

RSB:SND

IN THE DISTRICT COURT
OF NEW SOUTH WALES
JURISDICTION

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

MONDAY 8 MARCH 2021

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**SWEARING IN OF HIS HONOUR JUDGE CRAIG SMITH SC AS JUDGE OF
THE DISTRICT COURT OF NEW SOUTH WALES**

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The Honourable Mark Speakman SC MP, Attorney General on behalf of the
New South Wales Bar Association
Ms Juliana Warner, President, Law Society of New South Wales on behalf of
solicitors of New South Wales

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(Judge Smith's Commission read)

(Affirmations of office taken)

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PRICE J CJDC: Judge Smith, on behalf of all the Judges of the District Court
of New South Wales, I congratulate you and very warmly welcome you to this
Court. I wish you all the very best in your judicial career.

MR SPEAKMAN: May it please the Court. I acknowledge that we gather on
the land of the Gadigal of the Eora nation and I pay my respects to Elders:

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past present and emerging.

It is my great pleasure to congratulate you on behalf of the State and the
Bar on your appointment as a Judge of the District Court of New South Wales.
To your partner, Belinda, and your four sons, Toby who is 14, Jem 10, Audie 8
and Jude 5, to your mother Audrey and sisters Jo and Karen, welcome.

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Each of you shares this achievement with his Honour in some way.

Your Honour grew up in Penrith. You attended high school at
St Dominic's College and there you met two of your best friends, Cath and

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Dean, who are here with us today. You are the youngest of six children, there is Greg, Paul, Mark, Jo, Karen and yourself. Sadly, you lost your father, Trevor, when you were 20.

Your Honour's commitment and care for your family has followed through
5 to your four boys and your partner, Belinda. While growing up, you played cricket and had an abiding love for soccer, football. Your Honour played serious competitive soccer for the illustrious Mount Druitt Town Rangers. You enrolled in economics and later in law at the University of Sydney and juggled serious soccer with serious study.

10 In swearing in speeches like these, it is customary for friends and family to divulge slightly embarrassing anecdotes but in your Honour's case the many people consulted answered in the same way, "There are none to tell, he's just the loveliest person, extremely hardworking, family oriented and very humble." That is not to say your Honour is not without a sense of humour, indeed, quite
15 to the contrary and your Honour's harshest critics in that realm are your four sons. They are known to sigh at your dad jokes, particularly, when you wryly suggest how the rule of law might apply to particular circumstances requiring discipline. Your Honour's wry humour is legendary among your friends and colleagues and some have even suggested your seriousness and focus to be
20 funny in itself. This was evidenced when after being admitted as a solicitor in 1995, your Honour went to work for Cole and Butler Solicitors in Moree. There you rented a one bedroom apartment and furnished it with a folding camp bed to sleep in and a jaffle iron to take care of all your culinary needs. This, of course, is a reflection of the humble nature that so many speak of. That time
25 in Moree was formative. Here, deep and important friendships were formed.

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Your Honour was not one so much for partying, more of a deep personal connection was more your style.

On the banks of the river, your Honour liked to relax and have a laugh and invariably speak of your great passion for law. From arguing the particular
5 interpretation of the latest High Court case or a decision of the Court of Appeal to what was needed to increase education and training in the profession, these were the chats that you and many of your colleagues enjoyed.

From Moree, your Honour joined the Western Aboriginal Legal Service. This was also formative and forged in you a deep commitment to the issues
10 faced by Aboriginal people in our justice system. At Western Aboriginal Legal Service, you worked hard, churning your way through a high volume of cases, something you would become known for.

Your Honour holds much nostalgia for the days at Western Aboriginal Legal Service or WALs for short, so much so that you recently took your family
15 on an 11 night trip informing them they were in for a treat in taking the WALs tour. Your Honour played tour guide reliving those glory days through Brewarrina, Bourke, Dubbo, Wellington, Walgett and finally, Broken Hill. Your Honour added to your own knowledge of the circuit, learning that there are 14 skate parks and it is possible to visit all 14 in 12 days.

20 I am told your Honour always dreamed of becoming a public defender, driven by your deep desire to go into bat for disadvantaged people. The work of a public defender and a criminal lawyer is intense in volume and content and your Honour must have read through and looked at the inner details of some of the most heinous crimes.

25 When your Honour especially needs to decompress, you head up north

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to Hungry Head near Coffs Harbour and here you fish with your brother, Mark. You have just traded in a boat for kayaks well equipped with fishing gear. But this hasn't helped in actually catching fish. Your Honour is renowned for often returning empty handed but still the goal of decompressing, in a peaceful
5 environment with your brother, is achieved.

Your other pastime for relaxation, I am told, is musicals and one might easily guess your favourite is *Les Miserables*. You have watched the epic tale of ex-convict, Jean Valjean in London, America and here in Australia twice. He becomes a force for good in the world but cannot escape his criminal past.

10 That epic tale of progress from evil to good, from injustice to justice, from falsehood to truth, resonates.

Your love of the law runs through everything you do. Even your second born, Jem, is named after that brave older brother, defender of Scout and one who believes Tom will see justice, in Harper Lee's *To Kill a Mockingbird*.

15 Your Honour has worked on many notable and complex cases. You have appeared in more than 70 cases in the Court of Criminal Appeal. As Deputy Senior Public Defender in 2014, you worked on a case with the Aboriginal Legal Service, known as *TS v James*. At that time, many magistrates in the Children's Court and the Local Court were refusing to apply
20 the *Evidence Act* to forensic procedure applications. You advised the Aboriginal Legal Service on the legal issue, helped determine criteria for test cases, considered a number of matters as to merit and ultimately appeared successfully in the Supreme Court in a case which declared the law. It not only clarified the application of the *Evidence Act* but also confirmed the nature
25 of the proceedings as civil not criminal.

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I mention this case, not because it was high profile but because it illustrates your dedication and abiding interest in the work of all lawyers, of all courts and in helping lawyers and their clients to achieve justice according to law. You also advised the Aboriginal legal Service on a number of other
5 strategic litigation topics that did not result in litigation.

As a public defender, you appeared in the Court of Criminal Appeal in a matter well known to the criminal bar, *Parente v R*. The applicant, a lawyer, had been sentenced in the District Court on counts of supply prohibited drug and one count of supply commercial quantity of drug. The finding was that the
10 offender had not shown exceptional circumstances and a custodial sentence was imposed. The offender appealed. Two of the grounds of appeal, one of which was added following the decision of *Robertson v R*, raised the issue of whether the “principle” attributed to *R v Peter Michael Clark* had any continuing application. That “principle” is often stated as being that in cases of drug
15 dealing to a substantial degree, a sentence of full-time custody must be imposed unless there are exceptional circumstances. You submitted that this was an impermissible restraint on sentencing discretion. The Court agreed and held that the principle should no longer be applied. Having found error, the Court was required to re-exercise the sentencing discretion.

20 Your Honour has a longstanding commitment to the education of practitioners. Your mentorship has been the springboard for many others, from the Aboriginal Legal Service to the Public Defenders. At Public Defenders, you mentored those going into their first murder trial. There you developed a course for junior barristers, coordinating that with other public defenders.

25 You became a mentor in a more formal sense when you became involved with

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the Australian Advocacy Institute in 2002. You have reached a wide audience as a board member and senior instructor. You have taught across Australia and overseas from Hong Kong to England to Italy. You have never stopped mentoring. As a public defender, you were involved in training and education
5 for the profession including organising the well-attended annual conference.

When new rules came in for victims of sexual assault giving evidence, you conceived the idea for the vulnerable witness program and swiftly brought it into being. You are renowned for your deep commitment to knowledge sharing and the education of practitioners, driven by desire to quite literally
10 raise the bar.

Your Honour is un-Googleable. One reference on the internet says, "Craig Smith doesn't have a public profile." A Google search produces nothing. This is in keeping with your Honour's humble and modest disposition. You are well known for not wanting to draw attention to yourself as that would
15 waste precious time that could be more fruitfully spent just getting on with it.

Your Honour, throughout your career you have followed each step in the belief of what is noble and true to the rule of law. Your commitment to the rule of law is second to none. As you make the transition now from advocate to judicial officer, a quote from Victor Hugo in *Les Miserables* takes on particular
20 significance:

"Before him he saw two roads, both equally straight; but he did see two; and that terrified him, he who had never in his life known anything but one straight line. And, bitter anguish, these two roads were contradictory."
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Where once your Honour would have been tasked with one path, one side of the argument, you will now often have to face a choice between two contradictory roads. I have no doubt that the values and judgment that have

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led your Honour to this point will serve you well in your time on the bench.

Judge Smith, your appointment is an acknowledgement of your skills, expertise, specialised knowledge, hard work, dedication and personal sacrifice.

5 Congratulations on your appointment and I offer you warm wishes for your career on the Bench.

PRICE J CJDC: Thank you, Attorney. Ms Warner.

MS WARNER: May it please the Court. I acknowledge the Gadigal people of the Eora nation, the traditional owners of the land on which we meet today,
10 and I pay my respects to their Elders: past, present and emerging. I would also like to acknowledge any Indigenous Australians present today.

I come before the Court on behalf of the solicitors of New South Wales to offer my congratulations and wish your Honour well in your appointment to the District Court of New South Wales.

15 Mindful of the very important role relationships have played in your Honour's life, I would like to acknowledge the many family members and friends who are celebrating with you today and, in particular, all the lucky young fans of yours who are getting a day off school. Now, since being admitted to the role of solicitors in July 1995, your Honour has distinguished
20 yourself by your formidable work ethic; commitment to access to justice; and persuasive advocacy style.

Before being called to the Bar, your Honour had formative experiences at both Legal Aid New South Wales and the Western Aboriginal Legal Service. Your colleagues from this time still recall your keen sense of social justice and
25 a sense of humour said to be as dry as the landscape of the Central West, and

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that is pretty dry.

Decades later, your Honour would reconnect with these roots and sounds like skateboard parks too when you delivered an advocacy skills workshop in Dubbo.

5 Your Honour is a beloved instructor and now Director of the Australian Advocacy Institute or AAI which routinely takes you across Australia and even the world although not right now.

Your Honour's early experience and burgeoning expertise in criminal law led you to Samuel Griffith Chambers, one of Australia's premier law chambers.

10 Your Honour is still remembered fondly at 'Sammies' with one silk recalling your Honour as a gifted reader who would become one of the State's finest advocates. In her own words:

"He is a great loss to the Bar as an advocate but will use his skills as a judge to benefit the legal profession."

15 This is a recurring theme with members of the Bar, they are not quite sure whether to celebrate or cry. To quote another barrister from 'Sammies'

"You want to be happy but hello, what about the rest of us?"

20 Your colleagues have been very effusive about your skills as an advocate which is ironic because I understand that one of your greatest strengths is the economy of your language. To quote a fellow advocate:

25 "He only speaks when he needs to. He doesn't adhere to the 'spray and pray' approach. When he raises a point or objection, people take notice."

And I have to say, I'm going to take that spray and pray approach with me.

In 2004, only a couple of years before joining the Public Defender's
30 Office, your Honour appeared before Judge Ann Ainslie-Wallace, now Ainslie-Wallace J of the Family Court. Your Honour was defending a criminal matter

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in the District Court but without knowing you were also being head-hunted.

Ainslie-Wallace J has had a long association with the Australian Advocacy

Institute and remembers talent spotting you as a good prospect to join the

Institute's teaching faculty.

- 5 "There was something about his clear, calm and very persuasive manner in Court that singled him out as a good advocate, she says."

Your association with this organisation has been a long and productive one.

- 10 And through the AAI's international teaching program, it has taken you around the world.

It has taken you to Italy where your Honour once booked accommodation which was so far away from your colleagues that to avoid a long commute on a bus, you found yourself curled up on Ainslie-Wallace Js spare sofa - Ah, the

- 15 glamour of international travel for business.

It has taken you to England, for the prestigious UK Advocacy Training Counsel at Keble College, Oxford University. Your Honour's contribution along with fellow instructors Ainslie-Wallace J, Grant Brady SC and Murray Aldridge J showed off the true depth of talent amongst antipodean advocates.

- 20 But most importantly, it has taken you to where you want to be; to the heart of the State's courtrooms and to the practice of justice in New South Wales.

In 2017, while serving as the Deputy Senior Public Defender, your Honour formed a committee within the AAI to improve the standards of advocacy of lawyers dealing with vulnerable witnesses. This followed the

- 25 often-gruelling findings of the Australian Royal Commission into Institutional Responses to Child Sexual Abuse.

The resulting program recognised the great sensitivities involved in

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questioning witnesses who are vulnerable, either because of their age, physical or mental impairment or any combination of those factors.

The Vulnerable Witness workshop, headed in part by your Honour has now been successfully conducted in Sydney and Brisbane as well as a pro-
5 bono workshop for the Aboriginal Legal Service in Darwin.

This example, like so many other, illustrates the unifying thread that runs throughout your diverse and successful professional career, a commitment to ensuring that our justice system is accessible, fair and humane for all of those who have need of it.

10 I would like to conclude today by returning briefly to another swearing-in, this time of Judge Timothy Gartelmann in late 2017. In his public remarks, he paid tribute to your Honour and went on to note:

15 “In recent years, we have become mutual sounding boards and I have benefitted greatly from your clarity of thought. My apologies, Craig, for my treachery in abandoning you for the Bench. I am going to miss my exchanges with one of the drier senses of humour I have known, even in the law.”

Well today, your Honour, you have the last laugh. Your Honour has now
20 thrown off any ‘abandonment issues’ and will now join Judge Gartelmann on the very same Bench to which he was appointed.

Your Honour’s life story shows how suitably qualified you are for this judicial appointment and how your Honour will bring a wealth of knowledge, experience and good sense to the District Court of New South Wales. You will
25 be make a very fine judge.

The solicitors of New South Wales have every confidence you will be an exceptional judicial officer.

On behalf of the more than 36,000 solicitors of New South Wales,

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congratulations, your Honour. May it please the Court.

PRICE J CJDC: Judge Smith.

JUDGE SMITH: I would like to begin by acknowledging the traditional owners
of the land on which we meet today. I would also like to pay my respects to
5 Elders past and present.

Chief Judge, Mr Attorney, Ms Warner, fellow judges, former colleagues,
my family and friends. Thank you, Mr Attorney and Ms Warner for your
generous and kind words and for simply being here today. I should add that
what you said about *Les Mis* and the trip to Moree is entirely true, perhaps
10 regrettably.

Thank you, Chief Judge, and to the other members of this Court for the
incredibly warm welcome that you have all given me. I am very grateful to
everyone who has taken the trouble to be present in one way or another today.

I would immediately like to acknowledge the support and presence of my
15 family and friends. As has been noted regrettably, my father passed away
some time ago but I trust he is here in spirit. My mother and father raised six
kids. To me it always seemed like we had a lot, I do not think that was always
actually the case. I saw both of them work very hard, very diligently in different
roles over time. Set against that context, they instilled in me and I think my
20 brothers and sisters the importance of hard work but also decency. To Mum
who is watching this remotely, that is, assuming (a) my sister set it up correctly
and; (b) Mum connected correctly, both of which are not safe assumptions. I
thank you, Mum, for your unfailing support and love. To my brothers and
sisters, despite the simplicity of our surname, it is really clear that we are all
25 very different people with different roles and different jobs, something I really

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appreciate about our family and I would not have it any different. When I think of the differences, I also think of the common themes, your support, your good humour, your decency, your directness. I will always value those things, perhaps not so much the last one but, thank you.

5 I also thank my two best friends from school, Dean and Cath, who have been with me all the way along. I thank you for your friendship, your smiles, your families, our laughs and your never ending support.

When I started work in Moree and could I just add that I had actually borrowed my sister, Jo's red Ute, to drive to Moree and Jo is thankfully present today. When I started work in Moree and later with the Legal Aid Commission and with the Western Aboriginal Legal Service, WALs, I did not think for a moment that I would land in this moment. I understand now that those experiences shaped me as a person but also as a lawyer. In each of those places I worked and learned from some truly special people. There are many people but also places I am grateful to and for. The patience and experience of colleagues in Moree, the appearances in Boggabilla and Mungindi Local Courts, the families met and learnt from, the solicitors and the staff in the Legal Aid Commission who in what is relentless work have the work ethic, the skills, the compassion and good humour to continue to perform such important jobs for our community.

The colleagues and field officers from WALs, those road trips to, and work at, places like Bourke and Bre and Gill and Broken Hill. The exceptional passion, energy and ability of the WALs' lawyers. That was a place that spoke to me, personally, about what you should be and what you should do; the patience of and the lessons learnt from the experienced magistrates in all

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of those places, for which I am eternally grateful.

I have had the great benefit at either end of my time as a public defender to work at the private Bar in two places, both of which were just so good to me; both of which I felt lucky to be involved with and from which I will carry lifelong
5 memories and friendships. I thank both floors for the time I was permitted to work there.

I pause to thank his Honour Judge Gartelmann, as has been noted by Ms Warner. When his Honour Judge Gartelmann was a barrister we spoke often, more often about appellate cases and I benefitted greatly from his
10 advice, his precision of thought and his humour.

My work more recently at the private Bar has allowed me to work with many exceptional junior barristers. I hesitate to use the word "junior" though because to me they never seemed junior. They made me look better than I know I was, I learnt and it was emphasised to me the importance of the
15 pause and the nod, particularly, when it was clear they knew much more than I did. But above all the joy of working on hard cases with such good people, for families and people in hard places. Thank you.

I thank all my clerks over this time and more recently, Ryan Colerero for his friendship and support.

20 I would also like to thank the many prosecutors I have worked with over the years both in appellate work, jury work and the shorter matters, there have been so many and so many skilled prosecutors. Over those years I have formed many friendships with advocates on both sides of the table. Even in tough cases, emotional and hard fought ones, there is almost always a
25 handshake after the event and I loved that about our work. I especially thank

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the Director for his presence here today.

Present also today are three former or current senior public defenders, Judge Zahra, Ierace J and Belinda Rigg. I have had the great pleasure to work with each of them and learned from them. Not necessarily physically present today are the many other public defenders that I have worked with, present or former. Thank you to each of you.

I think as is clear, I valued every moment that I was a public defender, I loved it. I learnt many things during that time but I particularly learned from the late Tony Parker, Parker as we knew him, many things but two stand out. The first, that it was important to be fair dinkum, that is, not muck around, get to the issue. Parker believed, as do I, that juries and judges quickly see that. Second, to do the important cases. What he meant by that was not important in terms of profile but in terms of the importance of strong representation in what might be considered to be the most distasteful of cases, the context being the proper administration of justice.

I would also like to thank Ruth Hazelwood in a real sense, the soul of the PDs for all of her support and encouragement over the years; to my clerks, Renee and Colin during my time at PDs, thank you.

A link to a lot of my work at WALs, the private bar but particularly, the PDs was the influence of Judge Yehia. I thank her Honour publicly for all that she has taught me as a person, a lawyer and an advocate. I feel very lucky to have benefitted from her great passion for the law and justice.

In my second trial ever, it seems just a moment ago, I appeared before her Honour, now, Ainslie-Wallace J in a jury trial, it was for an Indigenous man from Bourke. I was nervous enough throughout that trial but became more so

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when her Honour towards the end of it, invited the Crown and I up for a cup of tea. It was not long after that that I began teaching advocacy. Simply put, that was solely because of Ainslie-Wallace J. Advocacy and teaching it has always been and just remains a joy, I still to this day get chills up my spine when I see
5 someone move on. I have learnt from many advocacy teachers in Australia and overseas but I wish to publically acknowledge a few. To Felicity and George Hampel, thank you. To Grant Brady, I thank you for all of your support and advice. To all of the AAI teachers, thank you, and I will see you very soon hopefully. To Scott Wallace, the general manager of the AAI and one of the
10 loveliest and most generous men I have ever met, thank you.

To come back to Ainslie-Wallace J and that cup of tea, which I will never forget, I have learnt so much as a person, advocate and teacher from you and will continue to do so, thank you.

I am really happy to have other members of our family here today. Judy,
15 Michael, Lisa, Molly, Sadie and Lola and from a distance Montana, thank you for being here.

To our boys, that includes you, Jude. We are so proud of who you are and who you are becoming. We are so lucky to be your parents. I hope you know, all of you, or will come to know the beauty that lies within each of you.

20 To my partner, Belinda, thank you for just being you, I really do not know how you do everything you do. Thank you for your patience and support during all of the cases. Times when although I might have been physically present, I think we both know and all of us know, it was likely that I was not otherwise present. I find myself luckier to be your partner as each day passes,
25 thank you for your love and support.

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It is a great honour to be appointed to this Court and I am very conscious of the great responsibility that attends it. I will work very hard in the hope that I can live up to that responsibility. I thank everyone for being here today. It is greatly appreciated. Thank you, Chief Judge.

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