

The Star Oct 1/95

Lawyer, judge duel as case drags on

Fiery pair pitted in Just Desserts preliminary

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When he's on the bench, they call him by his official title: His Honour, Judge Michael Martin. But in the courthouse hallways, lawyers whisper the nickname that stuck to him years ago: Dr. Death.

Rightly or wrongly, provincial court judge Martin has earned a private reputation as a defence attorney's worst nightmare: a black-robed, white-haired figure from the Old Testament, a judge who will brook no nonsense from high-flying, fancy-talking, Constitution-citing defence attorneys.

In a legal system caught up in affirmative action, Martin is a glimpse of the old world: He is a 69-year-old white male, born in a small town, married, with four children. During his 42-year legal career, he spent just 10 years practising law before becoming a prosecutor.

Martin is best known for his role as crown in the 1986 conviction of Helmut Buxbaum, a wealthy businessman who took out a murder contract on his own wife.

Shortly after the jury returned, Martin was seen toasting the verdict.

When appointed as a judge in 1989, the attorney-general's announcement noted the Buxbaum victory — a touch some defence lawyers find off-putting.

Some wondered whether Martin could leave behind his hard-hitting prosecutorial instincts. And as his Dr. Death moniker would suggest, many believe he has not.

There are various explanations for the name. Some say it's based on his black robes, white hair and papery-white skin that give him the deathly look of a Boot Hill undertaker.

Lawyers whose clients have gone down in flames before him have another explanation: "When a client walks in that courtroom it's his funeral," says one.

Martin is not known for his patience with high-flown theory or legal hairsplitting.

"The O.J. Simpson case would have driven him mad," says a lawyer who has appeared before Martin. (Like most interviewed by The Star, he asked that his name not be used, since he stands a good chance of appearing before the judge again.)

Ironically, Martin is now pre-



THE LAWYER: David Midanik is known for fighting the Establishment.

siding over a case that is, like O.J.'s, freighted with racial tensions: Just Desserts.

The case takes its name from the trendy Annex dessert restaurant where the crime took place: In April, 1994, a young woman named Vivi Leimonis was shot to death during a robbery at the restaurant.

Four young black men were charged. Their alleged crime sparked a national outrage about urban violence as well as lingering racial anger.

Some believe the case reflects a crisis in the black community, while many blacks are angry because of the undue attention the case has received.

Duo a combustible courtroom combination

Since last December, Martin has been on the bench for the preliminary hearing in the case, which has turned into one of the longest and most bitterly fought in Canadian legal history.

There has been endless courtroom bickering and harsh words have been exchanged more than once between Martin, the accused men, and their lawyers. One of the accused, during a heated exchange with Martin, said he would "Sue your white honky ass!"

Tensions came to a head this summer, when lawyer David Midanik, who represents one of the accused, asked the courts to remove Martin from the case.

In a legal submission, Midanik charged that his client may have "a reasonable apprehension of bias," due to a series of decisions and rulings Martin has made during the prelimi-

nary. Among Midanik's objections are:

■ That the accused have been denied "natural justice" by overzealous security.

■ That Martin allowed the crown to spend three days making oral submissions about an important issue, then told defence lawyers they would have to do theirs in writing.

■ That Martin refused to let the defence cross-examine a key witness.

The courts are expected to rule on Midanik's application this fall. If it's successful, it could force a new preliminary hearing.

Midanik's bid is an uncommon legal move. As Toronto criminal lawyer Paul Burstein notes, appeal courts are reluctant to brand other judges as biased: "This could lead to applications by other accused people not to appear before that judge," says Burstein.

Since it began last fall, the Just Desserts preliminary has been dominated by battles between Martin and Midanik.

Midanik, 44, will admit he is one of the most combative lawyers in the province.

He is a former student radical (he was Maced at the 1968 Democratic convention in Chicago) and has a reputation for fighting the Establishment on behalf of the disadvantaged.

Together, Midanik and Martin have proven a combustible courtroom combination.

For months, they have battled over a classic bone of legal contention: the defence's constitutional right to make "full answer and defence," by getting full disclosure of the crown's evidence.

Defence lawyers often complain about breaches of this right, but the protests have reached a feverish pitch in Just Desserts.

Disclosure means the revealing of the crown's evidence to the defence, so they can figure out how to respond to it.

Lawyers close to the case suggest that Martin, being a crown-oriented judge to begin with, hasn't given the defence an inch. In retaliation, they say, Midanik has baited the judge every step of the way.

One veteran courtroom observer says: "He obviously has no respect for this judge."

Battles over disclosure were not uncommon during Martin's career as a prosecutor. Most of his career as a prosecutor was spent in London, Ont., where he had a reputation a bit like hockey star Gordie Howe's — a hard and unrelenting player.

One lawyer recalled driving



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THE JUDGE: Judge Michael Martin, shown in '85 when he was crown in the Helmut Buxbaum murder case, is known as defence lawyers' worst nightmare

two hours to London to get copies of the evidence Martin had against his client, only to be handed a sheet of paper.

The lawyer still remembers Martin's terse comment: "See you in court."

This lawyer, like several others interviewed by The Star, says that Martin does not particularly enjoy presiding over preliminary hearings, as in the Just Desserts case.

He believes he would rather be conducting the trial itself, where he is the main actor.

Despite the complaints of lawyers who see Martin as "a prosecutor wearing judicial gowns," some have noted redeeming qualities.

"He's an old-fashioned man," said one lawyer. "And that can be good and bad. He's conservative and traditional enough that he gives cops the benefit of a doubt."

"But if their story starts to sound implausible, that's it. They're gone. There's a line with him. And once you cross it, there's no going back."