

RSB:SND

IN THE DISTRICT COURT
OF NEW SOUTH WALES

THE CHIEF JUDGE
THE HONOURABLE JUSTICE PRICE
AND THE JUDGES OF THE COURT

MONDAY 30 NOVEMBER 2015

**SWEARING IN OF HIS HONOUR JUDGE MARK BUSCOMBE SC AS
JUDGE OF THE DISTRICT COURT OF NEW SOUTH WALES**

The Honourable G Upton MP, Attorney General on behalf of the New South
Wales Bar Association
Mr J Eades, President, Law Society of New South Wales, on behalf of
solicitors of New South Wales

(Commission read)

(Oaths of office taken)

PRICE J CJDC: Judge Buscombe, on behalf of all the Judges of the District
Court I very warmly welcome you and wish you all the very best in your judicial
career. Attorney.

MS UPTON: May it please the Court. Your Honour Chief Judge, ladies and
gentlemen. Your Honour, on behalf of the State of New South Wales it is with
great pleasure that I congratulate you on your appointment to the Bench of the
District Court of New South Wales.

It would like to acknowledge your family and friends who are here with us
today to mark this important occasion. Your brother, your sister-in-law, your
niece and your nephews I am sure are very proud to be present here in this
court today.

I also note that your uncle, Mr Stanley Bruce Pitt, a 93-year-old veteran
of World War II, whom the French Government has recently awarded the
Legion of Honour, was unable to travel from Adelaide to join us, but I expect

RSB:SND

he is here with us in spirit today.

Your Honour, you bring with you to the Bench a distinguished legal career that spans more than three decades. Having grown up on the Central Coast of New South Wales, your Honour graduated from the Australian National University in 1982 with a Bachelor of Arts and a Bachelor of Laws. You were then admitted to practice as a solicitor.

During your Honour's early career you saw practice in firms in Sydney, as well as on the coast, and with the Public Interest Advocacy Centre.

In 1986 you joined the Commonwealth Director of Public Prosecutions in Sydney, and in 1990 your Honour was appointed director of the Civil Forfeiture Division of the New South Wales Crime Commission.

In 1993 you returned to the Commonwealth Director of Public Prosecutions as senior assistant director, thereby furthering your knowledge and expertise in the law on asset forfeiture.

Your Honour was called to the Bar in 1997, having read with Elizabeth Fullerton J, and I note that Fullerton J is here today as both a colleague and a friend.

Your Honour has developed a strong reputation amongst peers at Forbes Chambers as a person of high intellect, you are a fine lawyer and a very accomplished barrister.

You worked on both sides of the Bar in private practice, appearing for the Crown and its agencies and for the accused. Acting as junior counsel for the Attorney General, you appeared in a number of successful applications for guideline judgments, including those setting out aggravating and mitigating factors in break, enter and steal offences and dangerous driving causing death.

RSB:SND

Your Honour was also counsel assisting at a number of inquiries conducted by the Police Integrity Commission, and in 2009 you appeared for nine months as leading junior counsel for an accused in what became known as “the terrorism trial”.

Your Honour, your competitive streak in the court, or rather on the court, came to the fore at Forbes Chambers, and while I understand that various players’ commitments, joints and tissues have now committed the weekly Thursday night Forbes tennis matches to folklore, I believe your Honour remains an avid Sunday morning tennis player. I hope that is correct.

Your Honour was called to the Local Court Bench in 2009 and was sworn in on 13 October of that year. Your colleagues from the Magistracy have remarked that you are measured, you are a fine lawyer and, what is more, a fabulous bloke. Indeed, Deputy Chief Magistrate O’Brien noted that your Honour has made a significant contribution to judicial education with your presentations at events for the judiciary. Your knowledge in the areas of subpoenas and asset forfeiture is first rate.

I am assured that everyone at the Local Court is extremely happy that your Honour has been elevated to the District Court. Indeed Deputy Chief Magistrate O’Brien remarked that from your early career you had “trial judge written all over you”. However, I am also advised that your departure from the Local Court will be a huge loss and you will be greatly missed. It is clear that the respect your Honour commands amongst your colleagues in the legal profession extends beyond your proficiency in the practice of law.

Your Honour is known to be a careful and considerate person, who is extremely well liked by the staff of the Local Court. I am given to believe that the staff of the Downing Centre Registry very much enjoyed working with you

RSB:SND

because of your understanding and the respect you extended to each and every one of them. Your sense of humour and the capacity to laugh at yourself have endeared you to them.

I understand that on your final day as a Magistrate you walked the floor of the Registry to extend, and indeed to receive, fond farewells from the Court staff, and I hear that there were photographs, gifts exchanged and even tears shed, all demonstrating, of course, their genuine affection for you.

In the latter half of this year your Honour has been an Acting Judge of the District Court, presiding recently over criminal cases at the Sydney West Trial Court, and these past months will no doubt stand your Honour in good stead for your move to full-time place in the theatre of the District Court.

Indeed I am told the theatre is in your Honour's genes, as it were. The Valencia Cinema in Gosford, now of course a relic of history, was run by your family, I understand, and your interest in film has continued, with memorabilia from the Valencia's 1930s and 40s heyday forming part of your personal collection.

Your Honour is also known to be an avid reader of historical novels, with the works of Geraldine Brooks and Hilary Mantel being recently read by you, I believe. And, of course, your Honour is passionate about test cricket, another theatre of course, in which competitive spirit, technical expertise and fine judgment is required for success.

Your Honour is a man of wide interest, possessing a fine legal mind and an ethos that will be of great value to the District Court of New South Wales.

I congratulate your Honour on answering the call to the Bench and I wish you all very well. May it please the Court.

PRICE J CJDC: Thank you, Attorney. Mr Eades.

RSB:SND

MR EADES: May it please the Court. On behalf of some 29,000 humble solicitors of the State of New South Wales we congratulate you and rejoice in your appointment to this Court.

The Attorney and I have done many swearing ins and it is often I go through with a pen where all the parts have gone, but my approach will be slightly different, I wish to reflect upon your Gosford days in the public school.

Online *Encyclopaedia Wikipedia*, which is some obscure thing today, has published a listing of notable Gosford alumni. Curiously whilst two are listed, sadly none hail from the law. However, some of the more conscientious members of your group, displeased with the meagre nature, took it upon themselves to establish a virtual exhibition called *Notable Locals: A Central Coast Hall of Fame*. Oliver Wendell Holmes said, as part of this listing, "There is no friend like an old friend who has shared our morning days. No greeting like his welcome, no homage like his praise."

Far greater than scoring a mention on the Gosford *Wikipedia* page, your Honour's name and appointment as a Magistrate has featured prominently and no doubt this appointment will be similarly endorsed.

Your last posting as a solicitor was in the mid-SC and then you became employed by PICA, and then the Commonwealth Director of Public Prosecutions. The current Director of Public Prosecutions, Robert Bromwich SC, worked closely with your Honour. He would like to put on the record his comments that you were one of the brightest lawyers he has ever known. He further called your Honour "a man of the highest integrity and intelligence, who practices in a manner which is rigorously honest, efficient, highly regarded". Speaking your appointment he said that you "made a model magistrate and will make a model judge".

RSB:SND

When you went to the Bar you practised at Forbes Chambers, where you became a cherished colleague and a mentor to many young barristers, one of whom told me that you offered him the best professional mentoring that he had ever received, and that is truly high praise.

Today, when you were a Magistrate, it was agreed that your Honour listened to the answers you were given attentively, but your approach in appearing in court as a barrister was somewhat different. You were prosecuting and cross-examining one of the accused on the basis of phone records. In between your rigorous questioning the witness suddenly stood up, threw down his papers, and cried, "I can't go on. I'm guilty." There was moments of silence. Your Honour continued by looking down at your records and then said to the witness, "Now can we return to the call of 28 March?"

Your Honour's good humour, interested approach to life has won him many friends, as the Attorney has spoken of. Although it has been suggested that you have a tendency to have immediate, strong ideas when you first consider them, black versus white, however this is tempered by your determination to discuss your opinions and have shades of grey entered. Those people you speak to are most often your Honour's colleagues.

I am told that your Honour was a stickler for punctuality, notoriously so, and that on the extremely rare occasions when you were late, even by a minute, that was a source of great joy to your colleagues. In fact you were one of the very first to get to the Newcastle Local Court each day, and the stragglers amongst your brethren would sneak by your office door so you would not notice they had been late.

The Attorney has mentioned your personal fitness. Billy Jean King said that tennis is, "A perfect combination of violent action taking place in an

RSB:SND

atmosphere of total tranquillity.” The injuries you have sustained has increased that sense of tranquillity, and with your love of cricket you were no doubt late at night watching a pink ball fly through the air.

When your Honour was appointed a Magistrate you presided over a raft of cases, and the Attorney did not mention this, but there was a very significant one. It involved a criminal enterprise responsible for producing counterfeit education documents for international students. Your Honour’s approach and judgment in that matter was widely appreciated and highly regarded and acted on.

On a lighter note your Honour’s comments at the Bench have produced some comments and it is very difficult nowadays. With my generation we had characters on the Bar, the solicitors’ branch and even the Court for heaven’s sake, but you had involved yourself in a famous case involving a rugby league player. You observed, “The accused was significantly intoxicated, so intoxicated that he believed an EFTPOS machine was a telephone,” and that was just and deserved.

You have been an Acting Judge of this Court and the Attorney has seen fit to render your role a permanent one. It is a justly deserved elevation, a credit to your measured, experienced and faithful service you have rendered to the people of this State and to the law over the last 33 years. On behalf of the solicitors of New South Wales I commend you most heartily and wish you every success. May it please the Court.

PRICE J CJDC: Thank you, Mr Eades. Judge.

JUDGE BUSCOMBE: The Attorney General, Chief Judge, colleagues, friends and family, I would like to thank the Attorney and Mr Eades for those kind words. On thinking about what I would say today I became fixated upon the

RSB:SND

fact that the Attorney General's press release made reference to the fact that I had been in the law for some 33 years. I suppose I became fixated upon that statement for a number of reasons, not the least of which was that I realised it had told everyone that I was definitely getting on as they say.

In fixating upon the press release I reflected upon how I ended up going into the profession and all of the people that I have worked with or been involved with in cases over those 33 years. My interest in the law I have always thought goes back principally to John Mortimer's *Rumpole* series. I wish I could say that it was more that I had a noble calling, but unfortunately I cannot. I found both the books and the TV series great fun when I was young, and imagined that I would probably enjoy dealing with the sorts of unusual cases, not to mention the unusual people, that seemed to pass through Rumpole's chambers. I also probably wished that I, like Rumpole, could quote Wordsworth over a glass of claret, but that was something that always alluded me.

I have, of course, been incredibly fortunate on the long journey to this Court today and I owe a great debt to many people. My parents, although both having left school by the time they were 15, placed a great emphasis on the value of education. By way of example, my enjoyment of reading, which has been touched on, was always indulged by them with weekly excursions to the local library. I owe a great debt to my paternal grandmother.

As you heard I attended our local high school, which, unlike the school that is there today, placed great emphasis upon rugby league prowess, something I did not possess, unlike my brother, who is here with his wife and four of their six children. I was, however, fortunate that at least one teacher in the English department enjoyed having a day off to drive the debating team

RSB:SND

around all of Sydney and regional New South Wales from time to time. It was during those excursions that I began to enjoy the presentation of an argument, even one that did not have a great deal of merit, something I tended to specialise in later in life.

After high school I was again very fortunate to attend one of the country's great universities, the ANU in the nation's capital. I was particularly fortunate to be attending university during that all too brief period when the taxpayers of Australia understood that providing free university education was an investment in the country's future. I need to acknowledge that if that far-sided policy had not been implemented by Mr Whitlam's government, I would never have obtained the first rate education I did.

Apart from being able to enjoy all that university life offered in the mid-70s and very early 80s, I met a number of close friends, some of whom are here today and I thank them for their support over the years.

After university my first few years in the profession I found very difficult and considered giving the law away. The practice of law in Sydney in the early and mid-1980s struck me as being very cold and aggressive, and perhaps I was rather naïve at the time. As is obvious I ultimately persevered with the profession.

As you have heard I first joined the Commonwealth Director of Public Prosecutions' office in 1986, at a time when that office had only been in existence a short while. I was fortunate to join an office full of highly motivated, relatively young lawyers. It was there that I first met Judge Mark Marien and Judge Deborah Sweeney who are on the Bench with me today.

I received very great support from a number of senior people in the Director's office during the two stints I had there. During my second stint in the

RSB:SND

90s the legal staff who reported to me were dedicated professionals, who made my time there professionally enjoyable and enriching.

In 1997, as you have heard, I left the Commonwealth to commence practice at the private bar in Forbes Chambers. I had in earlier years been fortunate to have briefed members of Forbes to appear for the Commonwealth, or had seen them in action destroying the Commonwealth's cases. I read with, as you have heard, Elizabeth - now Fullerton J, who if I developed any skills as an advocate can take sole credit for them. Her Honour again does me a great honour by being present here today.

My time at Forbes Chambers was a very challenging but enriching professional experience. To be in the trenches with such a committed group of barristers was a unique time. I was in awe of the work ethic and dedication of members of Forbes Chambers during the more than a decade that I was there. Of course being able to seek the advice and assistance from such eminent practitioners as the late Paul Byrne SC, Tim Game SC, David Buchanan SC, Phillip Boulten SC, Peter Hamill SC, as his Honour then was, and Ian McClintock SC, who is sitting behind me, as his Honour then was, by simply knocking on their doors, was a very real luxury that I took full advantage of.

I also want to mention that it is often not easy for someone with a Crown background, such as myself, to attract support of the Bar from defence firms of solicitors. I was very fortunate that Michael Chalmers and Michael Marks, two wonderful criminal law solicitors, took a chance on me, to quote Abba. Over many years they gave me some great defence briefs and I owe them a considerable debt.

My time as a Magistrate has been a truly interesting and wonderful experience. I have received enormous support from all of my magisterial

RSB:SND

colleagues. In particular I acknowledge that without the support of Judge Graeme Henson, the Chief Magistrate, and Deputy Chief Magistrates Jane Mottley and Chris O'Brien, I would not be sitting here. I do want to specifically acknowledge the support and friendship I received from those Magistrates who sat with me in Newcastle and in the Downing Centre or Central on a regular basis.

Magistrates are the judges you have when you are not having a judge. They often have an almost unmanageable workload and are the primary face of the justice system for the majority of people who come into contact with it. The condition of some of the courthouses in which Magistrates are required to administer Her Majesty's justice is something nothing short of deplorable, given they reside in a rich, first world country in the second decade of the 21st century. By way of example in the last couple of years Magistrates on occasions sitting at Central, less than 500 metres away from this courtroom, have not been able to sit until rats and vermin in the courtroom have been caught. Despite what I consider to be a completely unacceptable situation, Magistrates and court staff, reflecting the professionalism that they have, continue to sit in that Court to ensure that those who might be entitled to bail were able to have a bail application made and determined in a relatively timely way.

I leave the Local Court with some considerable regret, given the tone of my voice that is obvious, but know that I am joining a Court that contains many fine lawyers, former colleagues and friends. In the short time that I have been an acting Judge and since the announcement of my permanent appointment I have received great support and encouragement from the Judges of this Court for which I am very grateful.

RSB:SND

Whatever I may have achieved since I have been a Magistrate, I do not think I would have done so without the support of Patrick Lennon, who has managed to combine being the full-time carer for his elderly mum, with being the part-time carer of this aging judicial officer, merci beaucoup mon ami.

I am acutely aware of the duties and responsibilities associated with sitting in judgment on other members of the community. With the support and assistance of my colleagues and the members of the profession who appear before me, I will endeavour to carry out those duties and responsibilities to the best of my ability. Thank you all for your attendance today.

PRICE J CJDC: Thank you, Judge. The Court will now adjourn.