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FIJI LAW SOCIETY

ANNUAL CONVENTION 2003

YANUCA, FIJI ISLANDS

A MESSAGE FOR THE YOUNG LAWYERS OF FIJI

The Hon Justice Michael Kirby AC CMG

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MORE SPEECHES

I am not sure why the President decided to have a speech at the dinner of the Fiji Law Conference. Originally there was to be none. I considered that it was a remarkably sophisticated and admirable law conference that refused to inflict a speech on the dinner participants. But then it was explained to me that anything to do with lawyers must have an address. I was asked to make a short speech, if that is not an oxymoron for judicial observations after dinner. I was told that I should direct my remarks to the young legal practitioners in Fiji, whose work is symbolised by the award of the outstanding young practitioner just announced. I congratulate the winner and those included in the short list. To them I say: You are the hope of the future.

* Justice of the High Court of Australia.

I will confine my observations to a few thoughts about the profession and about life. This is not, by any means, the true order of things. We all know that there is life beyond the profession. I shall save my best wine to last.

ON THE PROFESSION

My message to young practitioners about our profession of law is that they should remain idealistic and optimistic. I still am. There is plenty in the law to give us encouragement for the present and the future.

Of my three siblings, both brothers went into the law. One became a senior solicitor in a large firm in Sydney. The other went to the Bar, became Queen's Counsel and is now a judge of the Supreme Court of New South Wales. I am proud of them both. My sister took a different course. She went into nursing. She works in a leading Sydney hospital. Her specialty is oncology - treating cancer patients. It is an intensely personal and often highly stressful occupation. It is a noble vocation. My sister enjoys my love and respect.

Can we in the law ever approach the nobility of the healthcare professions? We are no longer involved in decisions of life and death. Happily in Fiji, as in Australia, the death penalty is no more.

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Yet like healthcare professionals, we work with people when they have problems - often grave problems. We are there to listen, to advise calmly, to be a guide in times of stress and worry - not only for the client but also for the client's family. In the judiciary, we are there to decide cases impartially, courteously and efficiently - with integrity, independence and competence. In so far as we can do so, we can all help to avoid injustices. When we do this, our profession too is a noble one. Often it must seem mechanical and routine. But then comes a client and a case or a problem that involves a challenge and an opportunity. When that occurs, we know that it is the quest for justice, and the avoidance of injustice, that give nobility to our calling.

In my lifetime in Australia, I have seen important injustices corrected. Take the injustices to the Aboriginal and Torres Strait Islander people - the indigenous people of Australia. When I was young, they suffered many wrongs in society and in the law. Young Aboriginals were taken from their mothers and adopted out on the criterion of the fairness of their skin colour. Health, education and housing were extremely poor. The law refused to recognise the land rights of the indigenous peoples. In one of the most important decisions of the High Court of Australia in its first century, the *Mabo case*, the Court reversed the old law. It recognised in law the land rights of the indigenous people. Other improvements have been made. Lawyers have played a significant part in them. Last week, in Sydney, I visited the Aboriginal Legal Service. I met the young

lawyers and volunteers who represent the disproportionately large cohort of Aboriginal defendants in prisons and before the criminal courts. Such lawyers and volunteers make the rule of law a reality. Most of them are young lawyers. They believe that the law is not just a set of rules but an instrument of equal justice for all.

Also when I was young there were no women judges. Listening to Justice Catherine Branson give her address to the Fiji Legal Convention, and witnessing her answers to searching questions, I could see the progress that we have made. Here not only was a distinguished judge with a well furnished mind. Here was a woman judge who demonstrated that gender is an irrelevant consideration to the "merit" that is required for judicial office, including high judicial office. Such "merit" does not come pre-packaged on the Y chromosome. Now, increasing numbers of women are attaining high office in the practising profession and on the Bench both in Fiji and Australia. We will see more of this. It is a big change since my early days in the law.

Another change concerns attitudes to race, skin colour and ethnicity. I grew up in White Australia. By the use of the devilish dictation test, people of darker skin colour were kept out of Australia, even in the days of Empire when they were British subjects. Most Australians supported this racial exclusiveness. In this respect, Australia was not unique. As I found in my service for

the United Nations in Cambodia, racial dislike and distrust is not confined to people of European origin.

Yet in my lifetime, this fundamental principle of the Australian Commonwealth has also been overthrown. Australia is now a much more interesting and varied country as a consequence. People are accepted as migrants on the basis of the skills they bring. Intellectual talent is colour-blind. It is not confined to any ethnicity. This is another great change that has occurred in my lifetime. It has been accompanied by legal change. Lawyers have played a part in effecting the change and in defending racial equality and redressing proved cases of racial discrimination.

How did these prejudice - against Aboriginals, against women, against people of different ethnicity - survive for so long into the modern age in a civilised community? To a large extent this occurred because of ignorance, prejudice and mythologies handed from one generation to another. But to a certain extent, it also occurred because of unfamiliarity and ignorance. Many people simply did not know any Aboriginals. Many did not know a leading women professional. Many had no contact with people of a different race or ethnicity.

There was another group who suffered discrimination. I refer to homosexuals. The criminal law penalised them. They suffered civil disadvantages. They were stigmatised and humiliated just for

being themselves. To some extent, this attitude also survived because people did not know homosexuals. They were encouraged to be secret about their identity. When we know people who are slightly different from ourselves, we realise the overwhelming commonalities of humanity. It is much harder to hate people that we know. That was certainly Australia's experience in breaking down the prejudices based on Aboriginality, gender and ethnicity. It is happening now with sexuality. The law, and lawyers, have played an important role in correcting these old, infantile prejudices. Usually, it has been young lawyers who have led the way.

I do not pretend that everything in my own country, or in Fiji, is perfect. For example, there are still many wrongs suffered by the Aboriginal people. Often there is still a "glass ceiling" against women, including in the law and in judicial appointments. Quite frequently there is racial prejudice and a fear of people from different ethnic backgrounds who look different from ourselves. There is still prejudice and discrimination against gays. But the barriers are gradually coming down. The young are leaders in these changes. They are connected through the Internet to the world of ideas everywhere. They are much better informed than any earlier generation. They know of the diversity of humanity. Far from being a cause for fear and shame, it is a cause of celebration. Diversity upholds freedom.

So when I look to the future, I have great confidence in the young lawyers of Australia and of Fiji. They will not be content with nostalgic talk about the "good old days". Such days were not so good after all. For them, the myths and fictions of the law will not be enough. They will translate "equal justice under law" from an empty phrase carved in stone or written in books to a living reality. That is their professional challenge. It is also their professional privilege.

ON LIFE

But what of life?

I first came to Fiji when the Union Jack flew here. In so short a time the Empire, upon which the sun never set, has faded into history. Yet it has left behind many links. Some remain precious to this day.

We still play the same games. Our political and constitutional arrangements are still profoundly affected by our past. We still boast an independent judiciary. We have legal professions that are in contact with each other and that draw strength from their long-shared tradition.

Our greatest link is the English language. With it come words and ideas of freedom and basic human rights.

But for me to give advice on life to the young, including young lawyers, would be presumptuous. So instead, I will leave it to the greatest exemplar of the English language, Shakespeare, to offer his advice. In *Twelfth Night*, the Bard said:

*"What is love? 'tis not hereafter;
Present mirth hath has present laughter;
What's to come is still unsure:
In delay there lies no plenty;
Then come kiss me, sweet and twenty,
Youth's a stuff will not endure".
II, i[37].*

Youth is a stuff that will not endure. So the best advice that age can give to the young is: Enjoy yourselves. Enjoy life. Enjoy the profession of law. Remember it is a noble profession and we must be worthy of it. In whatever tiny ways we can we must, as lawyers and as human beings, seek to make the world a better, more equal, kinder and juster place.

TY CONVENTION 2003

During the Convention, Obiter Dicta had the privilege of speaking to the Honourable Justice Michael Kirby AC CMG of the High Court of Australia. A complete transcript is provided below to convey his wisdom and profound intellect.

Interview with Justice Michael Kirby

Shangri-La's Fijian Hotel, Sunday, 2 August, 2003

Obiter Dicta: Justice Kirby thank you for speaking for this. When did you decide in your long and distinguished career that you might want to end up being a judge or a lawyer at some point? Is it a family tradition?

Justice Kirby: No it is not a family tradition. My father was a clerk. When I was growing up we didn't have a lot of money. However, it turned out that two of my brothers and I ended up as lawyers. One of my brothers is a judge at the Supreme Court of New South Wales. The other is a solicitor. My sister, the only other child, became a nursing sister. She works in oncology. I have to say I think she is the noblest of us all. When I was at school I was good at the sort of things that lawyers are good at. I was good at history, English, languages and at drama and debating. So my trajectory was really mapped out for me by the talents that I showed at school. And that's how it worked out. Otherwise, I might have pursued science or mathematics or the church or teaching. But law it was. So here I am.

Obiter Dicta: How many years have you been on the bench including your current position on the High Court of Australia which is of course Australia's highest appellate Court?

Justice Kirby: I was appointed a judge first in 1975. My commission dated from the 1st of January, 1975. The actual welcome ceremony was in December 1974. So that is a long period of service. In fact, I am the second longest serving Judge in Australia. If only I can persuade Justice Kemei Murray of the Family Court of Australia to retire, I will be numero uno. At the moment she is numero una. My appointment to the High Court of Australia dated from February 1996.

Obiter Dicta: Now looking back at your long career, what's been the most challenging aspect of being a judge at any level?

Justice Kirby: I've been fortunate to do different work in virtually every decade. My first decade was a solicitor; my second decade was as a barrister; my third decade was in the Australian Law Reform Commission establishing that body; my fourth decade as President of the Court of Appeal in NSW and later President of the

Court of Appeal of Solomon Islands; and my fifth decade of work in the High Court of Australia. Every decade has been something different. Every decade has been a new challenge. In life we are lucky if we get different challenges. Through all the periods of my recent professional years, I've had the opportunity to serve on various United Nations and other international bodies, Commonwealth bodies. That is a good thing because the tendency of lawyers is to live on your own little patch. The challenge of globalism today is for all of us to see the problems of the world and to understand that many of the things we're concerned about are challenges that exist in other countries and other jurisdictions as well.

Obiter Dicta: What in particular would stand out in your view as a career milestone?

Justice Kirby: It is for other people to talk about my career "milestones". (Better to call them career "pebbles", I think). The tasks that have interested me outside the law include the stimulating task that I had when I was Special Representative of the Secretary General of the United Nations in Cambodia; when I was working on the original Global Commission of the World Health Organisations on AIDS; when I was working on the tasks of constitutionalism in South Africa just before the change to Mr Mandela's government; or lately working on the problems of the human genome in the International Bioethics Committee of UNESCO. All of these are the problems of the present and of the future. Many of the tasks I've become involved in in the international sphere concern the impact of science and technology of the law. For me, those tasks are extremely interesting. They beckon us to the future. So, ironically, as my career in the law draws to a close I can see a new career opening in the interface of law and technology. We lawyers will not be immune, either in our discipline or in our profession, from the tremendous impact of science and technology on the world.

Obiter Dicta: And looking back your career is anything you would have done differently in terms of making a choice of the profession you would have found yourself or you are in at the moment?

Justice Kirby: I would have tried harder at school in mathematics so that I could understand science and technology better. This week, I embarked upon the voice recognition system. Every lawyer should get to know about this. The capacity of the new technology, new software, to recognise voice, translated automatically into text, is truly astonishing. It is an extraordinary development and it's only one of the multitude of developments that have occurred in the law in my lifetime. It began with introduction of dictaphone machines;

later came the photocopiers; later came word processors; later e-mail; and now voice recognition. It's an extraordinarily exciting time to be a lawyer. Many things that were done the same way hundreds of years are changing. We have to make sure that these changes also happen in the courts. We must see that the economies of the new technology are brought to the advantage of clients so that access to justice isn't just something we go to law conferences and boast about. It must be an actuality and reality that we live in societies that promise and truly deliver equal justice under law.

Obiter Dicta: How would you see the future of law and technology? In that interface, what do you see as the most significant challenges? The development of international law, national law, local law, the globalisation of commerce and the environment?

Justice Kirby: It is natural that, in a time when we are living in cyberspace; when we are communicating by fast moving text in the Internet and the worldwide web; when our problems include the human genome and great new epidemics such as AIDS and SARS, the issues of the law in the future will be more international. Even in my lifetime, I've seen international law raised from a theoretical, academic subject into a subject of actual practical importance. We see this, in part, in the commercial treaties which are negotiated and questions relating to the World Trade Organisation TRIPS agreement on intellectual property protection. We see it in the Closer Economic Relations Agreement between Australia and New Zealand. Many of these issues now come before the courts in Australia.

As well, international human rights law, which incorporates the principles of human rights recognized by the United Nations in treaties to which Australia, Fiji and most other countries subscribe, are beginning increasingly to impact upon our decisions in the courts. They help the judges to fill in the nooks and crannies of our legal system. This is to some lawyers a puzzling, and even worrying, development. To me it's a natural development for the law in a time when all other disciplines are rapidly changing because of the growth of internationalism.

If a person in Charles Dickens's time went into a hospital, eg if they visited Guys Hospital in London in the 1850s and the same hospital now, they would be astonished by the impact of science and technology. However, if a person went into a court then and now, they would not see all that much difference. So a very important challenge before us lawyers in the decades

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ahead is to get with the technology. To work out ways in which we can incorporate the wonder of the new technology into the delivery of our product. Our product is justice and law. That, I think, is a challenge worthy of a very old profession with a noble mission.

Obiter Dicta: Now posterity will all be our best judge but if there is one thing that you would wish to be remembered by as a legacy if you like in terms of your long and distinguished career public service, what would that be?

Justice Kirby: It's for other people to put labels on me. However, I have a deep commitment to respect for human rights and human dignity. I have a deep commitment because I have myself felt the sting of discrimination. I grew up in a country which had a lot of prejudice against Asian people. I grew up in a county which had great disadvantages for women. I grew up in a country which was very colour prejudiced and enforced the White Australia policy through the law by the dictation test. I grew up myself as a homosexual man in a country which criminalised people for their sexuality. I was told this morning that when I mentioned this, in Fiji, that it would raise a few eyebrows. However, my view is that the only way Australians came to accept the demolition of the White Australia policy was by meeting Asian Australians and Asian people and people from different lands and realising the great commonalities that we have with each other in humanity. It's the same in relation to women. It's the same in relation to skin colour. It's the same in relation to all minorities. It's the same in relation to homosexuals. It's no big deal. In genomic terms our differences are infinitesimally small. It's very important that we should realise these things and work on the features that unite us.

Obiter Dicta: Finally Judge, if I could ask you this question and if there is one word of advice that you would give to young lawyers, now what would that be?

Justice Kirby: Remain idealistic and optimistic. Our profession is a noble profession. It is a profession that it is committed to law. For that reason it has tendency to be a conservative profession. But it also a profession that is committed to justice and justice is a truly noble and progressive thing.

My sister as I mentioned, is a nursing sister. She works with cancer patients all the time. I've always thought that her work is very stressful, not very well rewarded but very important. Well, our work in the law can also be stressful, sometimes not so well rewarded but it's also extremely important. It is noble only insofar as we're committed to equality before the law and to the pursuit of respect for the human rights of everybody. Over the portals of our courts, either actually or metaphorically, is carved the banner "equal justice under law". Lawyers come together and they boast of these things. We have to make sure they're translated into actuality. The hope of doing this in the future lies with young lawyers, indeed with young and idealistic people everywhere.

Obiter Dicta: Thank you very much Justice Kirby.

ADDRESS BY RADIKE QEREQERETABUA

AT THE FIJI LAW SOCIETY
CONVENTION AT FIJIAN RESORT ON
1 - 3 AUGUST, 2003 (WELCOME
COCKTAIL PARTY)

Ni Sa Bula Vinaka and Welcome & Noaia

If I may say so, I think your society made the right choice in selecting Shangri-La's Fijian Resort to host this 2003 Conference.

As a representative of an overseas investor, I know only too well that these beautiful and tranquil settings you enjoy are somewhat fragile.

I say this from experience because this resort, had some 15 years ago, suffered at the hands of a few who had no respect for the rule of law.

I note with interest that the theme of your conference is "good governance". We all know after these years of political upheavals, how important it is to maintain the rule of law.

Your society has established that it has integrity and the nation notices the actions you have and are taking against members who do not in your view, carry that torch of integrity.

Your Conference Chairman, Graham Leung highlighted this state of health or ill health if you like, in your society in today's times.

As a concerned member of the public, let me say that as members of the society, you must, as the legal conscience of the nation, maintain the integrity of your fraternity at all cost, for the lawful existence of our nation, depends on it.

The Honourable Chief Justice, Ladies & Gentlemen, on behalf of the Management and Staff of Shangri-La's Fijian Resort, I hope your next 2 days will be both enjoyable and productive. Our hosting of this cocktail tonight is our way of saying that we are grateful for the way the Fiji Law Society has handled itself over the last few years. As members, you should be proud of how far you have come but no doubt there will be challenges ahead and I hope you will face them with the same resolve to doing what is right so that others may follow in your footsteps.

Vinaka, Danyabad and enjoy.

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HEWLETT-PACKARD YOUNG LAWYER OF THE YEAR AWARD



Ms Prem Narayan won the Hewlett-Packard Young Lawyer of the Year Award. The announcement was made at the Fiji Law Society's gala night as part of the law convention in

which was held at the Shangri-La Fijian Hotel from 1-3 August.

Prem was awarded a laptop computer from Hewlett-Packard's Manager Fiji, Barry Kay.

Having launched her legal career as a solicitor with Sherani's, Prem paid tribute to her colleagues at her former law firm for the development of her legal skills. She considers ethics to be critical to the legal profession because lawyers play an important role in the dispensation of justice. Practicing on her own from the Boulevard in downtown Suva, Prem is often to be seen around the courts in Government Buildings. She has a feisty nature, confidence and is not easily intimidated, useful qualities in a young practitioner. Outside the law, Prem has a strong social conscience that is reflected in a number of voluntary groups assisting the needy and disadvantaged with which she is involved.

With little fanfare or acclaim, Prem is making a solid contribution both to the advancement of women lawyers and to the profession generally. *Obiter Dicta* salutes Prem's achievement and wishes her well.

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