



VICTORIAN BAR

WELCOME

WELCOME TO HIS HONOUR JUDGE DAVID SEXTON AS A JUDGE OF THE COUNTY COURT OF VICTORIA BY SIMON MARKS QC, JUNIOR-VICE PRESIDENT OF THE VICTORIAN BAR, CEREMONIAL COURT 3.3 COUNTY COURT, FRIDAY 7 SEPTEMBER 2018 AT 9.15 AM

May it please the Court.

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

I acknowledge the traditional owners and custodians of the land on which we meet today, the Peoples of the Kulin Nation. I pay my respects to their Elders past and present.

Your Honour's appointment to this court is a recognition of the intellect, diligence, compassion, and the commitment to the administration of justice that you have displayed as a barrister; qualities which your friends and colleagues admire and praise.

And I'm delighted to acknowledge as his Honour the Chief Judge has before me, the presence of your father and sisters in the jury box this morning, as is your husband Steven.

Sadly, your mother is no longer with us but we trust she saw enough of your career in the law, particularly at the Bar, to not only be proud of you but to know that you had even more achievements ahead of you.

Your Honour grew up in Greensborough, here in Victoria, completing your secondary schooling at Parade College in Bundoora.

Even in those days you were intrigued by and attracted to a career in the law. I'm told that, like some others of us, your attraction to the profession was in no small part enhanced by the glamorous legal world presented on American television programs.

Not that you're the only one to have been so motivated as a young person. One of your fellow "Super Tuesday" appointees to this Court recently confessed to being influenced by the small-screen attorney Petrocelli. Your Honour was partial to "The Practice" – similar fare set in Boston. But, for you, none could hold a candle to Sir Wilfrid Robarts, Charles Laughton's ailing but indefatigable English barrister in the classic Witness for the Prosecution. Laughton, of course, donned a robe and wig.

Now clearly, your current respect for the Australian legal system has a much closer connection to reality. But even had Billy Wilder's classic not come to your Honour's attention, the law was for you. Already, you felt a calling. The profession catered to your genuine interest in human nature, while giving a voice to those needing to be heard.

Your Honour studied at Monash University, completing degrees in Law and Jurisprudence through a six year legal slog. It was, I'm told, your mother who was most instrumental in assisting and encouraging you down this path.

Your Honour was the first person in your family to complete a tertiary qualification.

Upon graduation you moved to Ballarat and completed articles at Saines and Partners. The principal was Ron Saines, now co-ordinating magistrate in Ballarat. You were admitted in 1994.



We will hear more about your Honour's time as a solicitor but your initial move to Ballarat and the rest of your career before coming to the Bar were all geared towards acting in criminal matters and, eventually, doing so as an advocate.

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Your Honour came to the Bar in 2004, reading with Julie Sutherland.

This was to prove a pivotal relationship for both of you in a couple of ways.

One of Your Honour's earliest appearances was in a committal with Ms Sutherland and another barrister.

Ms Sutherland says the charges were serious, and the matter was a difficult one. She allowed you to question one witness, but in the custom of senior barristers overseeing less experienced juniors, she did have a fear that, in her words, she would have to "mop up" afterwards. Instead, your Honour did a good job; a great job. So good in fact that she spontaneously praised you on the spot, as a "good boy". Clearly, this was high praise indeed.

And it was all good. Ms Sutherland had said it to you in court; in open court; but she'd said it quietly and discreetly; or so she thought. In fact, everyone in court heard it, including the client. Soon after, the client – no stranger to the dock, it must be said – himself asked whether that "good boy" might represent him at trial, instead of some of your more experienced colleagues.

Upon completing your period of reading, your Honour stayed on with Ms Sutherland. And stayed - and stayed.

Whether it was because of the charming decor of her chambers or simply the pleasure of Julie Sutherland's company; is not completely clear. However, your Honour and Ms Sutherland worked together for seven years in that room, on the 11th floor of Owen Dixon East.

And finally, when you did decide to go, and took a room of your own – it was on the 11th floor of Owen Dixon East.

In your time at the Bar, Your Honour has specialized in defending those accused of sexual offences.

As an area of practice it can be difficult, often thankless, and frequently highly confronting. Your Honour's friends and colleagues make mention of your ability and willingness to show empathy to all involved in such cases, whether they were your clients or not.

Your Honour appeared for the accused in the first Australian case of someone charged with intentionally transmitting HIV. You were led by George Georgiou QC. He says there were a large number of complainants, and that your cross examination of a number of key witnesses was superb, showing all the hallmarks of industry, judgment and skill that you've become known for.

More recently, your Honour defended an AFL footballer of Sudanese descent in a rape trial, instructed by Vincent Azzopardi of Tony Hargreaves and Partners. The public scrutiny was enormous; the many vested interests were ever-present.

Mr Azzopardi says none of that led Your Honour to alter your meticulous preparation. He says that you approached trials as an exercise in psychology – seeking to discern and understand what may or may not be motivating the accused, the complainant, the witnesses, and give that insight to the jury as a perfectly reasonable proposition(s). Now that takes skill; real skill.



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In that case, the accused's family was a model of immigrant industry, education and achievement. Family members were also in the habit of finishing the morning's trial preparation by praying together, and they included Your Honour and your instructor, though it was certainly not a practice in which either of you would otherwise have engaged.

In their prayers on the final morning of the trial, family members tearfully thanked Your Honour, and gave thanks for Australia - for the opportunities it had bestowed, and for the legal system that had provided them and every other citizen with a fair chance. The words were a quietly powerful contrast to the maelstrom swirling around the case. As it turns out, the accused was acquitted. There was joy all around. You were instrumental in the outcome.

Your Honour also appeared for the defence in a trial arising out of the Churchill fire on Black Saturday. It was an unfashionable brief; and the matter understandably provoked significant public attention and emotion. You did a fine job.

More generally, your Honour is described as jury-friendly. This is not meant in a patronising way. It is said, your Honour eschewed courtroom bluster in communicating with juries, instead approaching them genuinely and with unmistakable authenticity. One of your colleagues described your approach in terms: "You can't fake it, and you can't teach it, and David has it."

As it turns out, your Honour has attempted to teach it, along with all the skills of advocacy at university and at the Bar. Again, this is something about which we will soon hear more.

Your Honour has had two readers, both of whom speak of you with enormous respect, gratitude and affection.

Jacob Pruden speaks of observing your Honour's thorough preparation, especially in developing a rational case concept.

Caitlin Dwyer also mentions the importance your Honour places on the case concept, and speaks of spending hours with you that would fly by discussing case strategy and how to deal with difficult pieces of evidence.

Other colleagues describe your Honour as a uniquely gifted criminal barrister, displaying a perfect balance between intellect and creativity. And you are considered to have a prodigious work ethic. You are said to be great company, and you are praised for steering clear of one of the Bar's great indulgences – gossip.

Socially, your Honour has as many friends outside the law as within it. You like to keep fit, you are a lover of the arts – especially musical theatre, opera and old movies – and you love to travel. – don't we all?

In this respect though, one colleague observes: "He has an amazing knack of managing to complete numerous difficult trials in a year whilst simultaneously always seeming to be on holidays or to have just come back from one; or about to go on one." This was said by one of your readers, but we won't name her (although I do note you only had the one female reader).

Indeed, less than a week ago, Your Honour was enjoying the delights of the European summer. And now, here you sit. What power of persuasion brought you here from there, I know not.

What I do know is that we are all the better for it; I know too that this court is most fortunate to be graced with your services.

On behalf of the Victorian Bar, I wish Your Honour joy in your appointment; I wish you a long and satisfying career, one I am confident will be distinguished; as a Judge of this Court.

May it please the Court.