

Swearing In Ceremony of the Honourable Terence Lionel Buddin SC as a Judge of the Supreme Court of New South Wales

IN THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT

SPIGELMAN CJ
AND THE JUDGES OF
THE SUPREME COURT

Wednesday 30 January 2002

SWEARING IN CEREMONY OF THE HONOURABLE TERENCE LIONEL BUDDIN SC AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

1 BUDDIN J: Chief Justice, I have the honour to announce that I have been appointed a Judge of this Court. I present to you my Commission.

2 SPIGELMAN CJ: Thank you, Justice Buddin Please be seated whilst the Commission is read. Principal Registrar, would you please read the Commission.

(Commission read)

Justice Buddin, I ask you to rise and take the oaths of office; first the oath of allegiance and then the judicial oath.

(Oaths of office taken)

3 Principal Registrar, I hand to you the oaths to be placed amongst the Court's archives. Sheriff, I hand to you the Bible so that it may have the customary inscription inserted into it in order that it may then be presented to Justice Buddin as a memento of the occasion.

4 Justice Buddin, on behalf of all of the Judges of this Court and on my own behalf I welcome you to the bench of this Court. Your Honour has a quite unique combination of public positions stretching back over many years. The uniqueness lies in the fact that they are equally distributed between prosecution and the defence sides in the criminal record. It is a combination which is rare and which I know will be of great value to the Court for many years ahead and I look forward to serving with you on this Court for those years.

5 THE HONOURABLE R J DEBUS MP ATTORNEY GENERAL OF NEW SOUTH WALES: Your Honour, on behalf of the New South Wales Bar and the legal profession, it is indeed my great pleasure to have this opportunity today on the occasion of your induction as a Judge of the Supreme Court to express my sincere congratulations to you on this latest step in what has already been a distinguished career.

6 Your academic record reveals, I regret to say, a concerning early trend to itinerant gadabout behaviour. Starting serenely enough with an education at Barker College, you obtained a Bachelor of Arts and a Bachelor of Laws at the University of Sydney, before moving on to that hotbed of radicalism, Oxford University, to obtain your Bachelor of Civil Laws, and culminating in a final gesture of youthful rebellion, your Masters of Law at the University of Illinois.

7 Between 1975 and 1981, you worked as a lecturer, and subsequently as a senior lecturer in Law at the University of New South Wales, passing on the fruits of a misspent youth teaching criminal law and clinical legal experience. It is alleged that contemporary photographs of the period show a shadowy, hirsute, denim-clad figure with a megaphone and a collection of political badges and stickers, one can only hope to have been your Honour's evil twin brother, now safely under lock and key.

8 Consistent with your open and democratic approach to legal studies, you were one of the original founders of the

Redfern Legal Service, the Kingsford Legal Centre, and the Arts Law Centre. You also served on the respective management committees of those centres which not only continue to serve the interest of the community today, but have been the inspiration for the establishment of similar centres elsewhere in the State and, indeed, across the country.

9 Between lecturing and establishing community centres you also found time to co-author a book, "The System of Criminal Law: cases and materials". It was published in 1979 and became a standard casebook for students and practitioners alike. Your passion for criminal law is also evident in the numerous articles that you published on the subject.

10 During the mid 1980s, you practised in Sydney as a solicitor, initially in the partnership of Barron, Stevenson & Buddin. The partnership operated out of Chinatown and specialised in an unusual mix of entertainment law and criminal law. Your diverse clientele could include the members of INXS and suspected armed robbers all sharing waiting room magazines. During this time in practice as a solicitor you acted in a number of what have become leading criminal cases. *Gallagher v R* saw the High Court establish new rules on the introduction of fresh evidence. In *Quarty v R*, you pleaded hearsay provocation and you were the first solicitor to take instructions - and would later appear before the High Court - in the trial of the late Lionel Murphy J.

11 You quickly established yourself as a well-regarded and clever advocate with a keen sense of humour. One colleague recalls a morning in the Downing Centre where the magistrate called for matters for mention. You approached the bench and announced in chilling tones to a packed courtroom, "I am here for blood". All eyes now upon you, you continued calmly to say, "Mr Kevin Blood, your Worship, matter 3 on your list, I believe".

12 A passion for cricket has seen you represent the University of New South Wales in first grade. As your practice developed you added sports law to your area of expertise; although some less well-disposed acquaintances suggest that this area of your practice represented a hollow sham, designed only to enable you to meet cricket stars.

13 In 1987 you transferred to the role of barristers and practised at the private bar until 1990. Between 1990 and 1995 you served as in-house counsel in the Sydney office of the Commonwealth Director of Public Prosecutions. During that time you also became a valued teacher for the Australian Advocacy Institute.

14 In April 1995, you were appointed Director of Public Prosecutions for the Australian Capital Territory. This was a fitting appointment considering your dedication to justice and your immense experience in, and passion for, criminal law.

15 On leaving that role, you were appointed in New South Wales as Senior Public Defender in 1998, and then as Crown Advocate in 1999, a key Crown Law post - of considerable antiquity - which necessarily entails frequent interaction with the Attorney General of the day.

16 In the year 2000, within, as I recall, hours of learning that I had become Attorney General, you relinquished this august office and returned to a successful career at the private bar.

17 Most recently you have demonstrated a forensic skill and authority whilst acting as counsel assisting the Police Integrity Commission in an extremely high profile and long-running matter, Operation Malta.

18 Of the many terms of praise heaped upon you by your colleagues, most relate to the compassion and understanding you bring to your work, your kindness and courtesy to those around you, and, not least, your belief in fairness and access to justice for all members of the community.

19 You have behind you - and, I do not doubt, before you - a distinguished legal career. I am delighted, yet again, to be welcoming somebody of such outstanding ability, along with such wisdom and experience to the Supreme Court bench. I do ask your Honour, nevertheless, to do what you are able to to curtail the activities of your evil twin.

20 May it please the Court.

21 MS K CULL PRESIDENT LAW SOCIETY OF NEW SOUTH WALES: Chief Justice, may it please the Court, on behalf of the solicitors of New South Wales, it is my great pleasure to congratulate your Honour on your appointment as a Judge of the Supreme Court.

22 I adopt all that the Attorney has said in relation to your Honour's professional history and eminent qualifications. The Attorney has most eloquently and comprehensively covered those matters and rather than reiterate the same I would just like to simply say a couple of words from the perspective of the solicitors' arm of the profession.

23 Your experience as both prosecutor and defender will enhance the expertise of the bench in criminal law matters. The solicitors of this State will uphold the independence of the judiciary and the respect for the bench's decisions in criminal law matters is of vital significance to the community. This is a most popular appointment and the solicitors of this State are very pleased with this appointment, your Honour, and I would really just rather say that we congratulate you and wish you many satisfying years on the bench.

24 BUDDIN J: Chief Justice, your Honours, Mr Attorney, Ms Cull, members of the profession, ladies and gentlemen. May I commence by expressing my gratitude to the Attorney General and to Ms Cull for their generous words of welcome.

25 Indeed, it is a similar sense of gratitude that I feel when I reflect upon the numerous opportunities that have been extended to me during my career. I was able to go to law school at a time when not only were Commonwealth Government Scholarships available, but the entrance requirements were nowhere near as rigorous as they are now. Similar good fortune has prevailed until the present time. I am mindful of the fact that were I to be in another professional calling, then, given my age, I would in all probability now be regarded as surplus to requirements. It is a blessing for me that in the law, experience accumulated over an extended period of time, is seen as an asset.

26 I consider myself to have been very fortunate to have had the opportunity to undertake post-graduate studies overseas. I had my first taste of academia whilst in the United States. I was particularly impressed with the clinical programs that were on offer in the United States law schools and was delighted to later become associated, as has been adverted to by the Attorney, whilst on the Faculty of Law at the University of New South Wales, with the establishment of Kingsford Legal Centre. That and similar initiatives were made possible only because of the positive leadership provided by successive Deans who saw the Law School as not only part of the legal world, but also the broader community.

27 Another feature of the United States legal system that made an impression upon me was the frequency and seemingly effortless facility with which individuals moved laterally between academia, the practising profession, the business community and government service. Needless to say, especially given my own experiences, I believe that, where appropriate, such a culture of mobility has benefits for everyone. I, for similar reasons, am of the view that the legal system is particularly well served by lawyers who are prepared to appear, and who are equally at ease appearing on either side of the record. As the Attorney General's reference to Mr Blood demonstrates, the name of one's client can assume particular significance. One can readily understand the anxiety of counsel appearing for an accused man charged with importing cannabis resin who had to announce that he appeared for Mr Hash.

28 One of the most rewarding professional experiences that I have had was as the Director of Public Prosecutions of the ACT. It is somewhat unusual for a practising barrister to get the opportunity to head an organisation and to manage its operation. I thoroughly enjoyed my time there, particularly as I had the opportunity to perform a mentoring role for what was essentially a young professional staff. I also relished the challenge of having to make critical prosecutorial decisions such as whether to institute, or continue, or terminate proceedings, or to lodge appeals against sentences considered to be manifestly inadequate. The importance of making those decisions, which are often very difficult, was magnified as far as I was concerned, because I was acutely aware of the trust which is reposed in the hands of the person who is required to act as a totally independent prosecutor.

29 More recently I was privileged to observe at first hand the very important contribution that is made to the effective functioning of this community's Criminal Justice System by the splendid lawyers at the Public Defender's Chambers.

30 Important as events are in shaping one's life, it is ultimately however the impact which other people have on one that enriches an individual's journey. And so it has been for me. I have had a wonderful array of teachers and mentors, too numerous to mention, who have been an inspiration to me. I would like also to acknowledge the many outstanding lawyers that it has been my privilege to meet and, in particular, those involved in the various institutions with which I have been associated, namely, the Commonwealth, New South Wales and ACT DPP offices, the Crown Solicitor's office, the Police Integrity Commission, as well as the Legal Aid Commission. Frederick Jordan Chambers where I started and recently ended my life at the bar, will also retain a special place in my affections. I would also like to personally thank each and every one of you who have taken the trouble to attend this ceremony.

31 I would like to publicly acknowledge the part that my parents, Ailsa and Gordon, have played. They provided a loving and caring environment in which to grow up and have been an ongoing source of enthusiastic support ever since, as have been my brother, Chris, and my sisters, Maguy and Catherine. I would like to pay particular tribute to Chris and Catherine for having made the trip from their respective homes on Jersey in the Channel Islands to be here on this occasion.

32 Without the ongoing love and support of my wife, Penny, and our children, Isabelle and Hugh, I would simply not be sitting here today.

33 It is said that one learns much more from one's failures than from one's successes. It is also said that our greatest teachers are our family. If that be the case, then I should record my indebtedness to my own family for reminding me, upon what appears to be a daily basis, of those two lessons.

34 I would also like to take the opportunity to record the fact that there are three people whose lives and passing have deeply touched me and helped to shape my life. They are my friend, John Kirkwood, my father, and daughter, Charlotte, who did not survive infancy.

35 For a number of years I have been fortunate enough to be able to indulge my interests in the law and cricket simultaneously whilst serving as a Code of Conduct Commissioner for the Australian Cricket Board. Prior to that I was, for many years, Chairman of the Judiciary Committee of the New South Wales Cricket Association which has responsibility for all matches played in the Sydney Grade Cricket Competition. There was one experience from that period which may serve as a portent for things to come.

36 Normally proceedings arise following a complaint made by an umpire about a player's behaviour during the course of a match. On this particular occasion, the umpire at the bowler's end complained that the batsman, whom he had just given out LBW, had displayed dissent as a consequence of that decision. The umpire said that although he had clearly seen the batsman's lips moving he had been unable to discern what had been said. Accordingly, the dissent consisted of relatively innocuous facial expressions and other gestures. The batsman/defendant was presented with an exquisite dilemma - should he attack or defend?

37 The batsman assured the Tribunal that it was an essential part of his case to demonstrate that he had been the victim of an appalling decision. In order to recreate the scene for the Tribunal with as much authenticity as he could muster, the batsman not only repeated verbatim what he had said to the umpire upon being given out, but did so at precisely the same decibel level. He spoke forcefully and in full quadrophonic sound. As a result there was little room for misunderstanding his views about the umpire's competence. By this time the batsman was in full stride and his voice reached a crescendo. He was now in full advocate's mode as he prepared to deliver the coup de grace. Stripped of the searing language and the early epithets, the substance of his submission was that if the umpire had been unable, as he had said, to hear those incredibly offensive words which had been shouted at him then that would explain why he had been apparently unable to hear the very obvious inside edge from the bat before the ball hit his pad. As Sir Humphrey of Yes Minister fame may have been moved to say, that was indeed a courageous submission.

38 As I ponder what lies ahead, I readily acknowledge that it is one's actions and words that really count. Nevertheless it is important, I believe, to state one's intentions at the outset. I feel comfortable in dedicating myself to the responsibility of applying the law in all its majesty, whilst always remaining aware of its frailties. I acknowledge that I will be confronted with areas of the law with which I am unfamiliar. I look forward to that and similar challenges. I am also very aware that it is an awesome responsibility to sit in judgment of others, but I undertake to bring an open mind and a full heart to each task as it presents itself.

39 As Buddha is reputed to have said, "The journey of a thousand steps starts with the first step". If that remark can be applied to judicial life then I feel ready, willing and able to take that first step however tentative it may be. It is a great privilege to have been appointed to this Court and I am very grateful for the opportunity which it provides.
