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IN THE DISTRICT COURT  
OF NEW SOUTH WALES

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

10 Due to COVID-19 restrictions, Her Honour Judge Musgrave was sworn in as a  
Judge of the District Court of New South Wales by Justice Price AO, Chief  
Judge in a private ceremony on 10 February 2022.

A Welcome Ceremony was held on 31 March 2022. The following are the  
speeches made at that ceremony.

15 THURSDAY 31 MARCH 2022

**WELCOME CEREMONY OF JUDGE PENELOPE MARY MUSGRAVE AS A  
JUDGE OF THE DISTRICT COURT OF NEW SOUTH WALES**

20 Mr M McHugh SC, President Bar Association  
Ms J Van Der Plaat, President Law Society

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PRICE J: Judge Musgrave I had the privilege of swearing you in as a judge of  
25 the District Court in a private ceremony on 10 February of this year. The  
Court, I am sure, will benefit from your wide range of experience in the criminal  
law. You are very welcome in this Court. I look forward to you serving the  
people of this State for many years to come. It is indeed a pleasure to hold  
this welcome ceremony this morning. Mr McHugh.

30 MCHUGH: May it please the Court. I begin by acknowledging the Gadigal  
people as the traditional custodians of the land on which we meet and I pay my  
respects to their elders past and present. Chief Judge, Judge Musgrave, it  
would seem COVID has lessened the numbers today of all days but Chief  
Judge, as you know, my principal role this morning is to express the Bar's  
35 absolute confidence in Judge Musgrave and I congratulate the Attorney  
General for making such a shrewd appointment.

Of course the Bar does not have a monopoly on the judiciary and there

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are many examples of solicitors making great judges, present company included. Judge Musgrave, I do believe I have had more feedback from the profession about this appointment than any other, many from the Bar of course but undoubtedly from the other branch of the profession. I hasten to add it has  
5 all been one way, positive, and how could it be otherwise. In fact it is the solicitor branch that has been most excited by your Honour's appointment, and I do mean excited. I could have used any number of synonyms, animated, thrilled, even electrified.

Earlier this year, it seemed that every criminal law solicitor I spoke to,  
10 prosecution and defence, sang from the same song sheet. "Isn't this great, she'll be fantastic" and then "There should be more solicitors appointed", followed by at least one "When am I being appointed". I could only give them a gallic shrug. Yet I will now be able to point such aspirants to the speeches about your Honour today and note that it can only be a matter of time if they  
15 can match your Honour's breadth of experience and undoubted abilities which may be a tall ask for some.

That experience includes having practiced in a criminal law for 30 years. Your Honour attended high school in Armidale and attained a Bachelor degree in Arts Law at UNSW from '81 to '85. Your Honour was admitted as a solicitor  
20 at the Supreme Court of New South Wales in June 1986 and quickly volunteered as a solicitor at the Redfern Legal Centre and which your Honour somehow kept up into the mid-90s.

Your Honour joined the Commonwealth DPP in May 1989 and practiced across most areas prosecuted by the Commonwealth and rose to become  
25 Senior Assistant Director managing the general prosecutions branch of the

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CDPP, Sydney office. Colleagues included Robert Bromwich, Michael Wigney, John Hatzistergos, Peter McGrath and Tony Payne, as their Honours were then. Of note your Honour was a director of the Criminal Law Review Division of the New South Wales Department of Communities and Justice, it had some names in those times, between January 2007 and May 2015. Among the alumni of the CLRD are several judges and directors of public prosecutions including former Justice Rod Howie, Justice Richard Button, Justice Chrissa Loukis, Judge Mark Marien, Nick Cowdery QC and Lloyd Babb SC. In that role your Honour was able to manage and deliver on a substantial number of policy and legislative priorities of government, many of which were urgent and high profile in nature.

Former colleagues at the Department of Communities and Justice describe your Honour as tenacious, intelligent and courageous. By all accounts your Honour was a leader of an enthusiastic team of criminal law practitioners brought into the heart of the legislative process. There is still a genuine sense of loss among the criminal bar at the demise of the CLRD and your Honour's redundancy as its director and that was made clear to me again just this morning. Yet the achievements at that time were many and to name a few include, the implementation in 2014 of the government's package of legislative reforms to respond to alcohol induced violence including the one punch offence of assault causing death, reforms of the Surveillance Devices Act to enable police officers to utilise body worn video devices, a statutory review of LEPRA and subsequent reforms to implement its recommendations and of course the reformed Bail Act or one of them.

One of the last projects you worked on before the 2011 election was the

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introduction of judge alone trials in New South Wales. It was championed by the then Chief Judge but had resistance in legal circles. Your Honour made it happen in the last parliamentary session of 2010 following a legislative council law and justice committee inquiry. Had that not occurred we may have been in a very different situation in this State over the past couple of years and our members were able to continue to work in judge alone trials during that time. We owe you, your Honour, and then Attorney General Hatzistergos a real debt. Judge Hatzistergos described your Honour's time there as crisis management where the workload is simply horrific. I thought it best not to ask his Honour about the workload here in any detail.

I am told your Honour kept hens and would bring fresh eggs for the staff. Kerkyasharian said the eggs were delicious. Of course your Honour was more recently in private practice at Musgrave Legal and where, I know for a fact, your Honour was in high demand as the first call should the women and men in blue call around. As a criminal defence solicitor, your Honour was, in my view and in the view of a number of senior counsel practicing at the criminal bar, without fear. From breaches of UN sanctions in the Supreme Court, that was a great case, to large scale white collar crime with a side in financial investigations and the perhaps more mundane, but for those involved, serious matters where the client had the benefit of not just shrewd advice but a compassionate ear.

Your Honour has had a number of appointments and served on a plethora of committees including the Model Criminal Law Officers Committee, the DNA Review Panel, the University of Sydney Institute of Criminology Advisory Panel, the New South Wales jury taskforce, the New South Wales

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Sentencing Council and your Honour was involved in far too many reports there to set out. Suffice to say counsel who appear before your Honour can expect real familiarity with the often conflicting policies underlying the instinctive synthesis said to inform the ultimate sentence and your Honour was  
5 no doubt a valued member of the Law Society's Criminal Law Committee from 2016.

Thankfully it has not all been hard work. By all accounts your Honour reads widely and is known as a fan of The Thick of It and Doctor Who. Peter Capaldi's been in both and in the former, Capaldi played Malcolm Tucker  
10 a character based loosely on Tony Blair's Director of Communication, Alistair Campbell. For those who might be unaware, Tucker was prone to making expletive written insults directed at whomever he disliked and he pretty much disliked everyone and especially junior ministers. I won't repeat them here and I am certain that your Honour will not stoop to saying that someone  
15 "is so dense that light bends around him".

However the Bar will examine your Honour's judgments closely for the judicial definition of omnishambles. The Bar is not inferring that life inside the Criminal Law Review Division was in any way similar to Tucker's Department of Social Affairs and Citizenship, yet in preparation for this speech word did  
20 reach me of your Honour's habit of audible expressions of disbelief at the latest proposal for Criminal Law Reform emanating from the Premier's Officer, the Police Minister, Ray Hadley or a combination of all three. Some have described them as entirely non-verbal, a kind of exhalation that one might hear at a yoga class while others are quite insistent that the words such as "you  
25 cannot be serious" were in fact used. This was of course an example of

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your Honour speaking truth to power and no doubt where the courageous  
appellation comes from.

Your husband and two children, are no doubt very proud to be here today  
and of your Honour's achievements. Judge Musgrave, your Honour, has made  
5 a significant contribution to the legal profession and will no doubt continue to  
do so in this new role as a District Court judge. We wish your Honour every  
success in the years to come. May it please the Court.

VAN DER PLAAT: May it please the Court. I too acknowledge the Gadigal  
people of the Eora Nation, the traditional owners of the land on which this  
10 Court stands and I pay my respects to their elders past, present and emerging.  
I also acknowledge any indigenous Australians present today.

I come before the Court on behalf of the solicitors of New South Wales to  
offer congratulations and wish your Honour well in your appointment to the  
District Court of New South Wales. Mindful of the important role family has  
15 played in your Honour's life, I would like to acknowledge your husband,  
children and of course your beloved border collie, Whisky. During the  
pandemic I am told Whisky made so many unscheduled appearances at Law  
Society Committee meetings that she became the first pet to be made an  
honorary member of the Criminal Law Committee.

20 Your Honour's appointment is richly deserved. Your former colleagues  
have praised your Honour as a brilliant solicitor advocate, the most supportive  
of leaders and a brave defender of the rule of law. At the Law Society we can  
personally attest to all of these traits and more. Your Honour has served on  
our Criminal Law Committee since 2016 and was recently reappointed for  
25 another term before being appointed to this Bench.

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Over the last six years your Honour has been instrumental in developing our many submissions to government regarding criminal law reform and helping us formulate our policy positions on many contentious issues.

Your Honour also shares the unique distinction of having represented the Law Society at a Royal Commission. While serving with the Commonwealth Director of Public Prosecutions earlier in your career your Honour instructed a now preeminent Sydney based silk. Reflecting upon your appointment he noted your Honour was, in his words, “the whole kit and kaboodle”. He praised your legal acumen, welcomed your independence of spirit and was impressed by your holistic understanding of the criminal justice system.

This experience at the CDPP and your Honour’s aptitude for prosecution work, made your Honour a desirable candidate to serve as Director of the Criminal Law Division in the then Attorney General’s Department of New South Wales. For seven years your Honour worked tirelessly to progress law reform in that contested space, mindful of the tension between the State’s responsibility to protect its citizens and the rights afforded to those who come before the criminal justice system.

Your colleagues at this time, a closely knit group of legal practitioners that remain close, spoke of the many challenging issues your Honour faced. In 2014 after returning to work in the summer, your Honour helped develop a legislative response to the one punch attacks in a matter of days. Your Honour also played a decisive and often thankless role in shaping the legislative responses to organised crime and bail reform, among a host of other contentious and politically charged issues. The work was tough but what is telling is that when your former colleagues reflect on this time, they don’t focus

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on the challenges they faced, instead they remember your sense of humour and your Honour's laughter which regularly rang out throughout the office.

Apparently, your Honour kept a pink rubber squeaky pig on your desk which you would squeeze to rate projects. There is open speculation about whether it will reappear on your bench and be used to rate legal arguments. They also recall your insight and wisdom which helped them to flourish in the public service or juggle raising children and having a career. Your Honour was more than a mentor, you were their go to guide for eating out locally or their phone a friend for tackling the Simon Johnson warehouse. They were in awe, not only of your leadership and legal skills but also how much bulk French cheese and fine chocolate you could buy whilst on sale to squirrel away for the months ahead. Your Honour's legacy before this appointment will be measured, not only in your contribution to law reform but also in the many great legal practitioners that you have mentored.

After public service your Honour would enter private practice, running a thriving practice in criminal law. One silk noted that your Honour had one high profile client who was so well known for not paying his lawyers that he believed knowingly representing him made your Honour a candidate for sainthood. Whether your clients had a high profile or not or even, it would seem, whether they could pay, each benefited from your meticulous attention to detail and received a well-considered defence honed over many, many years. Your Honour's sense of service was a boon to this State and brought you to volunteer at the Law Society over many years. We are very grateful for your contribution.

I would like to conclude today by noting that your Honour brings a wealth



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of knowledge, insight and ability to the District Court of New South Wales. The people of our State are privileged to be served by you in this office and solicitors have every confidence that you will make an exceptional judicial officer. On behalf of the solicitors of New South Wales congratulations  
5 your Honour. As the Court pleases.

HER HONOUR: Thank you Chief Judge. I would like to start by acknowledging the Gadigal people of the Eora Nation as the traditional custodians of the land we meet on today. I recognise their enduring connection to the land and acknowledge that sovereignty of this land was  
10 never ceded. I also acknowledge the role the criminal justice system has played in the lives of many First Nation's peoples and the role it can and should have in addressing the prevailing, unacceptable and disproportionate levels of incarceration of them. I pay my respects to elders past, present and emerging.

15 I also acknowledge and thank for their attendance here today my now colleagues on the bench, my past solicitor colleagues, members of the Bar, friends and family and the Law Society past president. I also acknowledge those in isolation who might be watching via link and I thank you very much for all the emails I received this morning. I thank Mr McHugh of the Bar  
20 Association for his kind words. I thank Ms Van Der Plaat for speaking today on behalf of the solicitors of New South Wales of whom I was one for over 30 years. Ms Van Der Plaat I am sorry I have missed the opportunity to work with you during your tenure as president.

It is a real privilege to have this opportunity today, not only to hear people  
25 say very lovely things about me, but also to publicly thank some of the people

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who have been so important in my life and who have helped me get here. I was certainly not predestined to be on the bench, to the contrary I was quite ambivalent about a legal career. My old school friend, Peter Delangre who is here today as the unofficial social secretary of the completely non-existent  
5 alumni of Duval High School, will agree that none of us in high school thought about a legal career. An academic career was on the cards but definitely not a profession. I ticked the box for combined law when my parents, having come to terms with my abject failure at science, advised me that a career reading  
10 fiction might be rather difficult and suggested a backup plan would be worthwhile. So I saw some attraction in that as I could not study law in Armidale at that stage and set off for Sydney, not having ever known a lawyer and never having set foot in a courtroom.

I attended University New South Wales and I can skip very quickly over my university time, and my time at College of Law, because I paid them,  
15 frankly, very little attention and they me. It was really all about friendship from that time. I have to mention people who are hopefully watching online, Michelle O'Brien who was one of a handful or less of country kids from State high schools in my year. Rowena Low and also from College of Knowledge, Deb Vine-Hall, Shauna O'Sullivan and Anthony Toda.

20 I also have to apologise to my first employer. I suspect I wasn't an overly enthusiastic employee. I immediately started volunteering at Redfern Legal Centre which would mean me leaving on Wednesday afternoons and crawling in on Thursday morning after a very late dinner in downtown Redfern. I was on the tenancy night at Redfern and I absolutely loved it, again because of the  
25 people there. The person in charge was an ever enthusiastic and committed

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Andrew Haesler, now Judge Haesler who, again, I hope is watching online.

Judge Flannery who is on the bench today was also one of that team of volunteers.

I did finally do something about my day job when I decided, for interview  
5 practice, to apply for a job with the CDPP. I had absolutely no idea what they  
did and it was quite clear in the interview but they employed me nonetheless.  
Redfern was horrified that I was going to the dark side but I still maintain that  
fair prosecutors are essential to fair and proper outcomes. My first matter at  
the CDPP was my lightbulb moment. In my first week my instructor was  
10 Judge Sutherland, then junior counsel, his anecdotes were of course a crash  
course in the criminal law - but what hooked me was learning that the case  
was about garden gnomes made of cocaine. It was a bit of a “look at me mum,  
I’m doing science”. I then learned how to extract cocaine from plaster, filter it  
from curtains, shampoo and samsonite suitcases. Meanwhile the others  
15 around me focused on what were the interesting legal issues being worked on.  
Commonwealth crime at that time was very new and everything was a  
challenge. I thought it was better that I left such matters to the likes of those  
who were clearly far better at the law. Comments have been made in the past  
about something in the water during that time at the DPP and there are really  
20 too many high achievers to list them all. I did, though, have the office next  
door to Peter McGrath whose appointment to this bench was announced with  
mine and I was very happy to hear that we are now colleagues again.

So there came a point where I thought I needed to broaden my horizons.  
I had mastered the geographic distribution of heroin, or then again it may  
25 simply have been the introduction of the Commonwealth Criminal Code, but I

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decided to make a switch and moved across to New South Wales Justice Policy. Being at CLRD was a bit like walking through the back of the wardrobe into Narnia, it was a completely, completely foreign world with completely different creatures. I need to first thank Judge Hatzistergos, who was then  
5 Attorney General, for even giving me the chance. I thank Don Colagiuri who was then parliamentary counsel, who always had an answer, I had a lot of questions and Don had the back story as well.

Most importantly, I thank every single lawyer who passed through CLRD and I think you can see how much I appreciate them because I tear up at this  
10 point. Many practitioners passed through CLRD on secondment, they were on two year rotations. They were there because they were interested in law reform and between them they had an answer to every question parliament had or I had. I can safely say that everyone there worked on some crisis. It would though take me at least an hour to go through the list of lawyers who  
15 were there and their achievements, many of which never saw the light of day which is what the win was. I thank them for all the hours they worked. Their experience, their imagination, their sense of humour, we were very loud and very, very funny.

One person I do need to mention is my deputy, Mark Johnston, for his  
20 tactful upward management skills but also because I suspect he has been very selective in what he has provided to Ms Van der Plaat today. CLRD no longer exists. The lack of practical experience and the independence of seconded lawyers is a true loss to government that values well-informed, frank and fearless advice. Practitioners have also lost the chance to be exposed to the  
25 immediacy of government and the development of crime policy.

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When I left CLRD and started practice as a defence lawyer I realised I needed lots of teachers and I need to thank a few. Janet Menuel for teaching me what to wear to gaol and where to get the best pistachio nuts on the way back from Silverwater. Phil Boulten for his court craft and keeping a straight  
5 face regardless of what happens in a conference. To Sam Pararajasingham who hopefully is watching online - for not keeping a straight face at my jokes and for all the counsel at Forbes for sharing defence skills whenever I called on them. To Ryan Coleiro for sharing his tech skills and so much more. I also thank Kate Morgan who has been a friend since the DPP, who supported me  
10 as a defence lawyer and has never waivered from her belief that criminal lawyers and commercial firms can work harmoniously together.

Tim Game needs a special mention here. We could have ended up hating each other after a year long trial, I don't think we do, and Tim heartfelt thanks for your continuing support and for constantly pushing me. I simply  
15 cannot name everyone who has made a difference to me. What I can say is that I have been lucky to find a job where I am surrounded by people who share the same values and who know how important it is to support each other.

I have only been on the bench for a number of weeks, it has been a  
20 delight, it does not matter what you are wearing, the jury can only see the robes and worrying about bad hair days is completely a thing of the past. I thank the many judges who have offered support and given it, especially Judges Wass and Huggett who are in competition to see who most quickly responds to my phone a friend request. Thanks also to my Associate, Marnie,  
25 who has taken to the job like a natural. To everyone at Parramatta, it has been

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a welcoming place to start, thank you.

I do though need to say something more about being a solicitor. There's two groups in this room, solicitors and barristers. On the bench there is a large number of barristers and a small number of solicitors. I have always been a  
5 solicitor and it has suited me because solicitors need to be good at everything. Solicitors are practical and intellectual, they are empathetic and objective, all this often on legal aid rates of pay that mean that necessary work is effectively done pro bono and I know I am preaching to the converted when I say it, but it needs to continue to be said. An underfunded legal aid system is not an  
10 efficient, fair or just criminal justice system. As a sole practitioner, I thank the criminal law committee of the Law Society for their friendship, support and intellectual stimulation. Even the zoom meetings in lockdown were a lifeline to me as a sole practitioner.

On being appointed to the bench I am happy to say that it is not  
15 remarkable that I am a woman. I did, however, start when I could be the only woman in a courtroom. Recently I was in a matter where everyone was female except for the accused. This reflects the commitment to changing the involvement of women in the profession and the judiciary. I acknowledge the work of the Law Society and the Bar Association but I also acknowledge the  
20 many amazing women lost over the years and I am looking directly at you Jane Norman. There is a need to continue working on flexible work practices so women, at whatever stage of their careers and with whatever care and responsibilities, can engage as they choose and their skills are not lost.

I am now going to turn to my family. First, thanks to my parents who I  
25 know would have supported me even if I had decided to read books for a

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living. Thanks to COVID they can watch online and I just need to say hi to my dad in his nursing home, I am not sure which camera is working, and my mum at home. My husband, is here today with our children, our daughter whose partner was here for my swearing-in but is working today and our who is here  
5 with his girlfriend.

My husband arrived in Australia in the 80s in a purple seersucker suit and yellow swede pointy shoes. I didn't see you in that ensemble and life may have been very different if I had. Leaving a Glasgow housing estate may not have been a sacrifice for some but it was for you. You have now embraced  
10 the Hawaiian shirt lifestyle and I thank you for it. I am going to try and get to the end of this speech.

To my children, I often failed in my parenting duties but to the new generation of working mums I give some words of comfort, children will believe anything. They can go a very long time thinking that everyone goes to  
15 childcare in the holidays, that all meals come out of a freezer and that mum's work is way better than a theme park because there is endless highlighters and lots of out of date biscuits. They will believe they are the most important person in the world even though you walked out of their assembly or school concert because work was on the phone. My shortcomings were made up for  
20 by the community of co-workers who were always there to chat on the phone to my kids and thanks to Jessica Harris and Connie DeLong and the school parents who were friend parents. I have to give a special mention here to the Olafson's and my son's friendship with their daughter who has been part of our lives since childcare.

25 I am going to take my children as proof of the fact that working mothers

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can do two jobs at once. They have turned themselves into emotionally intelligent, socially minded, argumentative and gorgeous people. I am so proud of them and love them beyond words and at this point I will now just say thank you to everybody and I am going to go and have a little cry. Thank you.

5 PRICE J: Thank you Judge, I warmly invite you to join us for morning tea.

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