



In the presence of Justice

The rock star judge of Australia's High Court. The Dissenter. The last Labor appointee to the highest court in the land. Justice Michael Kirby is all these things. Before this stardom he was a Sydney University student - SRC President, President of the Union Board and University Senate Student Representative. When he was on campus last week to judge the inaugural Michael Kirby Plain Speaking Award, Julia Bowes and Alexandra Meagher spoke to Justice Kirby about student protest, writing judgments and sharing study notes.

Justice Kirby makes a distinct mark everywhere he goes. When you meet him, the reasons for this are clear: he is statesmanlike and gentlemanly. He has an impressive ability to work words like 'indicia' and 'a priori' seamlessly into every day conversation. Above all, he is warm and approachable and his passion for people and justice is contagious.

It's little wonder then that he literally took over the campus during his time at Sydney University between 1956 and 1967. He was President of the ALP club, elected President of the SRC (1962-1963) and President of the University of Sydney Union (1965). Simultaneously, he knocked up four degrees: a Bachelor of Arts (1959), Bachelor of Laws (1962), Bachelor of Economics (1965) and a Masters of Laws with First Class Honours (1967). In fact, the very first thing he told us was that 'The most important thing to say is that curiously, I found that when I got involved in student activities and extra curricular activities my grades went up. And that is a very common phenomenon... You're happy, you're engaged and you're having a fuller life and you get efficient.'

Justice Kirby is an archetypal product of the now romanticized days of 1960s student activism. It was a time when protests were hip and students agitated for the rights of Aboriginies and women. When pressed to explain why the popularity of protests has declined so drastically, he responded that 'perhaps in a funny way HECS and other obligations make people much more serious about their lives.' He thinks that students today live in a 'more cloistered time with a different society and a different ethos.' When asked what he thought the effect of VSU was on the student body he was respectfully restrained in saying 'I have my views, you might even be able to guess them, but I don't think I should express them.'

Today at the SRC, *Honi Soit* is screened weekly by the President and a number of other students to ensure that the content is unlikely to provoke law suits against the SRC. We decided to ask Justice Kirby if he took an active role in censoring *Honi Soit* while he was president. He artfully slipped in that he thought *Honi Soit* 'like most media, was and probably still is quite self-interested.' In our defense, however, he qualified that by saying that *Honi Soit* was 'often defending the important value of free expression, indeed controversial expression and often unpopular expression.' Indeed,

He shocked us by informing us that he 'never censored *Honi* a priori; that is to say we didn't conduct a review before it went to print - ever.' Unprompted, he went on to regale a captivating tale about the occasion when the 1962 editors of *Honi Soit* had been democratically sacked by the SRC while he was president. Unfortunately, he couldn't quite remember what their offence had been, but confessed that whenever he encounters one of the editors who was sacked, renowned journalist Richard Walsh, 'he reminds me of this shocking event in my life and I hold my head down in shame.'

Justice Kirby's time on campus was filled with associations with 'would be leaders. It is well known that Justice Kirby's High Court bench mate, Chief Justice Gleeson, was a contemporary of his at Sydney University Law School. Less well known, is the fact that the two judges shared study notes with Justice Kirby focusing on constitutional law and jurisprudence and Chief Justice Gleeson studying up on company law and equity. According to Justice Kirby, the note sharing system explains the weaknesses of each judge now, suggesting that 'maybe your life's course is charted by the notes you share - The moral of the story is you've got to choose very carefully who you share with!'

To the average law student, Justice Kirby is known for his high rate of dissent (33%) and his long and detailed judgments. For the long judgments, Justice Kirby apologizes, but notes that at least from a student's point of view, he is "google-friendly" and has been the court's leader of introducing headings, subheadings and sub-subheadings into his reasons.

On the issue of dissenting, Justice Kirby said if he had been appointed to the Mason court, there would certainly have been fewer dissents. He sees his dissents, and the fact that he often writes judgments alone, as a product of fundamental differences in approaches to the law and to statutory interpretation, 'My problem is that I often see difficulties in the way other judges reason... I am a contextualist... many of the present Justices are textualists and that means, for me to solve the problem, I have to look at a wider range of indicia.' This said, Justice Kirby is a strong advocate for different opinions on the court, citing his 11 years on the NSW Court of Appeal as an example, 'I have always thought that courts are strengthened by having a variety of values reflected in them because

then the judges spark off each other and ensure against a monochrome approach to legal problems.'

He says he wants to be remembered professionally 'as somebody who drank deeply at the well of jurisprudence at the Sydney Law School and cherished what they were taught: that law is not mechanical, it is about the human quest for justice. It is about values and that judges have a real role in expressing values which will change from generation from generation... it is the genius of the common law that combines within itself both stability and change.'

Personally, Justice Kirby will long be remembered for his passion for progressive causes. When asked about his biggest personal achievement to date, Justice Kirby responded 'I have been very lucky in my life to have a faithful and loving partner for 38 years.' He hopes that his 'sexuality may have been an encouragement for some people, not just law students but people generally. Because the whole business of dislike for homosexuals is irrational.'

Of course, an irrational dislike for homosexuals motivated the rogue Senator Bill Heffernan to make some damaging allegations about Justice Kirby under parliamentary privilege in 2002. Although those allegations were all debunked, the question remained: Was Justice Kirby deliberately barren? And if so, did he think this put him out of touch with Australian values? Justice Kirby responded to the question with a wry smile before adding 'I used to worry about not having children. actually.' He went onto explain that a biologist had once informed him that if he had nieces and nephews, which he does, the biological difference was negligible. With characteristic humour he added 'Once I heard that I had a cleansing Bex and a good lie down and I felt much better.'

Justice Kirby has been a leader for gay rights in Australia. However, a man who thinks as deeply as Justice Kirby and is as passionate about social justice is unwilling to leave it there. He left us with the following food for thought: 'One of the puzzles that occurs to me is if nobody talked about gay rights in those days [the 1960s], what are the issues that we don't see today that nobody is talking about? I have suggested some of them. For example, I think the way we deal with drug offences is one such issue. There are certainly things we are not seeing today that we will be ashamed of in forty years time.'