

**SPEECH ON THE UNVEILING OF A PORTRAIT OF
JUSTICE MICHAEL KIRBY
PRESIDENT'S COURT, COURT OF APPEAL
SUPREME COURT OF NEW SOUTH WALES
MONDAY 19 NOVEMBER 2007
UNVEILING OF THE PORTRAIT OF JUSTICE MICHAEL KIRBY
The Hon Dennis Mahoney AO QC***

Let me first join in offering congratulations to the artist for the portrait which she has produced. Portrait painting is a great art. And it is not without its difficulties. That great portraitist, John Singer Sargent ... you will remember his portraits of Lord and Lady Ribblesdale ... said that when he painted a portrait he lost a friend. This portrait will not lose any friends to the artist. You have, I think, captured the face of Michael Kirby but also something of his soul. As a portraitist should. Congratulations upon what you have done.

Our congratulations are due also to the Bar Association of NSW and the Law Society of NSW for having sponsored ... is that the correct word? ... this portrait. It is, I believe, the function of great public bodies to recognise and to memorialise those in their fields who have achieved

* Judge, Supreme Court of New South Wales, 1972-96; Judge of Appeal, 1974-96; President, Court of Appeal, 1996; Acting Chief Justice of New South Wales, 1996.

2.

things which should be memorialised. During the Presidency of Michael Kirby things were achieved which will be, and should be, remembered. It is good that, by the actions of these bodies, what happened will be remembered and remembered in this appropriate way.

In due course the things which occurred when Michael Kirby was President of this Court will be recorded, as they should be, in a biography. I trust that Michael has already started on the first draft of the biography. It is right that he should. An obituary is a biography with the last chapter omitted. And one is entitled to ensure that what is left is not an obituary.

It is not my function tonight to record all of the things which occurred. There is not time for that. And I have been injuncted to be brief. But let me remind us and record two of the things of the Kirby Presidency which remain in my mind.

They are first Courtesy. And then Hot Raisin Toast.

During the Kirby Presidency there was a change in the kindness ... the courtesy ... shown to the Bar. In earlier times, when I was in practice at the Bar, one did not expect kindness from the Bench. That was not the custom. Those who remember their appearances before Sir Alan Taylor, Sir Frank Kitto and later before Sir Garfield Barwick will understand what I mean. The Court of Appeal, understandably perhaps, adopted a similar ethos. The Moffitt Court believed that one procured

3.

most help from the Bar by the whip rather than a kind word. Perhaps that was right.

Under Kirby's Presidency that changed. The Court of Appeal became a different place. There was courtesy amounting often to kindness. I do not argue whether this was a good thing. One may argue for and against discipline. But under the Kirby Presidency the ethos of the Court changed. And a patient courtesy in a Court is no small thing. For myself, I found the Court to be a more pleasant place in which to be.

And then there was the subtlety of Hot Raisin Toast. During the Kirby Presidency two things changed. Under the *Supreme Court Act* the control of the management of the Court is given initially to the President. In pre-Kirby times that power was exercised by the President according to its terms. Essentially, the members of the Court were told what the President had decided should be done. Chief Justice Street will recall what and how things happened during those times.

Kirby initiated a change in the control of the Court. He introduced a form of consensus. The Judges met every two or three weeks and discussed what was to happen and discussed it, before it happened. To an extent the Judges assumed a responsibility for what happened in the Court.

And he initiated another change; a procedure for checking and discussing the progress of judgments through the Court....How long

4.

judgments were taking and, in rare cases of course, whether they were delayed.

As you will understand, these were matters of some delicacy. How does one lead a Judge to allow his colleagues to peer into the processes of his judgment writing? Subtlety was required. And subtlety was achieved, by the provision by the President of tea and hot raisin toast. One can boast one's judgmental achievements or confess what has happened to a judgment more easily in a context of tea and hot raisin toast.

A number of things happened...were achieved...during the Kirby Presidency. I have been injuncted to be brief and I must be so. These are but two which remain in my mind. It was a good time. It is good that his portrait will hang in this Court, to bring to mind what happened during the ten years of his Presidency.

I offer my congratulations to him and those who have been responsible for the portrait and the hanging of it.

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