

The passion of John Marsden

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Tomorrow is judgment day in **John Marsden's** bitter defamation battle. David Brearley spent two years following the court spectacle, and wonders if victory will mean much at all

THE pot-smoking poofter keeps his Order of Australia in a display cabinet on the bathroom wall. He packs his house with trophies, even here, but it's the ducks that catch your eye. A ragtag army of ducks is camped around his spa, tin ducks and rubber ducks and 100 other ducks of uncertain provenance, and real live ducks scutter about the lush green acreage outside. "Duck-duck-duck-duck," he calls in his big gruff voice, but the inscrutable little birds pay him no mind.

The ducks seem to be totems of one sort or another, and their owner waddles when he walks. His legs are still coming to terms with the extra weight that bunches about his middle these days, giving him the profile and the gait of a Tellytubby. He once quipped that "rich, generous and emancipated personalities" shared a "well-rounded silhouette", but that was in 1992, when his belly was still flat enough for mirth, and all else in life was perfect.

In 1992, **John Marsden** was president of the NSW Law Society, proud leader of 11,500 solicitors. He sat on the state's police and anti-discrimination boards while resting between presidencies of the Council for Civil Liberties, and his tiny legal practice at Campbelltown in Sydney's south-west had spawned a chain employing 140 professionals. The trophies were piling up fast, and -- a nice little sweetener -- his old mate **John** Fahey was premier.

The two men studied for the priesthood together, then **Marsden** employed Fahey as his articulated clerk. Later, he used to babysit the Fahey children.

But that was then, and these days he's not welcome in the house -- Mrs Fahey won't have it.

These days, he is the pot-smoking poofter.

Of all the vile and hateful epithets slung at him in recent years, amid all the noise about nipple torture and whips and weeping boys, it is these three words that really bring up the veins in **Marsden's** neck.

They were first uttered in the NSW Supreme Court on April 10 last year by Robin Small, a crusty Kings Cross copper of the old school who would almost certainly be played by Bill Hunter, should anyone choose to make a miniseries of that absurd melodrama,

Marsden v Amalgamated Television Services Pty Ltd.

The **case** concerns two Seven network broadcasts -- Today Tonight in March 1995 and Witness in May 1996 -- which imputed that **Marsden** paid boys for sex. These were the years of Justice James Wood's royal commission into the NSW Police Service, when ranking MPs were using parliament to name alleged paedophiles, and any whisper of the subject could find a captive audience.

Marsden sued and was found to have been defamed -- four days was all it took -- but the sewers erupted when he pressed his **case** for damages. Seven defended its broadcasts as truth, producing 11 young men, ex-rent boys mostly, to amplify its original slurs from the witness box. From February 2000, the court became a forum for talk of riding crops, anal relaxants, golden showers and worse. Two brothers described a druggy threesome, with **Marsden** on hands and knees begging for the whip. Another man claimed he was buggered and belted at 15, but never paid.

Marsden was always the plaintiff, but Seven's aggressive conduct of the **case** effectively made him the defendant.

In this context, Superintendent Small was a fringe witness at best, a bit player called in to spice up Seven's **case** on credit and credibility, which is what lawyers call a smear campaign. Small told the story of a failed drugs raid on **Marsden's** house, offered nothing on underage sex, and added with something like pride: "[**Marsden**] was known in the police force as a pot-smoking poofter."

That **Marsden** is in fact a gay male who enjoys cannabis gives rise to a profound question. "Does it mean," he asked the judge at the business end of proceedings last November, "that because I am a pot-smoking poofter then I am entitled to less damages?"

While Justice David Levine has spent a clear-headed summer applying the strictures of law to this abstruse conundrum, **Marsden** has been seething. He quotes Small's words obsessively, spits them out, as if they were the worst thing anyone ever said about him. He repeats them incredulously, as if they were untrue.

"Pot-smoking" demeans **Marsden** because it negates his thoughtful position on drugs issues. He was a director for several years at Odyssey House, a rehabilitation centre for addicts, and has delivered lengthy speeches here and overseas on the **case** for decriminalisation.

"Poofter" is a story in itself, a semantic nightmare. Gay men will apply it to each other, but rarely with any affection; it's not like queen, or even bugger, in that respect. On the tongues of straights it is loaded with latent violence. Poofter is the preferred usage among poofter-bashers. Of all the terms for male homosexual, only faggot can match its offensive punch.

Put the words together and **Marsden** seethes. He is of the suburbs, and he hears in their rugged poetry the authentic voice of middle-Australian bigotry -- the voice of conventional wisdom.

Small's words remind **Marsden** that gay men still live in a hostile world. But it's worse than that, more personal. Pot-smoking pooker insults his ego, for it is the antithesis of everything he believes himself to be.

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SINCE 1993, **John Marsden** AM, LL.M etc, has furnished Who's Who with a remarkably eclectic list of his recreations: "Art, ballet, reading and rugby league". Throw in the CV and you have the raw stuff of Renaissance Man -- a man for all seasons; a man of substance, at the very least. It's an image he strives to reinforce.

He dresses for the boardroom, in sober suits with the obvious flourishes: lapel pins, matching ties and handkerchiefs. His haircut is a schoolboy's bowl, but it's a thick growth that looks suitably severe when he slicks it back. He drinks Johnnie Walker Blue Label neat, makes his own sambuca, and keeps a magnificent table.

People find him charming or rudely engaging. He is a tireless gossip, generous and young at heart, with an easy body language. He loves company and keeps a colourful entourage, and there's always a factotum nearby.

Much was made during the trial of his art collection, and he likes it that way. Star billing went to an explicit erotic lithograph by Brett Whiteley, but **Marsden** surprised the courtroom one day by appearing with two small James Gleeson oils wrapped in newspaper. His stated reason for this unsolicited exhibition was to resolve any confusion between the Whiteley and the Gleesons, which also depict the male member. In fact there never was any confusion: **Marsden** was simply playing show-and-tell.

The art is just one part of the trophy collection. **Marsden** is a keen observer of his own press, prized examples of which hang framed in his home. These share wall space with caricatures of himself, photographs of important house guests and lovers (including some of Seven's witnesses in their glorious prime), and certificates for everything from bungy jumping to membership of the Gay and Lesbian Mardi Gras Hall of Fame.

Pride of place goes to a copy of Martin Luther King's "I have a dream" speech. **Marsden** is a dreamer himself, a card-carrying idealist. He loves a good quote and litters his speeches with a typically impressive selection: King, and Oscar Wilde of course, but also Cicero, the Oracle of Delphi, Shakespeare, Jerome K. Jerome and -- a personal touch -- one Joseph Choate, a 19th-century American jurist who celebrated the legal profession in lofty prose.

This, then, is Art **Marsden**, rounded and refined, if not quite the aesthete he suspects himself of being. You could fairly say he has more style than class.

The flip side is Footy **Marsden**, a role he plays with comparative ease. Footy **Marsden** is your basic have-a-go Aussie, loud, reckless, reared in the old man's pub. He's the sort of bloke who yells at boxers, but rugby league is his passion, and he workshops the weekend's results with Les Murphy, the youngest of Anita Cobby's killers, who calls him from jail on

Sunday evenings.

Marsden is a man's man -- the father of a young adult, for what it's worth -- with the important qualification that he is gay. There is nothing camp about him. He can be the most dreadful ham in court, but you won't catch him mincing this side of six whiskies, and even then it's low-level stuff. He's nobody's dandy.

His sexuality was hard won. Late adolescence was a commotion of anguish and fear -- active ingredient: Catholic guilt -- and the middle years seem to have been a succession of comings-out. He sometimes gives the date as 1992, his annus mirabilis, when he slipped the word "we" into a public statement on the HIV epidemic. Yet he nominates 1984 as the year he first took an active position on gay rights. He told his parents in 1972, before a political enemy could beat him to it. And then there was 1960, when **Marsden**, the blushing but (he says) brilliant novitiate, fessed up to Cardinal Gilroy at Springwood seminary. He was a teenager at the time and it's still one of his favourite yarns.

He is almost 60 now and he has had many lovers: 100 was the figure he offered the court, but that seems modest. Promiscuous is a label he will not deny, but predatory he will not accept. There were men he loved for years on end, and fast times in between.

He does beats and he fancies rough trade, manly men with hairy chests, truck drivers and such, but only those with their own teeth. Muscle Marys need not apply.

Finally, he is a top, meaning he likes to be the dominant party in any sexual arrangement, within limits. Seven says his tastes run to whips and other nasties; **Marsden** counters that he has a reputation in gay circles for "lollipop sex", meaning no kinky stuff.

That such details are now a matter of public record is the price he has agreed to pay, and not unwillingly, for his battle has become a quest.

Messianic passions were stirring within him by 1997, if not before, when he posed for photographer C. Moore Hardy. The crucifixion concept was Hardy's alone, but it must have piqued something deep inside **Marsden**, whose Christianity and civil liberties background commit him to a creed of fearless passive resistance. The true enemy

of injustice, he told the judge last year, was the man who put his principles above his person, whatever the cost.

Lately, martyrdom has become his preferred disposition. **Marsden** sees himself in the tradition of Saint Sebastian, a man who suffered greatly that other men might suffer less, and one of the most enduring figures in all of gay culture.

While the **case** for Sebastian's homosexuality is circumstantial at best, he enjoys a stellar afterlife as homoerotic pin-up boy. He is commonly pictured not at the moment of his death -- he was bashed and dumped in a sewer in about AD300 -- but during an earlier ordeal at the hands of Roman archers. Invariably he wears only a rag about his loins. His wrists are strapped high and behind, the better to display a superb upper-body musculature, and his

skin is flawless, save for the wounds of the arrows, which are no less obscene for being neat. Trussed and pierced, he averts his gaze to heaven, a model of constancy.

This loaded image, a favourite with artists since the Renaissance, exercises a powerful grip on the collective gay unconscious today. The Beautiful Saint embodies the righteousness of the cause, the cruelty of the persecution and the nobility of the suffering.

The martyr figure is a carefully nurtured motif in gay culture. Harvey Milk, San Francisco's first openly gay elected official, murdered in 1978, is enshrined in biography, documentary and opera. More recently, Matthew Shepard, the angelic University of Wyoming student killed in a horrendous gay bashing in 1998, has been immortalised by Tectonic Theater in The Laramie Project. But it is an earlier Tectonic production, Gross Indecency: The Three Trials of Oscar Wilde, that best maps out **Marsden's** route to martyrdom.

Marsden laughs off the analogy, but the parallels between his pursuit of Seven and Wilde's prosecution of the Marquess of Queensberry 100 years earlier are beyond uncanny. Each case began with a sexual slur against a prominent gay man. Each slur resulted in a civil suit for defamation. Each suit turned on the evidence of rent-boys whose calumnies fuelled the fires of common prurience.

That Wilde's suit eventually found its way to the criminal courts is a matter of legal interest only. His action and **Marsden's** are identical in spirit: moral convictions, unfashionable ones at that, tested in the hostile world of the courts; designs for martyrdom, in other words.

Wilde succeeded, partly because the judgment went against him, partly, too, because he conducted his great self-destruction with such bravura. Adopting the name Sebastian for an alias, he composed The Ballad of Reading Gaol, turning his incarceration into a potent symbol.

But **Marsden** is no Oscar Wilde. He cannot match the Irishman for intellect or social graces, let alone rhetoric. His final submission last November was shambolic -- emotional, rambling, occasionally incoherent: "I suppose, Your Honour, in **summary**, you look at a young man growing up at the plaintiff's age where his life, up until 1984, was one of illegality because of the way he was born, and it was difficult and encouraged people to live double lives and remain in the closet, as people say.

"Then in [19]84, the law changed but the stress (sic) for the gay man was only short-lived because, by late '84, early '85, the AIDS virus hit and one became on a rollercoaster as to whether one was going to die or not, and one was rushing off for tests.

"And as things started to pull out of that, in '93 and '94, Your Honour, I was suddenly hit with [Seven's defamation]."

This is the Passion of **John Marsden**: outlawed by birth, hunted by nature, hounded by men. Injury piles upon injustice in an epic continuum of suffering, with Seven squarely implicated. But is it enough?

Edward Gibbon in *Decline And Fall* reasoned that vanity was the seed of all martyrdom, and **Marsden** is a candidate on that score. Conversely, a certain humility is required to wear the martyr's robes with any style, and humility is one quality **Marsden** does not claim to possess. His temper is altogether wrong, too angry, and too flighty.

Broadcaster Phillip Adams testified to **Marsden's** "preposterous candour", and it's true that he has the boastful sexuality common to many gay men. He imagines, for example, that his pillow talk is tremendously thrilling to straight people.

A part of him is hurting, no doubt, but there's another part that's not entirely uncomfortable with the notoriety.

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SAINT Sebastian or pot-smoking poofter? Reputation is the prize here, and tomorrow's Supreme Court judgment will not be the final word on the matter. There is simply too much **Marsden** in the public arena these days for one man's findings to tell the story.

Ultimately, it is homosexuals who will weigh **Marsden's** claim on martyrdom and determine his place in the greater public narrative. He has other constituencies, of course -- the legal profession, politics, the western suburbs -- but these are hardly points of popular interest. It was as a proud gay man that he was defamed and as a proud gay man that he hit back. It is therefore as a proud gay man that he will be judged, in time.

But gays and lesbians are as fractious as the next demographic, maybe more so, and they do not speak with one voice on the delicate subject of **Marsden**. When the Mardi Gras potentates inducted him into their Hall of Fame last year, 200 people gave him a standing ovation, but 200 more stayed in their seats.

Some say **Marsden** walks on water, others think he's a sham, and these views can be held quite discrete from opinions on the truth or otherwise of Seven's broadcasts. Put another way, two men who believe precisely the same things about **Marsden's** private life are likely to adopt radically opposed positions on the man himself.

Where straights reduce their thinking on **Marsden** to a simple question -- Did he do those things? -- older gays in particular bring some seriously heavy baggage to the reckoning. Did he do those things? is only part of a highly complex equation.

These men were born outside the law. They remember a time when Mardi Gras was a protest and all High Court judges were straight, and they reckon they know a witch-hunt when they see one. Moreover, they understand the legal subtext to **Marsden's** prosecution -- the NSW consent laws that say girls may sleep with other girls at 16, while boys must be 18 before they sleep with men.

This rich layer of context, which **Marsden** claims is beyond the comprehension of straight people, creates a pool of residual sympathy for him within the gay and lesbian community.

Still, many ask why he sued in the first place, knowing the dirt such a tacky **case** was always going to generate. People feel exposed, invaded.

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TODAY Tonight and Witness said some creepy things about **Marsden**, but it was not until he sued that the shit really rained down. If the original slurs hurt, then the law's remedy has proved 10 times worse. Because whatever reputation **Marsden** had on May 8, 1996, the day after the second Seven broadcast, he has 10 times that reputation now.

Jeff Shaw, who was NSW attorney-general during most of this business, spoke about the futility of defamation actions at a Law Society function last year. His advice to the slandered: turn the other cheek. "Surely a decorous silence is preferable to a media hell," Shaw said in a speech that covered some celebrated cases: the Andrew Ettingshausen penis photograph, Abbott and Costello's Bob Ellis and, of course, always Oscar Wilde.

Shaw never once mentioned the society's illustrious former president, but clearly had **Marsden** in mind when he asked: "Why bother? Why take your life in your two hands like water, then make a fist and lose it all?"

Why bother?

Marsden might be asking himself this very question today, sitting out there with his ducks and his fine art, sweating on a verdict. His name has taken a thrashing, yet his **case** never really became the catalyst it might have been.

Her Majesty's courts proved an unwilling forum for a civil liberties debate.

Or was it simply that the man in the middle lacked the substance -- the gravitas -- to elevate this whole sordid business above the level of lewd curiosity?

Why the ducks, I asked him once, fancying there were too many of the critters to satisfy a mere affectation. The answer didn't amount to much, at first.

It turns out somebody gave him a pair, then somebody else did the same, and so the joke went until the ducks were legion. "So there's nothing to it," he said flatly. But then, in a very **Marsden** moment, his eyes creased at the corners and a broad smile crossed his face. "Except that duck rhymes with ..."

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Battle over the truth

JOHN MARSDEN

Born January 3, 1942 Educated St Joseph's College, Hunters Hill; De La Salle College, Armidale; Sydney University. Seminarian, solicitor, networker. Former president of the NSW

Law Society and Council for Civil Liberties, sat on the NSW Police Board, NSW Anti-Discrimination Board. Multiple memberships and affiliations. Stood for parliament as Liberal Party candidate, maintains powerful contacts across the political spectrum. Order of Australia since 1994.

November 1995: Deirdre Grusovin names **Marsden** as a pederast in NSW parliament.

March 1995: Channel Seven's current affairs program Today Tonight implies **Marsden** paid boys for sex.

May 1996: Witness on Channel Seven repeats the implications.

August 1996: Wood royal commission into NSW Police Service investigates **Marsden**. He is cleared.

February 1999: Supreme Court jury finds Seven defamed **Marsden**.

November 1999: Damages hearing begins, at which Seven defends its broadcasts as truth.

February 2000: Truth witnesses testify against **Marsden**.

May 2000: **Marsden** testifies.

June 2000: **Marsden** calls Anita Cobby killer Les Murphy to testify.

November 2000: Hearing finishes after 214 days.

June 27, 2001: Judgment day. KEYS- Chronology

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