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DEEP LISTENING CONVERSATION WITH
OSCAR TRIMBOLE

LISTENING & FORMAL DECISION-MAKING

The Hon. Michael Kirby AC CMG

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LISTENING & FORMAL DECISION-MAKING

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Speaker 1: Deep listening.

Speaker 2: [foreign language 00:00:02].

Speaker 3: Deep listening.

Speaker 2: [foreign language 00:00:06]

Speaker 4: Deep listening.

Speaker 5: Deep listening

Speaker 6: [foreign language 00:00:10]

Speaker 7: Deep listening: Impact Beyond Words.

Michael Kirby:

There's no specific training about techniques of listening. Certainly I never received any such training. It was regarded as something intuitive. I've never been asked questions before today, before [00:00:30] now, about listening. Never. No one's asked me questions about that. Therefore I'm trying to respond against the background of many years of professional life in which listening has

been a very important part to my life. But techniques of listening were not taught.

That was just the way I wanted to see the whole picture [00:01:00]. Because one of the problems in the law is getting transfixed with a particular text either of an Act of Parliament or of a judicial opinion. And then forgetting the context of that text in the larger picture. Context is extremely important for meaning and for understanding what the law is correctly [to be] understood. [00:01:30] It was listening but it wasn't listening with a pure heart. This was listening in order to gain the votes for my advancement in the world of student politics. As the Chief Justice of New South Wales said on my departure from the Supreme Court, I was a juggernaut of student politics. And that was because I listened and responded to the interest of [00:02:00] those who were the voters for the attainments that I longed for.

During my judicial years I would normally start at about 5 o'clock when there was no telephone and no interruption, and I could read up the material for the case of the day. That is not listening, except you're listening to the inner voice reading the materials [00:02:30] and getting the information into your head.

Speaker 7:

In this episode of Deep Listening: Impact Beyond Words, we travel to the High Court of Australia to learn from former Justice, Michael Kirby. We explore with him how methodical listening helped him during his time in student politics and also helped him while preparing and listening to the most [varied] situations and complex cases [00:03:00] in the highest court of the land. Listen out for the role his parents, and particularly his father played in developing listening muscles through story telling. I love the way that justice talked about the role [of] visual techniques in helping aiding him during listening for extended periods of time in dealing with a wide range of matters.

One of the things I loved exploring was listening how during court cases he would visualise a jigsaw puzzle that he was bringing together, [00:03:30] slowly but surely, methodically and deliberately. Finally, take the time to understand how you listen through cultures in societies when the Justice, and commissioners from Indonesia and Serbia, take testimony from refugees from North Korea. Let's listen to Justice Kirby.

Speaker 10:

Deep listening.

Speaker 11:

Deep listening.

Speaker 12:

[foreign language 00:03:54]

Speaker 13:

Deep listening.

Speaker 7:

Deep Listening: Impact Beyond Words. The book [00:04:00] is available via Amazon or at oscartrimboli.com/books. It's organised in a really practical way around the five levels of listening whether I speak on stage or listeners who email me after listening to the podcast. The most common question is what is the most practical tip I can give somebody to improve their listening. It always starts with level one, listen to yourself. How do you prepare yourself so that you can listen to somebody [00:04:30] else in the dialogue And the deeper that you breath, the deeper you listen. Check out the

book, *Deep Listening: Impact Beyond Words*, and you'll be able to move from an unconscious listener to a deep and powerful listener.

Speaker 15:

Deep listening.

Speaker 16:

Deep listening.

Speaker 17:

[foreign language 00:04:49]

Speaker 18:

Deep listening.

Speaker 7:

Growing up around the family dinner table, I'm curious what the conversation would have been about and who do you feel was the best listener in the group?

Michael Kirby:

[00:05:00] First of all, we did have a dinner together every night virtually, and that was my father, my mother, my brother Donald, my brother David and my sister Diana. So we were six. Having that conversation was definitely a wonderful thing in our lives. I feel very sorry for [00:05:30] the modern generation who live in their mobile phones and don't really communicate as much as people did in my time.

What were the subjects? It was everything. It was about our schooling. Our parents were supportive but not oppressive. They were happy when we did well. But they didn't blame us when we didn't do well. [00:06:00] Normally, we did well, and therefore all the conversation was encouragement, pride in achievement, and interest in what we were learning, and participation. I was never a good speller. My mother would help me with spelling. She was a wonderful speller and I got better at it. [00:06:30] My father was very interested in history, very interested in history. So a lot of time was talking about history, usually British imperial history. He had a great knowledge of it and would pass that knowledge onto us. He was a great reader to us. Our parents were wonderful parents. They were young [00:07:00] parents. They were wonderful parents.

As to who was the best listener, I think it was possibly my mother because she had a rather more self-effacing attitude. Perhaps this was a feature of women in those times. We're talking about the 1940s and '50s. My father was a bit of a show off, I'm more like [00:07:30] my father. My mother had very good judgement of character. That may have come from the fact that she spent more time listening and not showing off and not speaking before she thought. She had very good perception, and my father had very good display. Between the two of them, they gave us [00:08:00] gifts of communication which are invaluable, if you're going to the occupation of an advocate and a judge.

Speaker 7:

Your father was a great reader and read to you often. To what extent do you think that helped you in developing listening muscles?

Michael Kirby:

I think it helped in storytelling, and that is basically what [00:08:30] my father did. He read particular books to us. We never got to *The Magic Pudding* or Australian stories for children. We got the *Grimm's Fairy Stories* and they were German stories which were

written down by the Brothers Grimm. They were not the [00:09:00] ideas of the Brothers Grimm. They simply collected these traditional stories and recorded them, and then [they were] translated it into English. They were very didactic stories.

One lesson that my father repeatedly read to us was of a person who had a wife named Alice. “Alice, my wife, the plague [00:09:30] of my life has sent me to beg a boon of thee.” Alice would send her fisherman husband to a source of power, and she was elevated from housewife in a hut with a fisherman to the local squire. And then to the local baron. And then to the local lord. And then to the king, and then to the emperor, [00:10:00]. And then to the pope. When she wanted to be god, she was sent back to the fisherman's hut, and that was a story designed to tell the listener [the importance] of not overreaching yourself or not being greedy, I suppose.

We listened to my father's story. My father had a very good voice, and I [00:10:30] inherited my father's voice. I spent a lot of time listening to him. He knew a lot about history, mainly British Imperial history: wars, kings and sacrifice. All of that he would tell us and we would sit there with eyes wide open listening to him. In his presence, we had to listen. We were not there to be [00:11:00] interrupting.

Speaker 19:

Deep listening.

Speaker 20:

Deep listening.

Speaker 21:

[foreign language 00:11:05]

Speaker 22:

Deep listening.

Speaker 7:

A successful school time led to entrance into university, and you explored leadership roles in the student council. I'm curious what you learned about listening to all diverse groups through the university as a leader on the student council at Sydney University.

Michael Kirby:

I'd love to say that they were diverse. [00:11:30] They were diverse in the sense that they were women amongst them. My schooling in high school had been in a boys only high school at that time. That

was something different and diverse. But it wasn't as diverse as Australia was becoming in racial terms. It was actually rather monochrome, and my [00:12:00] schools were rather monochrome. When I go to my schools now, they're not monochrome. They are public schools in New South Wales and I'm sure elsewhere in the Commonwealth (maybe less so in Tasmania). But they are very diverse and they include people from many races. That would be a good opportunity to listen to their stories and to their family histories which would be quite [00:12:30] different from those of my family living in western suburb of Sydney. We were Anglo-Celtic and therefore part of the then norm of Australian society. I can't really say that I had to listen in order to adjust to the different stories that my colleagues in student politics would bring to the table. But I [00:13:00] did have to listen if I wanted to be successful in climbing up the greasy pole of political achievement amongst the Students' Representative Council and the Sydney University Union, and the other bodies.

I did want to succeed there. And I did succeed there, I became president of the SRC the president of the Union and [00:13:30] so on. My purpose of listening was to hear what other people were obsessed with, what they are banging on about so that I could then

indicate my interest in, and support of, their concerns in order to do something about those concerns if that was justified. But also to fan their [00:14:00] respect, support, affection. That's what I did. It was a rather methodical listening, I was listening in order to respond.

I think a good politician has to listen to people in order to be able to respond to people. One of the problems today may be that people are not listening as much as they did in my time. My job as a student politician was to listen [00:14:30] in order to respond to the interest of my colleagues.

Speaker 7:

You mentioned that you were methodical when you're listening, what structures or process did you set up to be methodical in your listening.

Michael Kirby:

I would look at the policy statements of the candidates for student position. I would see what they were indicating, was there [00:15:00] areas of interest. I would make notes of that in order that I didn't overlook [the fact] that X, the representative of medical students was interested in this, or that. And so I would engage X in conversation about this or that and bring in the issues that they had written down

of their [00:15:30] interest. It was listening. But it wasn't listening with a pure heart. This was listening in order to gain their votes for my advancement in the world of student politics.

As the Chief Justice of New South Wales said on my departure from the Supreme Court, I was a juggernaut of student politics. That was because I listened and responded to the interests [00:16:00] of those who were the voters for the attainments that I longed for.

Speaker 7:

I'm curious to test the hypothesis that I haven't been able to validate that when you go through training as a lawyer or a judge, you receive no guidance in how to listen. Is that hypothesis valid?

Michael Kirby:

Certainly, there's no instruction on how to [00:16:30] listen and what to listen out for, or how to listen as distinct from sitting and being present while things are happening around you. The job of a lawyer and of a judge involves working our puzzles. And getting the information to do that job involves listening and getting the essential information [00:17:00] that is necessary. Cutting away the information that is not essential and trying to ascertain the essential

facts. And then to ascertain the essential rules or principles of law to be applied to the facts and then coming to the conclusion as to what the lawful outcome is.

There's no specific training about techniques of listening. Certainly I [00:17:30] never received such training. But it was regarding as something intuitive. I've never been asked questions before today, before now, about listening. Never. No one's asked me questions about that. And therefore I'm trying to respond against the background of many years performing a professional life in which listening has been a very important part of my life. Techniques [00:18:00] of listening were not taught. That was simply regarded as implicit in the task of gathering up the data that was essential to the decision-making activities that I was engaged in either as a solicitor, a clerk, a barrister or a judge.

Speaker 7:

You said the law is about using a jigsaw puzzle to find the essentials of the truth [00:18:30] through [inaudible 00:18:31] [the lie of the] land. Are you a person that builds the edges of the jigsaw puzzle while listening or you just kind of start from the big shapes in the centre when you listen?

Michael Kirby:

I don't think anybody would have a single technique of listening. Some judges take copious handwritten notes whilst they're listening to a case. Some judges take very [00:19:00] few notes or very short notes. I started as a judge who took very copious notes. That was what I had learned when I was a student at university. I would take very detailed notes of what the lecturers had said. And then, after that, my task was to rewrite the notes in a more neat [00:19:30] and readable form. In the law faculty I shared the responsibility of taking notes and recording the notes, and updating them, and inserting cases or statutory provisions that illustrated the points. I shared that task with Murray Gleeson who later became the Chief Justice of Australia. Our careers went in parallel to a large [00:20:00] extent. And we worked with slightly different techniques. When I was actually preparing for exams, I sought to build tree diagrams with the major value or issue, and then the minor values, and then the sub minor values, and the sub minor values [00:20:30] in order that I could look at a page and see the whole page and see the sub principles that I was trying to get into my head. When I became a judge, I started by taking copious notes and then marking on the side of them. But because in the courts in which I sat you got a daily

transcript, it was really a bit of a waste of time for me to be [00:21:00] taking such copious notes. Except to the extent of doing so helped to get information into my brain. Somehow there was a connection between my fingers which were holding the fountain pen or ballpoint, and the writing of it to go up my brain and up into my cortex and into my memory. That [00:21:30] was how I originally did it.

Later towards the end of my time when I was on the High Court of Australia, I went back to the tree diagram. In one of the books that's been written on my life, there is actually a photograph which shows one of those tree diagrams. [00:22:00] Subsequently, I found that there were some authors of tutorial books for students who presented legal studies in tree diagrams. The whole book was in a tree diagram. I didn't know that when I developed my technique. But that was just the way I wanted to see the whole picture [00:22:30] because one of the problems in the law is getting transfixed with a particular text either of an Act of Parliament or of a judicial opinion, and then forgetting the context of that text in the larger picture.

Context is extremely important for meaning and for understanding what the law [00:23:00] is, correctly understood. That is something I achieved, I think, by this technique of the tree diagram. When I, in

later years, took notes in the case, I was trying to make a tree diagram of the arguments for and against the propositions that had to be resolved by me as a judge. That was the way [00:23:30] I did it.

Speaker 7:

When we think about the length of time, you would need to sit as a judge in judgement . For those of us who haven't been in a courtroom, how long are you actually sitting in a room listening to these submissions for and how do you stay focused during that period of time? Because there must be all sorts of distractions that come into your mind while you're listening to these submissions.

Michael Kirby:

Life is full of distractions. In the role of a judge at least at the time I [00:24:00] was a judge, life was organised so that you could concentrate. I always started everyday very early. During my judicial years I would normally start at about 5 o'clock when there was no telephone and no interruption. I could read up the material for the case of the day. That is not listening except you're listening to the inner voice [00:24:30] reading the materials and getting the information into your head. Then you are required to sit on a full day

from 10 o'clock or 10:15 until effectively 4:15 at the end of the day, with a lunch hour in the middle of it. Very concentrated attention to detail.

[00:25:00] If you can't do that then you shouldn't be in that job. It's a job that requires concentrated attention. Not everybody likes doing that because most people love to have interruptions, and stimuli, and different thoughts. Maybe, in some ways for the most creative writing, you need [00:25:30] stimuli and external thoughts coming into your mind. Nowadays they pop into your computer and there it is. You've got to just live with it and adapt to that. In my day, a judge didn't have those interruptions. The judge was in charge of what interruptions he or she would tolerate.

Speaker 7:

If we come to your most [00:26:00] recent significant work with the United Nations, the listening jigsaw puzzle on which you had to work was very different. There's 26,000 people who've left North Korea and you've interviewed a couple of hundred of them for the work you've done for the United Nations. I'm curious with so many layers of listening over culture, over language. I'm assuming you needed to listen to interpreters for testimony, what was the method you used

[00:26:30] to set up a successful inquiry into the work you did with North Korea?

Michael Kirby:

It wasn't all that different from the work of sitting in court. To the extent that it has been done differently by others. I, against the background of my experience as a judge in an Australian court, was able to persuade my colleagues that we should do it substantially in the way that [00:27:00] inquiries are conducted in Australia (or court cases are conducted in Australia) by having public hearings. By having witnesses giving testimony. By having a transcript prepared and by, in this case, having the testimony filmed and put online.

All of this was a familiar territory with me. In truth, a lot of the evidence was [00:27:30] gruesome to an extent that you would not see it in an ordinary day in Australian court or even an extraordinary day. The testimony by a person who was put in a detention camp as a political enemy or suspected political enemy of the regime in North Korea and whose job it was, after each day, to pick up the bodies that had been thrown out from the huts [00:28:00] of the camps because the person had died usually from lack of food overnight.

And then put them in a wheelbarrow and take them to a vat, reduce them to ashes and then distribute the ashes on a field nearby.

All of these [testimonies] reminded me very vividly of the films that I'd seen as a boy and a youth [00:28:30] of the concentration camps of the Nazis which were discovered at the end of the Second World War. Many of the stories that were recounted in their evidence by the witnesses were extremely harrowing, most upsetting and on three occasions, reduced me to tears because they were just so cruel. [00:29:00] To think that at the end of my life as an Australian judge I was required to undertake an investigation which took me into [such] gruesome facts, was certainly an unexpected encounter for me.

Of course, it meant that the testimony was very vivid and not difficult [00:29:30] to listen to or to remember, because it was just out of the ordinary course of the life of an Australian, including an Australian judge. That was how we went about it. It's true they were about ultimately 30,000 refugees from North Korea in South Korea. We didn't interview anything like that number and we had to cut off our testimony [00:30:00] at a certain point because we just had enough and we had to get our report written. You have to be quite efficient

about these things. You can't just sit there thinking this is such an interesting matter, I could spend months thinking about it. But we didn't have months. We just had to get our report done effectively in seven months. That's what we did.

That concentrates the mind. And it also concentrates the listening and the attention to detail. Detail [00:30:30] is critical in formal decision making whether it's in an Australian court or in UN inquiry. Detail. The devil is in the detail. The outcome lies in a synthesis and analysis and then assessment of the detail of the material you've received. Preferably done whilst it is fresh in your mind. And that therefore requires techniques [00:31:00] and aids that will help you to focus on the matters you have to decide and do so efficiently. You got to be efficient to be a judge. You can't just sit there and enjoy it.

Speaker 7:

Finally, I'm curious about the role that commissioners from Indonesia or in Serbia played in bringing a different perspective to listening in that inquiry. What perspective do you think was additive from Indonesia or in Serbia?

Michael Kirby:

[00:31:30] They took a very active part in the inquiry. We did agree amongst ourselves that, where a woman was the witness, we would ask Sonja Biserko from Serbia to take that woman through her testimony, lest a white male authority figure distort the testimony because of some [00:32:00] respect or diffidence that was exhibited towards me. The different perspectives were quite interesting actually. Sonja Biserko who had been a member of civil society in Serbia and had been involved in the response to the genocide that had occurred in the end of the former Yugoslavia, [00:32:30] she looked at the big picture of what was being recounted against the background of her experience in a society which had been a communist society which had collapsed and broke down. Seeing how North Korea was going to need help to get through, and out of, this predicament. So she was looking at that particular angle.

Marzuki [00:33:00] Darusman had been the Prosecutor General and Attorney General of Indonesia. He had worked in a civil law discipline, but substantially on criminal cases. He had been an advocate and a person who prosecuted people for crimes. Therefore, he looked at it very much as a prosecutor would looking for who is guilty of these heinous [00:33:30] offences. That was the

angle that he brought. He would question the witnesses in a rather more robust way than I did.

I always questioned them in the manner (what we call in the courts) Examination In Chief. 'What happened then?' 'What did you do then?' 'What did you see?' Letting them tell the story [00:34:00] in their own words. We cross examined them if there was a need to clarify something or if we didn't really believe what was being said. He would be quite sharp.

Between us all, we each contributed to the type of examination and the eliciting of the information that was necessary. But then we had to put an analysis of it, and [00:34:30] a synthesis, and conclusions, and recommendations, and findings down on papers. Because you can't just sit there thinking about it. You have to reach a conclusion and write it so that it can be presented, in this case, to the Human Rights Council of the United Nations. That's what we did.

We had the help of an excellent secretariat, of mainly youngish, mainly legal [00:35:00] experts who worked with us and under our direction, but the responsibility for the decisions was with us. And we discussed various points on which there was a potential of

disagreement. In the end, we didn't have any disagreement. We agreed on the conclusions. We agreed on the findings. And we agreed on the recommendations. So we delivered the report. I took great pains because I was the only [00:35:30] native English speaker. So I took pains to weigh every word of the text to make sure it was readable.

Many UN reports are not readable, often that's because they've been written by a person whose first language was not English. But I think our report was extremely readable. And I think that was part of the reason for its success and for the impact it made in the United Nation system. [00:36:00] It did require a lot of concentration on detail. My whole life has been dealing with masses of detail: masses of information, digesting it and then writing it up, then moving on to the next case.

In our system in Australia, the judge will one day be dealing with a case concerning motor car accident. And then next day dealing with a broken contract. Next day dealing with [00:36:30] a family law case where parties who began in love now, hate each other and they're fighting over the children. With a case involving a big business deal which has come unstuck. You've got to be an instant expert in the

law and the facts relevant to such cases. Unless you do your decision quickly, it just becomes oppressive.

There are judges who [00:37:00] don't have the inclination, or talent, or discipline to decide matters quickly. They get a backlog of undecided cases. It's a terrible burden for them. I still have a nightmare, and even though it's now nearly 10 years since I left judicial office and the High Court, I sometimes wake up with it, sweating. [00:37:30] It is of owing a decision of a case that I've heard that haven't yet delivered my reasons. The other judges are waiting for me. I'm holding up the whole works. In truth, I didn't often do that. In truth, I was generally the first or the second who got my decision in. But [00:38:00] it's a sign of how deeply embedded in me there was a sense of responsibility, a sense of duty and obligation, a sense of self-pride that I was not causing the others to be inconvenienced by the fact that I was holding up the other judges and the decision of the court. Although when I wake up I know, "Phew! [00:38:30] All your cases are in. They've all been done. You delivered them all. You were on time. You did your duty". But it does show how that was very deeply embedded in my mind. It comes from being taught the Grimm's fairy stories by my father: of not getting too big for your boots. Remembering your place in

society. [00:39:00] Remembering your duty to fulfil your obligations and doing your functions in a way that is expected of you. That's what most judges try to do. And that's what I tried to do.

Speaker 7:

Just as a detail that we can't escape is we're out of time. Thank you so much, it's been enlightening, and I'm delighted that our story came full circle, and we finished where we started [00:39:30], with your father reading the stories to us.

Michael Kirby:

Fathers in the audience should beware. Years and years later, their child will be telling of the impact of those stories on their lives. but, overwhelmingly, with loving parents, it's a beneficial impact. That was substantially the case in my life.

Speaker 23:

Deep listening.

Speaker 24:

[foreign language 00:39:56]

Speaker 25:

[foreign language 00:39:58]

Speaker 24:

[foreign language 00:40:00]

Speaker 26:

[00:40:00] The art of listening seems like a simple concept. Yet a skill often neglected by time poor executives all over the world. New technologies and multitasking has paved the way to a modern world full of distractions. Oscar's book, Deep Listening, is an invaluable weapon for business leaders like yourself who are looking for more powerful ways to communicate with key talent. By reading this book, you will not only learn how to create trust and authentic actions [00:40:30] from those around you, but also all the crucial information you need for future business success.

Speaker 27:

Deep listening.

Speaker 28:

Deep listening.

Speaker 29:

[foreign language 00:40:40]

Speaker 28:

[foreign language 00:40:43]

Speaker 30:

Deep listening.

Speaker 7:

If you are enjoying this series, the best way to stay up-to-date is to subscribe via your favourite podcast application, Apple podcast, Spotify, and now available on Amazon Alexa. We'd love to hear your feedback as well, [00:41:00] we're always listening for ways to improve the show, so please leave a review on your favourite podcast application as well, you know we'll be listening.

Speaker 31:

Deep listening.

Speaker 32:

Deep listening.

Speaker 33:

[foreign language 00:41:13]

Speaker 34:

[foreign language 00:41:15]

Speaker 35:

Deep listening.

Speaker 7:

I've been looking forward to this interview for quite a while. One of the big take outs for me was the importance of focus, discipline, presence. Focus and presence are two [00:41:30] of the significant elements of the Chinese character, Ting, which means to listen, and Ting is six dimensional. I admire the discipline that the justice showed in turning up to his chambers every morning at 5 AM to prepare. I loved how he created a deliberate listening environment for him whether it was in preparation, making sure he was completely free of distractions, and the process, and the time and the traditions in the court room to ensure that there were no distractions. [00:42:00] So focused judgement could be dispensed when the judge was hearing the matters in front of him.

I was really curious about the North Korean inquiry and the fact that they took depositions from nearly 300 refugees from North Korea. I was fascinated by the role of Sonja Biserko, one of the three commissioners with the Justice, and a member from Indonesia. About how she really was listening for the long- [00:42:30] term. She was listening for evidence of context in a post-communist society in North Korea, a truly great example of listening across all five levels of listening, but also listening beyond her own generation and seeing a future of possibilities for the people of North Korea.

The one thing I'll do as a result of listening to this interview with a Justice, and also reading the book Deep Work by Cal Newport, is that I'm very much [00:43:00] more conscious, more deliberate about creating an environment around me for listening that's free of distractions. How choiceful are you about setting up a listening environment prior to the conversation. Thanks for listening.

Speaker 36:

Deep listening.

Speaker 37:

Deep listening.

Speaker 38:

[foreign language 00:43:20]

Speaker 39:

Deep listening.

Speaker 40:

Deep listening.

Speaker 41:

[foreign language 00:43:23]

Speaker 7:

Deep Listening: Impact Beyond Words.