



VICTORIAN BAR

WELCOME

ADDRESS AT THE CEREMONIAL SITTING TO WELCOME HER HONOUR JUDGE MARTINE MARICH ON HER APPOINTMENT AS A JUDGE OF THE COUNTY COURT OF VICTORIA BY SAMUEL HAY, HONORARY TREASURER OF THE VICTORIAN BAR, ON THURSDAY 30 AUGUST 2018

May it please the Court.

I appear on behalf of the Victorian Bar to congratulate Your Honour Judge Marich on your appointment to this Court.

I also acknowledge the Traditional Owners and Custodians of the land on which we meet, the Peoples of the Kulin Nation, and pay my respects to their Elders past and present.

Your Honour has practised Law for more than 21 years as a Solicitor and Solicitor-Advocate. You have taught at the Monash Law School for more than 17 years – concurrently with your legal practice; and with being the mother of three sons – all still at school.

Your Honour's secondary education was at University High School. You completed the VCE aged 16. Your real love was mathematics but, having been accepted into Medicine, you began that course at Monash University. You transferred to Science; and then to Science/Law. The rest, as they say, is history.

Your Honour graduated Bachelor of Science and Bachelor of Laws (with Honours). You immediately began, in your Articles year, a course-work LL M.

Upon completing your Master's degree, after only a year or so off from graduate work, you began work on a Ph D.

Your only compromise to the realities of life in concurrently:

- practising Law in the City,
- teaching at the Monash Law School, and
- being the mother of a young child,
- was to transfer from the Ph D degree to the SJD degree – which had a coursework component as well as a thesis.

You completed your doctorate in 2008.

Your most recent "educational" effort was entirely self-taught. You decided to take the California Bar Exam and – simply taught yourself American Law!

Incredibly, you passed at your first sitting – you got the results in May.

Putting this in context, unlike here where, with only a few add-ons, an Australian Law degree qualifies one for admission to practice, in the United States, the Bar exam is free-standing and extends over a number of days.

The overall pass-rate in the February California Bar Exam you took was 27½ % of those who took it. Even of those candidates who had a Law degree from an American-Bar-Association-accredited Law School, only 46% passed.



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Articles and early years

Your Honour served Articles with Paul Vale in Ringwood. You remained with the firm for a year as a Solicitor.

You then spent a year in the Melbourne Office of the Commonwealth Director of Public Prosecutions. You prosecuted, largely, Social Security fraud cases.

In 1999, you joined David Grace QC – it was to be the start of a close professional association that continued right up to your appointment to this Court – some 19 years later.

The firm was then David Grace & Associates; it later became Dr Martine Marich & Associates – the same premises; the same floor – the same happy professional association.

Particularly in Your Honour's early years working with David Grace, Your Honour's emphasis was in submissions – researching, drafting and working with Mr Grace and his co-counsel on submissions – in, over the years, literally, over a hundred appeals in Courts of Appeal throughout Australia and in the High Court.

All these cases – win, lose or draw – resulted in significant precedents in the Criminal Law involving procedure, evidence and sentencing.

Your Honour drafted the submissions in, for example, the High Court appeal in the Gypsy Jokers Motorcycle Club case.

This was a landmark case in what developed into a line of High Court decisions that balanced the control of organised crime – in this case, by permitting secret evidence; against the promise of procedural fairness.

Your Honour's work on the submissions was foundational to the arguments of David Grace QC leading Mark Moshinsky SC (now Justice Moshinsky of the Federal Court) and Dr Albert Dinelli; and they were opposed by David Jackson QC for Western Australia and by the Solicitors-General for the interveners: the Commonwealth, New South Wales, South Australia, Victoria, Queensland and the Northern Territory.

You included scholarly analysis of the Gypsy Jokers case in your doctoral thesis: *The Confidentiality of Investigative Information in the Trial Process* – brought a touch of the exotic into that scholarly tome – and came immediately to mind to your thesis supervisor when she was asked for something funny or interesting about your Honour.

Your Honour also appeared as Mr Grace's Junior – for example, in the High Court representing David Eastman in his successful appeal against the Director of Public Prosecutions for the ACT.

In 1995, Eastman was convicted of murder of an Assistant Commissioner of the Australian Federal Police. There were appeals to the Full Court of the Federal Court and to the High Court. There were two Inquiries. And Eastman's re-trial in the ACT Supreme Court began this last June.

Particularly over the last 10 years, Your Honour's emphasis shifted more to appearance work. You appeared in numerous trials, including Child Sex Trials in this Court. You appeared in Appeals – in the High Court and State Courts of Appeal – in particular, in Victoria and in Western Australia.

In your first appearance in the Dandenong Court, you made the mistake of taking the train. The walk from the station is about 15 minutes, but through a very rough part of town – bad enough on the way to Court; worse on the way back because your client had paid you in cash at the Court and Your Honour, normally fleet-of-foot, was teetering in high heels, and with a considerable sum in your Prada handbag.



In recent years, Your Honour represented survivors and their families before the Royal Commission into Institutional Responses to Child Sexual Abuse. You appeared in some 18 public hearings of the Commission, all over Australia.

The perspective was, of course, wholly different from that in your Criminal Defence practice.

One of the Senior Counsel Assisting the Commission praises Your Honour's steady and authoritative presence; your sensitivity; and your keen observation of detail.

During the Hobart sittings, he was examining a former School Principal by video-link. The Principal had his wife with him, he said, for emotional support.

The former Principal gave a key exculpatory answer. Your Honour whispered to Senior Counsel Assisting: "Someone just passed him a note".

Senior Counsel had not seen this at the foot of the screen.

"Have you just been passed a note?"

"Yes"

"Did that note prompt the answer you just gave?"

"No, it did not – the answer was entirely my own."

"Please read the note." –

the witness hesitated; was visibly embarrassed; then read the note – it was the answer he had just given, word for word.

The true advocate, Your Honour argued your clients' cases to the best of your knowledge and ability. In the Commission, that the high bar on tendency, propensity and similar-facts evidence, and the rules on coincidence, were factors that had rendered the Criminal Justice system less effective in dealing with child sex offences – and that the Commission should recommend that those rules be relaxed in such cases. These were not arguments in which (as a Scholar and Teacher of Evidence, or as long-time Defence Counsel), Your Honour took any joy.

Your Honour was, as a Solicitor, a strong supporter in briefing members of the Independent Bar – far too many to name – but including, for example, Mark Taft SC and Michael O'Connell SC – now Your Honour's judicial colleagues on this Court.

Counsel you briefed praise Your Honour's prodigious work-ethic and fiercely rigorous intellect – "being briefed by Martine is just scary"; – and your unbelievable efficiency: "she produces appellate submissions with disturbing ease".

Counsel admire Your Honour for your conduct of really-difficult defence arguments and cases – for your excellent knowledge of the Law of Evidence – and for applying that knowledge responsibly and incisively.

In an intentionally-causing-serious-injury case in Geelong, at the intensely-embarrassing last-minute, a defence witness materialised. Your Honour was patient with your clients, and utterly professional and ethical despite difficult circumstances. The witness had to be called. In the result, your clients were resoundingly convicted – perhaps because they'd left spare-parts of the home-made spears to be found at their own house.

Your Honour was prepared to do hard cases personally. In the last year or so, you had Senior Counsel in a serious aggravated burglary with all sorts of intricacies in the defence. Mid-trial,



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the case was adjourned; and your Senior Counsel had to withdraw. To his great admiration, Your Honour stepped in as Counsel – another inevitable conviction – but that often occurs when one has the courage to afford access to Justice and representation; and to run hard cases.

Your Honour did not come to the Independent Bar, but you bring to this Court many of the experiences of those who did, and the admiration of those you instructed.

Notably, Your Honour was welcomed to this Court not only by your fellow Judges, but with particular enthusiasm by their young Associates, many of whom had been taught by Your Honour at Monash.

You are, at Monash, popular with Staff and Students alike. You have taught, not only your “trade-mark” courses in Criminal Law and the Law of Evidence; but also Civil Procedure and Public Law & Statutory Interpretation; and, recently, an intensive Comparative Torts course to United States Law Students in the Western Michigan University Cooley Law School’s “Down-Under” program at Monash.

On behalf of the Victorian Bar, I wish Your Honour joy in your appointment and long, satisfying and distinguished service as a Judge of this Court.

May it please the Court..