

Episode 6: Michael Kirby

Michael I found that if you speak clearly and if you try to avoid words that have too many syllables — most of which are words that are rarely used — or sentences which are far too long, you're going to lose the attention of the audience and they're going to wonder what the hell you're talking about.

Bob Welcome to Top of Their Game, the show where we speak with the people making communications clearer, fairer, and just plain better. I'm your host, Bob Milstein, a lawyer and plain language trainer, practitioner, and advocate.

It's a real honor to be able to speak today with the Honorable Michael Kirby, AC, CMG. His Honor is a distinguished Australian jurist, academic, and human rights advocate who served as a justice of the High Court of Australia from 1996 to 2009. A prolific speaker and writer, he remains active in legal, academic, and human rights circles. Before his retirement from the High Court, His Hon. had a long and varied career, including — not all at the same time, I should add — president of the International Commission of Jurists, judge of the Federal Court of Australia, president of the New South Wales Court of Appeal. But of particular relevance to today's discussion, I think, is his role — some years ago now — as chairman of the Australian Law Reform Commission, and how that role sparked his early interest in what these days we call “plain language,” but back then we called “plain English.” In today's interview, we explore His Hon.'s career journey, insight, and messages for current and future practitioners, but with a particular focus on the topic of communication: written communication in particular. Before we get into it, a word of warning. During our chat, I asked questions about the 10 commandments of clarity. This refers to an excellent article His Hon. wrote many years ago now, where he drew — with full attribution, of course — on some earlier teaching of our first podcast guest, the great Joe Kimble. I often quote from it when I run training for lawyers and for others. To read more about that, take a look at our show notes. And now, Justice Michael Kirby.

Michael I'm Michael Kirby and I consent to the conversation with Dr. Milstein, which will now proceed.

Bob Thank you so much for the elevated title. Were I a doctor, my mother would have loved that. But sadly, I'm just a plain old *mister*.

Michael Well, that's what I am now too, a plain old *mister*. But *Mr.* is the name of citizens and therefore we can be proud of our title.

Bob Alright. Well, Mr. Kirby or Citizen Kirby, thank you so much for joining us today.

Michael Thank you.

Bob I'd like to start by reflecting on some comments. You've said that a former High Court justice, Sir Anthony Mason, would speak highly of your writing and would say something along the lines of “If you want to know what a case is about, take a look at one of Kirby's opinions.” I also have seen in interviews you've given that, in response to that, you've often said, “I actually don't know what it is about my writing that would generate that sort of comment.” That's a rather unpromising way for us to start this interview about the topic of writing and your writing in particular. But, of course, you have over the journey written massive amounts of material, be they speeches, articles, and, of course, judgments. Do you have a view about what it is that comprises your particular writing style?

Michael First of all, I'm very glad to have heard that Sir Anthony Mason took this view. What he actually said was "If you want to know what a case is about, you start with the Kirby judgment." And that is by contrast to others. It's not at large. It's a matter of comparing me with the other members of multi-member courts that sat with me. So far as what I think is the reason why a lot of students like my reasons is that I had always a rather modest view about my knowledge of the law. I had not had a practice nor a reading that had taken me into every nook and cranny of the law, but I had to decide cases that involved every aspect of the law and therefore I had to get the principles and the authorities into my head and, accordingly, I had to be able to explain it to myself. And explaining problems and approaches to yourself is the beginning of wisdom. If you can understand what the proper approach is and what are the cases or authorities, statutes, and so on that have influenced the outcome or decided the outcome, then you have to explain that. But the underlying purpose is to understand it yourself, and then you can explain it to others.

Bob I imagine though that that's a challenge that has faced many, many judges and decision-makings over the journey, and yet we rightly celebrate your particular skills at communicating. I wanted to take you back a little bit to some of the influences that have perhaps shaped your approach over the journey. I did hear you interview some years ago about the books that made a profound influence on you as a young man. One of the books you mentioned is *The Book of Common Prayer*, but you also mentioned the Shakespeare phonograph records that your father used to bring home and play on the gramophone. And for some of our younger listeners, you'll need to look that word up. In that interview, you talked about the poetry of language and its capacity to sometimes even communicate serious matters. Has that manifested in your approach to writing generally and writing judgments in particular?

Michael I think there's a step before that, and that is English is a complicated language because it's fundamentally the combination of two linguistic streams: the Anglo-Saxon–Germanic stream and the Norman French–Latin stream. And the result of that is for every word or concept, there are two meanings. And that is a complicated language, marvelous for literature and poetry, but not so good in explaining with precision what the law is. I think a feature of my writing is that I tend to write as I speak. This is not something I consciously set out to do, but the problem is that many lawyers and judges, possibly for historical reasons, choose the Latin-French-Norman conquest language rather than the Germanic language which we speak in the kitchen. And I tend to use the Germanic language stream to speak in short sentences and to write in short sentences and to use if there is a choice of word: the old Germanic word, which is what we would use in ordinary discourse. And that, I think, is an explanation — as best I can conceive it — as to why people find my writing easier to understand. I write as I speak.

Bob And implicitly do other judges traditionally adopt an approach that perhaps defaults to the more rarefied, French-influenced writing, for a range of reasons?

Michael Well, the range of reasons include the fact that when the law took off in England in the 12th or 13th century under Henry the Second, the judges delegated their own royal prerogative to decide cases to clerks who later became judges, or court judges. And that being the case, the system in written terms — right from the beginning really — of the English common law made by the judges defaulted to the language of the clerks, and that put a stamp on our legal exposition. And that stamp has not gone away. It still tends to influence the way lawyers and judges write, but it doesn't influence the way I write or speak and it's therefore something I try to avoid if I can. If I have a choice, I'll choose the Germanic stream rather than the English stream. And it's a reason why at school I was very good at German. I had a *sprachgefühl*, a feeling for that language, whereas

most people were better at other languages they had at school, including, at my school, Japanese. But English was a Germanic language in the kitchen and that's how I like to speak.

Bob I know that in your 10 commandments of clarity, which I'd like to explore with you a little later, you do advocate for the Germanic approach over those that lots of lawyers tend to default towards.

Michael Also, also full stops.

Bob Ooo, we love that.

Michael I love my full stops, I love my Germanic stream, and I think brevity is also a good thing. Though that is, according to my partner Johan, that's something that eluded me in many statements and my judicial life. But I do my best with that. But full stops and the common language of ordinary discourse is the best choice. There I go again: *Discourse* is a French-based language. The common course of English expression would be the Germanic statement.

Bob I know you say that you write like you speak, but of course admirers of both will say that they are at an exceptionally high level. In your judicial or indeed public speaking roles, have you ever drawn consciously from rhetoric, from theatre, or oratory traditions?

Michael Well, as to theatre, which is the one you mentioned in the middle of that list, I did love theatre and my father was a wonderful father. He read to us as children: my two brothers and my sister and me. And therefore we got some very good language from the classics. And that included Shakespeare. Now, Shakespeare is the source of so many expressions — what a marvelous mind that man had. And to think that he once walked amongst us. It's amazing. But we learned Shakespeare — not as most of school children do: by looking at the text and working their way through it and being astonished at the ambiguities and insights. But by listening to it as a drama and listening to it in the language spoken by Sir John Gielgud or Sir Ralph Richardson or even Marlon Brando in the recording of Julius Caesar. Wonderful actors giving proper emphasis and speaking of it as if it was happening now. So that's definitely something that influenced me. The theories of logic and of linguistics, I didn't really study until I got to the jurisprudence lectures in law school, when we were studying the meaning of judgment and the meaning of judicial exposition. That is something that came later. But my early training in public schools, sitting alongside ordinary Australians of every background and of different races, was a big influence on the way I express myself.

Bob Clearly, your father was a big influence on you, but were there any other mentors or writers or thinkers, for that matter, who've shaped your understanding of clarity, of persuasion, or indeed moral courage in communication?

Michael Of course, there are many who influence a person on a journey as long as mine. I'm now 86 and therefore that's a long time to collect influences. But my father definitely was a big influence. My mother also. My mother would speak to me as she was ironing, and those two wonderful people of my earliest life really did influence my expression, and it made me want to get on my hind legs and speak in public. That is not something, at least in those days, that was usual in Australian schools. You were supposed to sit there, shut up, pay attention, and learn. That's what you're there for. But I heard these wonderful actors and we're talking about — even when I was 13 or 12 — expounding passages from Julius Caesar or Richard the Third that were popular movies at the time. And that gave me a real insight into expression at the highest level. Not

everyone can be a Shakespeare, but you can learn from the way other people express themselves in plays and theatre movies and also in books.

Bob One area of learning that I was hoping we could particularly focus on today was around our passion of plain language communication. I know you've had quite a background going back, I think, to your law reform days in the area of plain language. Would you care to say a little bit about that?

Michael Yes. It came about because one of my colleagues, Professor David Kelly of the University of Adelaide, who was a big influence on me in my very first draft report when I was appointed to the Law Reform Commission. It was on how should we improve the handling of complaints against the police. Was a tricky subject, was one in which there were powerful influences and different political viewpoints. And I, in the weekend when we were first assembled, wrote the report from cover to cover. It was an amazing job, but I wanted to put my stamp on the Law Reform Commission and to show, first, that you have to work very hard and, second, that you have to be very clear in how you do it. And David Kelly came into my room as chairman of the Law Reform Commission and he smiled — he had a wonderful smile on his face — and he threw the manuscript that I had proudly presented to him into the air and said, “We were asked for a report on policy and law, not a geography lesson.”

I had organized my report around “in England, they do it this way; in Belgium, they do it this way; in South Africa, they do it this way.” And then I drew some threads together at the end. But he said, “You have to learn conceptual writing. You have to learn conceptual expression. You have to think deeply about the issue you're trying to communicate, and you have to then try as hard as you can — using some tools that have been discovered — to get to the central core concepts that you want to convey.” And that means not just speaking spontaneously as I now am, but in writing: doing so in clear language, preferring the Germanic source language to the Romance source language, and putting a sprinkling of full stops as you like to sprinkle salt. But as your mothers were telling you, you can't do that. It's bad for your health. Sprinkling all stops is good for your health and it's certainly good for your clarity. So David Kelly was a great exponent of clear expression, plain language, plain English, as it was called in those days. And it's true of all languages and all expert communication, but also in advocacy and in speeches and expression outside the written text. It was a great lesson. I pay a tribute to David Kelly and I tell him every time. He rejects this influence and won't accept the praise, but that was really an occasion when I got a big insight. And if you can get, say, 10 of them in your life, you've done well.

Bob I imagine not too many people have thrown your documents in your face, either literally or metaphorically, up till that point. How did you initially deal with the confrontation of being attacked in that way?

Michael Well, I knew that David Kelly, like myself, was of Irish heritage. His family came from the south in Ireland: the Roman Catholic tradition. Mine came from the stern Protestant tradition of the North, who were very hard workers. So we had a difference of point of view. But I knew that he was such a brilliant man that I had to learn from him. As well as that a barrister, an advocate, a solicitor doesn't have to have precision of language of the kind that is required by a Law Reform Commission trying to change the law or a judge or a barrister in court. It's a matter of expressing things with clarity and with precision and understandably and attractively — uncomfortably. And that's more likely, if you follow these minor changes, to the way you might have spoken to other schoolchildren or to other lawyers. It requires a bit of thought as to how you can do it clearly, and that's what David Kelly taught me. Think conceptually and speak in short sentences and

communicate, so that what you are saying will be equally clear to a general lay audience but also to experts in the field. So I pay a big tribute to David Kelly and he was really the founder of plain language in Australia. Peter Butt of the University of Sydney became another. And increasing numbers of lawyers joined the movement and became committed to greater clarity and sharpness in the exposition of legal texts, including where they had the responsibility of judicial opinions.

Bob And yet there continues to be pushback from segments of the legal profession and others that sometimes plain English, plain language is not appropriate, is dangerous, and should not be embraced. And now this is a diminishing position, but it's still out there. What's your view on that?

Michael Well, I had a very clever colleague in the Court of Appeal of New South Wales, where I was the president for 10 or 12 years, and that was Justice Roderick Meagher. Now, he was a university medalist, a very bright man. But he thought the problem with plain language was that it stamped an artificiality on expression. In the search for the language of the kitchen, I found that if you speak clearly and if you try to avoid words that have too many syllables — most of which are words that are rarely used — or sentences which are far too long, you're going to lose the attention of the audience and they're going to wonder what the hell you're talking about.

One of the greatest decisions of the High Court of Australia was the decision in the Australian Communist Party against the Commonwealth. It's in 1951, Commonwealth Law reports, and it's a very long judgement. And it's also very long judgments within the judgments. Most of the justices wrote separately and they wrote very long judicial opinions, as I prefer to call them. And those opinions had very few full stops or very few paragraphs. You will go from one page to another with the one sentence. It's astonishing to me as I look at them now. Such an important decision and so important in the passages which tried to explain the concept in the case, but just very poorly expressed. Sir Owen Dixon, at one stage in his reasons, got to the essence of it and essentially said, "Under the Constitution of Australia, the federal Parliament has substantial power to deal with what alleged communists do, but it doesn't have power to deal with what communists think. That is something that is reserved to citizens and others in the nation, and it's something which we on the High Court have to protect." And that was essentially what the High Court decided in that case. It was a very important decision, a very important principle. But you've got to go searching for it in page after page of text, and maybe you'll stumble upon that somewhere. But it should be clear.

Bob Over some period now, lots and lots of Australian judges are seeking to promote among their brother and sister judges the principles of clear, concise, effective, plain written communication, even in decision writing. For instance, Ex-federal court judge Mark Weinberg gave a speech to the Judicial College in my home state of Victoria, where he made a proposition — I'd be keen to get your take on it. He says even the most complex of legal and factual issues can be dealt with using plain language. Fair?

Michael Well, I think it's hard in some areas where the principles of law are unsettled or abstruse or conflicting, and the law likes occasionally to bury the apparent inconsistency in rather complicated language, sometimes for color or for poetry. In law, you need to express things in something less than mathematical precision. But generally speaking, I'd support the plain language movement and I support the effort to get lawyers to learn some basic rules. And if we all obeyed that, things in the law would be much easier and simpler for readers or listeners.

Bob One related point is that one shouldn't necessarily assume that plain language must mean bland language, or neutral or dispassionate or objective. I think the marketing department needs to work on that adjective, because the word *plain* is not a great shorthand description for what is really a discussion around clear, concise, reader-focused, respectful communication.

Michael But there you've used 6 adjectives.

Bob There it is.

Michael Instead of 1.

Bob There it is.

Michael And the *plain* is obviously a sort of keyword that is designed to encompass all of the above.

Bob Can I take you to your 10 commandments of clarity? Now, you might not know it from looking at my calm demeanor, but inside I am breaking down on hearing that you don't remember them and I feel like I'm cross-examining you now.

Michael Moses did not remember his 10 commandments either.

Bob He was a very old man, though.

Michael I'm a very old man.

Bob Alright. I'm only going to put 2 of the commandments to you.

Michael That's a relief.

Bob Two of my personal favorites. Words of connection should appear at the start of sentences. What do you mean by that?

Michael I think we've got to be very careful about having rigid rules, because language is a fluid thing and it has to adapt to the audience that is going to receive it, and whether they are going to be people of rigidity or whether they're going to be sophisticated minds that are going to be arrested by using that expression, because it used to be forbidden. But now it's much more common. And I think that was because it seeped in possibly through the Supreme Court of the United States, where there have been some very powerful writers. It seeped in in order to arrest the attention of the reader, because this was an unusual thing. Normally you would use *however*, but *however* is a rather boring word. And, you know, every proposition has exceptions. And *however* is signaling that what you've just said is not so clear and there are exceptions, but *but* can sometimes do that even more powerfully. And it is a very short word and it can be used effectively in particular occasions.

Bob One other aspect of your 10 commandments. I think you say it this way: "The passive voice should generally be banished and replaced with the active voice." I've always been amused that you drafted that sentence in the passive voice.

Michael I was trying to make my point.

Bob I think so.

Michael Passive voice is not something we use in everyday speech very often. And for that reason, I think it's better to have a positive command than a negative command, which is what I was attempting there. I have to say, I think there is a problem here. And the problem is that most young people have got no idea what the passive voice is.

Bob Mhm.

Michael They haven't studied Latin. They haven't studied figures of speech. They don't know grammar. In my day, that is something you had to study in English 1 at high school. You had to know all the figures of speech and all the rules of grammar, and that was something Mr. Arnold taught me at Fort Street Boys High School.

Bob Do you remember what Mr. Arnold said when he tried to explain what the difference is between active and passive?

Michael Well, we're talking here 1951. Mr. Arnold, he was a very good teacher. They were all good teachers. Public school teachers in those days were wonderful. I'm sure they mostly are today. Our public education system is one of our great inventions in Australia and we've really removed it of proper funding in recent times. But Mr. Arnold taught me the figures of speech and the rules of grammar, and they remain in my brain and they just automatic pilot as far as I'm concerned.

Bob I wanted to move away from our plain language discussion and just get some insights from you about your writing process. Do you have any writing rituals or habits that have helped you over the years when it comes to writing judgments or articles or speeches?

Michael Yes, I do. My ritual involves a tree diagram. That is to say, I would sit there during argument in the High Court of Australia, and I knew that ultimately the painful obligation would fall on me to write my reasons and explain why I came to a conclusion, and do so by reference to the major propositions that had been advanced — especially those that were contrary to the conclusions that I tended to favor. And therefore I would start preparing the tree diagram, which had an image of the top importance, and then a sub-branch and then a sub-sub-branch. And that was the way I could get onto a single page or a few pages the points that I was going to try to cover.

Bob Earlier, you mentioned the difficult writing that you encountered when reading the High Court judgment on the Communist Party of some decades ago. But going to the other end of the spectrum, are there legal writers, past or present, whose work you admire for its clarity or elegance?

Michael Well, of course there are, and many of them have served on the courts on which I served, and I learned from those other good writers. For example, on the Court of Appeal, Justice Mahoney taught me a lesson. I used to be sitting in the middle and he would be on my right or left, depending on the seniority of the bench. And I saw he was always writing, always writing, every minute he was writing. And ultimately I tackled him and said, "Dennis, what are you doing there?" And he said, "We are not sitting here today to enjoy ourselves. We are here to do a very difficult task and that is to write a judgment. This is our purpose. This is the definition of what we are doing. And therefore I have to use time in court to prepare the reasons for judgment. Don't think you're here to listen to and enjoy the advocacy. Of course, it's easy to do this — let the case wash over you — but in the end, they don't want your emotional reactions to the advocacy. They want your reasons and therefore you should be using the time in court to prepare your reasons." And so I thought, well, I must step up my endeavors with my tree diagrams. I didn't do the drafts in terms of the solution to

particular problems in the case, which I think is what Dennis Mahoney was doing. I did them in terms of the concepts: learning the lesson that Professor David Kelly had given me. Of identifying the big issues so that I could tick them off and deal with each one, and the sub-issues and the sub-sub-issues and so on. So Dennis Mahoney is definitely one, but they were all very clever judges and very impressive, including those that I didn't always agree with.

Bob You mentioned the importance of the tree that informs the shape of your reasoning. Was it your hope or maybe expectation that counsel appearing before you would help shape that tree for you by clear articulation of the key matters in issue?

Michael It was my hope, but the hope was often dashed by the fact that they could not get their minds around how I was looking at the problem and how the judges had to look at the problem. When Roddy Meagher was a barrister, I always thought that he had a mind like a judge. He would tackle the guts of the case. He would go for the jugular. He would go to either the winning or losing point and try to persuade us on those. He was very, very clear, very brief, and very dangerous, because he would take a punt that he could win the case on a particular issue, and he would often abandon issues which others would laboriously and boringly plow their way through. But he would go straight for the jugular and he won many cases because of that. Because he was saying "Here is a simple solution to this case. You are overworked, you're underpaid. You're sitting up there in grandeur, but you're swamped with a deluge of cases. I am offering you a simple solution and a clear and principled solution to this problem." And that was very good advocacy. It was often very persuasive. Advocates have to remember they're not there to write a law school essay. They're there to help the judge to resolve a dispute between parties and they have to focus on the task in hand.

Bob What's a common misconception people have about judges?

Michael Well, that was expressed by a young associate to Justice Hope and he referred to this in his farewell address in the Court of Appeal of New South Wales. He said, "I had a young associate — who now, by the way, is a very senior barrister — who came to my chambers and when he left he said, 'I thought I was coming into a great Socratic dialogue and I was going to meet these brilliant jurists who were striving to conjure with all of the most complicated issues of philosophy and law of the age. Instead, what I found was a group of old men, as we were then, trying to struggle with the law and the justice of the case.'" And he said that because he thought that was an accurate description of what it was like, and I enjoyed the Court of Appeal much more than the High Court.

Bob Generative AI and what it means for the future of writing in general, in particular the writing that lawyers do. Maybe even the writing that decision-makers do. Any thoughts?

Michael Well, certainly the writing that decision-makers do is going to be affected by generative AI. If there is a big fault in the English legal system, it is that it put great store on advocacy and putting two parties before a decision-maker. The civilian system of France and Europe is a different system and puts a greater power in the hands of the judge. But the English system, which we inherited in Australia, depends a lot on the decision-maker. And if the decision-maker has to have the assistance of people on both sides, it's going to be costly. The adversarial system is a costly system because of the fact that you've got to have these two talented people that have to be paid and paid a good salary. So that's our problem. And our problem seems to be getting worse with the difficulty of getting through decisions and getting cases decided and getting judges to decide the case efficiently and correctly and fairly. And that's where I think AI will come in. But on the other

hand, the Mabo decision in Australia and the Communist Party Dissolution Act decision and other cases of that kind could not have been decided by generative AI. It was the application of fundamental human-rights type principles that were nebulous, were not sharp, and which had to leap one way or the other at the crucial point. And that is why we need AI to solve our fundamental problem of expense and access to justice. But we need the individual human decision-maker to be there in cases where the old principles are wrong or unfair. And that was certainly the case in the Communist Party case and in the Mabo case and in many other cases. So that's our challenge, to use generative AI to get through the cases more quickly and efficiently, but to reserve the access to an individual human mind with human experiences and with a human sense of justice and fairness and kindness to fellow human beings.

Bob That's a really important observation about one feature that flows from the inherent but sometimes invisible bias of the database, which the algorithm feeds off.

Michael Yes, that is so. But certainly AI is going to be very helpful and I am looking forward to watching it for as long as I've got left. But meantime, I think it's very important that lawyers of today should remember their obligation to consider old principles and — especially if they're in the High Court of Australia — to decide cases in part by what was said in the past about what the law is, and in part by the human experience of what justice and kindness and human rights involve. So that's our challenge.

Bob In the time that's left, could we turn briefly to some less weighty matters? Have you ever had a legal phrase or term you secretly disliked or thought was completely ridiculous, but that you nevertheless felt you had to use?

Michael Well, in virtually all criminal cases, the matter is determined by whether the judge has correctly instructed a jury, because the most serious cases are still dealt with by jury. And in that instruction, the judge is bound to give the instruction that they must decide the matter on the evidence beyond reasonable doubt. And repeatedly jurors come back and say, "What does that expression mean? Can you give us some help on what that means?" And in the criminal casebooks, some judges try to respond to that. "Well, it's not a foolish doubt or it's not a trivial doubt. It's not a doubt that you can readily answer and dismiss." But invariably the appeal courts will stop that and will say, "The judge must not explain this. This is something which juries know intuitively and they will know that their duty is to be very sure, but we can't explain it. They must apply the principle themselves." I can understand that rule and I applied it many times, especially in the Court of Criminal Appeal and in the Court of Appeal, but it's not really very helpful. I think in the United States, the judges are allowed to elaborate, but in Australia that is not permitted. It's something which I felt uncomfortable about, but it's a settled principle and I applied it. My brother David, whose life was entirely sitting in big criminal trials, said the juries overwhelmingly, 99%, got it right. In my view, it's a system which is a bit strange — to have 12 laypeople — but it's a good system, and it also makes lawyers try to talk to them in terms that are understandable and that they can cope with, but not on the onus of proof and the burden of proof.

Bob Entirely unrelated note, what do you read for pleasure and has that influenced your approach to writing or speaking?

Michael Well, I read history, particularly the history of the world and its conflicts, and my partner reads it too. So we are running history course. He reads biographies. He's reading at the moment a biography of Vincent van Gogh and about his hard life, his difficult life, and how he only had a working life of about five years. And

yet he became a top artist of the greatest reputation. So that's interesting. He's from the Netherlands, my partner, and that's what he reads. He was in the Netherlands when the German occupation occurred, so he lived through history. But I had great teachers of history and I love history. And if I had my life again, I'd be a professor of history. But I'd be writing clearly and I'd be writing conceptually and I would be writing plain language.

Bob Outside of the courtroom, apart from your interest in history, are there any hobbies or interests that feed your creativity or your clarity of mind?

Michael Well, I love music and I love the music of J.S. Bach. I've got a doctor friend who was a doctor in HIV and every Sunday he sends me the J.S. Bach cantata. It's just such wonderful music. It's something in Bach's mathematical precision that attracts the human brain. I love Sondheim, I love modern music, but history is what really gives me a buzz. And, fortunately, my partner who stuck up for me for 56 years is similarly interested. So I think it's very helpful if you have a good partner in life and I've certainly been lucky in that department.

Bob Who are your heroes?

Michael Well, I would say Nelson Mandela and Eleanor Roosevelt and people who've worked in the international space in the AIDS pandemic. There are some wonderful people whom I've actually known and worked with in international human-rights law. They would be amongst my heroes. And my parents who taught me Shakespeare and both the gramophone records and my partner, who took me on the overland journey and we visited together the places of his culture. And I would say I've been very lucky with my family and my brothers, sister.

Bob I did watch another interview of yours in which you described yourself as an archivist's dream. I gather that means that you're a wild collector of lots and lots of different things.

Michael Well, I mentioned to you that I used to throw out the drafts of my reasons, and Professor A.J. Brown, who later wrote a biography of me, said, "You mustn't do that. You must keep these things. These are priceless. They show how your mind developed." And I said, "Who cares how my mind developed? The only thing that's important about me is what I wrote when I was a justice of the High Court." But I was convinced that they should be kept. And I didn't quite collect every bus ticket I ever took, but I collected a lot of stuff and it's all in the National Archives of Australia. And someday, maybe, somebody who is listening to this podcast will get to and start analyzing it, but I warn them they'll be covered by an avalanche of material which has accumulated over many years. But honesty and transparency in public office, I think, are important features. And judges should explain how they drafted reasons, how they had problems, how they coped with the problems, so that people will understand that this is a human institution and it has its weaknesses and it has some poor players. But on the whole, in comparison to the other rules and powers that are on offer, it's a very good system.

Bob You speak of honesty and transparency, but kindness and empathy and humanity are important things as well. Do you believe kindness is a communication skill?

Michael Well, certainly I believe in kindness and I grew up in a very kind household. So that I was really shocked when I saw later in professional life the rudeness and incivility of some lawyers to each other. In the Court of Appeal before I came — and people talk about this — the judges were tremendously able, but almost

all of them were very rude, and I could never perform my best as a barrister in the face of that sort of personal stress and tension. And so I was determined that that would change. And it did change. And I go along to countless welcomes to judges. And many of them say, "And I must mention also the change that occurred in the Court of Appeal when Justice Michael Kirby was appointed." Suddenly it became a very civilized place and the dialogue became more civilized. And in that environment, you can do your best. So stress, pressure, civility, and kindness are very important features of the life of an advocate and a judge.

Bob If you could give one piece of advice to a young lawyer about writing clearly, what do you think it would be?

Michael Full stops.

Bob I guess I should have heard that one coming, yes. It seems to be a frequent flyer. I was going to hit you with another question about what's your favorite punctuation mark, but I think I'll draw a line through that one as well. I think the—

Michael Second favorite is the semicolon, which is like a full stop in disguise.

Bob Pen, paper, or keyboard?

Michael Generally, pen and paper.

Bob If you could time travel, where would you go?

Michael I think I'm quite happy where we are. I would rather stick where I am. And in any case, my journey and my spaceship is about to dock and therefore I don't worry too much about where I might have been.

Bob If you could own any artwork in the world, what do you think it might be?

Michael It would be a manuscript of J.S. Bach. That's my favourite. I've gone through my periods of Gustav Mahler and other composers, but in the end I keep coming back to J.S. Bach. So something hard wired to the human brain and I just love it. It's just marvellous stuff.

Bob If you could have dinner with any writer, living or dead, who would it be?

Michael I think W.B. Yeats. He was a Protestant Irishman, he was a great poet, and his poetry is something just wonderful. "Had I the heavens' embroidered cloths, / Enwrought with golden and silver light, / The blue and the dim and the dark cloths / Of night and of light and of half light, / I would spread those cloths under your feet: / But I, being poor, have only my dreams; / I will spread my dreams under your feet; / Tread softly because you tread on my dreams." Mr. Arnold taught me that too.

Bob Beautiful. I feel now that I'm moving from your sublime to my ridiculous: dog or cat person?

Michael Cat. Was a dog, now a cat. My partner dislikes dogs, thinks they're dirty and messy. Cats are beautiful and very suitable to Netherlands households, which are small, tidy, and clean.

Bob Final question. What single word would you like people to associate with your legacy as a communicator?

Michael Kind.

Bob Kind. Well, I'm sure you can be secure that that is in fact going to be one of the many wonderful things that people associate with you and your legacy. It has been a real privilege to spend time with you. I thank you so much for it and I wish you all the best.

Michael Thank you and I wish you all the best for peace in the world

Bob And to you.

As the host of a podcast that bangs on about making communications clearer, fairer, and just plain better, it was particularly inspiring to hear his, on his very deeply felt views about the need to communicate with a sense of justice and fairness and kindness to our fellow human beings. To learn more about His Hon. and his 10 commandments of clarity, be sure to check out our show notes.

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