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# Q & A

Law Institute of Victoria  
Jason Gregory, Senior Journalist  
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1. In general, what is bothering you (politically, socially etc) both in Australia and internationally?

MDK: I don't let things bother me. I have never have trouble sleeping. I don't just sit here worrying. I get on with useful activities. But obviously the big issues are nuclear disarmament; global warming; alternative energy; poverty as a human rights issue; HIV/AIDS; access to water, housing, education; and defence of human rights at home and abroad.

2. In the law and on a personal level, what do you count as your greatest victories, and the worst (or most disappointing) moments?

MDK: The most important lesson I have learned from life is the importance of love: for family, for a partner, for community and for people generally. Love is the foundation of universal human rights.

3. At 70, what are the most important lessons you have learnt in life?

MDK: My big interest in culture is music. I would like to be able to go to concerts and not to be thinking of tomorrow's engagements.

4. You said that, for now, 'damn the roses'. But when you intend on teaching and beginning arbitration work you may have more of a routine. If so, what are some other interests you may be keen to pursue?

MDK: Being a lawyer trains the mind the think inside the square. In many ways, I have been very orthodox. The Oxford Companion to the High Court noted strong, conservative elements in my judicial values. Perhaps I should have been more questioning of received legal wisdom. But the questions I have asked will have to do for now.

5. You have said in a previous interview that "maybe I did not have enough crazy ideas and think outside the square." Is this true and if so in what areas?

MDK: One issue that needs a lot of questioning is the approach of society and the law to illegal drug use. Another is the patriarchal approach to women, gays and

other minorities. Australia's obsession with sport needs to be re-thought. We should be teaching human rights values in our schools better than we do. Perhaps a Charter of Rights will help. There are lots of rules in the law that need re-examination: such as the approach to the 'proviso' in criminal appeals; the obscure notion of 'jurisdictional error' in administrative law; and the way refugee applicants get caught up in a sometimes hostile spiral of litigation. We need to keep telling ourselves that Australia has the barest trickle of refugee applicants, compared to countries of Western Europe. The ancestors of most of us in Australia were 'queue jumpers' for economic reasons.

6. Did you ever not speak out and later regretted it? Are there areas in which you would like to become more vocal?

MDK: I have not usually regretted not speaking out. When I was a judge, I knew the rules and observed them. With my retirement, the rules have changed. But there are still inhibitions that I respect.

7. When you reflect on your pioneering roles on the bench and in public life did you take every opportunity presented?

MDK: I did not take every opportunity presented. I turned down many offers and still do. In fact, the really difficult challenges in life are to say no to interesting opportunities. I have done this many times. They present the 'what ifs' of life.

8. Is there still a role for positive discrimination in society?

MDK: There is a role for positive discrimination in Australia to correct long-standing inequalities and injustices. Getting more Aboriginals into higher education is an urgent requirement. It was so when I was at University and remains so to this day. It is a national disgrace. So are problems of indigenous health and housing.

9. You have often cited Alfred Kinsey as a personal inspiration. Who are your new heroes?

MDK: I do not go around looking for heroes. Many are brave and good people who are completely unknown. Like 'Shorty' Coleman who I met working on land mine clearance in Cambodia. He is now doing similar jobs in Afghanistan. He was trained in the ADF. I admire Mary Robinson and Louise Arbour, past High Commissioners for Human Rights of the UN. My heroes nowadays tend to be scientists, like Luc Montagnier, Nobel Laureate for discovering the AIDS virus. Or Craig Venter whose big computers put the pressure on to complete the mapping of the human genome. I can tell you that scientific conferences are much more interesting than most legal conferences. Less gossip and trivia. More curiosity.

10. - What are the most important emerging areas of law OR what will the law look like in 20 years?

MDK: To answer the question of what law will look like in 20 years, we need to think of the technology that will then be around. It will both present new challenges and provide new answers. In future generations, lawyers will be able to have an implant that will give them instant access to legal data and means of analysing legal problems. The advance of informatics is truly an evolutionary step in our species.

11. We are producing a story on Ron Castan for the following edition and I wanted to check to make sure it was ok to use the anecdote you gave about the wearing of the wigs. Is there anything you would like to add?

MDK: Ron Castan was a great advocate and a very fine human being. You may use the wig story. But send me the text so I can make sure it is correct.

12. I want to chronicle the number of speeches, appearances etc you have made since your 'retirement' and will use your website for that background, unless you are able to easily draw on the information. Flights, speeches, appearances (even in rough figures).

MDK: I am preparing a diary to upload on my website. Even when it is done, even in draft, I will send it to you so you can do the statistics for 2009. I do not seek out or generate these invitations. They flood in every day. I like people. Meeting them, I always get new ideas and a sense of what really matters in law and in life.

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