



VICTORIAN BAR

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## SPEECH

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### ADDRESS AT THE WELCOME OF HER HONOUR JUDGE ANNE HASSAN, JUDGE OF THE COUNTY COURT OF VICTORIA IN COURT 3.3 OF THE COUNTY COURT ON TUESDAY 12 NOVEMBER 2019 AT 9:15AM

#### BY SIMON MOGLIA

May it please the Court, I appear on behalf of the Victorian Bar.

In doing so, I pay my respects to the people of the Kulin Nation and their elders past and present who have been the owners and custodians of this land for many thousands of years.

I also acknowledge your Honour's family and friends sitting in the jury box. And distinguished colleagues seated beside and behind me.

It was last century when your honour and I were at law school together. To some at least that might make us sound older and wiser...

We met studying history and philosophy of law and torts and the process of law – subjects we affectionately called 'HPL' and 'TPL'.

Later, in your Honour's final year, we were together again studying Corporations Law – Corps for short. During that course, a small team of us, including Rachel Ellyard, now also at the Bar, regularly met over coffee, shared notes, prepared for exams and wondered just where Corps would take us.

I'll come back to that, if I may.

In 2001, on admission to practice, Your Honour commenced a most formative period of work as Associate to Justice (later Chief Justice) Warren, then head of the Supreme Court Commercial list.

My learned friend for the Institute will have more to say about that time.

Crossing William Street, in November 2003 you signed the bar roll and joined Dever's list.

You read with Jane Dixon, later QC and now Justice of the Supreme Court.



But it wasn't long, may I say, before your Honour returned to those corridors over the road.

In March 2004 you appeared for a company called Laserbem (remember that name). You were before Justice Kaye (now Justice of Appeal), led by Peter Riordan SC (now Justice Riordan).

Laserbem was in dispute with another corporation over a lease worth about \$250,000 a year. Not a bad start to your practice.

The case raised a cornucopia of commercial litigation conundrums – statutory interpretation of the Cth Trade Practices Act, application of the Victorian Property Law Act, termination of contract, unconscionability, implied obligations, equitable damages, the Statute of Frauds 1677 and the Instruments Act 1958.

What a legal feast! And you won!

What better introduction to commercial litigation at the bar? Your future was surely set.

However. Looking back, history gives that moment a different complexion. For it seems that for all of those commercial riches, in fact, you were just getting it all out of your system!

You took the other path. From then on, you averted your eyes from such glamour and got down to the serious business of crime.

So to return to the question, where would Corps take you? Apparently not that far. Although you do use that word in criminal practice, it does take on a rather different meaning.

You embarked on a 15 year career at the Criminal Bar, appearing in hundreds of cases, mainly in this Court.

All this is not to say you didn't have a diverse practice.

In 2007, you appeared before Justice Bell, led by Terry Forrest QC (now Justice of Appeal) defending a woman who suffered with a significant personality disorder. With her boyfriend, she had committed a number of armed offences and faced a lengthy sentence. In those years, the tide was turning against mitigation on the basis of personality disorders, and soon the Court of Appeal in a case called O'Neill would prohibit it. But undeterred, you pursued the point and his Honour imposed a relatively rehabilitative sentence.



You saw the real person amidst the law.

You continued that work from 2009- 2014 you ably served the State as a Crown Prosecutor.

In 2009 you were in the widely publicised Theophanous case. After the Magistrate made orders permitting publication of the complainant's evidence, you went before Justice Osborn on judicial review seeking to protect her privacy.

Again, the personal was important.

During the rest of your time at the Crown (and following your release) you also showed yourself to be a dab hand at judicial review and administrative law as it related to crime.

In a 2017 case, again before Justice Bell, you dealt with the fair hearing rights of a litigant in person. In that case, the litigant had been locked up for contempt by the Magistrate and then again on appeal by a judge of this Court! He was nothing if not consistent.

On review, the Charter obligations on courts dealing with litigants in person and the operation of the Criminal Procedure Act were in tension. It was heard over a number of days and, as could be expected from your Honour, it required an eye for detail and an ability to grapple with a number of interacting (if not conflicting) legal principles and authorities.

Neither have you been a stranger in the Court of Appeal.

There, you appeared alone and with leaders including DPP John Champion QC (now Justice Champion), Chief Judge Kidd (as he then wasn't), Trapnell QC (now also of this Court), Silbert SC, McArdle QC, Elston QC and Kissane (now SC and Chief Crown Prosecutor).

In the 2016 case of Borg, your Honour appeared with the then Director on a Crown appeal against sentence on two charges of dangerous driving causing death. It was terrible driving. But the offender was a young man with autism, cognitive impairments and by the time of sentence at least, debilitating depression. The gravity of the offending was high. The moral culpability of the young man was low. To make matters worse, the matter settled late – after what we call a hot-tub of experts had helpfully narrowed the issue on the eve of trial. But by then, Mr Borg was no longer eligible for youth detention. Could it have been any more complex?! The Court exercised its



discretion to let the sentence stand. But your Honour was being prepared for the most difficult part of your new role.

Finally, in a less tortuous matter, in August this year, as befitting a bookend to your time at the bar, your Honour made your final appearance in the Supreme Court – in fact, before your mentor Justice Jane Dixon. I'm happy to report that her Honour adopted your submissions.

It hasn't all been cases and court appearances though.

Since returning from the Crown, you have taken two readers, Mable Leong in 2017 and Jordan O'Toole in 2018. He said you were a terrific mentor – always interested in the work he was doing and, even beyond the reading period, always available as a sounding board.

Your junior in recent cases, Lachlan Cameron reports you have a great sense of humour and were a very generous leader – self-assured, glamorous, fair and unflappable.

And reflecting your broad social conscience, you have been:

A member of the Barristers Animal Welfare Association from 2007-2012;

A member of the Bar's Equality & Diversity and Pro-bono Committees in 2017;

An advocacy coach for the Bar Readers Course for a number of years;

A mentor for the Diverse Women's Mentoring Association;

A volunteer at the Darebin Legal Service; and

A volunteer for Sudanese Australian Integrated Learning.

No doubt as an acknowledgment of your Honour's well-rounded character, good standing at the bar and perhaps good humour, you were invited to give the traditional junior counsel speech at the 2018 Bar Dinner and to thank her Honour Chief Justice Kiefel of the High Court who delivered the main address.

As was expected, you spoke eloquently from your studies in classics and knowledge of literature. You quoted Shakespeare! You spoke about communication.

On the topic of 'every generation's grappling with modernity', you called on Socrates. While you named him 'philosophy's first curmudgeon', you liked what he said about oral advocacy in the adversarial tradition:



“He was against paper. It threatened the spoken word, which was more authentic and less open to distortion because of the presence of a critical interlocutor who would challenge and question any loose or sloppy utterances.”

As we know, following the advocacy comes the decision.

You quoted Chief Justice Warren, who, in a somewhat more recent exhortation spoke of judges having to write reasons for sentence more simply and briefly – in an accessible way that they might more readily be published and more importantly, read.

All good so far.

If I am not mistaken, however, your Honour took the idea to a most interesting conclusion. You pondered on what would happen if the courts were to follow the current US President and started issuing judgments via tweet.

The results were ... well, shall we say, what happens at the Bar Dinner stays at the Bar Dinner.

That night, you also spoke of what I suspect is a less well acknowledged interest of yours – science fiction. Remember your first big client’s name was Laserbem.

You told us all, and in particular a member of Federal Parliament who was in the room, “The main premise of works of science fiction is the creation of alternative worlds or scenarios, that reflect contemporary concerns and occasionally act to critique these concerns. The great works like 1984 and The Handmaids Tale are regularly evoked as prescient to our current world, as indeed they are.

‘A text that I also recommend is Cormac McCarthy’s The Road. This novel evokes a post-apocalyptic landscape where climate change and human actions have left the environment desolate and arid.

‘Perhaps I should make this clear,’ you said, ‘this is a nightmare future! NOT a policy objective.’

I am happy to predict that the ripple effects of your interests and efforts will not entirely leave the bar as you move to the bench.

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

In keeping with your interests, perhaps I should say, by way of benediction:



May the force be with you;

May the dialogs in your court be satisfyingly Socratic; and

May your reasons for sentence be ... well, reasoned not tweeted.

May it please the Court.