



Oral History Project—Transcript

Interviewer:

Commissioner Mark Perica AM

Guests:

The Hon. Elizabeth Evatt AC¹

The Hon. Mary Gaudron KC²

The Hon. Michael Kirby AC CMG³

Sydney, 15 December 2025

Hearing room 11.1

¹ The Hon. Elizabeth Andreas Evatt AC (born 1933) barrister and judge. Studied law at the University of Sydney, the youngest law student ever accepted and became the first female student to win the University's Medal for Law. Admitted to the NSW Bar in 1955. Worked at the England and Wales Law Commission (1968–1973). Appointed as Deputy President of the Commonwealth Conciliation and Arbitration Commission (1973), the first woman appointed to the Commission. Chaired the Royal Commission on Human Relationships (1974–1977). Inaugural Chief Justice of the Family Court of Australia (1976–1986). Appointed as a member of the United Nations Committee on the Elimination of Discrimination against Women in 1984, and Chair (1989–1991). Chair of the Australian Law Reform Commission (ALRC) (1988–1993). Chancellor of the University of Newcastle (1988–1994). First Australian to be elected to the United Nations Human Rights Committee in 1992, serving as a member (1993–2000). Commissioner of the Australian Human Rights and Equal Opportunity Commission (part-time) (1995–1998). Judge of a tribunal of the World Bank (1998–2007). Elected as a Commissioner of the International Committee of Jurists (2003).

² The Hon. Mary Genevieve Gaudron KC (born 1943) barrister and judge. Completed Bachelor of Arts degree at the University of Sydney (1962), commenced a part-time Bachelor of Laws degree (1961), graduating with first-class honours and the University's Medal for Law, the second female student to win (1965). Admitted to the NSW Bar in 1968. Appointed as Deputy President of the Australian Conciliation and Arbitration Commission (1974–1980). Chair of NSW Legal Services Commission (1979–1980). Appointed as a QC in 1981, the first female to do so in NSW. Appointed Solicitor-General of New South Wales, the first female Solicitor-General in any Australian jurisdiction (1981–1987). First female Justice of the High Court of Australia (1987–2003). Joined the International Labour Organization (ILO) (2003), President of the ILO Administrative Tribunal (2011–2014).

³ The Hon. Michael Donald Kirby AC CMG (born 1939) barrister and judge. Attended the University of Sydney, earning a Bachelor of Arts (1959), Bachelor of Laws (1962), Bachelor of Economics (1965), and Master of Laws (First-Class Honours) (1967). Elected President of the University of Sydney Students' Representative Council (1962–1963) and President of the University of Sydney Union (1965). Admitted to the NSW Bar in 1967. Inaugural Chairman and later President of the Australian Law Reform Commission (1975–1984). Appointed as Deputy President of the Australian Conciliation and Arbitration Commission (1975). Appointed as a Judge of the Federal Court of Australia (1983–1984). President of the NSW Court of Appeal (1984–1996). Chancellor of Macquarie University (1984–1993). United Nations (UN) Special Representative for Human Rights in Cambodia (1993–1996). President of the Solomon Islands Court of Appeal (1995–1996). President of the International Commission of Jurists (1995–1998). Justice of the High Court of Australia (1996–2009). Led a UN Human Rights Council commission of enquiry into human rights abuses in North Korea (2013–2014).

Please note: This version of the Oral History Project interview transcript with Evatt, Gaudron and Kirby JJ has been edited to improve readability.

- Perica C I'll tell you who I am. I am a relatively recent appointment. I was appointed in 2023. Um. I've been a labour lawyer basically for 40 years before that, 38 years, so I have some familiarity with each of your history. And you know, as I say, it's the buzz around the Commission that you're all coming today. You've got no idea. And everyone's asking me, how did you get it? Well. I've got a lawful order from the President to do it. So that's why we're here. OK, now, how would you like me to address the three of you?
- Gaudron J I'm Mary.
- Evatt J Elizabeth.
- Kirby J Michael.
- Perica C Michael. OK, great. All right. Now I said to Elizabeth before that today is the 121st anniversary of the assent being given to the *Conciliation and Arbitration Act 1904*⁴. The original legislation...
- Kirby J And, uh, which anniversary is it?
- Perica C This is the 121st.
- Kirby J Oh, wonderful. Would have been better if it'd been the 125th.
- Evatt J I can't wait that long...
- Perica C I'm basically going to do it thematically in time order. And the first thing I want to talk to you about your early life and engagement with industrial relations. Firstly, with you, Elizabeth, I assume having Clive⁵ as a dad and Herbert Vere⁶ as an uncle, you were, you were... I assume you've met a lot of union people when you were a kid. Is that right?
- Evatt J No.
- Perica C No? Really?
- Evatt J Not really...

⁴ The [Commonwealth Conciliation and Arbitration Act 1904](#) (Cth) was an Act relating to Conciliation and Arbitration for the Prevention and Settlement of Industrial Disputes extending beyond the Limits of any one State. Assented to on 15 December 1904. The Act created the Commonwealth Court of Conciliation and Arbitration having jurisdiction for the prevention and settlement of industrial disputes, to make legally binding awards and to enforce them.

⁵ The Hon. [Clive Raleigh Evatt](#) KC (1900–1984), barrister and politician. Admitted to the NSW Bar in 1926, appointed as a KC in 1935. Elected as State Member for Hurstville (NSW Legislative Assembly) in March 1939 for the Industrial Labor Party. Served as Minister for Education (1941–1944), Minister in Charge of Tourist Activities and Immigration (1946–1947), Minister for Housing (1947–1950 and 1952–1954) and Chief Secretary (1950–1952).

⁶ The Right Hon. [Herbert Vere \(Doc\) Evatt](#) KC (1894–1965), politician and judge. Doctor of Laws at the University of Sydney in 1924. Elected as State Member for Balmain (NSW Legislative Assembly) (1925–1930) for the Australian Labor Party and then as an independent. Appointed as a KC in 1929. Appointed as a Justice of the High Court of Australia (1930–1940). Elected as Federal Member for Barton for the Australian Labor Party. (1940–1959) Served as Attorney-General and Minister for External Affairs (1941–1949), President of the United Nations General Assembly (1948–1949), leader of the Australian Labor Party (ALP) and Leader of the Opposition (1951–1960), Chief Justice of NSW (1960–1962).

Perica C Right. So did you have any, was there any, discussion about labour disputes, or anything like that in your home at all?

Evatt J No.

Perica C No... all right. So you had no, basically no exposure? Well, that's a...

Evatt J Well, when I was at the New South Wales Bar for a very, very short time. I did appear with my dad before what was then the Arbitration Court, of course.

Perica C OK, so no involvement.

Mary, you've always said that you come from a staunch union background. What do you mean by that?

Gaudron J Oh well, my father was a union man, he was the shop steward for the AFULE⁷ in Moree. He took the view... ah... that the Arbitration Court was the boss's court.

He whooped with joy on the day of the Boilermakers' decision. My grandmother's de facto was a shearer... who kept a gun under the bed in case Charlie Oliver⁸ should come to town. Charlie Oliver, in his view, had sold out the shearers, and deserved to be shot for the result in the Arbitration Commission versus AWU, in which Lionel⁹ appeared and argued... that you couldn't create a dispute... with respect to non-union members by serving a letter of demand on the union. Argument partially successful. Court bought that. But said, but so far as there were union members, they're bound by the award... the result was they were paid less than their non-union... [indistinguishable]... their non-union scabs.

This was a matter I lived with for some days...

Perica C Michael, you've said that... um, you had no direct involvement in labour issues as a kid, but it was always on the news. It was always labour disputes and, because of centralised wage fixing, always pre-eminent, like more than the High Court you've said?

Kirby J Yes, it was...

Gaudron J Yes, sorry...

Kirby J Well, my father's mother, had married the national treasurer of the Australian Communist Party. This was a second marriage. And therefore, I lived in a home where issues of industrial disputes and elections, were frequently discussed, but there was no direct contact with anybody in the labour movement except for my step grandmother, my Uncle Jack or her husband, I called an uncle. But the home was generally sympathetic to the Labor Party and to trade union movement, and subsequently when I went to the Bar, I started to get work in the industrial relations area... and that was usually, though not always, on the union side.

Evatt J Could I add to my answer?

⁷ [Australian Federated Union of Locomotive Employees](#) (AFULE).

⁸ [Cecil Thompson \(Charlie\) Oliver](#) (1901–1990), trade union official.

⁹ The Hon. [Lionel Keith Murphy](#) QC (1922–1986), barrister, judge and politician. Admitted to the NSW Bar in 1947, appointed as a QC in 1960. Elected as a federal Senator for NSW (1962–1975), serving as Attorney-General (1972–1975). Appointed as a Justice of the High Court of Australia (1975–1986).

Perica C Please...

Evatt J So I do recall now that I'm thinking about it, but if there were strikes or industrial disputes dad would always... sort of talk on the side of the workers. A Labor family.

Perica C So we'll get to law school. Elizabeth. Now you were started at the University of Sydney as a 16 year old, is that right?

Evatt J I think I was... [indistinguishable]... no I think I was 17...

Perica C 17... I assume there was no, when you went to uni, there was no discrete labour law subject. Is that right?

Evatt J I don't remember.

Perica C No, no. But and do you recall any teaching about the placitum 51(xxxv)¹⁰ of the industrial relations power in constitutional law there?

Evatt J Yeah, I'm sure that was included.

Perica C And did that pique your interest at all?

Evatt J No, more than any other.

Perica C All right.
Mary, you did a BA¹¹ first?

Gaudron J I did.

Perica C What do you remember about your time at law school, and do you remember anything labour law related?

Gaudron J We did have an industrial law course.

Perica C Did you? Oh, right. OK...

Kirby J Bob Roulston?

Gaudron J It was Bob Roulston. I, I don't think 51(xxxv) got much of a mention in constitutional law, but we, we...

Evatt J The Harvester Case¹² probably... [indistinguishable]...

Gaudron J In constitutional law?

Evatt J Or something like that...

Gaudron J In industrial law, we would have done that. Ah, I did get the idea. In uh... final year that we should invite... Bob...

Kirby J Hawke?¹³

¹⁰ [Australian Constitution](#), section 51 paragraph (xxxv): 'Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State'.

¹¹ Bachelor of Arts.

¹² [Ex parte H.V. McKay](#) (Harvester) (1907) 2 CAR 1, Higgins J, President, 8 November 1907. The first federally arbitrated standard wage – the basis of the national minimum wage system in Australia.

¹³ The Hon. [Robert James Lee \(Bob\) Hawke](#) AC (1929–2019), trade unionist, politician and Prime Minister. Rhodes Scholar 1952. President of the Australian Council of Trade Unions (ACTU) (1969–

- Gaudron J Hawke, yes, that one... to be a guest lecturer. And we did. And it was totally uninspiring.
- Perica C And Michael, you've said, so you did an undergraduate labour law course, did you?
- Kirby J Yes, I did do industrial law, that was an optional subject.
- Perica C Yes.
- Kirby J But I, I elected for it. And soon after I went to the Bar, I, I'd had some compensation cases with Neville Wran¹⁴... And Neville Wran and Jack Sweeney¹⁵ summoned me up to be their juniors in cases in the Industrial Commission, in the state and in the Arbitration Commission in the federal sphere. So that was, that was my introduction to industrial law practice. But I really wasn't an expert in that.
- Perica C I think you said in your last interview¹⁶ that Professor Thompson, you did the nth part of your master's subject you did a thing of industrial law and...
- Kirby J Yes, I did a master's degree after I'd finished my undergraduate degree. And in that degree I did one of four subjects... was industrial law... and that, sort of prepared me to understand the basic structures of the system.
- And when I was appointed, I still didn't feel comfortable that I knew enough to be able to apply day by day so I sat down in the backyard of my partner's parents' home in Wellington, New South Wales, in the sun, going through all the textbooks and preparing cards in an alphabetical system, which later was published by CCH¹⁷ Industrial Index to Australian Labour Law, and that was not a bad document...
- Perica C It was great...
- Kirby J It was so that I would have a sort of encyclopedia that I can go straight to if there was a dispute on a bans clause question or a log of claims question, I would have this all laid out. It was a very good book, and I don't think I ever got any royalties for it... It was CCH...

1980). Elected as Federal Member for Wills for the Australian Labor Party (ALP) in 1980. Elected as Leader of the ALP in 1983, served as the 23rd Prime Minister of Australia (1983–1991).

¹⁴ The Hon. [Neville Kenneth Wran](#) AC QC (1926–2014) barrister and politician. Admitted to the NSW Bar in 1957, appointed as a QC in 1968. Became a member of the upper house of the Parliament of NSW (Legislative Council) in 1970. Elected as State Member for Bass Hill (NSW Legislative Assembly) in 1973 for the Australian Labor Party. Served as Leader of the Opposition (1973–1976), 35th Premier of NSW (1976–1986). Chairman of the Commonwealth Scientific and Industrial Research Organisation (CSIRO) (1986–1991).

¹⁵ The Hon. [John Bernard \(Jack\) Sweeney](#) QC (1911–1981), industrial advocate and judge. Admitted to the NSW Bar in 1946, appointed as a QC in 1962. Appointed as a Deputy President of the Commonwealth Conciliation and Arbitration Commission from June 1973, and in November 1973 was appointed to the Australian Industrial Court. Appointed to the Federal Court of Australia in February 1977. Served as an additional judge for the Supreme courts of the ACT (1974–1981) and the NT (1976–1979).

¹⁶ Kirby J was interviewed for the Oral History Project for the first time on 15 October 2003.

¹⁷ CCH – now [Wolters Kluwer](#).

Perica C That was the bible 15 years ago, I'll tell you. Now we'll move to your respective careers at the Bar.

Elizabeth, now you spent a little bit of time in New South Wales, before you went to Harvard. That wasn't a year, was it? Less than a year?

Evatt J Less than a year...

Perica C Yeah. And then you practiced in England from '58 to '68, is that right?

Evatt J Yes, it was.

Perica C All right. And then you went to the, well, it wasn't called the Law Reform Commission. What was it called?

Evatt J It was the Law Commission...

Perica C So in New South Wales or in your practice in, in England, did you do any labour or employment law related work there? What did you do in England?

Evatt J Let's go back to Australia...

Perica C Right...

Evatt J There was one occasion, at least when I went with my father, who was a QC at the time. I appeared with him in the Industrial Arbitration Court as it was in 1955...

Perica C Fantastic.

Evatt J He, he did all the running, of course. I was holding the papers, so that was the one and only time. I didn't get the feel of what sort of jurisdiction it was at that time...

Perica C And what about in England?

Evatt J No...

Perica C No?

Evatt J They don't have anything of the sort...

Perica C What sort of law did you do over there in your practice?

Evatt J Just knockabout law. What Junior Barristers do in and out of the magistrates' courts and the district courts, you know...

Perica C Good place to learn...

Evatt J Whatever you can do...

Perica C Now, Mary, you went to the bar in October '68 and apparently you had a great practice in defamation and labour law. Now...

Gaudron J No, no, in defamation law involving trade union officials and labour disputes.

I can tell you the, the solicitor had not been born in 1968 who would brief a woman in industrial matters. And you know that's true, Michael...

Kirby J Shocking!

Perica C Now I think in your goodbyes, the goodbye tribute made to you, it was said that there's some of your more gormless male opponents called you 'Merciless Mary'. Is that right?

Gaudron J Oh, what... that they were gormless?

Perica C No, no, they called you Merciless Mary...

Gaudron J Oh, it is true that people did refer to me as that, I mean in those days... anything to... give a girl a bad name. You know...

Perica C Alright, so I'm going to deal with the equal pay case in a minute, but what sort of cases did you do before that in the industrial space?

Gaudron J Well, they were in the defamation space...

Perica C Right. So you had a specialty of representing union officials in defamation cases?

Gaudron J Yes, and I suppose... the biggest one... was the Mount Isa dispute¹⁸. With Pat Mackie¹⁹...

Perica C And how did you get that?

Gaudron J Well, nobody else would do it. Basically, they were... there was no, no money in it and uh, you were on a hiding to nothing from wherever you... were...

Perica C Yeah, I understand. OK, now getting to the equal pay case. If you read the barristers at the end of the decision, it says that John Keely²⁰ and Ken Marks²¹ had it and then later, you... and as I understand the way that case went, that McMahon²² had it and they were soft pedalling it, not doing anything on it until Whitlam²³ came in and turbocharged it and made submissions. Is that how you got it?

Gaudron J Well, I had been making a noise... all around, whenever, wherever anybody would listen, about the injustice that was unequal pay...

Perica C Yes...

¹⁸ [1964 Mt Isa Mines strike](#).

¹⁹ [Pat Mackie](#) (also known as Eugene Markey) (1914–2009), seaman and trade union official.

²⁰ The Hon. John Augustine Keely QC (1925–2015), Judge of the Federal Court of Australia (1977–1996).

²¹ The Hon. Kenneth Henry Marks AM QC (1924–2005), Judge of the Supreme Court of Victoria (1977–1994).

²² The Right Hon. [Sir William \(Billy\) McMahon](#) GCMG CH (1908–1988), politician and Prime Minister. Elected as Federal Member for Lowe for the Liberal Party in 1949, held the seat for 32 years. Elected as Leader of the Liberal Party in 1971, served as the 20th Prime Minister of Australia (1971–1972).

²³ The Hon. [Edward Gough Whitlam](#) AC QC (1916–2014), barrister, Prime Minister, and ambassador. Admitted to the NSW Bar in 1947. Elected as Federal Member for Werriwa for the Australian Labor Party (ALP) in 1952. Elected as Leader of the ALP in 1967, served as the 21st Prime Minister of Australia (1972–1975). Appointed in 1983 as Australia's ambassador to the United Nations Educational, Scientific and Cultural Organization (UNESCO), based in Paris.

Gaudron J I ran across... Clyde Cameron²⁴ in a pub... where I was being refused service... could you believe? But...

Kirby J You were in the bar instead of the saloon...

Perica C The saloon, yeah...

Kirby J Should have known your place...

Perica C He was instrumental in promoting you two to the Bench, in my understanding. He wanted the young people on the Bench.

Kirby J So did Whitlam... And so did Murphy...

Perica C Yes, of course they did...

Kirby J They were three very determined people, suddenly with the power of the Commonwealth and they wanted to change the face of the judicial and administrative tribunal.

Perica C I assume that was a long slog, that case?

Gaudron J My submissions were short. I think... the only bit I can remember about the submissions is pointing out which countries party to the ILO²⁵ Convention on...

Perica C Women? Yeah... Elimination on the discrimination...

Gaudron J Yeah...

Perica C In employment²⁶. I assume Australia hadn't ratified it yet?

Gaudron J Oh, yes...

Perica C It had?

Gaudron J Oh, yes... well... there was a notion around at that time, a constitutional notion, that you didn't ratify it until you, either by yourself as the Commonwealth, or together with the other states, you could legislate to implement it...

Perica C Yes...

Gaudron J They had not, at that stage, encountered the notion that the ratification of a treaty engaged the external powers...

Perica C Yes, right...

Gaudron J So they had ratified it, but had...

Perica C Right. So, so it was the Bench... [indistinguishable]...

Gaudron J And part of the argument was, in that context... that the Bench, that the... what was it called at that stage?... The Conciliation and Arbitration...

²⁴ The Hon. Clyde Robert Cameron AO (1913–2008) politician. Elected as Federal Member for Hindmarsh for the ALP in 1949. Served as Minister for Labour (1972–1974), Labour and Immigration (1974–1975), and Science and Consumer Affairs (1975).

²⁵ International Labour Organization, United Nations agency based in Geneva, Switzerland.

²⁶ [C100](#) - Equal Remuneration Convention, 1951 (No. 100).

- Evatt J The Commonwealth Conciliation and Arbitration Commission²⁷ and then it changed to Australian Conciliation and²⁸...
- Gaudron J Yes, that's right. I think I was gone by that stage. I'm not too sure. Ah... part of the argument was, that it was necessary for the Commission to... grant equal pay so that Australia could implement the treaty... I mean, hopelessly wrong as things have turned out but it was OK for today.
- Perica C Fantastic. Well, centralised wage fixing. It makes it a bit easier to implement than now. All right, that's great.
- OK, now, Michael, you went to the Bar in '67 and in 2003 when you interviewed in this process, you said that you had an electoral fraud case in the liquor trades. Was that your first one or can you describe your industrial practice at the Bar?
- Kirby J Well, that practice was a consequence of the practices of Lionel Murphy, Jack Sweeney and Neville Wran. But mainly connected with Neville Wran, most of whose practice was in the Industrial Commission of New South Wales. And Jack Sweeney would invent... a topic that would take up his practice in the coming year...
- Perica C Right?
- Kirby J And he, he invented the issue of overtime pay and overtime obligations and the circadian rhythms and the way in which working by the, for different time zones was not good for you and that you should be compensated properly for. And he got me as a junior in that.
- Neville Wran got me into the liquor trade union case. That was basically about alleged fraud in the election of the officials, and that came before Sir John Kerr²⁹, Mr Justice Kerr, the Commonwealth Industrial Court, and so I did that for him. Lionel Murphy came later, and I didn't really know Lionel very well, but I knew Neville well and Neville thought I was terrific, mainly, I think, because I would get into the chambers, and have a pot of tea ready for him when he arrived. Neville was an early worker. He would get in at about 4am and so I got into the habit of getting into work in my chambers at the same time. I would have his cup of tea ready and then I would tell him what the main points were in the case. And he liked that, he thought that was terrific to have a bright young whippersnapper serving it up to him.
- So it was a varied practice: Commonwealth and state; industrial relations issues; trade union issues and suggested fraud in elections in trade unions. You won't believe this, but that was being suggested... and Neville had a retainer for the Health and Research Employees Union³⁰. They were the union that did a lot

²⁷ Commonwealth Conciliation and Arbitration Commission (1956–1973).

²⁸ Australian Conciliation and Arbitration Commission (1973–1988).

²⁹ The Right Hon. [Sir John Robert Kerr](#) AK GCMG GCVO QC (1914–1991), barrister, judge, and Governor-General. Admitted to the NSW Bar in 1938, appointed as a QC in 1953. Appointed a Judge of the Commonwealth Industrial Court and the Supreme Court of the ACT in 1966 and also served as a Judge of the Supreme Court of the NT (1970–1972). Appointed as Chief Justice of the Supreme Court of NSW (1972–1974). Appointed as Governor-General (1974–1977). He was appointed Australian Permanent Representative at UNESCO in 1978 but relinquished the role.

³⁰ Health & Research Association of Australia (HREA). In 1991 the HREA amalgamated with the Hospital Employees' Federation of Australia to form the Health Services Union of Australia.

of work for hospital workers. And, and so I got into that and that they were matters that would end up with awards, award variation or change and it was extremely interesting. I was very frightened to go into industrial relations because it was a world all of its own. And then someone said to me, I think it was Michael Sweeney, who was a young, he was Jack Sweeney's son...

Perica C Right?

Kirby J He said 'look, you've been president of the SRC³¹ at the University of Sydney', this is really the same, and you're having a fight and you've got principles and you're trying to establish them. So just go in there and talk as you would in an SRC meeting' so that's what I did. That served me well.

Perica C Fantastic.

All right now getting to appointments... now, Elizabeth, you were appointed in 1972. The duumvirate, Gough and Lance Barnard³²...

Evatt J Mmm...

Perica C Gough gave you a call in the middle of the night...

Evatt J That's right...

Perica C And he offered the DP³³ position to you. Can you tell us about that? What did he say to you?

Evatt J He just asked me if I'd like to take up that position... and I said could I have a little bit of time to think about it...

Perica C I think you've said... it was reported that you consulted your partner, your family and the cat?

Evatt J I did... and the cat...

Perica C All right. So what was the discussion over that 24 hours?

Evatt J Personal private family business... discuss the ins and outs... it was a terrific opportunity to be involved in... a new Australia... Australia's about to change quite dramatically as everyone knew would happen under Gough's Prime Ministership... so... in the end we worked out a way that we could manage it...

Perica C Great. So I should imagine it was a logistical nightmare to move back to Australia after being in England for 10 years?

Evatt J Oh, well, we managed to work it out.

Perica C Right, now Mary, you were appointed in August '74 as a 31 year old. Can you tell us the mechanics of it... like it's nowhere said who rung you? How did you

³¹ Students' Representative Council. Michael Kirby was the President of the Sydney University SRC 1962–1963 and 1963–1964.

³² The Hon. [Lance Herbert Barnard](#) AO (1919–1997), teacher, politician, and diplomat. The high point of Barnard's career was the government, often known as 'the duumvirate,' that Whitlam and he impatiently formed from 5 to 19 December 1972 rather than wait for the final election results. Barnard as deputy Prime Minister held 14 ministerial portfolios while Whitlam held the other 13, thus establishing for Barnard a record for the greatest number concurrently held by any Australian minister.

³³ Deputy President.

find out... all of that? Nothing I haven't but seen that anywhere. So could you describe that, that step?

Gaudron J I don't know that I remember... Well, one thing I might mention because you haven't got it, I saw it in this book Michael sent me, the '74 national wage case. OK. There had been a very close election result in '74 was the last one he won... and... thereafter... and I think it was just routine, I was briefed as Jack Sweeney's junior in the national wage case, to run the argument for equal minimum wage, because without the equal minimum wage, which is not noted in your little book there, equal pay was a joke... Yes, most of the people were on... most of the workers on the minimum wage were women, there were men too, but they were... women far exceeded the men, naturally... so I done the... national wage... the...

Perica C '74 national wage case³⁴...

Gaudron J Yeah, I've done the submissions. I mean, I didn't... Jack did the money bit. Money was still... it was already becoming clear, that money was the core business... of the Arbitration Commission... ah... anyway... so I think it took some while for the... National Wage Case to come out that year, I'm not too sure... And I think... as it did, I think... you will remember this... Sharp... was his name Sharp?

Kirby J Yes, Ian Sharp³⁵... the Registrar, later a judge...

Evatt J Yes, I remember him...

Gaudron J He was at that stage, the... head of the... Department... and he rang me. It, it appears that, that... appointment at that stage... was in the gift of Clyde and no one else... the duumvirate had gone...

Evatt J Of course...

Gaudron J And he rang me, and I took the view that I've always taken. If you don't accept it... this is none of you I expect everyone... if you don't accept it, they'll say 'we offered it to a woman once and she turned it down. They haven't got the guts', and... so... I'm not going to give them the opportunity to say that. And that, that was, that's all there was to it.

Perica C All right, now, Michael, you're appointed '75. Jack Sweeney, got you into his Chambers and said did you, whether you wanted to be a DP? Is that right?

Kirby J Not quite, no... I was, I was appearing in Melbourne on behalf of all of the unions in the electricity industry in Victoria. There was a threat of a strike that would render Victoria utterly without electric power...

Perica C Oh, this is the SECV dispute, right?

Kirby J Yes, and the unions, as was rarely the case, got together and they all agreed, and they had a solicitor named Bernie Gaynor. The Gaynor family are still around and there's a judge in the County Court in Victoria who's a Gaynor. And Bernie Gaynor briefed me and I appeared for all of the unions in Victoria, and it

³⁴ [1974 National Wage decision \(pdf\)](#).

³⁵ The Hon. Ian Gordon Sharp AO (1913–1996) public servant and judge. Served as Secretary of the Department of Labour (1972–1974) and the Department of Labor and Immigration (1974–1975). Appointed as a Judge of the Australian Conciliation and Arbitration Commission (1975–1978).

was actually a very urgent and important case and, I argued it on behalf of the unions. And I think I must have made a few marks because then ultimately at the very death knock, there was an agreement, and that led to my having discharged my duties and I was ready to go home to Sydney, but the associate of Sir John Moore³⁶, he was then just Mr Justice Moore, who I think was the President at the time...

Evatt J Yes...

Kirby J He invited me, to come into the judge's chambers which was rather unusual... the judges kept separate from the barristers. You didn't see them socially much, and that was it. But he asked me to come in and said, 'I've been authorised by the Minister to inquire whether you would accept appointment as a Deputy President of the Arbitration Commission?', and it came to me as a tremendous shock because, I mean it was a very important position.

It's very hard for Australians now or later, to realise how important the Arbitration Commission was. Apart from the High Court of Australia, the Arbitration Commission was probably the best-known national tribunal and it had until 1956, been the Arbitration Court. And it was constantly on the ABC News in those days where the ABC News covered international first, national second, local third and in the second there was always reports on the Commissioners and the decisions that they made. And so it, it seemed to me to be a, a very good offer.

And, ah... some members of the Bar told me 'don't do that, you'll sink like a stone, you'll never be seen again'... and, but... my partner, Johan³⁷ said 'I think this is a great idea I'll see more of you than I do'...

Perica C Yeah, I'm sure.

Kirby J And so I raised the matter with my Clerk (Barrister's Clerk), Greg Isaacs. He said to me 'Boss, this is a great opportunity, you must take this. This is a great position and an important position, and you can't say no to it'. And so I said yes to it and that was the beginning of my association as a judge with the Arbitration Commission...

Perica C Now, before we leave, you appeared before Elizabeth and Mary... how would you describe their judicial...

Gaudron J Watch it, watch it...

Kirby J They, they were very different, shall we say. Elizabeth, whose background had been in the Law Commission of England and Wales, and who had worked with Sir Leslie Scarman³⁸, later Lord Scarman, a very great judge in England... she

³⁶ The Hon. [Sir John Cochrane Moore](#) AC (1915–1998), barrister and judge. Admitted to the NSW Bar in 1940. Appointed a Deputy President of the Commonwealth Conciliation and Arbitration Commission (1959–1972) and then acting President (1972–1973). Appointed as President of the Australian Conciliation and Arbitration Commission (1973–1985).

³⁷ Johan van Vloten (born 1939). He is the domestic partner of Michael Kirby from February 1969 to the present.

³⁸ The Hon. Leslie George Scarman, Baron Scarman OBE PC (1911–2004) English judge and barrister who served as a Law Lord until his retirement in 1986.

was calm, sweet, correct, well organised, super intelligent, and she didn't have the benefit of my little book of industrial cases...

Evatt J No... [indistinguishable]... I hadn't done it yet...

Kirby J She, she'd done it herself and therefore she, she was very nice to appear before. Very courteous to everybody, which I also tried to be...

Mary on the other hand... Mary was... she was not courteous to everybody. If they are giving her the run around, she would be very, very rude. She would tell them where to get off, and she called a spade a spade. So they were a study in contrasts...

Perica C Would you like to say something in way of defence?

Gaudron J Well, I'm grateful that he didn't call me sweet. If I were you, Elizabeth, I'd flump it down...

Evatt J He called me sweet?...

Gaudron J He did...

Evatt J I'll take it back...

Kirby J No, you, you were very correct. Mary, on the other hand, was... as she appears in this interview, she was very direct and very 'in your face'. Now my partner is from the Netherlands and he's very direct and very in your face. Well, Mary was like that so I was getting that at home, and then I would get it from Mary from the bench. But she was super bright and very intelligent and very hard working. So they were just different. But they made-up the range and colour of the old Arbitration Commission, which was a pretty powerful institution.

Perica C It was. Yeah. OK, we're getting into your time at the Commission now, Elizabeth. Now, if I'm wrong, your time was quite limited. You were there from '72 until about August '74. Did you keep... see what Michael did, he kept his... ah, his Commission at the Commission, and did other things. Is that what happened to you? Did you retain your...

Evatt J I did...

Perica C Deputy President commission?

Evatt J I did, but I was active until middle of 1975...

Perica C Right? OK, and...

Evatt J But I, I just wanted to add to what I said before, you only referred to the Prime Minister and the duumvirate but, later on, I learned from Bob Hawke directly, that he was the one that had put up my name to the Prime Minister... so... [indistinguishable]...

Perica C Right. Absolutely...

Evatt J Oh, he told me that much later on...

Perica C Right. OK...

- Kirby J I don't think Bob Hawke would ever have put my name forward to anybody because it later came to my notice when Gareth Evans³⁹ was trying to lobby, Bob Hawke, then Prime Minister, to appoint me to the High Court of Australia. I was then the president of the Court of Appeal of New South Wales... He said 'I'm not going to appoint that faggot to the High Court'... he had a lot of prejudices in him. One of which was against homosexuals. But I don't think that worried, um...
- Perica C You and Gareth were at uni together, is that right?
- Kirby J Yeah, well, he was from Melbourne and I was from Sydney. He was the president of the SRC in Melbourne...
- Perica C Yeah that's right...
- Kirby J And I was the President in Sydney... So you had associations in the same circle, right? And a wonderful one. He's still a good friend. He's done wonderful things for our country.
- Perica C I remember Labor and the Constitution used to be, you know, go to, sort of like my little red book, I must say...
- Evatt J So let's come back to that, it's true that towards the end of 1974 I was asked to preside over a Royal Commission on Human Relationships⁴⁰... but by that time, I had embarked... with my panel, on determining the first... National Building Industry Award⁴¹... It was, a very big deal and I wouldn't leave that, because I was already into it. It was in the middle so I kept on with that until it was all settled and determined, which didn't happen until somewhere... around about April, May 1975...
- Perica C Oh right, so...
- Evatt J I was still active, and just for the books, somebody up there decided that I never left the Commission... that I remained a Presidential Member of the Commission until I reached retiring age, which was, um... in 1993.
- Kirby J That might have been because in, in the Court, people who were appointed to the old Arbitration Court, even though the High Court said it's not properly a Court, the Commonwealth and the Commonwealth bureaucrats and Attorney Generals took the view that they had been appointed to a court and therefore they could not be removed because they had life appointment, and that was faithfully observed to all of the people on the old Commission who had a Commission in the Arbitration Court... and maybe they just got a bit mixed up and confused...

³⁹ The Hon. Gareth John Evans AC QC (born 1944) politician, international policymaker, academic, and barrister. Admitted to the Vic Bar in 1976, appointed as a QC in 1983. Elected as Federal Senator for Victoria for the ALP (1978–1996) Elected as Federal Member for Holt for the ALP (1996–1999). Served as Attorney-General (1983–1984), Minister for Resources and Energy (1984–1987), Minister for Transport and Communications (1987–1988) and as Minister for Foreign Affairs (1988–1996). Served as Chancellor of Australian National University (2010–2020).

⁴⁰ Australia's [Royal Commission on Human Relationships](#) (1974–1977) was set up to inquire into and report upon the family, social, educational, legal and sexual aspects of male and female relationships.

⁴¹ National Building Trade Construction Award 1975.

Evatt J If it went to the High Court or somewhere else, it might have well been determined that being appointed to the Family Court or Federal Court... would end the commission...

Perica C Can you keep two offices at the same time?...

Evatt J [indistinguishable]... I kept on with it, and when I was then President of the Law Reform Commission, they deemed that I was still a Member of the Arbitration Commission. When I finished at the Law Reform Commission, I went to talk to the President... of the Arbitration Commission to tell him what my intentions were... I couldn't come back.

Perica C Last time Michael was interviewed, he said that he, he, you know, when you were in the building industry panel you used to go to site visits and get up ladders and all that sort of thing. Is that... do you remember them? The site visits in the building...

Evatt J Absolutely, when I had the building industry that was... quite a lot of fun... You know as soon as a... Member of the Commission's going to visit, they... stop a concrete pour or something, you know... just so you know that they can do it...

Perica C Yes...

Evatt J It's when I went to Adelaide... I went on a lot of site inspections because they wanted to test me out, you know... What will she do? How will she react? What will the lady do? So they took me to the Grenfell Centre. That was a very big, tall building in Adelaide, the tallest in Adelaide for many years. They wanted me to inspect the building works there, so they took me up to the top floor in the lift. But that wasn't the top floor, there were higher. There was a higher floor, which you could reach by an outside ladder, on the side of your building. It was a little bit protected. And they said no, we we'd like to, you know, we could go up to the top floor. So I just went up the ladder...

Perica C Right, oh my God...

Evatt J And then down, of course, I had to come down the ladder. I think that was all right then, then I was OK then.

Perica C Yeah, that's right. You passed the test.

Evatt J I passed the test...

Perica C And how did your fellow Members treat you when you got here?

Evatt J Members of the Commission?

Perica C Yes...

Evatt J Oh, they were very friendly. They knew that I... had very little knowledge or experience in the operations of the Commission and they, they looked after me and they sat me on some appeal court, appeal decisions, you know, to get the feel of it. I had my, I had a panel with two Commissioners, John Gough⁴² and

⁴² Commissioner John Lewis Gough (dec. 2008) Rhodes Scholar 1946. Appointed as Commissioner of the Commonwealth Conciliation and Arbitration Commission and Australian Conciliation and Arbitration Commission (1962–1984).

Len Matthews⁴³... were my two panel members. And they were excellent people. They helped me do things and, you know... they were able to...

Perica C Now you can get your own back now.

Evatt J What was that?

Perica C What was Michael like as an advocate?

Evatt J Oh, Michael was perfect, of course he was... because there was one time when we were in the, in the, in a little bit of bother and... for some reason... somebody objected to his, him appearing and you know, in the Commission at that time, for counsel to appear, you had to give permission. And because of the balance between the parties was a little bit... not quite right... I, I denied you permission. I sent you away, Michael, do you remember?

Kirby J Yes...

Evatt J I know you don't act disagreeably Michael ...

Kirby J A more horrible action has never been done to me. It never happened anywhere else...

Evatt J There was something between the balance of the parties...

Perica C Yes...

Evatt J I deemed it was proper to send Michael away, so I did...

Perica C Now, Mary, you were on the Commission from 1974 to 1980... and you had the meat industry panel⁴⁴. Is that right or wrong?

Gaudron J Well I took over...

Evatt J You took the meat industry...

Gaudron J I took the, Elizabeth's panel over, except for the building industry...

Evatt J No no, I moved from the meat industry to the building industry...

Gaudron J Oh, I see. Well, I copped...

Evatt J You copped my old panel...

Gaudron J I copped Elizabeth's old panel and her Commissioners Gough... and...

Evatt J Len Matthews...

Gaudron J Matthews, yes.

Perica C Right, and how, how was that? I, I assume you went to site visits for that in abattoirs and that as well...

Gaudron J Well, I have a feeling, but I could be wrong... that they sent me anywhere that smelt.

⁴³ Commissioner Leonard George Matthews CBE (dec.) Appointed as Commissioner of the Commonwealth Conciliation and Arbitration Commission and Australian Conciliation and Arbitration Commission (1963–1980).

⁴⁴ Matters to the Commission were separated into panels of similar industries, with dedicated Members dealing with that panel so as to get an understanding of the industry and the issues and people within it.

Perica C Yeah...

Gaudron J So meat had a pong.

Evatt J Did you go up to Cairns?

Gaudron J Yes. Meat, pastoral, shearing sheds...

Evatt J Yes...

Perica C Well they pong...

Gaudron J They pong... ah, municipal officers. I was... I was in and out of sewerage works.

Evatt J Did you have the Brisbane Municipal Council?

Gaudron J I had the Brisbane Municipal Council... and I threatened Clem Jones⁴⁵ with contempt.

Evatt J Oh right, I didn't have to do that.

Kirby J Was he the Lord Mayor of Brisbane?

Gaudron J He was the Lord Mayor of Brisbane... and our later leader...

Evatt J They wouldn't agree to anything...

Gaudron J No...

Evatt J But when I was there, in the Brisbane City Council case, this was when a \$6 basic wage rise which had been given, at some point that was flowing into all areas, awards and more, but the Brisbane City Council would not agree... to this... increase of \$6, whatever it was, and so we were just arguing back and forth in the court. And I said, your Honour, could we, could we have a, could we have a private... what do we call it?

Kirby J Conference...

Gaudron J Conference...

Evatt J Conference, could we have a conference? So we... we went into conference and they said, look, it's really all agreed, we just can't agree to it in the court...

Perica C Right, in the court, in the Commission...

Evatt J And we went back and I made the award, so all agreed...

Perica C Right. Terrible, belligerent...

Evatt J It's a strange business, Clem Jones wouldn't allow them to agree to it...

Perica C Yes, it would be OK if it was imposed on them, but wouldn't agree...

Evatt J That's right...

Perica C Yes, that happens all the time here. All right. So Mary, you sat on the Mat Leave case⁴⁶?

⁴⁵ Clem Jones AO (1918–2007) Lord Mayor of Brisbane (1961–1975).

⁴⁶ [1979 Maternity Leave Case \(pdf\)](#).

Gaudron J Yes.

Perica C How was that?

Gaudron J Well, that leads me to another aspect. Ah, which people may not agree with, but... you know, it's my perspective... at the time... outside the Commission... there was... a demand, but not articulated, for the Commission to act in other spheres than money...

Perica C Yes...

Gaudron J Now the Commission, I mean you saw it later... in terms of a, a demand... from, from the MOA⁴⁷ actually, for an anti-discrimination provision in, in the awards... in each award... ah, so safety standards. People were not... entirely happy... with... disability, this, this developed over time. I can't actually... and this is the people, people wanted proper health and safety standards and not disability allowances...

Perica C Yeah, like a dirty work allowance or a hot work allowance...

Gaudron J Yes. So, so there was a... while I was still there, but I'm not to, these were all separate things, but they were just seemed to be happening outside the Commission, and seemed to me... to... want... well, seem to me... not to interest the Commission greatly... it seemed to me that the first 11, as I called them... were more interested in money matters and, and probably by this time in curtailing those money allowances. So, the maternity leave case, was a bit of a test of the Commission's fibre...

Perica C It's a non-money issue. It costs something, but it's not money is not central to it. That's right. Like a social change type thing...

Gaudron J Ah, and in any event, there was a feeling that women were called, were doing, were causing too much trouble generally. They had got equal pay and they weren't, you know, more or less, got equal pay and that had added to the wages bill and they... so... ah... I will... what I remember, is that Peter Coldham⁴⁸ did...

Evatt J Oh yes...

Gaudron J Won that case for women. Appearing for the ACTU was... tell me her name?... you'll know... she later became a Deputy President...

Evatt J Judith... Cohen⁴⁹ was it?

Gaudron J No, no, Judith was later...

Evatt J Oh OK...

Gaudron J Oh, well, no, she was probably about the same time, but it wasn't...

⁴⁷ Municipal Officers' Association of Australia (1921–1991).

⁴⁸ The Hon. [Justice Peter Abernethy Coldham](#) DFC QC (1919–1995), air force officer, barrister, and judge. Admitted to the Vic Bar in 1946, appointed as a QC in 1963. Appointed as Deputy President of the Commonwealth Conciliation and Arbitration Commission, Australian Conciliation, Arbitration Commission and Australian Industrial Relations Commission (1971–1989).

⁴⁹ The Hon. Justice Judith Jacqueline Cohen AO (1926–2012), teacher, barrister and judge. She was admitted as a solicitor NSW (1950), solicitor and barrister Vic (1953). First woman appointed as a Commissioner. Appointed Commissioner (1975) then Deputy President (1980) of the Australian Conciliation and Arbitration Commission and Australian Industrial Relations Commission (1975–1991).

Evatt J Pauline, Pauline Griffin⁵⁰?

Gaudron J No, it wasn't those two, it was well after that, but she was the advocate for the ACTU at that stage...

Kirby J It was Marsh...

Gaudron J It was Marsh...

Perica C Jan Marsh⁵¹

Gaudron J And, um... Peter Coldham... and the argument was... the, the, the argument that the ACTU was putting forward... was that the pregnant woman had to have six, I think it was six weeks, mandatory leave. And... I remember... Peter... 'And what would you say, Miss Marsh, about Fanny Blankers-Koen⁵²?' [indistinguishable]... as did I...

Perica C Yeah...

Gaudron J What's Fanny Blankers-Koen? And eventually, Jan, got up the courage to ask why? 'She... she won, Olympic gold, twice while she was pregnant' and should she have Peter? Anyway, don't...

Evatt J Who said Peter? Peter was it?

Gaudron J Peter yes, Peter was a nut about sports, of course... Fanny Blankers-Koen. I forget what she, but she won...

Evatt J Oh yes, she was a terrific sprinter... famous in the '40s...

Gaudron J And, and she done it while pregnant...

Evatt J Well, so what?

Gaudron J Well, that was...

Perica C Exactly...

Gaudron J That was that was the point, but Peter didn't agree with the notion that there should be six weeks mandatory leave... Anyway, so that's all I'm in for. I mean, maternity leave was eventually granted... The other person, who shone in that... ah, you may remember her. Stella Cornelius⁵³.

Evatt J Oh, yes. What was she doing there?

Gaudron J She came along. She intervened, I think, in her own right... to say that she had, had all her furriers working. Granted maternity leave for many, many years.

Evatt J OK, good... good for her...

⁵⁰ Commissioner Pauline Marcus Griffin AM (born 1925), social worker, manager and judicial officer. Appointed as Commissioner of the Australian Conciliation and Arbitration Commission and Australian Industrial Relations Commission (1975–1990).

⁵¹ The Hon. Jeanette (Jan) Isabel Marsh (born 1948), trade unionist and judicial officer. Appointed Deputy President (1988) then Senior Deputy President (1993) of the Australian Conciliation and Arbitration Commission and Australian Industrial Relations Commission (1988–2008).

⁵² Francina Elsje 'Fanny' Blankers-Koen (1918–2004) was a Dutch track and field athlete, won 4 gold medals at the 1948 Summer Olympics in London.

⁵³ Stella Cornelius AO OBE (1919–2010) businesswoman and peace activist, founded Cornelius Furs.

Perica C All right. Have you got anything to say about our friend here as an advocate?

Gaudron J I don't remember him...

Perica C All right... now...

Gaudron J I think I win that one, Michael...

Perica C The 40 days and 40 nights⁵⁴. Did you decide anything in those, in that time?

Kirby J Yes, I had a case... which was the first case I was assigned. My industry was the maritime industry... and thank God that didn't involve going to abattoirs or climbing up in the building industry, I just swanned along in disputes about ships, conditions in ships, port conditions for ships, and that was actually, quite clean and it, it was a perfect introduction.

Gaudron J Did you have anything about asbestos cladding?

Kirby J No, asbestos hadn't come on the scene at that stage...

Evatt J Well, yes, it had...

Kirby J Well, it hadn't come before the Commission, I don't think...

Evatt J We, we had it in the building industry award...

Kirby J Well, I was only there for 40 days and 40 nights...

Evatt J No, I'm just saying it was...

Kirby J They didn't give me time to, to put my teeth into asbestos, if one can put it that way. But this, this was...

Perica C People in Wittenoom⁵⁵ did...

Kirby J About a, a vessel, in the Gulf of Saint Vincent, which didn't have air conditioning for the crew quarters, and therefore they had oral evidence which explained how... terrible the conditions were, how exhausting they were, to do any work at all, particularly the arduous work of the ship employees, crew, and then finally they took a, an inspection, of a ship. The ship was spruced and looked wonderful, very clean by the employers, but the employees, the unions had locked all the windows and therefore it was extremely hot... and it was a theatre. I, I realised this was a theatre for the various unions in that industry, and I had to give them full marks for their theatrical performance... but that that led to an award. And there were some other cases.

Some people thought later, I had been appointed to the Commission to take the judicial title in order to be available as Mr Justice Kirby for the Law Reform Commission... but it wasn't... that it didn't happen that way. I took the position because I had done quite a lot of work as a barrister in the industrial relations field. I knew it was very important, as I was growing up it was an extremely important aspect of Australian public life, and I was proud to be appointed. But then I was appointed to the Law Reform Commission and that I kept the title

⁵⁴ Kirby J was appointed to the Law Reform Commission after only 40 days (and nights) as a Deputy President of the Australian Conciliation and Arbitration Commission.

⁵⁵ Wittenoom was former blue asbestos mining town in WA which was declared a contaminated site in 2008 and permanently closed in 2022.

and like Elizabeth's, they protected my title because they, because I retained my commission in the Arbitration Commission...

Perica C Well, you came to ceremonial sittings...

Kirby J That's right. I was there for all of those, and I saw them come and go. I saw Jim Staples⁵⁶ when he was serving in the Commission.

Perica C Well, he'd led you, hadn't he? He had led you in cases, hadn't he, Jim?

Kirby J He had accepted briefs when, when I was a young solicitor...

Perica C OK, right...

Kirby J Because he and I were both members of the Council for Civil Liberties in New South Wales...

Perica C Oh, OK...

Kirby J And we were both interested in that area, and he was a very good advocate and also a very smart lawyer...

Perica C That's what everyone says...

Kirby J It was he who discovered in the Jury Act, or the Coroner's Act, that there was a special provision that in certain circumstances a coroner could summon a jury to decide a case. And this was a civil liberties case about a police shooting of a person, and Jim summoned a jury, got the client to summon a jury and the, the client, ah, had fled the scene and his co-accused had been shot by police. So it was all about the rights of police in the course of, of dealing with a felony, to shoot a person, a suspect. And so Jim, summoned a jury, and the jury was really wonderful, you know, they came back with a whole series of recommendations. That should be governed police use of firearm and those recommendations were adopted by the police. I put that down to the fact that, we got a jury instead of a Magistrate who would often rather in those days were rather, police... friendly...

Perica C OK, great. All right. Now this is a general question. Now, it's two parts. Did you enjoy your time with the Commission? If so, why? And was there anything you learned in your time with the Commission you took into your later judicial offices?

Evatt J Well, I did enjoy my time there because it gave me an opportunity to... get around the country and see things, see what people were doing out there in the factories, and the slaughterhouses, and other places... which I hadn't known anything about before. So I learned a lot about Australia really and... also I enjoyed working with the people on, on the employer side and the union side,

⁵⁶ The Hon. James Frederick (Jim) Staples (1929–2016), barrister and judge. Admitted to the NSW Bar in 1960. Founding member NSW Council for Civil Liberties (late 1960s). Appointed as a Deputy President of the Australian Conciliation and Arbitration Commission (1975–1989). Justice Moore withdrew all of Justice Staples' panel assignments in May 1980 leaving him to sit on the full bench as invited on a case-by-case basis only. When the Hon. Justice Madder replaced Justice Moore as the President of the Commission in 1985 Justice Staples received no more work. Justice Staples was the only Member of the ACAC to not be appointed to the newly formed Australian Industrial Relations Commission in 1989.

they were, they were all, they were, they were good. They were good to work with usually.

Perica C Yeah, yeah, that's good.

Evatt J A lot of good times. Shall I tell you about my big case...

Perica C Yes...

Evatt J You know about that one?

Perica C No...

Evatt J Went to the High Court. Well, you know, the builders' labourers⁵⁷ were... um, what do you call it? They were rejected from the system... dereg...

Perica C They were deregistered?

Evatt J They were deregistered. So there were no builders' labourers, but they wanted to have this National Building Industry Award... so some way had to be found... to, bring them in... to us...

Perica C Yeah, yeah, what was *amicus curiae*⁵⁸ or something?...

Evatt J So a dispute had to be created, but there was no union... and so, several hundred or maybe thousand... individual builders' labourers in different states, were involved in creating a dispute. And I was asked to find the dispute, but this had never happened before... usually it's between a registered union...

Perica C That's right... [indistinguishable]...

Evatt J There's the business between the employers and individual...

Perica C Individual builders...

Evatt J In more than one state...

Perica C One place... yeah, yep...

Evatt J And so I went through the process and heard all the submissions and found their dispute... [indistinguishable]...

Perica C Up to the high?

Evatt J Re Evatt⁵⁹...

Perica C Yeah. Re Evatt? Oh, Re Evatt. Yeah, of course...

Evatt J *Ex parte* The Master Builders'...

⁵⁷ Australian Builders Labourers Federation (BLF) (1911–1972). In 1972 it became the Australian Building Construction Employees' & Builders' Labourers' Federation until it was deregistered in 1974. Resuming in 1976 it lasted until 1986 when it was deregistered permanently. This occurred in the wake of the 1982 report from the [Royal Commission into the activities of the Australian Building Construction Employees' and Builders Labourers' Federation](#).

⁵⁸ An *amicus curiae*, or 'friend of the court', is a person or entity who appears in court in relation to a matter to assist the court without being a party to the proceeding.

⁵⁹ [R v Evatt; Ex parte Master Builders' Association \(NSW\)](#) [1974] HCA 56; (1974) 132 CLR 150 (18 December 1974).

Perica C Builders' Association. Yes...

Evatt J And they decided that it was quite bizarre... bizarre, they called it... but they said that it, it was within the bounds of legality. It was OK, it was lawful. It might be wrong industrially, but it was lawful as far as the Act went so we were able to go ahead with our award.

And we had asbestos, but I can't remember, I know there was... blue asbestos and other asbestos...

Perica C Yeah... the blue was the bad one...

Evatt J It was still allowed to be used... there were either... I hope it was precautions... or... I think it wasn't just extra money, but I hope it was precautions...

Gaudron J There weren't many precautions you could take...

Evatt J I can't remember that... I just remember that you had it...

Kirby J The manufacturers were suppressing the knowledge...

Perica C James Hardie⁶⁰...

Kirby J That they already had... and that's what ultimately was their downfall because that came out, and fought out in the general courts and...

Evatt J It was dangerous, there was a lot of...

Kirby J Terribly dangerous...

Perica C Well its frangible... there's no safe level, it's frangible its asbestos there that could be breathed in, you never know, it might get you...

Evatt J Yes we didn't know there was no safe level...

Perica C No, no...

Evatt J It was starting to come out...

Perica C Mary, what about you? Did you enjoy your time here?

Gaudron J Loved it...

Perica C Yeah? And was there anything you took... from here that you applied or thought about in your subsequent judicial office?

Gaudron J Outside the field of industrial relations... it's hard to find a joke in the law... but in... within the industrial arena, you'd be hard pressed not to find a joke every day...

Perica C What about you, Michael? Did you? What did you think of your time here?

Kirby J Well, I certainly took with me to the Court of Appeal and then to the High Court, the appreciation of the importance of the National Industrial Relations Tribunal. I'd always felt it as a little boy. I heard about it on the ABC News. I took it into my practice. I did the non-compulsory subject of industrial law. I got to know it. I developed a practise at the Bar in the field and then I was

⁶⁰ James Hardie was a major Australian manufacturer of asbestos-containing building products (like fibro) and other materials, becoming synonymous with the health crisis caused by asbestos, leading to widespread worker illness and major legal battles for victim compensation.

appointed to the Industrial Relations Tribunal of the nation. And then I came subsequently to hear a number of important cases in the High Court, concerned with industrial relations.

You know, they're still rolling out... This is the latest part of the Australian Law Journal, and there's a reference there to the case of Helensburgh Coal Proprietary Limited and Bartley⁶¹, which is an industrial law case about work choices... workplace rights and responsibilities.

Anyway, in about 1996, Mr Howard's government⁶² introduced the Work Choices⁶³ legislation, and that legislation had a lot of cases, including constitutional cases. At the end, at the crunch... there was a challenge by the ACTU and other unions⁶⁴ and... against the whole notion that you could override a century of decisions.

That the Australian Constitution, by having a specific and special provision for industrial relations, requiring that it be done by an independent tribunal, and requiring that decisions on that topic be made according to justice and equity of the case, not just through power or money. That was a very important development in our constitutional law, which we got from New Zealand. We dealt with some of the most brilliant judges of the High Court, spent oodles of time deciding what was a dispute between... workers in different states for the prevention, settlement of industrial disputes. And so every word in section 51, paragraph xxxv was worked on by the High Court. There were so many cases...

Perica C That's right...

Kirby J And then suddenly they said, oh, that's all been a big mistake. You don't have to do that at all. You can just go, well you can go out of industrial relations into the corporations law... and we had a very good barrister in the High Court appearing for the State of Victoria, Pamela Tate⁶⁵. I'm sure you know Pamela... a fantastic barrister, and she said you can't do that. Even though there is this view that you can expand federal power, where there is a specific limitation on a power, such as on acquisition of property for the Commonwealth under section 51 (xxxv) of the Constitution, the limitation of providing for 'just terms',

⁶¹ [Helensburgh Coal Pty Ltd v Bartley](#) [2025] HCA 29 (6 August 2025).

⁶² The Howard government was the federal government of Australia led by Prime Minister the Hon. John Howard AC between 11 March 1996 and 3 December 2007. It was made up of members of the Liberal–National Coalition.

⁶³ Work Choices was the name given to changes made to the federal industrial relations laws in Australia by the Howard government in 2005, being amendments to the *Workplace Relations Act 1996* (Cth) by the [Workplace Relations Amendment \(Work Choices\) Act 2005](#) (Cth), that came into effect on 27 March 2006. Before the commencement of Work Choices the Commonwealth relied on the conciliation and arbitration power (section 51(xxxv) of the Constitution) which provides that the Commonwealth may make laws with respect to 'conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State'. The Howard government sought to bring as many employees under Work Choices as was within its constitutional powers. It relied on the corporations power (section 51(xx) of the Constitution of Australia) extending its coverage to an estimated 85% of Australian employees. All employees of 'constitutional corporations' (i.e. trading, financial, and foreign corporations) became covered by the Work Choices system.

⁶⁴ [New South Wales v Commonwealth](#) [2006] HCA 52; (2006) 229 CLR 1; 81 ALJR 34; 231 ALR 1 (14 November 2006).

⁶⁵ The Hon. Pamela Tate AM QC, Solicitor-General for the State of Victoria (2003–2010), Judge of the Court of Appeal of the Supreme Court of Victoria (2010–2021).

that has to be given effect even though you use other powers. And therefore, you can't just get rid of the special requirements for legislation on industrial relations provided in section 51(xxxv). I found that completely convincing...

Now, you might say I found it convincing because I'm a little boy hearing about it. I knew about it. I'd sat in it. I didn't sit long, but I understood it. I knew its importance and I knew it's ethical... objective... and therefore I dissented... Ian Callinan⁶⁶ also dissented, but he dissented on the philosophical view that this was a move by the Commonwealth into an area that didn't belong to it and that it only belonged to it in a very particular case where, it was an industrial dispute extending beyond the limits of any one state etcetera.

So, you asked me did it affect me on the High Court? Well it certainly did... and you know, I sat there for 13 years with judges, most of whom... Mary's excused in this... would say, oh, you can't do that. That would be against a precedent. That would be against... well, there were hundreds of precedents...

Gaudron J There were a few on the other side too, and including the facts in, in one sense... um, can I go back to what I said, there were things going on outside the Commission which... presaged, in a sense the end of the conciliation and arbitration part. One was a very heavy campaign by Professor John Niland⁶⁷ from University of New South Wales to introduce, collective bargaining, and he, he, it was he, was bringing in the other things. Now he was not a constitutional lawyer, but... you couldn't ignore the fact that apart from the national wage cases, which only by the most strenuous notion could they be seen to be... for the resolution...

Perica C Resolution of disputes, that's right, that's right...

Gaudron J So, um... but apart they decide the national wage cases on which the Commission was absolutely concentrated, all its big guns were brought to bear in the national wage cases. And by about the time we speak, in trying to limit, wage rises, with the guidelines, now what they were doing, by making up the guidelines which everybody had to comply with, they were in, in fact, limiting the exercise of they themselves, were limitising of the arbitration powers...

Perica C Express power, yes...

Gaudron J Now...

Kirby J But it had to be done in public. It had to be done in a public discourse and...

Gaudron J Let me...

Kirby J They could be criticised...

Gaudron J Let me finish my sentence... please...

Kirby J Yes...

⁶⁶ The Hon. [Ian David Francis Callinan](#) AC QC (born 1937). Admitted to the Qld Bar in 1965, appointed as a QC in 1978. Appointed as a Justice of the High Court of Australia (1998-2007).

⁶⁷ Professor John Rodney Niland AC (born 1940), academic. Obtained a Bachelor and Master of Commerce from UNSW and a PhD from the University of Illinois. Served as a mediator of labour disputes in the US while at Cornell University, and in Australia has undertaken extensive academic and policy work in conflict resolution, theory and practice, particularly enterprise bargaining.

Gaudron J Just this once... But also, the conciliation power, not always, but a large amount of the time, when you sat there, the parties had bargained their way, to a position, which we were endorsing...

Evatt J Yes...

Gaudron J So, so there was a, an area of, collective bargaining going on, and there was an area, where the Commission was dealing itself out of the use of the arbit... to some extent dealing itself...

Perica C Right...

Gaudron J And in the meantime, there are all these smart people like John Niland, who incidentally, I, I didn't like all that much, but, but he was smart...

Kirby J Like President Trump and our Mr Rudd, he said 'I didn't like you either'.

Gaudron J And I... I forget what I was going to say now...

Perica C Yeah, yeah... that collective bargaining was a step away from the settlement of disputes...

Gaudron J Yes, but there was a big campaign for us outside the Commission... And so what we haven't mentioned... either... is the industrial relations club⁶⁸, which we know, never existed...

Kirby J No...

Gaudron J No, well...

Perica C I think that's the Gerard Henderson⁶⁹ creation...

Gaudron J No, no, it was real...

Perica C Was it? The club?

Gaudron J The club was real... Ah... the arbitra... in the... the arbitration power to the... well, to the success of the Commission... depended on... the unions being cooperative. I mean, the Commission was in no position... to enforce its own awards. They had to bring in... the unions to do that, and to ensure that they went quietly, they had to bring in the employers...

Evatt J The National Building Industry Award was in the sense a collective bargaining thing. They wrote it...

Gaudron J Yes...

Evatt J Employers and the unions wrote it together. There was a list of things they didn't agree, but...

Gaudron J Yeah, yes...

⁶⁸ The 'industrial relations club' or 'IR club' is a term from Gerard Henderson's 1983 essay in *Quadrant* in which he claimed that employer groups, unions, the federal industrial relations department and the Arbitration Commission formed a largely Melbourne-based club that controlled Australian industrial relations. The individuals running these organisations, he wrote, had a 'vested interest' in an IR system based on pragmatic deal-making between contending parties. They acted without regard for the economic effects of their decisions, or for the national interest more generally.

⁶⁹ Gerard Henderson (born 1945) is an Australian author, columnist and political commentator.

Evatt J Not that far apart...

Gaudron J Mmm...

Kirby J But that's not unusual...

Evatt J No...

Kirby J In litigation...

Perica C No...

Kirby J And the parties...

Gaudron J Well...

Kirby J The issue...

Gaudron J Well it was...

Evatt J They co-operated an enormous amount... it seems for the public, the public weren't aware of that...

Perica C Now I'm not being interviewed here, but it's been my experience that people that did not grow up in the culture of conciliation and arbitration only have Work Choices and beyond. They don't understand that... there was everything really a grand settlement...

Kirby J I warned against this. I warned that this would turn its back on a century of constitutional law and adjudication. And I... I've seen happen what... it was the public nature of it. And the fact that you had to debate it and discuss the issues...

Gaudron J Michael, out there, there was a whole group of people that called it the boss's court, had no faith in it whatsoever...

Kirby J Well, do they have faith in the boss's being able to decide? But that's part of the corporations fall under...

Gaudron J But you asked earlier. I just wanted to get this in for Elizabeth's sake... why I... you love the Commission? I said because there was a joke a day. And one day I can remember... I was in Peter Coldham's chambers for some reason, and he took a call, and he, he said, 'let me get this straight, the Chief Justice of Australia has notified a dispute with the Builders Labourers Federation, who are refusing him access to the new High Courts'... it later came on... I'm, I'm sorry... I mean, you couldn't, I mean you couldn't...

Perica C Couldn't make it up. No, no...

Gaudron J And you'd get one every day. And when it came on too, when Peter called the matter on for preliminary hearing, he's, he, he asked some questions, and Normie Gallagher⁷⁰, God bless him...

⁷⁰ Norman Leslie Gallagher (1931–1999) trade unionist and communist. Elected as Federal Secretary of the Builders Labourers Federation (BLF) (1961) and Victorian State Secretary (1971). Founding member of the Communist Party of Australia (Marxist-Leninist) in 1974. He encouraged guerilla warfare strategies in the building industry (stopping concrete pours) but was reputedly involved in soliciting secret commissions. Following the 1981 Royal Commission he was sentenced to 18 months in gaol and was fined \$60,000 [R v Gallagher](#) [1986] VicRp 25; [1986] VR 219 (7 October 1985).

Evatt J Oh yes, he was a laugh a minute... terrible guy...

Gaudron J Well, he may have been terrible but what he said was, he said, 'well Your Honour, I don't know what sort of Chief Justice'... oh that's right, Peter had said it, it started up with a builder's labourer complaining, that... the Chief Justice was interfering, and giving them orders as to what to do on the site... and Peter said 'but, but he does that to me... too, he gives me orders and that' and he said 'I don't know what sort of Chief Justice he is, but I can tell you' says Normie... 'he'd have made a damn fine clerk of works on the Acropolis'...

Evatt J Who said that?

Gaudron J Normie...

Perica C Norm said it...

Gaudron J Sorry, I bet that's...

Perica C No, no, no this is this is the gold that we need in this, this forum. All right now...

Evatt J Yes, that's right... [indistinguishable]... he wasn't easy to deal with... but his bark was worse than his bite...

Perica C That's right, he had... occasionally he had like... sometimes it was like crazy, like a fox. You know my experience of him that sometimes the positions he took were had some logic behind them, but sometimes not...

Alright, now we're into the personalities, anything you can say about your fellow Members while you were here that stands out, and any gossip or anecdotes will be graciously received. Elizabeth have you got any, is there any with the personalities when you were there that stand out?

Evatt J Well, of course, John Moore was the President and, I sat with him when he was settling a really major dispute to do with... oil tankers or something the oil industry, whatever it was. And I was tremendously impressed by the way he handled the parties who intervened into...

Perica C Everyone that appeared before him has told me that he was basically an inscrutable sphinx, he...

Evatt J Yes, he was...

Perica C He wouldn't, he sat back and passively...

Evatt J Inscrutable and that was what worked in settling his dispute. He got them one, the other, one, the other, one, the other...

Perica C That's right...

Evatt J We actually got, well, I sat through the whole process and I was very impressed... how he got them to do what he wanted in the end...

Kirby J Interestingly, Sir Anthony Mason⁷¹ has a reputation, a similar reputation to having been a sphinx, when he was sitting in the High Court. Now Mary sat with

⁷¹ The Hon. [Sir Anthony Frank Mason](#) AC KBE CBE QC (born 1925), barrister and judge. Admitted to the NSW Bar in 1951, appointed as a QC in 1964. Appointed as Commonwealth Solicitor-General (1964–1969), and Judge of NSW Court of Appeal (1969–1972). Appointed as a Justice of the High Court of Australia (1972–1987), Chief Justice of the High Court of Australia (1987–1995).

Sir Anthony, I never did. And I did see him from the Bar table and I saw, Sir John Moore from the Bar table and both of them, they didn't ask many questions. They certainly didn't interrupt each other, and they just listened quietly, and understand, and you don't know where you were. Now there is a theory that it is contrary to the fundamental right to know how the tribunal is thinking, and you, you've got to give some indication, so if you're on a wrong track, the advocate can deal with it. And that was certainly the view that I took. But these...

- Gaudron J Even with your fellow judges...
- Kirby J Even... well, I would say especially with some of my fellow... excusing you, but that, that was, these were two very... important... and influential presiding judges...
- Evatt J I'm talking about a conference...
- Kirby J Yes...
- Evatt J Not in court...
- Kirby J No, no...
- Evatt J In conference, the silence of the mediator is perfect because they have to sit... the others have to say something...
- Perica C Yeah, there's power in it...
- Evatt J The power of silence. That's what I say. The other, other one I remember was Terry, Terry Ludeke⁷²...
- Kirby J Yes...
- Evatt J He was always very friendly, always very helpful. I don't know what he was like as an arbitrator...
- Perica C My first engagement with the Commission in 1987 was... a bans clause application, defending against it, with, before Terry, with the Brylcreemed⁷³ hair. I'll never forget it...
- Evatt J He was a busy man, he did a lot...
- Gaudron J Was he still on the Commission in '87?
- Perica C Yeah, he was...
- Gaudron J When did he leave? Sorry...
- Perica C I think he went, I think he just, barely in the year after, into the Industrial... Australian Industrial Relations Commission, but barely...
- Gaudron J Yeah...
- Kirby J He was greatly respected by...

⁷² The Hon. John Terence (Terry) Ludeke QC (1921–2013), barrister and judge. Appointed a Deputy President of the Commonwealth Conciliation and Arbitration Commission, Australian Conciliation and Arbitration Commission and Australian Industrial Relations Commission (1972–1991).

⁷³ Brylcreem is a British brand of hair styling products for men first created in 1928.

Gaudron J The Catholics...

Kirby J By the, the other...

Gaudron J The DLP⁷⁴ and the Catholics...

Kirby J There were people who didn't like him at all. And so...

Evatt J When I was...

Kirby J Mary's evidencing that now... I didn't know if he's...

Evatt J When I was starting...

Kirby J Catholic...

Evatt J He always, he always came into my chambers if I had something on and he'd go through it all with me... you know, it was helpful. He was very good...

Perica C All right, Mary, is there anyone that stands out when you were there... that you liked, disliked?

Gaudron J Well... Peter Abernethy Coldham... was the first... real gentleman I'd met in the law... fascinating he was, interesting... um...

Perica C Not one dimensional, is that what you're talking about?

Gaudron J Sorry?

Perica C Not one dimensional like a...

Gaudron J Oh no, no, not at all...

Evatt J But he's a Melbourne man...

Gaudron J Yes...

Evatt J Probably different then...

Perica C Some of us...

Gaudron J Well, well, that is true, but I, I found him interesting, engaging, engaging...

Evatt J Yes, yes...

Gaudron J I felt a bit sorry for... tell me... the economist?

Kirby J Joe Isaac...

Gaudron J Now I'm telling you a story, out of school or something... Joe, everybody down there except me, just... everybody from Melbourne, and half the Sydney people, were... were members, not of the Melbourne Club, of the other one...

Perica C Savage? Savage Club, like the Bohemian one, that, oh um...

Evatt J The Australian one?

Perica C Australian Club?

⁷⁴ The Democratic Labor Party (DLP) came into existence following the 1955 ALP split as the Australian Labor Party (Anti-Communist), it was renamed the Democratic Labor Party in 1957.

Evatt J It was a club...

Perica C Anyway, they were members of a gentlemen's club...

Evatt J Men, men only club...

Gaudron J Yeah... and Peter was a... Peter was anxious to... join it... Peter, is his name Peter? That's how I'm talking about...

Kirby J Joe Isaac⁷⁵...

Gaudron J Joe, was of the Jewish religion, and he applied... and they said no, no, they, they didn't need anyone... from the Arbitration Commission... I mean, the place was... whatever the club was it was full of Members of the Arbitration Commission, including...

Evatt J Peter?

Gaudron J No... surprise... he was Melbourne Club, he was far too grand to be a member of this inferior club... But including Ludeke...

Evatt J Oh, Ludeke...Terry...

Gaudron J So Joe came to see me and he was terribly, terribly upset about it all about it being rejected. So I said that go and speak to Terry, see if there was anything, and I gave the thing... Terry's response was... [indistinguishable]... and that was when I gave up on Terry.

Evatt J Well, don't you... you didn't try to join, I'm sure.

Gaudron J Well, I certainly did not, and I haven't tried to join the Australian Club⁷⁶ either...

Kirby J And Mary would not allow the High Court to have its social functions at any club which didn't allow women as full members, and it's a very correct thing, but the minute Mary left, the minute she left...

Gaudron J Story of my life...

Perica C Now Michael, I haven't asked you... what about... is there anyone that your time there that stands out, someone that mentored you someone that you...

Kirby J There was a very nice... was it Jim Robinson⁷⁷?

Gaudron J Yes...

Kirby J He was a very nice and civilised...

Gaudron J He had the 'quality-of-life' panel...

Kirby J Yes... he had theatre and so on...

⁷⁵ The Hon. Professor Joseph Ezra (Joe) Isaac AO (1922–2019), economist, academic, judicial officer. Appointed a Deputy President of the Australian Conciliation and Arbitration Commission (1974–1987).

⁷⁶ The Australian Club is a private club founded in 1838 and located in Sydney at 165 Macquarie Street. Its membership is men-only and is considered the oldest and most prestigious gentlemen's club in the southern hemisphere.

⁷⁷ The Hon. James Robinson QC (1926–1990), barrister and judge. Appointed a Deputy President of the Commonwealth Conciliation and Arbitration Commission and Australian Conciliation and Arbitration Commission (1970–1986).

- Evatt J Who's that?
- Gaudron J Robertson... he had the 'quality-of-life' panel...
- Kirby J I had cases in that, I, I acted for Harry M Miller⁷⁸ in the dispute over Jesus Christ Superstar⁷⁹... and, and he was a really cultured, intelligent, sophisticated...
- Gaudron J He was from South Australia...
- Kirby J Oh, was he? I didn't know that, he was great and I, I really liked him. But the other thing was you would go up, to interstate, and even in the short time I was there, I went up to Shepparton, and, in Shepparton in the park at lunchtime, I met Sir Murray McInerney⁸⁰, and he was a judge of the Supreme Court of Victoria. Very nice, very old man... [indistinguishable]... 10 years older than I, younger than I am now.
- But, we got to talking about, the cases he did when he was a young barrister, and suddenly I saw he was crying, and he was remembering the dock briefs he did in capital cases where the matter at stake was not just the winning, and the money or so, it was about the life and death of the prisoner. And, he had this feeling of inadequacy as a young counsel, that he had to do the case without the experience, because that was all that was given then for the assistance of prisoners. And so it served for me, to introduce me to the world of the judiciary.
- And I came to know them all over the country, and to like some and not like others, but you just get on with your own work and you have to remember that judicial independence includes independence from each other... That's a very important feature of, the tradition that I supported.
- Perica C OK, well, we're moving on to that now. Jim Staples, I have to ask... now you were basically a lone voice defending him in public when he was marooned on the Australian Conciliation and Arbitration Commission. Can I ask you what motivated you?
- Kirby J Well, I was then a Commissioner of the International Commission of Jurists⁸¹. The International Commission of Jurists spent half of its time dealing with complaints about the way governments in different countries, dealt with judges and sidelined them and didn't promote them or didn't appoint them or so on. And so, that's what was done in a body of which I was a member, in Australia... and, I put it up to my colleagues in the Court of Appeal of New South Wales just in case I was going barmy. They all said they would sign a letter, protesting about the fact that when the Industrial Relations Commission was established, the Arbitration Commission all was repealed, then all of the judges on the old Arbitration Commission were appointed to the Industrial Relations Commission, except Staples. And... and that...

⁷⁸ Harry Maurice Miller (1934–2018) promoter, publicist and media agent.

⁷⁹ Jesus Christ Superstar is a sung-through rock opera with music by Andrew Lloyd Webber and lyrics by Tim Rice, first performed on Broadway in 1971, the first Australian production run was 1972–1974.

⁸⁰ The Hon. Sir Murray Vincent McInerney QC (1911–1988), barrister and judge. Appointed a Judge of the Supreme Court of Victoria (1965–1983).

⁸¹ The International Commission of Jurists (ICJ) is a non-governmental organisation of leading judges and lawyers from around the world working to advance the rule of law and realisation of human rights for all.

Evatt J I had to fight...

Kirby J What's that?

Evatt J I had to fight to be appointed...

Kirby J Oh...

Evatt J They weren't going to appoint me...

Kirby J But they did appoint you. But they didn't...

Evatt J They did but it...

Kirby J Appoint, didn't and wouldn't...

Evatt J Wasn't the original idea that they...

Kirby J No, they, they didn't appoint him. They sent him on an overseas travel, and, and, that was to investigate some aspects of law reform that Ellicott⁸² decided. And the net result was a very serious breach of what had been the tradition that the Commonwealth always appointed people to successive tribunals...

Perica C Yes, that's it...

Kirby J Except in this one instance. I'm not sure whether with the AAT⁸³ and the recent reconstitution they didn't appoint all the old Members of the AAT?...

Perica C They didn't... there, they marooned a lot there...

Evatt J That was the whole intention...

Kirby J But this was, this was just one exception, and I didn't think it was right, and my colleagues in the Court of Appeal of New South Wales and, and so on, said it wasn't right. It went to the New South Wales Bar Association and Mary's old friend Roderick Pitt Meagher⁸⁴ was the president of the New South Wales Bar Association and he said, 'Well, they're not really judges at all'...

Perica C Yeah?

Kirby J 'And therefore they don't have to have tenure, and therefore we don't have to worry about it'. And that was the view the New South Wales Bar took, but it wasn't the view I took... And that article that I wrote on the Staples matter, still bears re-examination...

Perica C I read it... was it, the, you, you wrote one for the Bar News and one in the Journal of Industrial Relations, what, well, was that the same thing or were they...

⁸² The Hon. Robert James Ellicott AC QC (1927–2022) barrister, politician and judge. Served as Solicitor-General of Australia (1969–1973) before entering the House of Representatives at the 1974 federal election as a member of the Liberal Party. He held senior ministerial office in the Fraser government, serving as Attorney-General (1975–1977), Minister for Home Affairs (1977–1980), the Capital Territory (1977–1980), and Home Affairs and the Environment (1980–1981). He retired from politics to be appointed to the Federal Court of Australia, serving as a Judge (1981–1983).

⁸³ Administrative Appeals Tribunal.

⁸⁴ Roderick Pitt Meagher AO QC (1932–2011), barrister and judge. Admitted to the NSW Bar in 1960, appointed as a QC in 1979. President of the NSW Bar Association from (1979–1981). Appointed a Judge of the NSW Supreme Court and the Court of Appeal of NSW (1989–2004).

Kirby J Basically, I often repeated things in case somebody had not had the benefit...

Perica C Yes, well, the Bar News people won't be reading the Journal of Industrial Relations, that's for sure.

Now... it turns to you, Mary. It's always said in relation to this that you it was reported, or purported, that you resigned over what happened to Jim Staples?

Gaudron J I did...

Perica C Is that right?

Gaudron J It is correct...

Perica C Right, so did... John Moore had something to do with it? Didn't he? He didn't like him? He was marooned before that wasn't he? He wasn't given...

Gaudron J Not exactly...

Perica C Right. If you could tell me that would be great...

Gaudron J OK. By this stage, in my view, the Commission... was developing some sort of, mental illness about itself. I don't mean individually, but the Commission...

Perica C Like a collective madness type thing?

Gaudron J They weren't, they didn't all have the same form of madness...

Perica C Right...

Gaudron J So... by this stage we're into the... the Commission's... determination that there could be no wage rises outside the so-called anomalies. And that, and Jim, and perhaps I too, but I wasn't terribly vocal about it, took the view that that was an abdication of the Commission's core responsibilities. And also, it was quite clear, you didn't get to sit on the relevant Full Benches unless it was clear that you weren't going to rock the boat in anyway. So, by this stage, Jim particularly, and maybe me, although I wasn't causing trouble actually at that stage, took the view that there was a first 11 and a second 11. And, if... there ought to be some more involvement of the outsiders, who were stuck with trying to resolve everything on the basis of an anomaly... which didn't necessarily make sense anyway.

So Jim by this stage had the maritime union, and he had made a recommend... so Jim's prose, was idiosyncratic at best, and you can recognise it from 100 miles away. Now I, I have a feeling... this was in the February or March... So he wrote this thing where the, shipping magnates had decided to ignore his recommendation. And it ended up with 'leaves and recommendations swinging in the wind' or something like that. Something, not particularly judicial, prose, how un... well, but anyway, then... I have a feeling I'm, I'm, this is, I was a bit too close to it too. And I did resign because of it.

And I became unemployed and unemployable, with my resignation speech appearing on the front page of every metropolitan daily. Anyway, he appeared at a, he spoke at an Industrial Relations Society do in Adelaide⁸⁵. Now, I'm not too sure what he said there or what he didn't say... but it was interpreted, by

⁸⁵ [Canberra Times, 18 March 1980: Staples the 'sacrificial lamb' – Trove.](#)

everybody, as being disloyal to Sir John Moore. I, I'm, I can't really... maybe it was, maybe it wasn't.

Then they came to me. I mean, there were two parts to it, why I left. One, I didn't think it was right to do what they subsequently did to Jim, and two, I thought I'd been ill used in the process.

The first, as to the first, everybody was rushing around, in corners gossiping about who was going to be the next President because, whoever was the next President, would get a knighthood... and my, my views on the benefits of knighthoods, were not well received.

But, Terry Ludeke came to me and said 'Now look, John's very upset. Will you give a letter? Will you sign a letter?', which I did, 'Saying that he has your full support?' Why it mattered, did he have my full support, I should have been smarter, I, but I had things going on in... [indistinguishable]... so I signed it. And then the next day, he called Jim in and said 'This means no one will work with you, not even Mary will work with you', which it's not how I interpreted the letter, was not what I intended, and... so I said 'I'm out of here, I can't work with people here, behave like this'. So I mean, I said what I thought, they had no right.

So what they did, what they indicated that, with Jim, was that they would not allocate any cases to him. I thought they did, that was, I did not believe Sir John Moore had that right. And even if it meant that, no, but even if it were, as they claim, which was ridiculous, that nobody would work, would sit with him. That didn't give him the right to say no more work. And they had no right, to use my letter to say that, that was my view.

Perica C Thank you. That's clarifying.

Gaudron J What did it clarify?

Perica C Well, it was pretty opaque what happened. So, you know, I, I knew about the letter but didn't realise that precipitated you leaving...

Gaudron J What letter? What...

Perica C The letter, where everyone you know, where John Moore has my full support, you didn't know what it was going to be used for. Yeah, OK. All right, Look, I've got one thing...

Kirby J Can I just mention in fairness to Sir John Moore, he was, as we talked earlier, a very accomplished, and serious person who was truly dedicated to the Commission. And this was a mistake, that I thought, but I didn't think he did it with any evil intent, I think he just thought that this was preventing Sir John running the Commission as he thought necessary. And also... Jim Staples was a difficult person...

Perica C Yes...

Kirby J It was difficult, but circumstances and principles, apply to difficult cases as well as easy cases and difficult people, and, and in the end he didn't take it on. He could have applied to the High Court for an order saying I hold a commission under the Commonwealth, under an Act of the Commonwealth. I am, and implied in that is that I will get work and I'm not being given work and that's a

breach of the requirement, and I ask for an order that the President determine what I will get...

Gaudron J Interested whether it was just, justdisiable any more than well, anyway it doesn't matter...

Kirby J He wouldn't do that. He spent his whole life building a boat. I think that might have been because of what happened to him made him a bit mentally disturbed... So the net result was a very sad saga. But it's very important to understand Moore was a very honourable man... And he had a very difficult customer in Jim. He shouldn't have handled it as he did. He should have sought a way, and I do suspect maybe Terry Ludeke put him up to this...

Gaudron J I'm sure...

Kirby J But whatever, whatever happened, you need to give support to the institution. You know, I had terrible disputes, with some of the High Court Justices, in particular Chief Justice Brennan⁸⁶, and... also other later Chief Justices about my partner's entitlement to travelling allowance. And it was Mary in the end who said 'We've got to have that sorted out and the court has to do the right thing', and a decision was reached and it was voted on by the Justices of the High Court of Australia, the highest judges in the nation, and it split to three-three, and I hadn't voted because it affected my partner, it affected me. And so I said, 'Well, Mary, this affects me, it affects me financially and therefore I mustn't vote', and Mary said 'You've got to vote, Kirby, this is necessity. You have the, if you don't vote, this will not be resolved. You have got to vote. It's your duty to vote'. And in the end I said...

Gaudron J I had to point out he wasn't the only person affected by it...

Kirby J But I, I said in the end, 'Very well'... and she was right and I was wrong... and it was then fixed, in a sort of a way, but the unpleasantness continued, as you have in little group dialogue. I'm sure it's still through the Fair Work Commission, you have very strong feelings, often about things that in retrospect, weren't so important. Though I do think my partner's entitlement to basic travel, he used to drive down. He was there more than any of the wives of all the Justices. We were family values. But he was denied the travelling allowance...

Evatt J Can I just say, I don't know, I think that John Moore could have found other, other solutions. Possibly, I don't know. But I do know that when I was Chief Judge, as I was for quite a few years, at the Family Court, it's very difficult sometimes... managing Judges, and some who, are not up to scratch...

Perica C No...

Evatt J Some who, don't want to follow the rules, certainly there can be real, real...

Perica C Tension between...

⁸⁶ The Hon. [Sir \(Francis\) Gerard Brennan](#) AC KBE QC (1928–2022), barrister and judge. Admitted to the Qld Bar in 1951, appointed as a QC in 1965. Appointed as Member, Australian Law Reform Commission (1975–1977), inaugural President of the Administrative Appeals Tribunal (1976–1979), Judge of the Australian Industrial Court and Additional Judge, ACT Supreme Court (1976–1981), Judge of the Federal Court of Australia (1977–1981). Appointed as a Justice of the High Court of Australia (1981–1995), Chief Justice of the High Court of Australia (1995–1998).

Evatt J I have a certain sympathy, for the need to deal with difficulties, but he may have found other solutions, I think...

Perica C There's, there's tension between the idea of independence and the idea that you've got to manage the court. I mean, you're, you're the Chief Justice. You have to, you know, make sure all the troops are on side...

Evatt J There are... there are people out there who depend on you... I had to, to have decisions made that that affect them. You know, you have to think about them...

Kirby J I think he continued to draw his salary....

Evatt J Well of course he did. They couldn't change that...

Kirby J Well, they could. He wasn't a Chapter III Judge. Theoretically, they could stop it...

Gaudron J The Act at that stage, although it wasn't, the Act provided that they were entitled to the status of...

Evatt J Yes...

Gaudron J And it...

Evatt J It did have that...

Gaudron J And it also provided, that the way for removal, was by means of Parliamentary vote. So this was a way of, bringing about the same effect without...

Evatt J Except he got his salary, he got his salary...

Kirby J He got his salary and then built his boat...

Gaudron J Well, he initially, he went...

Evatt J There wasn't...

Gaudron J On what I call the 'Bob Ellicott travelling scholarship', which was to explore the EU provision... which is, of the Equal Rights Commission, which is now the subject of fun resonating the UK...

Evatt J [indistinguishable]... that there was any person, that could deal with John Moore and Jim Staples and get some sort of solution...

Gaudron J Well, well I...

Evatt J [indistinguishable]... could do that...

Gaudron J Well, I had been to speak to John Moore, and suggested that for the moment, for the time being, Jim be given a floating position to, for six months, so that the rest of us could all take our accrued annual leave. And Jim had indicated he would accept that, and said...

Evatt J 'Til things died down... 'til things...

Gaudron J So John said 'Well, that may be a solution', and then the next day, out came the letter saying nobody...

Kirby J That might have been manoeuvred by somebody else...

Gaudron J I think it was...

Kirby J I mean, a small group dynamic...

Gaudron J I have no doubt it was manoeuvred by Terry Ludeke because he was the one, he was telling me how I do...

Kirby J Well, he, he was a rather rigid man whose personality was rigid... and he would regard this behaviour as completely unacceptable... Anyway, we've spoken rather frankly about this...

Perica C Look, there is there's one sort of push polling question I want to ask at the end. Can you give me your reflection on the Commission and its importance to Australians?

Evatt J Well, I can tell you that my recollection is that everyone used to hang on the, the results of the basic wage case.

Gaudron J There was a time...

Evatt J It was in the '50s at any rate...

Perica C Right, Mary...

Evatt J And later...

Gaudron J There was a time when it was more important than the High Court, it was the most important, most important institution, but it was, was...

Kirby J But it, it isn't now. That is basically not the fault of the Fair Work Commission. That is the fault of the federal parliament and of the Howard government to substitute the corporation's power, which leaves them... [indistinguishable]...

Gaudron J It wasn't the only problem...

Perica C And you know, and Kelty⁸⁷ saying 'Dog returning to its vomit' and all that stuff. You know that working people have benefited by having the, the Commission and its various iterations there. And we all get bad decisions that we don't like that just doesn't there doesn't...

Evatt J It was the...

Gaudron J Well, I mean, there were, there were other things they, they were...

Evatt J Ideas, it helped to make Australia...

Perica C It did, that's right...

Gaudron J There are other factors, I think Michael, one was what the Accord⁸⁸ did to the trade union movement... So the trade union movement was fundamentally weakened, and, which you can still see in the number of unionists against...

⁸⁷ William John (Bill) Kelty AC (born 1948), trade unionist. Served as Secretary of the Australian Council of Trade Unions (ACTU) (1983–2000).

⁸⁸ The Prices and Incomes Accord was a series of agreements between the Australian Labor Party (ALP) and the Australian Council of Trade Unions (ACTU), in effect from 1983 to 1996. Central to these agreements was an incomes policy to address the stagflation crisis by restraining wages. The unions agreed to limit their wage demands and assist in microeconomic reforms, and in exchange, the government provided a 'social wage' of welfare and tax cuts.

Perica C Well, it's 13% now...

Evatt J Yeah...

Perica C It was 50% when I started...

Gaudron J And, well, you see that the union movement was a fun... in my view, it was a fundamental aspect of it, not just in the creation of disputes, but, in making it work. And once and once the union movement was weakened, it was inevitable that the Fair, whatever iteration you were at that time, would, would lose, some sort of... place in the daily news...

Kirby J If you ask what did the old system achieve? You've gotta buy the Industrial Index to Australian Labour Law because it's all listed there... mighty achievements and there continues to be very important...

Perica C OK, why'd you remember? Did you like remember the index of that was fantastic...

Evatt J [indistinguishable]... Never mind all the index, it was, it was for me, it was about all those people out there what they were doing...

Perica C That's right, exactly...

Gaudron J I mean, the Harvester decision, I mean they, they were remarkable decisions in their time. The notion of the basic wage was, it's a big idea... that, that's...

Evatt J The Harvester case?

Gaudron J Yeah...

Evatt J Brilliant... a, a first for Australia...

Perica C It was, yeah. Well...

Evatt J It made Australia, it gave Australia, it gave great stuff...

Gaudron J Eight hour day...

Perica C Eight hour day, annual leave, mat leave, sick leave. Think, talk to an American. It's just incredible. You think you don't get sick leave. I can't even think about it...

Evatt J They don't have anything like the conditions that our workers have...

Perica C That's right. All right...

Kirby J Thank you very much Mark...

Perica C Thank you. No, no...

Kirby J For the questions, and for taking us through our lives in the Commission...

Evatt J We could go on for hours...

Perica C Thank you. No, no, no, it's beautiful to hear from you. And it's an incredible honour for me because I've been following each of you for my whole life there. So, yeah, great honour...