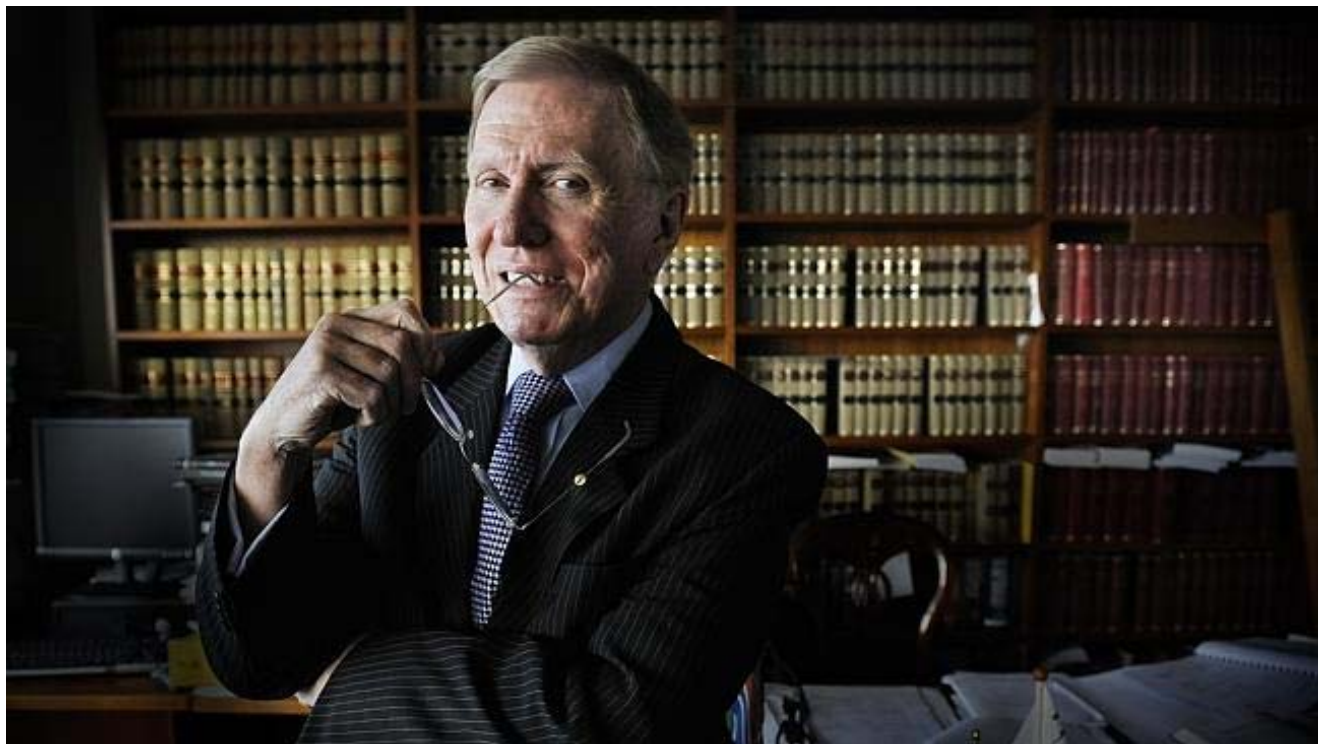


# Inside the Heffernan disaster

MICHAEL PELLY THE AUSTRALIAN JUNE 06, 2014 12:00AM



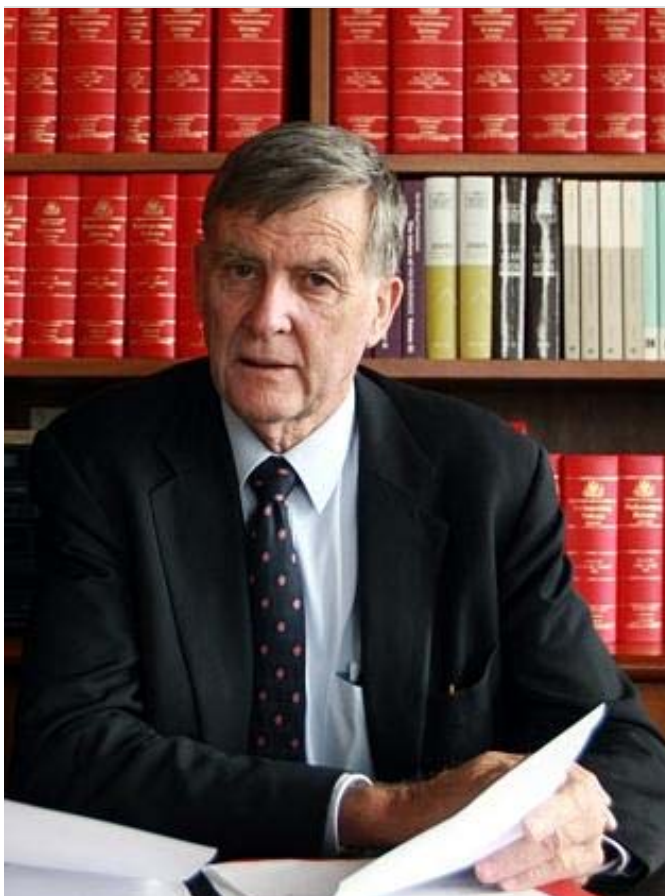
Michael Kirby was subjected to allegations by Bill Heffernan, later shown to be false, that he rorted the commonwealth car system. Picture: Phil Rogers Source: News Limited

**IN 1958, two of the brightest students studying law at Sydney University, Murray Gleeson and Michael Kirby, formed an alliance.**

“We basically divided the world,” said Kirby. “He took the subjects that he was especially interested in, subjects as illuminating as Bankruptcy and Income Tax Law. And I took subjects that I was interested in, such as Constitutional Law, Jurisprudence and International law.

“We were very methodical, very hardworking and very serious-minded about our duties. We both agreed on a particular A4-sized paper and spiral binding. Both of us were very neat.”

They also shared a weekly lunch at Cahill’s, a chain of restaurants in the city. It was usually on a Friday, when Gleeson’s religion required him to eat fish.



“I put my Protestant reservations to one side, mainly because when I went there I found I very much liked the fish. It was always very battered fish with lots of tartare sauce.”

Bill Heffernan. Source: News Limited

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When Kirby was appointed president of the NSW Court of Appeal in 1984, he was regarded as a potential successor to Laurence Street as chief justice. However, when Street announced his early retirement in August 1988, Kirby was overlooked in favour of Gleeson. Street and Kirby had an uneasy relationship, partly because of Kirby's enthusiasm for making speeches away from court. Gleeson shared Street's view and a few months into his tenure he decided to deliver his message at an event hosted by the University of NSW Law Press.

Jane Mathews, who in 1987 became the first woman appointed to the NSW Supreme Court, said “the whole speech was an attack on Michael Kirby”.

“Michael was always a fan of Lord Denning and what Murray did was quote the worst bits of Denning and say, ‘This is the man Michael Kirby has a portrait of up on his wall’ .... It was obvious (they didn't get on).”

Gleeson described his comments as “a shot across the bow”.

“Denning had been the darling of the progressives at the Law School until in his old age he made these statements which revealed that he was a real redneck ... I was probably giving that as an example of the way judges could put their foot in it if they started making statements about things outside their fields of expertise.”

Kirby left soon after Gleeson finished, clearly hurt by the speech. Still, they settled into a form of peaceful coexistence. Gleeson knew Kirby ran a happy, collegiate appeal court and accepted he would keep giving speeches away from the court.

Kirby was elevated to the High Court in 1996, but Gleeson again leapfrogged him in 1998 when the Howard government appointed him chief justice of the High Court. They would share another 10 years together on the bench.

Allegations against Kirby in 2002 led to the greatest public crisis for the Gleeson court.

Senator Bill Heffernan had been telling colleagues and the media for some time that Kirby had used a commonwealth car in the mid-1990s to pick up male prostitutes in Sydney. In late 2000, Heffernan thought he'd found a smoking gun: a photocopied ComCar job sheet from Easter Saturday, 1994. By early 2002, he was threatening to go public, but John Howard said: “I made it very clear that I didn't want it raised and if at any point he felt he had to, he had to come to talk to me ...”

When Heffernan defied the PM on Monday, March 12, and outlined his claims against Kirby in the Senate, Howard insisted it “came as a complete bolt from the blue”.

“I got in touch with him and he said, ‘Oh well, mate, you know I had to do it’,” said Howard.

On Wednesday afternoon, both Kirby and Gleeson were shown a memo that said the job sheet was bogus. This annoyed Mary Gaudron when she saw Kirby at Canberra Airport on Thursday evening. She became intent on drumming up support. Ken Hayne saw it as an attack on the entire court and agreed to draft a media statement.

At the time, Gleeson was in Sydney, hearing special leave applications with Bill Gummow and Ian Callinan.

When they broke for lunch, the trio went to Gaudron's chambers. She told them a statement should be issued by the court, and criticised Gleeson for his inaction. Gaudron told Kirby's biographer, AJ Brown, that the chief justice exploded: "He was screaming at me. 'Who do you think you are? Have you appointed yourself press secretary to this court?'"

Callinan, though, insisted Gleeson kept his composure: "I was there and I can tell you Murray Gleeson was not shouting. I never heard him shout."

Labor frontbencher Laurie Brereton's name appeared on the sheet as having also used a car on the day in question, but at the time he was on a family holiday in Queensland. A story appeared in the Sunday newspapers to that effect and Gaudron learned that Brereton would publicly refute Heffernan's allegations the following day.

She told some of her fellow judges, but not Gleeson.

The chief justice had been asked by Howard to meet him at Kirribilli House at 3pm that afternoon; the inquiry Heffernan wanted into Kirby was clearly in play. Gleeson told Howard that Kirby had nothing to fear.

However, at 3pm — the same time Howard started his meeting with the chief justice — Brereton was staging the press conference that proved the ComCar sheet was fake.

Soon after Gleeson left, Howard was told of Brereton's intervention. Within hours, he was also shown official advice — which Heffernan had unsuccessfully sought — that confirmed the ComCar job sheet was a fake.

He then called a 7pm press conference to announce he had sacked Heffernan as his parliamentary secretary and asked him to apologise to Kirby.

Gleeson rang Kirby at his home and left a message: "Johan, it's Murray Gleeson. Can you get Michael to call me? Good news. Good news."

This is an edited extract from Murray Gleeson: The Smiler (Federation Press)

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