexual activities. Or infected through the use of unsterile needles.

So far as sex is concerned, it's very difficult, as I understand it, to get condoms in prisons. The WHO has urged that they be made available, in a discreet way. Others in Australia

have done so. I [raised this] at a conference in Melbourne and in a conference in Adelaide. I was told that the problem was the prison unions were standing up to the Ministers and resisting the provision of condoms, even condoms issues by the medical staff of hospitals. They were doing so [allegedly] because they were afraid that the condoms would be filled with water or weapons or drugs and that they would break down the security of the prison.

Daniel Connell: Presumably the same problem's involved with needle exchanges?

Justice Michael Kirby: Well, greater problems with needles exchanges because of it. On the one hand the prison officers were fearful that the needles would be used to jab them and to expose them to risk, which is not an illegitimate fear. Or that there'd be needles all over the place and that accidentally they would come into contact with the needles which, again, is not an illegitimate fear. And, secondly, that within prisons there is the particular problem that, insofar as there are not sterile needles, that the needles such as are available will be used and reused and triple reused needles and therefore the very kind of needles which will tend to spread the infection.

Now, my understanding is that the prison authorities of Australia have uniformly resisted the availability to prisoners of sterile equipment. They're resolute in that respect. In both respects, then, condoms and needles, the Ministers have not been willing, or [felt] able, to take on the prison unions. Therefore, the status quo remains. No condoms, no needles.

But I do gather that within New South Wales prisons, at least, bleach is available, which can be used for cleaning needles. I assume that that's well known within a prison and that that can reduce the risk of those who can get access to a needle. But, of course, the more difficult you make it to get access to bleach or to sterile equipment, the more likely it is that in the chance situation of the need for the use of a drug, that there will be, if drugs are available, the temptation to use unsterile equipment.

My understanding, however, is that the spread of HIV in Australian prisons is considered to be relatively low - relative, that is, particularly in contrast to the United States. But whether that is so or not and whether the statistics bear that out or not is a matter that I'm not really competent to judge.

Daniel Connell: A number of people such as Dr Shepherd and Fred Hollows have alleged that the gay lobby has controlled the development of a response to AIDS in Australia. What's your opinion about those sorts of comments?

Justice Michael Kirby: I think there's an element of truth in it. Most of the early victims of HIV AIDS in Australia were gay. That galvanised a lot of people into a deep concern about it and a determination to do something about it. Some of the early fighters were themselves people who had discovered that they were infected and were very angry about that. They were determined to do something about it.

I believe, for example, that my friend who I said earlier is becoming ill, has been motivated in the tremendous, tremendous efforts that he's put into his scientific work, by his own infection. By his desire, in part, to do something which he hoped would lead to some sort of breakthrough for himself, but in part also to be contributing to the global scientific effort which is needed in this situation.

So that to the charge that the gay lobby has taken a disproportionate role, disproportionate to its numbers in the community, in the epidemic and in its strategies, the answer comes back, "Well, they've done so because they were in the front line".

The drug lobby, of course, is virtually non-existent and is rather powerless. They rely on the intelligentsia to speak for them - doctors, lawyers and others who believe that the current [legal] strategy is irrational, or ineffective, or relatively ineffective.

The sex workers are also rather silent. Therefore, if you identify the groups who in the early stage of the epidemic in Australia were most at risk, it really did fall upon the gays to mobilise themselves and to present the strategies and to articulate them, and that they did. I think it's thoroughly admirable that they do so. There are a number of heroes of the movement who, by their efforts to protect the gay community, were also, I believe, protecting the whole community of Australia.

Daniel Connell: Looking at the situation now, and perhaps looking at it particularly from a legal point of view, what do you see as the priorities? I mean, on the one hand, are we in a situation where we basically continue with the existing policies, hoping, waiting, for a cure of some sort to come along, or are there developments, leaving aside the possibility of a cure, that should be embarked upon, either in legal... and particularly in legal terms, in terms of taking the response to AIDS to a more effective level than it is at the moment?

Justice Michael Kirby: This was partly the subject that was discussed at the recent meeting in Annecy in France, where we had a lot of the top people involved in vaccine development. The general feeling was rather pessimistic about the cure. The problem, as I understand it, is that HIV penetrates so many organs of the body that the idea of somehow getting the virus out of the entire body and releasing the body [completely] from the infection is very difficult to conceive.

Therefore, the most that can be hoped is that we develop, in some future time, something that can control the progress of the virus. That it'll become a condition akin to diabetes that can be kept under control. And a person will continue to live with HIV AIDS and be perhaps infectious and able to infect others, but will be able to control the terrible downslide that occurs when the condition triggers itself and becomes active towards the last two stages of the progress of the virus.

So the feeling in Annecy, at least from the top scientists who were there, was one of pessimism about a cure. And rather more pessimism, I thought, much more pessimism than in the early days of the international meetings about HIV AIDS, when there was a lot of loose talk about the "magic bullet". There was much more pessimism even about control mechanisms. The optimism, such as there was, concerned strategies for vaccines. There seemed to be rather more optimism that, in due course, vaccines would be developed.

It seems that there is one corner of the virus which is constant and to which a vaccine can be targeted. They've identified this unchanging element in the envelope of the virus and therefore they feel that they can develop a vaccine which will attach to that.

There are at least eight major vaccine developments happening in the world. A number of their representatives were present at this meeting in France. And some of them were quite gung-ho about it. There was one Israeli professor, who I thought was rather like General Dyan with the Six Day War, who was talking about a cocktail of vaccines, as if this was some sort of exquisite French evening that we were all going to go to, where we would have a cocktail of vaccines. His view was, "Use 'em all" which was, one might say, a very typically Israeli approach to the problem.

But, generally speaking, the scientists there took the view that the vaccines were still quite a long way down the track. That they had to be trialled and tested. That they would, certainly in their early days, be extremely expensive. And a whole series of moral problems are [then] presented because the vaccines will basically be trialled probably in poor developing countries, only to be made available later in wealthy countries who can afford to pay for the costs of research and development.

So that is the score so far as cures and vaccines. There is a hope that there will be a vaccine which will have an effect on a person who is already infected. And within the literature there's a great deal of discussion, even some discussion which suggests that there should be no development of a vaccine for prevention, total prevention, that all efforts should be concentrated on a vaccine that will operate on a person who is already infected to stop that trigger that occurs when the person moves from an infected [HIV] status to being a person on the path to AIDS.

But, whatever meetings and worthy writers and scribblers say about these things, the research money will flow, I think, into prevention. That's where the world's anxieties will be. Like that Russian scientist, they will simply want to have something that can stop it going any further and they'll then write off people who've already been infected. I think that's the Realpolitik of the vaccine industry. That's what's likely to occur. [That's the sad fact.]

But, given that there is no likely early cure, if ever there will be a cure, that there is no likely early condition to palliate and control a person's infection who is infected and that there is no likely immediate vaccine, what do we have? All we have is more of the same.

More of what we've got. More candour and frankness in dealing with sexuality and with drug use.

And this is, I think, the overall strategy that should be adopted. It involves the endeavours to instruct in the use of safe sex and in the use of condoms. It involves, for example, the development of condoms where women can take control of their own sexuality and not be dependent upon men to use condoms and protect them.

There have been developments in respect of female condoms. Those developments are pressing ahead, though again they're going to be expensive and probably only really available and suitable for liberated Western women - who are, after all, an important class of the people who are at risk.

But one of the most gripping aspects of the meeting in France was [the presentation] of a doctor from Tunisia. She said that she could only come to the conference, under Tunisian law, because she had the permission of her husband to be there. She described the awful predicament of the woman in Tunisia who knows that her husband is having random sex, who knows from reading and from gossip of the penetration of HIV in the Tunisian community among sex workers. Who realises that she is at risk but is not empowered to deal with the matter, even talk about the matter with her husband. Who is not empowered or has no funds to secure a female condom, even if it were available in Tunisia, which it probably isn't.

The predicament of such a woman, one has only to think about the quandaries and conflicts that must go in the mind of a dutiful wife in Tunisia, or in many other developing countries and religious countries, who don't even have the advantages which we have in Australia, and other Western societies, of talking frankly and candidly about this and in doing things to stop the spread of the virus. So that's [another] major target for future strategies.

If one major theme came through the meeting in Annecy, so far as prevention is concerned, it was the empowerment of women. That if we're talking about Sub-Saharan Africa and the developing world and in Asia where the risk of the explosion of AIDS in high

population areas, then the real prevention must be targeted at women in order to allow them to prevent its spread.

The general feeling was that that was, in turn, allied with other educational and health needs. That these are all circles within circles. That you can't simply inform people in countries like, say, Iran or Tunisia, about safe sex and about condoms. That that just isn't a feasible strategy. And that therefore there have to be other strategies developed for their societies.

But if the question is, what do we do in Australia?, I believe we need to be constantly reinforcing the messages, reinforcing the instruction about safe sex, reinforcing the techniques and the facilities for safe sex and for the prevention of the spread of the virus. And until we have a sure cure which is readily and cheaply available, if ever, and until we have a vaccine which will prevent infection or prevent the deterioration of a person already infected, then that basically is the only vaccine we have. The vaccine of knowledge and of self-protection and by self-protection the protection of others.

Daniel Connell: A very personal question. Thinking of the last hundred years or so, there was sort of a brief period in Western societies of certain types, leaving aside the wars, where it was possible to be an adult and not have very many of your peers die until they got to their sixties and seventies. But now that now looks like a brief period... I mean, and you've already described losing quite a few friends over the years. In terms of philosophy of life, the impact on the way you think about life, the way you think about, you know, what's it mean to exist, when you're seeing examples of... in a very concrete way. I mean, we all know in theory but in a concrete way. Are you conscious of perhaps changes on your outlook of life that've come from this particular experience of the last ten years on a personal level?

Justice Michael Kirby: I suppose that I would have to say yes. I mean, it would be amazing if you were not affected by the repeated performance of death and the obligation to attend and sometimes speak at funerals. And the passing and deterioration of people whom you have known who have been fine human beings and attractive and decent people. So that, when you see this happen, you realise the transiency of human life. In a

sense, you realise what is the great lesson of death - or one of the great lessons - which is that we are all just on a little short journey and that it'll catch up with us all.

Now, my parents are still alive. Therefore, in a immediate family sense I've not had that brought home. I've not yet reached 60 and therefore I haven't had the experience of being one of those who went through without the loss of people in war. The fact is that the earlier generations of this century lost people at young ages in the two major wars and then in Korea and later wars. But now people are losing friends in the scourge of AIDS. So that, perhaps, this is just doing what the earlier losses did to [earlier] generations.

Making people realise the transiency of life, which when you're young you tend to think will last forever, making people realise the naturalness of death in the sense that it will come to us all, and then you see how it is a passage through which people have to go and through which you realise you will then yourself one day have to go. And that makes you realise both the urgency of doing whatever you want to do and are going to do, but also the rather irrelevant nature of any of your achievements because of the fact that everything is so terribly temporary.

So that these meandering thoughts are my only answers to the great question of existence. But certainly seeing frightened people who have become infected, receiving a letter as I did from one saying, "By all means ensure that you do not become infected because this is a terrible condition and these are terrible experiences I'm going through". So that when you get letters of that kind and when you see a school friend trembling and shaking [you have to pause and reflect]. I had a school friend who came to see me. He was a wonderful runner at school. He was four years behind me. But he came to see me quite early in the epidemic. He was a person who'd become a teacher, a teacher of teachers, at the University. He was a very nice person.

Anyway, he came and told me that he had been diagnosed. He was very upset. I really reproach myself that I was not sufficiently sensitive to put myself in his shoes at that time. I tended at the time - this was ten years ago, I suppose - to pass it off and say, "They'll find a cure". I had that brutal optimism that people had at that time. I regret that I was not more sensitive to his viewpoint and concerns.

I think, having now been through this a few times, I am [now much] more sensitive to it. I really feel how terrible it must be to find the outcome of a test which is positive and what a terrible blow it must be, because at that moment a person's whole life changes. And what a burden it must be on doctors and others who have to convey that news. And how this is happening every day in this country and everywhere else in the world, really.

So that this is at the microhuman level a terrible condition. That friend of mine who told me I saw from time to time - not often enough, I must say - during his illness. He didn't survive for very long. He must've been diagnosed at a late stage in the infection.

I remember seeing him for the last time at St Vincent's Hospital. He had uncontrollable trembling. They were trying to get his condition under control. I then went overseas and he died. So I never spoke at his funeral, as he'd hoped I would. But, anyway, he's still in my memory. He was a very gifted and nice and decent human being who didn't deserve to die so young and didn't deserve to die that way.