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ADAM J

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THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT



SPIGELMAN CJ
AND JUDGES OF THE
SUPREME COURT

Tuesday 28 July 1998

SWEARING IN CEREMONY OF

THE HONOURABLE MICHAEL FREDERICK ADAMS QC

AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

ADAMS 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.

SPIGELMAN CJ: Thank you. Justice Adams. Please be seated while your Commission is read. Mr YVescombe would you please read the Commission.

(Commission read)

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

(Oaths of Office taken)

Mr Acting Prothonotary, I hand to you the oaths to be placed in the Court archives. Sheriff. I hand you the Bible so that you may have the customary inscription inserted in it so it may be presented to Justice Adams as a memento of this occasion.

Justice Adams. on behalf of the Judges of this Court and on my own behalf I congratulate you and welcome you as a Judge of this Court. On a personal note may I say I look forward to your robust conviviality to the Court.

THE HONOURABLE J W SHAW QC MLC ATTORNEY GENERAL

OF NEW SOUTH WALES: May it please the Court, your Honour. Justice Adams, as Attorney General and on behalf of the Bar of New South Wales it is indeed my great pleasure to be able to congratulate you this morning on your appointment to the Supreme Court of New South Wales.

Your Honour was admitted to practice as a solicitor in 1969 following your graduation in law from the University of Sydney and of course after serving the dreaded articles of clerkship in a commercial firm.

However your working career as a lawyer really began somewhat adventurously as a legal officer in Papua and New Guinea. At the Public Solicitor's Office, in what was then still a colony, you specialised in crime and land law before becoming the Director of that country's Legal Training Institute, a body created to provide practical legal training for law graduates of the University of Papua and New Guinea.

That was the first step in your movement outside the strait-jacket of standard legal practice into education and reform of the law.

In 1975 your Honour became the Principal Legal Officer in the Administration and Policy Division of the Australian Legal Aid Office. That position gave you a senior role in policy development and the management of the Legal Aid Office. For a time you were Acting Deputy Director of the Western Australian Office of the Australian Legal Aid Office.

Your Honour was admitted to the bar in 1977 and engaged between 1977 and 1979 as a Public Defender. In 1980 you commenced a successful private practice at the Sydney Bar, specialising in the criminal law. You appeared in all the Courts, the High Court, the Court of Criminal Appeal, the Court of Appeal and the Supreme Court and the District Court, and

perhaps somewhat unusually for some members of the criminal bar, you appeared regularly for both the prosecution and the defence.

Your early success for the defence against Sir Gerard Brennan, as he would later become, in a Papua New Guinea murder trial where he appeared for the prosecution, gave you the probably unique distinction of a 100 percent record against the future Chief Justice. These and other successes saw your Honour involved in many other important trials.

Notably and recently you prosecuted in the trial of David Eastman over the murder of Australian Federal Police Deputy Commissioner Colin Winchester, and you appeared for the ACT Director of Public Prosecutions on the appeal.

Another important case involved your Honour as counsel for the Ananda Marga sect in the Supreme Court of New South Wales.

Adams QC's cross-examination of Mr Richard Seary at the Hilton bombing inquest has been described in J L Glisson's text on Cross Examination as "truly marathon". This is not in itself praise, but the fact that the interrogation is in part published and referred to in that work as "a polite invitation to the witness to acknowledge and explain the difficulty with which he is confronted" does indicate that other advocates could learn from the technique.

Your Honour also appeared for the prison officers involved in the Inquiry into the assault of Jamie Partic, an Inquiry that usefully led to significant changes in the operation of the fine default system and the prison system generally.

You acted for the Northern Territory Government in the Chamberlain trial and Inquiry and appeared for the successful applicant in the landmark *Georgiadis v Telecom* case in 1994. That case saw the Court accept the principle that s51(xxxi) of the *Constitution*, concerning the

requirement of the Commonwealth to acquire property on just terms, applied to the abolition of rights of action at law.

Your Honour has also acted as counsel assisting the Independent Commission Against Corruption in the Aboriginal Land Councils Inquiry and as counsel assisting the Nader Inquiry into certain Parliamentary allegations.

Your Honour has practised as a Queen's Counsel since 1987 and been a leader of the 4th floor of Wentworth Chambers.

Beyond advocacy, Michael Adams QC took an active role in the law, the legal profession and society.

Since 1991 your Honour has been a member of the Board for Social Responsibility of the New South Wales Synod of the Uniting Church of Australia. Between 1993 and 1997 you were a member of the Professional Conduct Committee of the New South Wales Bar Association, in 1996 a member of the Bar Council and in 1998 that Body's Honorary Treasurer.

In May 1995 I was pleased to appoint your Honour as a part-time Commissioner of the Law Reform Commission of New South Wales. A year later you became part-time Chairman of that Commission following the Honourable Mr Justice Gordon Samuel's appointment as Governor of New South Wales.

As Commissioner and Chairman your Honour has brought a great depth of knowledge and extensive practical experience to the work of the Law Reform Commission. You have been involved in a number of important references, including those relating to the adoption of children, sentencing, (including the current stage of that reference dealing with the sentencing of aboriginal offenders), partial defences to murder such as provocation, diminished responsibility and infanticide, the review of the *Anti-Discrimination Act*, the right to silence, the reviews of ss409B and 316

of the *Crimes Act*, a review of the *Listening Devices Act* and the use of video surveillance and the circulation of legal advice to Government.

Your Honour also chaired the Committee examining the law relating to food contamination extortion bids and that resulted in recent amendments to the *Crimes Act*. I hope your Honour will be able to continue that valuable work as Chairman of the Commission in the future.

From September to December 1996 your Honour was an Acting Judge of this Court - although perhaps I shouldn't mention that this morning - but the experience must have been satisfying as you have now accepted a permanent appointment to this Court.

It is entirely a matter for the Chief Justice as to which Division of the Court you are assigned but it must be said that you are unlikely to be characterised as a "whisperer" of the Equity Division. I say that as one who once shared a luncheon table with both Justice Marcus Einfeld and yourself.

The public expects a lot of its judges and overwhelmingly the community receives extremely high standards of intellectual capacity, efficiency, diligence, fairness and balance from the New South Wales Bench. Your Honour is someone who has in the past always demonstrated such attributes and will no doubt do so in the future.

Your Honour, the bar has confidence in your capacity to administer justice in this Court. You have our best wishes.

MS M C HOLE SENIOR VICE-PRESIDENT LAW SOCIETY OF NEW SOUTH WALES: May it please the Court, your Honour it is with pleasure that on behalf of the 14,500 solicitors of New South Wales I welcome you to a permanent position on the Supreme Court Bench.

Commencing your career in January 1963 as an articled clerk with the much esteemed firm of E J Kirby and Co, and I note that your masters,

solicitors Ernest Kirby and Anne Plotke are in Court here this morning, you then completed with your LLB in 1968 and were admitted as a solicitor in 1969.

After dabbling in editing you took up an appointment in Papua New Guinea, as described by the Attorney-General. This was an exciting time in Papua New Guinea when the transition to independence was being engineered.

As a precursor to one of your possible interests in your future on the Supreme Court Bench, you then became the Director of the Legal Training Institute, excellent preparation for an appointment to the Legal Practitioners' Admission Board or perhaps the Syllabus and Curriculum Sub-Committee of the Legal Qualifications Committee.

With your admission as a barrister in 1977 you brought your considerable skills to the forefront of the courts of New South Wales.

As described by the Attorney-General you were able to have a large input into the variety of cases in which you appeared as he has described it "for both the prosecution and the defence".

With your ability to represent such a wide spectrum of society it was natural for your talents to be used beneficially in the context of law reform, taking into account the changing nature of today's society and the representational responsibility of the law, whilst at the same time facilitating access to redress, justice for those less able or skilled at that than yourself.

Apart from your legal pursuits, as mentioned, you have taken a leadership role in relation to various outside interests and have committed your time to assisting those interests and supporting them wherever possible.

Your ability and availability as an after dinner speaker has been noticed and I have been told that at a recent 15 bobber dinner in favour of

a very recent appointment to this Honourable Court you were invited at short notice to give the speech in honour of the new appointee.

You were heard quietly to muse to yourself with some mirth that you must have been chosen to undertake this task as you were the only person present who had a larger girth than the guest of honour. Given the brevity of notice I understand that the speech was enjoyable, entertaining, enlightening and well-received.

Prior to the announcement of your elevation today you resigned as the Honourable Treasurer of the Bar Association of New South Wales. It is with pleasure that I note that the rumour that you had done so because the audit was imminent may now be laid to rest.

On behalf of the solicitors of New South Wales I congratulate you and assure you of their support in the years ahead. As the Court pleases.

ADAMS J: Chief Justice. Mr Attorney, President Elect, thank you for your all too generous remarks. I recalled, as you were speaking, the injunction required by the law to be given by Judges to juries that they should bear in mind that the statement made by the accused was not on oath and had not been subject to cross-examination, but they could give it such weight as they thought it deserved. The transcript never recorded the raised eyebrow or the intonation. At the same time, one must bear in mind the heavy responsibility of practitioners to be completely frank. I thank you for taking that responsibility so seriously this morning.

I have been in the law now almost since my seventeenth birthday, almost thirty-five years ago. For all the drudgery that inevitably attends the attempt - and I should emphasise the word "attempt" - to achieve excellence, I have enjoyed that life very much.

' It is of course a living, though one which does not seem to be attractive to everyone. My children, for example, have from an early age

rejected all my attempts to suggest that perhaps they might consider legal careers. And we are more and more often the targets of criticism, even abuse, from the press, and that part of the entertainment business known as talk-back radio who, of course, assert that they have the same heavy responsibility of frankness as that to which I have already referred. These criticisms are sometimes ill-informed and, indeed, ill-motivated, but it cannot be denied that there are aspects of the processes of the law that do cause injustice.

Calvin spoke of the ineradicable wickedness of humankind. Indeed, if there is one lesson from history that is plain to us all, it is the compelling truth of this judgment. At the same time, it is my experience that most of the lawyers that I have met and have got to know have aspired to do right and, even as adversaries, have been honourable. The fact is that discovering the truth is as often as not a very difficult and complicated task: doing justice is frequently no easier, and commonsense is often a way of refusing to grapple with the facts. It is not true that commonsense once told us that the earth was flat - it told us to go to the end of the earth and look over the edge. Of course, there are some people for whom the discovery of the facts is easy. When I was in my first year of university - as it happens with the Chief Justice - we thought that we knew everything. As Mark Twain said of himself and, I think, Will Rogers, "Between us we shared all knowledge - he knew everything that could be known and I knew the rest". I am not quite sure why this is so, but the other group of this kind are journalists. This is why it is necessary that we should always pay them close attention.

Sometimes, of course, the facts can be quite compelling. If I may be forgiven for a slight diversion, as cross-cultural experiences can sometimes be quite educative, when I was in New Guinea I worked, as you have heard, in the Public Solicitor's Office, earlier on doing criminal trials. On

my first trip to the Western Highlands, I defended a man for murder which was committed in a remote corner and a very fierce part of what was then called the Enga District. It was the habit, unknown to me at the time, of male friends in this area, when they met, to grasp each other by the testicles. It is reasonable to infer, I think, that this provided convincing evidence of the most sincere friendship.

I was, however, somewhat taken aback when my client, acting quite justifiably according to his custom, attempted to greet me in the same way. Whilst, of course, I had his interests at heart and was determined to do my best for him, I found this quite alarming and I quickly avoided contact by sitting behind a desk. I am not sure, despite his acquittal, that he ever really trusted me. This feeling did not return until, many years later, as a Public Defender, I commenced to appear in the Court of Criminal Appeal. Some have told me that appearing in the High Court was not an altogether dissimilar experience. It certainly tended to sharpen the focus and, as Dr Johnson observed of a man who repented shortly before his execution, concentrated the mind wonderfully.

In the general run, however, clients measure one's trustworthiness by more conventional methods by taking the time to ensure as best one can that they understand the process in which they have become involved, by putting their case as forcefully and, if necessary where it might be unpopular, courageously as one can. By and large, it has been my experience that clients understand and accept that this must be done honourably and honestly. As Arthur Miller said:

Willie Lowman never made a lot of money. His name was never in the papers. He's not the finest character that ever lived. But he's a human being and a terrible thing is happening to him. So attention must be paid.

And, whether they understand it or not, of course this is the duty of every counsel: to ensure that attention is paid.

Of course I did not pick these ideas out of the air, they were taught to me, firstly by my parents and then by the friends I was so fortunate to have, especially Ernest Kirby, my master solicitor, and Anne Plotke, his partner (who are, I am very pleased to say here today, and I am honoured by their presence). They were truly my mentors as I left my teenage years and started to discover the world and life of the law. I owe, also, an immense debt of gratitude to my wife, Sue, whose support and partnership has made it possible for me to practice the law, perhaps with too much passion at times, but who has been a constant help and force for good in my life.

My children, too, have been a source of great joy and immense pride, despite their reckless disregard of my advice on their choice of careers; they also deserve my thanks for their love freely given and their loyalty, beyond that which I deserve.

I also recognise the support and the affection that I have received at the hands of those with whom I practiced. Although the collegiate life of the Bar is weakening somewhat in recent times, yet it was and is a powerful force for good and gave me, who came with no contacts or networks, no friends from the big side of town, guidance, encouragement and help whenever I sought it.

I must, of course, mention, not only the Public Defenders, of whom my chief was Howard Purnell, all of whom became firm friends, but also the members of my first and only floor - the fourth, in Wentworth Chambers - especially Rowles who, scarcely knowing me, let me share his room for as long as I needed when I commenced private practice, refusing to take any payment. I must also thank our clerks who all served us well, but most especially Ms Paddy Bedford who gave to us all for over eight years her utmost loyalty and enthusiasm and integrity. How much we all owe her.

There are many others within and outside the law. many of whom are here, to whom I owe debts of gratitude. The self-made man is not only conceited, he is deluded. But constraints of time must prevent me naming o long a list. I will only say that. as a judge, I will do my best to live up to the highest aspirations which you have taught to me to reach. You honour me by your presence. I look forward to your help in times to come. I pray that I will be a good judge.
