

## THE SHEEP, THE PROPHET AND SUPERMAN

Heroes were very much 'en vogue' as I set out to interview David McMillan for this article. Hollywood had revived all the great cartoon heroes and brought them to life in blockbusters packed with special effects, and sustained by not much else than a love story and a 'beau' in a tight, brightly-coloured, costume in a bid to woo audiences the world over. I must admit that even I was wooed with some success, as I had been an avid fan of Spiderman as a boy.

I sat back in the car and tried again to picture David McMillan. Although I had received some information about the man, it was all very difficult to put together. Would I find an incredible man with a powerful and inspiring voice and a confident and energetic manner? Or, would I find a simple man, quietly spoken and unassuming, comfortable in his role as a legal aid solicitor and happy to be of any help? In a way I found both these things, which made him a lot more real and interesting. His voice was both quiet and inspiring and his manner obliging but very much in control. I also feared that I may not find the right questions nor have access to any great stories that I could then put to print as evidence of the heroic qualities of the man. As we shall see I was looking for the wrong thing and at the same time finding exactly what I needed but failing to recognise it.

David McMillan is currently a solicitor for legal aid and has been a lawyer for 26 years. At the time that this article is being written he is a solicitor in the civil litigation section of legal aid and concentrates mainly on consumer law and human rights matters. He has had an amazingly varied career so far which has seen him take on various different roles as a lawyer and even carried him overseas. He started out doing duty work for legal aid in the criminal section for three years and moved on to the indictable section for another two years. David then donned his cape and flew to Papua New Guinea as there was evil at work there. That is not true of course, it could have made for a more sensational article but also a far less interesting and important one. David actually caught the plane, like you and I could, to PNG and worked for legal aid in the Public Solicitor's office from 1983 to 1986 working in 'serious crime' there. From 86 to 88 he was in a branch office of legal aid in Australia and after that was involved in the Royal Commission for Aboriginal Deaths in Custody until 1991. He then came back to legal aid working in a branch office and finally

joined the main office in 1992. He has been there for the last 11 years. My response to that incredible list of accomplishments could have been a well thought out comment that reflected 4 years of university. Unfortunately, 'wow' was all I could manage.

I asked David if he had always worked at legal aid (apart from the Royal Commission). The response was as surprising as the way it was made: "Oh sorry, and I worked in a private firm for almost one and half years before that in 1977 to 1978. For a law student who has been inundated (and nearly drowned) by the 'vener, prestige and importance' attached to working in a private commercial firm, the attitude David took to that part of his career was refreshingly nonchalant. It seems that private firms were not what he wanted to do and anyway he found legal aid more enjoyable and worthwhile. He actually thought that he has now been rendered thoroughly unfit for the private sector for many reasons. David added, again as an afterthought, that he also volunteered at Redfern Legal Centre from 1978 and then moved as a volunteer to Marrickville and is now volunteering at Kingsford Legal Centre and has been doing so since 1987. Not only had he given up on private firms in order to do something "more worthwhile", he was also working overtime in order to help community legal centres, this was becoming very interesting indeed.

As I learnt afterwards, all this should have come as no surprise from a solicitor who enjoys his work and his role in helping those around him and the community at large and is absolutely lucid on the role of lawyers and the responsibility that the possession of knowledge carries with it. It has become so normal and widely practised in society to use knowledge as a ticket to a better social position and a weapon with which to battle on the commercial arena that we seem to have forgotten that this is not its proper purpose. Knowledge can certainly be used as a weapon but one must choose the battlefields carefully and, more importantly, responsibly.

With that in mind I asked David what his big victories have been over the years, whether there are events that remain with him as personal milestones. His answer to that was:

"I've had a few different things that, for me, have been very personally enlightening. I went to New Guinea, different culture, different legal system, you learn a lot about yourself, you learn a lot about how systems function and then that is knowledge in terms of

understanding how our system works here. Being at the royal commission (into Aboriginal deaths in custody) was an eye opener too...Visiting, as we did for quite a few weeks, some of the Aboriginal towns in western NSW made us see what you don't come face to face with in urban Sydney. Going through all the papers, having people give evidence, being part of that inquiry you began to understand a lot of the failings...of our system and the things that have to be done in order to have some semblance of equality of opportunity..."

The above quote is typical of the answers that I got throughout the interview. The answers were spontaneous and well thought out at the same time, betraying the legal training behind them. The surprising part for me was that they were incredibly fresh. Twenty six years of fighting and battling with a system and for a society had seemingly left David, not bitter and sarcastic, but hopeful and energised. Without wanting to sound pompous or dramatic, there seems to be a steely and constant determination about David McMillan that I have also found in his peers in my brief time with Kingsford Legal Centre. With no overtime and no partnership to bill hours for, these people nevertheless work relentlessly and tirelessly trying to catch those that society (or rather its institutions) has consciously decided to forget. As the incredible Tracy Chapman sang in her 1989 song/study on the underclass "Subcity": "Here in Subcity life is hard...won't you please give the president my honest regards for disregarding me". Well, David McMillan has been giving the honest regards of the underclass to the president 'and all those concerned' for over a quarter of a century. Has all this time working with the underprivileged and swimming against the strong and unforgiving current of the modern capitalist ideology dulled him? He did say at one stage of the interview that with all the cuts in funding of legal aid, along with a series of negative changes impacting on society, that "overall you have this negative impact upon those people who, in the jungle of the world, can't fend for themselves" in the same way as those who are the protected and never forgotten classes of our society can. "Its a grim thing" said David, "I can't believe its happening...You'd think that we would just go on and get more civilised but it is not always so..."»

Is he blasé then or has he been adversely affected by all of this? In short; NO. In fact, David found that his job, which has brought him close to some of the harsh realities of society, has made him into a better person. He found that: "...it does affect you and change you for the better really in my view in a way that is quite essential." It is this essential view that I want to consider now. Some of us seem to have forgotten the

essentiality of that view for a lawyer. We are nowadays more concerned with punishment and corporate ideals than we are with justice and equality. In his essential novel in 1995, "The Unconscious Civilization", John Ralston Saul wrote that one of the indications that we are all living in a time of crisis is that: "The leader of the free world has 1.5 million people in jail...More than double what it was fifteen years ago...Put another way, 5.1 million Americans are in jail or under judicial supervision. Triple the figures of 1980."<sup>1</sup> Saul also makes reference to the dangerous and pervasive corporate ideals of our modern capitalist societies<sup>2</sup>. What does any of this have to do with David McMillan? Well, it has everything to do with him and with being a lawyer. In the face of such discouraging figures and incredible inequalities, the lawyer must rise up and act out his/her role in finding justice and that is exactly what David McMillan is doing.

In his highly influential book, "The Prophet", Kahlil Gibran writes of criminals saying: "Oftentimes have I heard you speak of one who commits a wrong as though he were not one of you, but a stranger unto you and an intruder upon your world. But I say that even as the holy and the righteous cannot rise beyond the highest which is in each one of you. So the wicked and the weak cannot fall lower than the lowest which is in you also."<sup>3</sup> Again, it may seem that I have strayed too far from the subject at hand, but this is not so. The above quote from Kahlil Gibran speaks of a philosophy, a way of thinking that would be very helpful to society if adopted by lawyers. What would it mean in practice, for after all, these are merely theories. In practice it would be David McMillan who, after 26 years in the law, thinks that if you (as a lawyer) find yourself in a position where you cannot help someone that does not mean that you can rest easy just by saying that you cannot help. "Because you've done ten years or twenty years doing something, you do know how the system works you know where there would be the best chance of getting some [help]...and referring them there or even making the contact yourself. That's an important thing to do. Its easy not to do it... in the end its your own conscience, no one's going to know...Its your conscience too that gets exhausted...You got to have that feeling, I guess, not lose contact with people and not be dulled by it all ...Try to put yourself in the same position, if this was you, what would you like to see happen." It is this kind of philosophy that should be

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<sup>1</sup> Saul J.R, *The Unconscious Civilization*, The Free Press (New York) 1995 at 14.

<sup>2</sup> IBID at 14-21.

<sup>3</sup> Gibran Kahlil, *The Prophet*, ARKANA, Penguin Books (England) at 53.

widespread amongst lawyers and thus should be a strong and major part of any legal studies.

At this stage of the interview, I had only two questions that I wanted David to answer. The first was to ask how he managed to keep such a fresh and positive view on his work and the second was in relation to a rumour that I had heard about him arranging to demote himself from a managerial position. He answered both questions when I asked him the first. We saw above that one of the ways in which he has kept such a standard throughout his career is through having the right philosophy/approach to his role. He also told me that: "You do have to protect yourself in some ways...If you feel their pain continually...you may then find yourself maybe not doing the job in the best way that you should." Another way by which David has kept himself so positive and preserved some of his energy is by taking on new challenges as he went along so as not to be lulled into making less effort. Hence, changing jobs and taking on new responsibilities helped him stay enthusiastic about his work. In fact, David was promoted a few years ago to managing the civil section of legal aid in which he now works. It turns out that after 8 years in that position he felt that "whatever skills I was going to bring to the management of this section, I had done it in that time" and that he needed to do something different to keep enthusiastic. When faced with his options, some of which included other managerial positions, he realised that what he enjoys doing is working as a solicitor and helping people. That is how he ended up demoting himself back to working in the section that he had managed for the past eight years.

This interview was undertaken as part of a project for the Kingsford Legal Centre entitled "unsung heroes of legal aid" and it is with this in mind that I went to meet David. Needless to say that he knew nothing of this, I doubt whether he would have taken part in the interview (which by the way he gave away his lunch hour for) if he knew that I may be portraying him as some kind of hero. I have to ask myself, at this stage if that is indeed what I tried to do with this article. Have I moulded this article so that David would appear as a hero and thus created a false image of him? I would certainly like to think that that is not the case and made every effort not to do this consciously. The result is such that I went out to meet a person of whom I had varied expectations and indeed I met with a very different person than I could have imagined. I think that the best way to describe David

McMillan is to say that he is a lawyer. What do I mean by that? Well he is certainly not a sheep to corporate influences felt in society and constantly uses his education in the law as well as his extensive knowledge and experience to question society and to fight for justice from a higher level in courts and by running cases as well as down to making the right referrals. We have seen that his philosophy is in accord with the wise words of Kahlil Gibran. Does that make of him a prophet? Is that what a lawyer is? I certainly do not think that lawyers are prophets or that David McMillan thinks of himself as one. Do his numerous and varied accomplishments make of him a hero? Well certainly not in any sense of the word as understood by popular, Hollywood-influenced culture. His somber and conservative attire for work bears no resemblance to the red and blue tights of superman (some will think that I should have checked his cupboards but I know that I would have found books, documents and no cape). What could I mean by a lawyer then? Well the fact that some may be asking themselves that question is testimony to the fact that we need more people like David in the profession. I do not pretend that I have the answer to this but may perhaps hint at what I think a lawyer should be. Parker (1999) holds that: "It is a tradition of active citizenship by lawyers to solve the problems in access to justice that simply doing their duty by clients and the legal system leaves untouched. It encourages lawyers to have their own convictions about what would be justice and seek out ways to act out those convictions as lawyers."<sup>4</sup> and I wholeheartedly agree with him. Furthermore, a lawyer should be someone who is keenly aware of the responsibilities placed on him/her as the champions of justice in society and should aim for that in everything that they do. They should be sensitive to the fact that they are a part of society with an important function to perform and that they have a responsibility that comes with the knowledge and training that they receive.

That is what I would like to convey about David McMillan, merely that he is a lawyer in the true sense of the word.

Eric Ribot.

Former Kingsford Legal Centre student

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<sup>4</sup> Parker C. (1999) *Just Lawyers*, Oxford University Press, Oxford (1999) at 99.