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Swearing-In Ceremony of the Honourable Peter Anthony Johnson SC as a Judge of the Supreme Court of New South Wales

THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT

SPIGELMAN CJ
AND JUDGES OF
THE SUPREME
COURT

Tuesday 1
February 2005

SWEARING-IN CEREMONY OF THE HONOURABLE PETER ANTHONY JOHNSON SC AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

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

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

(Commission read.)

Justice Johnson, 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 forms containing the oaths so they may be placed amongst the records of the Court and the Bible so that it may have the customary inscription placed in it and presented to his Honour as a memento of this occasion.

4 Justice Johnson, on behalf of all the members of this Court and on my own behalf, I welcome you to this Court. You have arrived here after a distinguished career at the Bar, particularly in the areas of criminal and public law. I look forward to serving to serving the people of this State with you for many years to come.

5 **THE HONOURABLE R J DEBUS MP, ATTORNEY GENERAL OF NEW SOUTH WALES:** May it please the Court.

6 It is my great pleasure to congratulate your Honour on your appointment to the Supreme Court Bench on behalf of the State of New South Wales. Your Honour has a distinguished history in the law as a Judge of the Supreme Court. I am confident that you will continue to provide a valuable contribution to the legal community in Sydney and to serve this State with distinction.

7 I know that your Honour is under no delusions as to the arduous nature of the work you have agreed to shoulder.

8 Your work will be hard. The hours will be long and the light of public scrutiny, rightly, will shine brightly upon your efforts. It is a burden that you and your fellow Judges shoulder willingly in the service of the law and we thank you for it.

9 The State's highest Court has seen many changes and reforms in recent years in an effort to keep pace with the ever increasing complexity of the law concerning technology and commerce and the regulation of civil life.

10 I should not shirk from mentioning the burdens we, in the legislature, inflict upon you with incessant refinements and alterations to the criminal law.

11 The Court has been, from time to time, the focus of some ill-informed even scurrilous media attacks, but such attacks proceed from ignorance. You join a bench renowned nationally and internationally for the breadth of its learning and rigour and diligence.

12 Your Honour has undertaken a long and assiduous apprenticeship in the law. You completed your Bachelor of Arts in 1972 at Sydney University and went on to receive your Bachelor of Laws in 1975 and your Master of Laws in 1981.

13 In 1976 you were admitted as a solicitor and worked in the then Public Solicitor's Office - admitted on the same day as Justice McColl, I believe. During this time, your Honour was also the duty solicitor in Courts of Petty Sessions, the solicitor in charge at Hurstville Legal Aid Office, and solicitor in charge in the Research and Advising Section. Your Honour was admitted as a barrister in February 1982. I understand that you read with Colin O'Connor who is now his Honour Judge O'Connor QC of the District Court.

14 You have specialised in the areas of administrative, criminal and appellate law and appeared before numerous inquiries. Recently, you appeared as Senior Counsel at both the Special Commission of Inquiry into the Waterfall Rail Accident and for the Australian Capital Territory at the inquest and inquiry arising from the ACT fires of January 2003.

15 In various disciplinary proceedings before the New South Wales Medical Tribunal, your Honour acted on behalf of the Health Care Complaints Commission. You advised the Commission on investigation and possible disciplinary proceedings arising from the Special Commission of Inquiry into Campbelltown and Camden hospitals.

16 Your Honour has also appeared on behalf of the Director of Public Prosecutions in appeals and other proceedings before the Court of Appeal and the Common Law Division of the Supreme Court of New South Wales. In a prescient display of judicial even-handedness you have also appeared for the defence in trial and appellate criminal proceedings.

17 The High Court has had the privilege of seeing you in action on a few occasions. Your Honour appeared for the Attorney General for the Australian Capital Territory in the case of Eastman v Director of Public Prosecutions in the ACT. Only those of us who have been involved in any matter involving Mr Eastman can appreciate some of the unique challenges you must have faced in that matter.

18 Your Honour, with Mr Glen Bartley as junior counsel, appeared in the Queen v Young, a case concerning sexual assault communications privilege and although your Honour did not win the matter, it is a tribute to your legal expertise and skill that the parliament later introduced amending legislation which actually implemented your arguments.

19 Your Honour was Assistant Commissioner for the Independent Commission Against Corruption during 2003 and 4, and you also have been a member of various committees, including the Justices Act Review Committee and the Professional Conduct and Criminal Law Committees of the New South Wales Bar Association. I should say that the President of the Bar Association has particularly asked me to convey his regret that he is unable to attend today's ceremony being otherwise detained at the presentation of new Silks to the High Court. No lesser duty would have prevented his attendance.

20 Naturally, all of this productivity results in a considerable pile of paper. I am told that you are notorious for having the most cluttered chambers in town. Apparently there is one-way access only in your Honour's chambers. I believe that the clean-up for your move to the Judges' Chambers has presented a challenge akin to one of the seven labours of Hercules. Such an amount of paper also reflects how greatly your Honour has contributed to legal research in Australia. Your Honour is the joint author with Justice Howie of the Supreme Court of Criminal Practice and Procedure (New South

Wales).

21 Moreover, you have had many articles published in The Judicial Review and the Australian Journal of Forensic Sciences.

22 Your Honour is learned and professional and extremely well regarded for your ability in the appellant law. Indeed, I understand you are noted for an ability to get through an immense amount of work, particularly demonstrated during the Waterfall Inquiry where your Honour read and mastered thousands of documents. This inquiry also clearly showed your Honour's dedication to any task at hand for during that inquiry your Honour went on a preplanned holiday to a remote island off the coast of Norway. Undaunted you arranged for material arising from the inquiry to be emailed to mainland Norway, printed and brought by boat to your island retreat. I say no more.

23 Your Honour is a devoted husband and father to two daughters. Your wife, Joanne Muller, is a solicitor and chairperson of a number of disciplinary tribunals, including the Medical Nurses Tribunal.

24 The breadth and depth of your Honour's experience makes you a most valuable addition to the Supreme Court Bench of New South Wales and I am sure that your position as Judge will be as successful and fulfilling as your career as a barrister and solicitor has been, and I offer you my best wishes on your appointment as Judge of the Supreme Court of New South Wales and congratulate you on your continued success.

25 **MR J E McINTYRE, PRESIDENT, LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

26 The famous philosopher and lawyer, Cicero, once said, "A room without books is like a body without a soul."

27 The sentiment of this quote is something that your Honour has taken to heart. It has been put to me that the written word is your life. I am told that you cannot pass a book store without purchasing volumes. I am also told that it is your greatest weakness.

28 When Cicero penned those words, the concept of publishing wasn't even a glint in his eye. The room he envisaged probably only had a couple of books lying around for effect. He certainly could not have imagined your Honour's chambers on the fifth floor of Wentworth.

29 I believe that on a recent trip overseas you were instructed by your family that no more books were to be acquired. You resorted to subterfuge, having tomes delivered to your chambers rather than take them home where, even the new storage area in the roof built for that purpose, was having great difficulty in accommodating your literary largesse.

30 When it comes to the printed word, you are described as being a bower bird, putting things away in case you may need them at a future date, and your collecting, I am told, is eclectic - submissions, articles, transcripts, obscure documents, duplicates - all kept for future reference. Your Honour's move to the Bench has occasioned what one colleague dubbed "the greatest cull in the history of chambers".

31 It is also said you have an incredible stamina that allows you to focus on the case at hand for lengthy periods. Briefing solicitors talk about conferences that went for four or five hours. One confided, "I was nearly expiring until his lovely secretary brought in a plate of Tim Tams and coffee", at which point your Honour, oblivious of the time that had transpired, commented with surprise, "Have we been in here that long?"

32 Apparently the generous supply of chocolate biscuits was much appreciated by the government solicitors who were more familiar with the regime of BYO tea and coffee.

33 Another solicitor tells me that you become so immersed in the subject that a short phone call sees you ringing off an hour later and a 4 o'clock conference means stumbling out into the dark at 8pm. "He is so involved and has a love of the law", he said.

34 During a three-week inquest, it was apparently your habit to go straight from the Court to the interview room and continue working through the afternoon, completely absorbed in the matter. After the second week, your solicitor, almost apologetically, asked if you wouldn't mind, but could she go out and have some lunch. Those appearing before you in Court might be advised that you are unlikely to be taking morning or afternoon tea adjournments. I am told that once your Honour takes on a case, you commit to it.

35 That ability to stick to something hasn't always been reflected in your clients however. The recent Waterfall Inquiry, which consumed a great deal of your time in 2003 and 2004, was initially a matter in which you represented the Coordinator General of Rail and the Director General of the Department of Transport.

36 As it has been put to me, a week is a short time in politics and the inquiry was very long. Over the course of the inquiry, one of your most challenging jobs was to explain the rationale for the frequent name changes of your client as the transport portfolio morphed into various restructures - first to the Transport Coordination Authority, then to the Ministry of Transport. You suffered the gross indignity of seeing a client disappear into thin air when the Coordinator General position was abolished, but then you gained another client with the inception of the Independent Transport Safety and Reliability Regulator.

37 Who would have thought the Waterfall Inquiry would go on for so long? Certainly not your good self. Believing that 18 months down the track was a safe bet to plan a holiday, you confidently booked a six-week sojourn to Italy and Norway only to discover that you would be away when submissions were due. The allure of Waterfall, however, was too great and you kept phoning in to see how your team was getting on.

38 While you worked on your travels, you have also travelled for work, going that extra mile. I am told that, once immersed in a medical case, you visited the tiny country town concerned, scrubbed up and donned hospital garb to enter the surgical theatre. Your companion claims that you certainly looked the part and may have missed your vocation. Those closer to you say that a propensity to faint at the sight of blood is what really precluded you from entering the profession of your father - who was medical superintendent at Royal Prince Alfred Hospital - your grandfather and, indeed, one of your brothers.

39 However, blood - the evidence and not the reality - has played an important part in your career. Your case involving Mr McLeod-Lindsay, accused of murdering his wife with a crowbar, turned on the blood splatters on his coat and the walls of his home.

40 Blood features prominently in crime, one of your Honour's specialisations. You probably have the dubious honour of having cross-examined almost every career criminal worth their salt in New South Wales. Assisting Coroner Glass into the disappearance of hitman, Christopher Dale Flannery, all of the colourful Sydney identities were said to be falling over themselves to be questioned, taking it as a slight of honour if they were not called.

41 The infamous Chopper Reid put around a story in relation to that matter that he knew something. Your Honour immediately flew to Tasmania to interview him in his cell. It turned out that he knew nothing and was unable to provide much assistance to your inquiries. However, you apparently supplied him with some material that he was later able to use in his book, to wit: You refused to shake his hand - a slight he took poorly.

42 While you may have eschewed intimate contact with Mr Reid, getting down and dirty with the criminal element is nothing new to you. Indeed, in your first year as a lawyer working in the Public Solicitor's Office - the precursor of Legal Aid - you were the duty solicitor at a variety of Local Courts.

43 One morning you went along to the old Burwood Courthouse and attempted to interview your client through a small peep hole in his cell door. A kindly probationary officer said, "Wouldn't it be easier if I let you in?" You agreed and the police officer led you through and closed the door.

44 When your interview was finished you discovered you'd been locked in and couldn't get out. "Hello", you inquired softly through the door. Your fellow inmate, more familiar with the situation that you now found yourself in, advised that a little more noise would be required.

45 The passing sergeant was somewhat surprised to find you and, once he chastised you, proceeded to go and tick off the young officer. Finding yourself incarcerated on the wrong side of the cell door, while an inauspicious start to your career, certainly failed to blight it. In fact, you quickly moved on to run the Hurstville Legal Aid Office where one of your colleagues was a fellow called Rod Howie. He has now, of course, taken on the appellation of the Honourable Justice Howie.

46 Your professional relationship with him did not cease after Hurstville, however, and the two of you collaborate most successfully on the undisputed leading Criminal Law Service for Butterworths.

47 I am also told by one of my former partners that whilst you were regularly appearing at Kogarah Court your ability to plead not guilty on behalf of almost all your Legal Aid clients had the enormous impact on the list that most of the other profession couldn't get matters listed for hearing. In other areas, your Honour has done much for charities and religious orders. There is a strong sense of public duty in your work. One matter in which you were involved, involved a priest and it turned into being a leading case on sentencing which went all the way to the High Court. Having a brother who is a priest has given you a deeper understanding of the church and a special interest in these matters.

48 Your Honour has been very fortunate to share your passion with the law with your wife Joanne, a solicitor who chairs a large number of medical tribunals. She suggests that the youngest of your two daughters, your 8-year old, may follow in her parents' legal footsteps. Apparently, "she has an answer for everything".

49 Your eldest daughter has footsteps of her own, or is that ballet steps. Perhaps as a sign of your devotion to Emily and Alexandra, you have made your own attempts at high kicking, I am told, principally at the school bush dances. I am advised, however, that when you and Joanne take a turn on the Ashfield dance floor, you are as mediocre as the other parents.

50 I know that your daughters are also choristers, who have made TV appearances through Carols in the Domain. I have not, however, been able to discover your Honour's talents in the vocal area.

51 While a lot of people know about the law, not all have your Honour's fantastic judgment. As one briefing solicitor has said, "In the past decade in which we have used him, he has never got into trouble. His is the best appointment I have seen in years without a doubt. New South Wales is very fortunate that he said yes."

52 Your written advices have been described as "works of art". Apparently, Judges frequently ask for your written submissions which, with the benefit of good cut and paste, seem to make an appearance in the final judgment. Justice Whitlam recently described one of your submissions as "a model of clarity".

53 Your Honour's excellent legal knowledge, not only about the relevant areas of law, but also about practice and procedures has ensured that you are highly respected by your colleagues and the judiciary. An example of that high regard is evidenced in the words of Chester Porter QC, who, upon hearing of your appointment, wrote: "You will be a modest Judge, although you have much less to be modest about than most. You have a sense of justice which, combined with your learning, will ensure that people receive a fair trial."

54 Your Honour, the solicitors of New South Wales can only concur. We wish you a long and very productive career on the Bench.

55 As the Court pleases.

56 **JOHNSON J:** Thank you, Chief Justice, I thank you both for those very kind words.

57 It is often said on these occasions that the words spoken are a little too kind. They have been again on this occasion, but I thank you very much for them.

58 I want to thank all of you, friends, family, colleagues - past and present - for coming here today. This is a very special day for me. It should be noted that you are all part of history. This is the first time that people have been searched on the way to a swearing-in. I thank you all for leaving your arms at

home or on the ground floor. Someone told me that if you wear red they won't search you, but I think that is meant to be a secret.

59 I have had, in the words of AB Facey, "A fortunate life". At a time such as this one thinks back to earlier life events. Life at the Bar and family life involves concentration on the present and the near future, but I have much to be thankful for in my life.

60 Sadly, both my parents passed away some years ago. More than one person who has spoken to me recently has commented that my parents would have been proud today. Their hard work and sacrifices opened many doors for me in my youth and they set standards which I have sought to apply in my life. There were five children in our family, Lex, David, Paul, Sue and myself. Sadly and suddenly, Lex died in 2002. He was a close friend as well as a brother. He would have been very pleased to be here today. David, Paul and Sue are here today together with members of their families. Some have travelled very long distances to be here. I would like to thank them for their love and support over many years which, in so many ways, has assisted me in life.

61 How and why did I come to the law? That is a fair question which barristers tend to ask themselves from time to time, sometimes late at night when surrounded by paper. And their families sometimes ask the same question. In my case, having finished school, there was no clear career path. Certainly it wasn't going to be medicine for reasons that have been adverted to, although my family did have a history in medicine. The Arts Law course at Sydney University provided the comfort of six years to consider options. During those years of study my interest in law grew, in particular, in the field of criminal law.

62 I was fortunate to obtain employment in the State Crown Solicitor's office as a legal clerk in the last two years of my studies starting in 1973. I worked mainly in the conveyancing section, grappling with, amongst other things, the mysteries of Crown land, western land leases, and Old System Title. Perhaps it was at that time that criminal law had greater attraction! I received a proper grounding in legal practice at the Crown Solicitor's Office. Thoroughness and care were emphasised and it may be that my experience in that office has given rise to some of the features of my practice which have been referred to, although in a somewhat exaggerated way from what has been said. I have been very glad that my contact with the State Crown has continued in my years of practice as a barrister.

63 Having been admitted as a solicitor in March 1976, my interest in obtaining work was in the practice of criminal law. In May 1976, I started with the Public Solicitor's Office. The mid 1970s were heady days for legal aid in this State. There was an expanding system of solicitors within the then Courts of Petty Sessions providing legal aid. The working day started for me in those early months in 1976 attending the cells behind Central Court of Petty Sessions. Then into Court for a range of pleas, mentions, bail applications and hearings. This was the practice of criminal law at the coalface.

64 As a young lawyer, the Central Court and cells were places of colour, movement, drama, sadness and, at times, humour. You saw a face of the criminal law in its opening chapter when the persons charged were first before the Court often hours after the event giving rise to the charge. And those events ranged from murder to swearing and everything in between. This work took me to other Courts over the years in Sydney, both Courts of Petty Sessions and the District Court.

65 There has been reference to the incident at the Burwood cells. I have to say it wasn't as bad as it sounds, Mr McIntyre. I do have a long and largely self-serving version of the event which I will give at another time. Some have said that a short spell on the inside probably did me good!

66 My work as a solicitor between 1976 and 1982 provided a grounding in the real world of criminal law. For me, the colour of the courts added to the black letters in the books. Although my work in this area was a long time ago, my memories and experiences of those times have had a significant influence upon my life and practice of the law.

67 During those years, I made many friends in the law. Reference has been made to my work with Rod Howie, now a Judge of this Court. We worked together at the Hurstville Legal Aid Office in the late 1970s. He covered Sutherland; I covered Kogarah. The Courts are a little different now to the way they were in those years. Since 1985, fortunately, we have been joint editors of the Criminal Law Service. I am very pleased to be jointing him on this Court.

68 I am grateful for the chance which I had to play a part in the legal aid system between 1976 and

1982. Many persons from that era in legal aid now sit on Courts in this State: The Supreme Court, the District Court, and the Local Court. I am glad to be joining them.

69 I came to the Bar in February 1982. Although my background was in criminal law, I wanted to practise more generally. I was most fortunate to be taken on by the fifth floor of Wentworth Chambers as the floor reader. I knew no-one on the floor at the time. I was a stranger who had worked as a solicitor on the legal aid side of criminal law. The willingness of the floor to take me on as a reader was an example of the kindness of the floor which I have experienced since then. I am very glad to say that, having arrived as something of an unknown quantity in 1982 on the fifth floor, I have stayed there throughout my practice at the Bar.

70 When he was sworn in as a Judge of this Court, in June 2000, Justice Whealy who was a close colleague on the fifth floor, said that the fifth floor had a "colourful and strong history". His Honour also observed that the structure of the floor was "one of great variety and strength" and spoke of "the overwhelming sense of friendliness and goodwill" amongst those on the floor. His Honour was entirely correct.

71 The members of the fifth floor, past and present, whom I have known over a period of 23 years are fine people and fine lawyers. For me, the members of the floor formed a type of extended legal family. I have made lifelong friends with persons whom I shared practice with on that floor. That has extended in the practice of law, with all its ups and downs, since 1982. I thank all of them. I wish the floor well and I am confident that the colourful and strong history, as described by Justice Whealy, will continue to be written.

72 I do not wish to list the barristers on the fifth floor, past and present, who have helped me in so many ways. To name some would not be fair to the many. However, I would like to express my great thanks to the floor clerk, Karen Walker-Flynn, who, for many years, has served the floor with dedication. Could I also mention Ciana Goodwin, who has worked tirelessly as my secretary for several years, and I am very pleased to say is coming with me to this Court as my associate.

73 I have been very fortunate in my areas of practice at the Bar. Over the years those areas have changed, often in unexpected ways. From practice in the criminal and civil Courts to the Coroner's Courts, the Medical Tribunal and Commissions of Inquiry, including the ICAC and the PIC, the work has always been interesting and challenging. At times my work has involved a concentration on inquiries. It has been satisfying work. It offers the chance to concentrate on a particular area in great depth.

74 This has included, in my case, some of the cases which have been referred to, areas - speaking generally and not exhaustively - which have included prisons, police, bush fires, rail accidents, the great tragedy of the Family Court bombings and murders of the 1980s, Christopher Flannery and cases of importance with the PIC and the ICAC. Often, changes for the better emerge from these processes. The role of the barrister in inquiries can be a very constructive one.

75 I had the good fortune to appear as junior counsel with many eminent senior counsel. I have learned a great deal from many persons in that capacity. One of the great strengths of the Bar is the opportunity it provides to barristers to work with a range of leading counsel from whom so much can be learnt. In my case, the leading person who played that role was Chester Porter QC who I am very glad to see is here today.

76 I first appeared as his junior in a contempt case in the Court of Appeal in 1985 and I appeared both with him and for other interests in a range of cases and inquiries in which he appeared over the years. His influence upon my practice of the law has been enormous. I thank him for it. The thoroughness in my approach to work, which has been referred to, flows very much from lessons I have learned in working as junior to him.

77 For me it was a near perfect life in practice at the Bar.

78 There have also been chances to play a part in areas of policy, law reform and legal education, both inside and outside the Bar. I have found this to be challenging and important work.

79 Paths in life sometimes cross and cross again. As an example of that I shall be starting on the sixth

floor of this building with chambers which are next door to Justice Whealy which, in turn, are next door to Justice Howie. I will be very glad for their continued friendship and assistance in the years ahead.

80 The most fortunate chapter in my life involves my family, my wife, Joanne, and my daughters, Emily and Alex. I wish to thank them for their love, patience and support. In recent years I spent much time out of Sydney on cases. Often the family of a barrister do not have an easy time. You tend to bring the work home with you either in a bag or the head or both. It is easy to have one's head in the legal clouds. Family life has been very important to me. In future, if my head shows signs of heading for the legal clouds again, as it probably will, I look forward to a return to earth through the happy involvement of my family.

81 I thank you all, once again, for coming today. I am very conscious that the road ahead will be challenging. It is both an honour and a privilege to be appointed as a Judge of this Court. I shall do my very best to satisfy the public trust which has been placed in me. Thank you very much.
