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Swearing-In Ceremony of The Honourable John David Hislop 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

Tuesday 23 March 2004

SWEARING-IN CEREMONY OF
THE HONOURABLE JOHN DAVID HISLOP
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

1 **HISLOP 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 Hislop. Please be seated whilst the Commission is read. Principal Registrar, would you please read the Commission.

(Commission read.)

Justice Hislop, 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.)

Principal Registrar, I hand to you the oaths so that 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.

3 Justice Hislop, you come to this Court with many years of experience and, particularly in recent years, in the civil appellate jurisdiction of the Court. I welcome you as a Judge of the Court and congratulate you on your admission. I know I speak on behalf of all of my colleagues when I say I look forward to serving with you on the Bench in the future.

4 **MR I G HARRISON SC PRESIDENT OF THE BAR ASSOCIATION OF NEW SOUTH WALES:** If the Court pleases.

5 On behalf of the Bar Association of New South Wales, may I congratulate your Honour on your appointment today as a judge of this court. Ceremonies to welcome and farewell members of the court are important events in the legal calendar. Today's ceremony is no exception.

6 Your Honour grew up at Yagoona. It shouldn't pass without comment that Yagoona is not far from Bossley Park. You were educated at Sydney Boys High and Sydney University, thereby following what has become a well-worn path to the Bench.

7 You did your articles at Dexter Healey & Co, were admitted as a solicitor on 26 April 1968 and went on to work at Mulock Timmins at Penrith following a year at Dawson Waldron. You were able to acquire the invaluable practical experience that only a suburban general legal practice can provide. You took charge of a group of clients at the firm known as "The Maintenance Ladies". It cannot be subject to any doubt that your modesty and charm must have assisted you greatly in sorting out their

problems.

8 You were called to the Bar on 9 February 1973, taking silk in 1991. You bring to this court, therefore, more than three decades of experience as an advocate in state and federal courts at every level.

9 You read with Rodney Hudson, a well-known identity at the Sydney Bar. Because Rodney Hudson and your Honour are so similar in looks and personality, you were often thought to be twins.

10 Your main areas of practice were in insurance law, medical negligence, personal injury, professional negligence and workers' compensation. In the latter years of your practice, you confined your work almost exclusively to work in the New South Wales Court of Appeal. David Jackson QC, your colleague from Seventh Floor Wentworth where you have been in chambers since 1988, considers you have had one of the largest practices in that court. It goes without saying that the Court of Appeal is not a place where you want to be mentioned officially in the years to come.

11 Loud, flamboyant, brash, eccentric and controversial; these are all words that haven't been used to describe you. It is said you don't talk; rather, you whisper. You are considered by your fellow members of Concord Golf Club to be the most dangerous man on the course because of your inability to call "fore" loud enough to be heard by anyone other than your immediate playing partners. You are a certainty to be assigned to the Equity Division.

12 Peter Maiden tells me that in the seventies you went through a period where you were known to wear green and purple suits. Whatever affliction it might have been that caused such appalling lack of judgment is unknown, but at all events you seem to be all right now.

13 It hasn't been possible, in the time available to me, to collect a large series of humorous stories and anecdotes about your Honour. That is obviously my fault. I didn't start looking soon enough.

14 It is anticipated that your Honour will be assigned in fact to the Common Law Division. This has started the usual speculation about where your Honour might stand on the assessment of damages. John Gleeson QC was conducting a book on this. The smart money suggested that because you were such a nice person you would be reasonably generous. You subsequently plunged in the betting when Gleeson revealed that, in 13 years as a silk, you never felt able to justify the added expenditure on a room and a half.

15 Finally, as everyone knows, barristers' clerks are always a good source of information on floor members for occasions such as this. I asked your clerk, Andrew Laughlin, if it would be possible for him to give me a brief sketch of your Honour in a word or two. He said yes, that would be possible.

16 May I say at a personal level that my association with your Honour has been one of great satisfaction. You are a man of integrity and decency and you do not appear to be troubled to ruminate over small and irrelevant details which often conspire to deflect the mind from what is truly important.

17 On behalf of the New South Wales Bar Association, I congratulate your Honour on your appointment. I trust that you will have a long and rewarding career in your new role in this court.

18 May it please the court.

19 **MR P JOHNSTONE TREASURER LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

20 Your Honour, I appear here today in a number of capacities: Formally as treasurer of the Law Society of New South Wales, representing the solicitors of this state; secondly, I appear as a partner in Blake Dawson Waldron, the firm in which you practised briefly as a solicitor; more specifically, I appear as someone who has briefed you extensively in your time at the Bar, particularly in your early years when you were retained to appear for Australian Iron and Steel Pty Limited; and finally, as a friend, who occasionally plays golf with you during the summer holidays.

21 What has this experience taught me about you and what advice might I hand on to those who will

appear before you now that you have been elevated to the Bench? I propose to refer to a few pointers during the course of this address.

22 Just a fortnight ago, in this courtroom, members of the profession gathered to farewell Justice Roddy Meagher, a man who made his opinions well known to those in his Court. Indeed, on one occasion I believe he advised Mr Harrison who appears here beside me that such was his regard for his argument that he intended to go to sleep.

23 However, those who appear before your Honour will have no such blatant cue as to whether their case goes well for them or otherwise. Instead, I advise them to look to the judicial eyebrow. All my colleagues attest: When he does not agree with you, he gets a quizzical look and his right eyebrow shoots up very high. "He never says that you're wrong", says one solicitor. "He's too gentlemanly to tell you, but you know he doesn't agree with you when he raises that eyebrow." Counsel be warned.

24 Your Honour, we have heard about your meritorious rise through life: School Captain and Dux of Darlington Public School, from which you went to the selective Sydney Boys High.

25 From school you went on to study law at the University of Sydney, whilst working as an undergraduate articled clerk at Dexter Healey & Co, where your Master Solicitor was the late John Dexter. You are a product of the public education system and the recipient of a Commonwealth scholarship. You have risen to be a Supreme Court Judge through sheer hard work and ability.

26 You could be described as having the typical Australian background and being an average, down-to-earth Aussie bloke. You love sport, enjoy watching a game of cricket, will have a barbecue at home, and you drive a Holden Commodore. After your student years, you travelled around Europe with a backpack for almost a year before settling down to your career.

27 However, you are a bloke who has been very good at your job. You have been an enormously successful barrister. One barrister who has worked with you says that of the 34 appeals that you ran together, you won 31. That is some batting average.

28 For my own part, I well remember when Tim Studdert took silk in 1982 and we retained you to act as junior counsel, on behalf of the Port Kembla Steelworks, in the Wollongong sittings of the Supreme Court.

29 In those days the Steelworks was a well-known hard litigant which ran to verdict many of its cases before a jury. There were some 12 weeks of jury trials each year, in sittings of three weeks at a time. Each sittings was preceded by a week of preparations, including conferences and views.

30 I still have visions of your Honour in a hard hat as you trudged through the Open Hearth and the Coke Ovens, forever fearful that a crane would drop a slab of steel, or a forklift would run you down.

31 Gary Flowers, who, along with the late Nick Meagher, also briefed you in that time, speaks of you not only as an extremely competent counsel who worked well with his own solicitors and clients, but as someone who built constructive relationships with the lawyers on the other side.

32 Courtesy will, I am sure, be a trademark of your Honour's Court.

33 Your Honour has also been an educator, keen to share your knowledge with others. You have taught litigation and practice and procedure at your alma mater, Sydney University.

34 You were recruited to Dawson Waldron by Bob Somervaille under the usual criteria, the principal one being that you played cricket. Dawson Waldron was, in those days, a nursery for the Bar. A long line of successful barristers gained some experience at the firm, including Gordon Samuels, Ken Handley, David Bennett, Jane Matthews and, of course, Tim Studdert and Hal Sperling. There are a number of others who I see sitting around this courtroom today.

35 At Dawson's you came under the guidance of Nick Carson and the late John McDarra at a time when Hugh Keller, David Somervaille and I were lowly articled clerks, but we, in turn, looked to people

like you and Brian Gill and Roger Betts for help and guidance.

36 Your departure from Blakes - or Dawsons at it then was - was followed in time by Roger Betts, and then later still by Brian Gill. You continue to socialise three or four times a year with Roger Betts and Brian Gill, thus maintaining an association that has lasted for nearly 30 years, since those early days when you were young solicitors together at Blakes.

37 Roger Betts tells me that he has been upbraided more than once for his tardiness, having been delivered the ultimatum that he wouldn't be invited to lunch if he was late again.

38 For 18 years he has been waiting for your Honour to exhibit some slip in punctuality, but so far you have given him not one occasion on which to take the moral high ground. He grumbles, "John was never late for lunch."

39 Perhaps this is another warning for any young lawyers who will be appearing before your Honour.

40 Your Honour's practice has been in appellate insurance, medical negligence, personal injury and professional negligence. Appropriately, you have shown a wonderful medical knowledge, especially in your cross-examination of doctors. When asked about this you have responded, "Margaret helped me out", referring to your wife, a general practitioner, who has obviously been an enormous support to you in your professional life. One may speculate if your daughter Helen, who began her career as a thespian, was encouraged into her current work as a physiotherapist so that she might be pressed into service as well. Unfortunately, Helen has just embarked on the next phase of her own career overseas and is unable to be here with you today to celebrate.

41 Just as there have been those upon whom you could rely, the legal fraternity has been able to rely upon you. Says solicitor Jim Keeling: "Though he was asked by many, he never took on too many briefs. He was not greedy. This meant that he was always thoroughly prepared and he was available when your case was ready to start. He would never dump you."

42 As I have mentioned, your Honour is a keen sportsman. As a young man you played grade squash and you were a fast bowler in cricket, graduating to golf and tennis as you matured.

43 Now, however, you are an honest toiler at golf, playing on a consistent handicap - which I won't mention - sometimes attending a week-long golf clinic. This was a fact which my research for today disclosed that has not previously been known to me.

44 As you have risen through the ranks - and through the floors of Wentworth Chambers, settling finally on the seventh floor - you have retained that down-to-earth view of the world; remained someone unconcerned with airs and graces. Daily, you catch the train in from Burwood, using the opportunity to do some work during the commute. When offered a lift in a taxi with a colleague to some event, you declined, saying, "It might spoil me. I'll lose the pattern."

45 Your Honour, one thing on which all your colleagues agree: You have been a terrific person to deal with, concerned ultimately with doing the best job for your client. As you move to the Bench, I have no doubt that you will continue this approach.

46 The solicitors of New South Wales wish you well in the role.

47 As the Court pleases.

48 **HISLOP J:** Chief Justice, your Honours, Mr Harrison, Mr Johnstone, other members of the legal profession, ladies and gentlemen.

49 I thank Mr Harrison and Mr Johnstone for their kind words. I also thank each of you for coming here today to mark this occasion. I am well aware how difficult it is to spare time for such events and I appreciate you taking the trouble to be here today.

50 My genesis as a lawyer traces back to Sydney Boys High School. There I completed my schooling with a Commonwealth scholarship to Sydney University. I had no idea what course to pursue. No-one in the family had been to university. We knew no lawyers. The school careers adviser suggested I was suited to a career in either journalism or law. He advised against journalism on the ground that it would likely lead to alcoholic liver disease. Thus advised, and anxious to secure my health, law became the only option.

51 It was, for economic reasons, necessary for me to do law part time. JO Dexter, an old boy of my school, needed an articled clerk. Thus began my career in law.

52 I was fortunate. John Dexter was a most able solicitor, and a tough, but fair, task-master. He had a large insurance-based personal injuries practice. I learned much from him.

53 So too, I learnt from HRH Hudson with whom I read. Rodney Hudson was truly one of nature's gentlemen. His practice was appearing for those he described as "the broken and bleeding" in personal injury actions. He did so with great skill and compassion, and much success. The early association with these men determined the shape my career as a barrister was to take.

54 My good fortune continued when I was invited to join the second floor 180 and later 7 Wentworth. Each floor had and has many talented lawyers and personalities. Their reputations are such that I have no need to individually name them. I very much enjoyed my time on each floor, the friendship and camaraderie and the assistance of people who are and were acknowledged leaders in their field.

55 I was also led by leading silk from other chambers and, in turn, had the privilege of leading a host of capable juniors, many of whom are now silk. I am grateful for the support I have received from the solicitors who have briefed me, some of whom have supported me continuously from my earliest years at the Bar.

56 I thank my staff over the years for their dedicated and loyal support. I particularly thank my long-term secretaries: Angela Newton, Vanessa Williams, and the late Barbara Gemmell; and my clerks: Bill McCarthy, Bob Horne, Andrew Laughlin and Ian Belshaw.

57 Each of these people have influenced my development as a person and as a lawyer. I am indebted to them.

58 My wife and daughter have also contributed. These are practical people. My wife, an old style suburban GP; my daughter, a physiotherapist. They see legal decision making as a straightforward matter requiring only the application of their version of commonsense. They reject entirely the doctrine of precedent, unless it accords with their opinion, and are annoyed at the distraction caused by lawyers' requests for medical reports or attendance at Court. However, they have and promise to continue to ensure I remain in touch with the real world.

59 In the end, however, it is my parents, particularly my father, to whom I owe the greatest debt. Without his wise counsel and the sacrifices by both my parents, I would never have obtained a degree, let alone progressed through the law as I have done. Unfortunately my father passed away 18 months ago. This would have been a proud moment for him.

60 Hopefully, I will meet the challenges of my new role. Should I do so, it is to those people who have contributed so positively to my career that the credit is due. Thank you.
