

RSB:SND

IN THE DISTRICT COURT
OF NEW SOUTH WALES

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

MONDAY 29 MARCH 2021

10 **SWEARING IN OF HER HONOUR JUDGE TANYA SMITH SC AS JUDGE
OF THE DISTRICT COURT OF NEW SOUTH WALES**

Attorney-General Mark Speakman SC MP on behalf of the New South Wales
Bar Association

15 Ms Juliana Warner, President, Law Society of New South Wales on behalf of
solicitors

20 (Commissions read)

(Oaths of office taken)

PRICE CJ: The oaths will be placed in the court archives and the Bible will be
25 suitably inscribed and presented to Judge Smith as a memento of this
occasion.

Judge Smith, on behalf of all the judges of the District Court of New
South Wales I very warmly welcome you and wish you all the very best on
your judicial career. Mr Attorney.

30 ATTORNEY-GENERAL: May it please the Court. I acknowledge the
traditional custodians of the land on which we gather, the Gadigal of the Eora
Nation, and I pay my respect to elders past, present and emerging.

Your Honour Judge Smith, on behalf of our State and the bar it is my great
privilege and pleasure to congratulate you on your appointment as a judge of
35 the District Court of New South Wales.

I also acknowledge and pass on my congratulations to the members of
your family, who are here with us today. To your husband, your daughter Ella,

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your parents Neville and Yvonne, your brothers Jason and Aaron, your sisters-in-law Kristy and Miranda, and your nieces Mackenzie and Georgia welcome.

Your Honour was born in the tiny Queensland town of Glenarbon, where
5 your father had been posted to teach. Your parents were educators and you moved around the State, from Glenarbon to Ubobo to North Arm to Wallumbilla to Dysart to Brisbane. This gave you wide exposure to life in rural areas, to city living and to many people from different walks of life. Your final years were at St Margaret's Boarding School in Brisbane. Education, the
10 importance of education and life-long learning were part of family life. It is a value you still hold dear and emulate today.

A love of shoes and couture, for which you are renowned, also started early on, very early on as well, so did your desire to study the law. When you were seven, playing in a sandpit with a cousin, you announced that you were
15 going to become a lawyer one day. You then relayed this to your parents. They were supportive, although a little confounded. There were no lawyers in the family and no inkling of where you might have attained this idea. At the same time, though, it made complete sense. When sent to your room for misbehaving, you spent that time practising in front of the mirror. When
20 released from your room you delivered a judgment to your parents. Your speech conveyed indignation at the injustice you had suffered. It was excellent early practice for a career in the law. Not too long after the sandpit news you announced that you would become a barrister and set out researching that path.

25 In high school you played touch football and made a Central Queensland

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team. You had the same disciplined approach to sport as you had with study, excelling at netball, running and athletics.

Your Honour was an avid reader with a keen interest in stories about women who had succeeded despite the odds. You were fixated on the
5 detective books of Agatha Christie. You read all 66 of her murder mysteries, with their wide variety of intriguing characters and suspects.

During your schooling you did not waiver from your desire to become a lawyer, but you had a natural ability with maths. In your final year your
10 advanced maths teacher approached you, saying, "They knew you wouldn't change your mind about studying law, but it would be an absolute waste if you didn't pursue maths in some form." You took this advice and enrolled in a double degree in law and science, majoring in mathematics at the University of Queensland.

While at university you landed your dream part-time job, managing a
15 fashion boutique on Sundays. Very few female students studied maths at the University of Queensland at the time, but that did not deter you. You graduated with a double degree in 1994 with first class honours and a university medal in law.

You began your legal career at Mallesons Stephen Jaques. It was not
20 long though before you felt a calling away from private practice to the office of the Director of Public Prosecutions. You started as a level 1 solicitor in Parramatta. While working on one particularly violent criminal case, you met a lawyer from New Zealand who was prosecuting someone for murdering one of your witnesses. Romance blossomed over the dissection of evidence
25 involving a number of hit men. That lawyer was David Clarke, the man who

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would become your husband.

Your Honour has also lectured in law at the University of Western Sydney and was for a time a policy officer in the Criminal Law Division of the Attorney General's Department.

5 You returned though to the DPP, where you have been a trial advocate, Crown Prosecutor, deputy senior Crown Prosecutor and most recently acting Deputy Director of the Public Prosecutions.

 Over your 20 year career in law you have had a reputation as having the sharpest of legal minds. You have been described as having a photographic
10 memory. You make copious notes on every document in your brief with any pen in reach. Every colour of highlighter is used, the margins are filled with notes and indignant exclamation marks and key words, and points are circled with lots of large asterisks. Your Court of Criminal Appeal documents have been described as resembling pieces of contemporary art.

15 You are well known for your abundant energy. Having carriage of multiple matters listed for hearing on the same day does not phase you. One day in the Banco courtroom you had two sentence appeals, followed by a complicated conviction appeal. Your presentation was no less persuasive close to 4pm than it had been with the first matter that morning.

20 You have worked on some high profile and complex cases. In 2016 you were counsel for the prosecution of Robert Xie, accused of murdering five members of his wife's family, the Lin family. Along with your co-counsel, you secured five murder convictions in the fourth and final trial.

 Your scientific and mathematical training came to the fore here and in
25 many other cases you have worked on. In this case it gave you particular

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insight into the expert DNA evidence that was key to the case. In 2020 Xie
appealed against those convictions, mostly in relation to the expert DNA
evidence which you had led. Your Honour was not Crown on the appeal, but a
behind the scenes guru and 24-hour support hotline. I mention this because it
5 is not something unusual for you. Many of your colleagues provided
anecdotes, saying that you put as much effort into advising on their cases as
you do on your own. The Xie case is a good illustration.

When new evidence was served just before the originally listed hearing
date, you gave advice and support from a family holiday in Noumea. The
10 appeal was dismissed by the Court of Criminal Appeal in February.

You were senior counsel for the Crown in the conviction appeal of
Ronald Medich for the murder of Michael McGurk. In 2018 Medich was
sentenced to 39 years gaol, with a minimum non-parole period of 30 years.
Medich recently challenged those convictions and the Court of Criminal Appeal
15 dismissed his case.

Your Honour was also senior counsel to oppose the sentence appeal of
Amirah Droudis, sentenced for murdering the ex-wife of Man Haron Monis.
You were also junior counsel in the trial of Bruce Burrell, whom you helped
prosecute for the kidnapping murder of Kerry Whelan.

20 As well as the many complex cases, you have been described as a
mentor extraordinaire. Your presentations, lectures and seminars have been
greatly appreciated by colleagues. You have presented and lectured to the
New South Wales Bar Association, the Public Defenders workshops and
Crown Prosecutors conference. Your topics have ranged from tendency and
25 coincidence evidence to consciousness of guilt.

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You also developed a two day training program for newly appointed Crown Prosecutors and coordinated a two day joint program for advocates from the Aboriginal Legal Service, Legal Aid and the Office of the DPP.

Your informal mentoring has contributed significantly to raising the
5 standard of your office's legal knowledge. You have been described as someone with an open door policy. Your Honour has been sought after by Crown Prosecutors and more seasoned advocates for your excellent judgment, so much so that at times there has literally been a queue of people out the door of your chambers.

10 One former colleague recalls you accompanying her on their first day of Court. You were both level 1 solicitors, but you were the most experienced. You sat at the bar table beside her to bolster her confidence. The judge that day was particularly ferocious. When he began cross-examining your colleague's witness, you sensed she was about to stand and interject and you
15 gently placed a hand on her wrist. This did not deter your colleague. She stood, was roared at by the judge and scrambled to sit back next to you. This illustrates your wisdom, your restraint and the feelings shared by many that you were often there beside them, literally and figuratively, as a support.

Your Honour works extremely hard, but in your spare time you like
20 nothing more than spending time with your husband and daughter. Family is important. In fact just about the only family member not present today is Anzac, your beloved dog, so named in honour of the Australian and New Zealand alliance of you and your husband David.

After long days working you like to unwind, watching a good crime show
25 with a strong female lead. You are also an excellent cook of vegetarian food

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and you bring your mathematical precision to the construction of legendary desserts.

From your earliest years you have been a diligent life-long learner with a razor sharp legal mind. Agatha Christie said, “The best way to get ahead is to
5 get started,” and you were getting started when you were a seven-year-old in the sandpit with your cousin.

Judge Smith, you have been described as a polymath. As one colleague described, you are a combination of Ruth Bader Ginsburg and Albert Einstein but with more flamboyant fashion.

10 Your colleagues bemoan the loss of experience and guidance now facing the DPP. Solicitors, Crown Prosecutors and those in the Director’s chambers all recognise the extraordinary effort you have put in to mentoring others as a service that is seldom known to those outside the DPP.

In the next chapter of your legal career you bring your generous
15 commitment to education and life-long learning, along with your razor sharp mathematical precision. Your appointment is an acknowledgement of your skills, expertise, diligence and integrity. Congratulations on your appointment and I offer you the warmest of wishes for your career on the bench. May it please the Court.

20 PRICE CJ: Thank you, Attorney. Ms Warner.

WARNER: May it please the Court, I acknowledge the Gadigal people of the Eora Nation, the traditional owners of the land on which this Court stands, and I pay my respect to their elders, past, present and emerging. I would also like to acknowledge any other indigenous Australians present or watching today.

25 I come before the Court on behalf of the solicitors of New South Wales to

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offer congratulations to your Honour and wish you well in your appointment to the District Court. Mindful of the very important role that relationships in your family have played in your Honour's life, I would like to acknowledge the many family members and friends who are celebrating your appointment today, your
5 husband David, your dad Neville, your mum Yvonne, your aunty, who I met in the lift, and your daughter Ella. Can I say, Ella, you must be so proud of your mum, she is a real inspiration for you.

So after being admitted to the roll of solicitors in February 1997, your Honour seemed destined for a long and successful career at Mallesons
10 Stephen Jaques, which is now KWM. However after two years working as a banking and finance lawyer, your Honour traded the scenic offices and its harbour views for an entry level position with the DPP in Parramatta, and can I say as a commercial litigator in a large firm, and Judge Coleman will appreciate this, that I am not surprised you ran away from banking and finance
15 to the DPP.

In a 2012 interview with Lawyers Weekly your Honour admitted the transition was a bit of a shock, but your Honour quickly found your feet and the move proved to be a very fortuitous one. Your Honour found yourself liberated from timesheets, billable hours and banking and finance, and thrived in a world
20 where the focus was on representing the community to the best of your ability.

Over two years in multiple roles the DPP would prove the perfect forum for you to challenge yourself intellectually, while ensuring that your formidable legal skills were employed for the common good. In little over a year your Honour would receive the first of your many promotions within the DPP.
25 As your Honour rose through the ranks you were always conscientious to

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support and mentor the next generation of legal talent, and at times your vehicle for mentoring your junior colleagues was literally one, a Mitsubishi or Mazda hatchback. Staff who worked alongside your Honour during your Campbelltown years remember how your Honour would offer to drive them home after a long day in the office and the hatchback was part transport, part legal classroom and part debriefing room.

In her own words a now Crown Prosecutor, who was a young solicitor at the time, recalls that:

“During that time we used to rattle off all our legal questions to Tanya and over the years I’ve continued to rattle off questions and seek advice. I have frantically called, emailed and even texted from the door of the court, knowing that she would always have the right answer.”

This is a recurring theme for almost everyone who has provided comment on your Honour’s career, because we have lots and lots of spies between us and we were all coming up with a similar type of theme.

It is not just that your Honour has an amazing legal mind, or in the words of one of your former colleagues “a legal super brain”, it is that you share this knowledge so freely and generously with your colleagues. To quote a deputy director upon hearing of your appointment, “Well who’s going to do all the mentoring and present all the CLE courses and tell us what tendency actually means?” This is another recurring theme, quite a few of your colleagues have outed your Honour as a stickler for making sure everyone understands tendency.

So in 2017 your Honour became a Crown Prosecutor and again thrived in that demanding role, representing the community and assisting the Court to arrive at the truth and justice between the accused and the community.

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Your Honour was a force to be reckoned with in the courtroom, always persuasive but unfailingly polite. Solicitors that instructed you were in awe of the level of preparation you brought to each brief.

To quote a deputy director on your rise through the ranks, it would be tempting to say that Tanya was a quiet achiever, but there is nothing quiet about Tanya. From her razor sharp stilettos and designer outfits with lots of zippers to her not quite sotto voce speaking tone, no-one is ever in any doubt that Tanya is in the room and can I say all power to you.

Your Honour continued to be promoted and your career would prove an inspiration for many women practising within the law. In the words of another Crown, "As a female colleague I am reminded of the saying that you can't be what you can't see, and Tanya allowed us to see what we could achieve."

Over many years and in many cases your Honour has been a powerful defendant for the rights of female victims. In 2019 and again in 2020 your Honour would hold the role of deputy director. A fellow silk has likened your career at the DPP as the perfect template for a junior lawyer to aspire to.

Your Honour is so beloved by this organisation that some of your former colleagues have convinced themselves that they are merely outsourcing you to the District Court. They remain confident that your Honour will remain on hand, albeit from the bench, to explain all the problems with their cases and to continue to tell them what tendency really means because they will have obviously got it wrong. Nevertheless they will miss running into you on level 21. They will miss your good humour and warmth, and they will miss your unique ability to pair any meal or legal matter with just the right bottle of champagne and, can I say, you are clearly a woman after my own heart.

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So your Honour brings a wealth of knowledge, personal integrity and insight to the District Court of New South Wales. The people of our State are privileged to be served by you in this role, and the solicitors of New South Wales have every confidence you will make an exceptional judicial officer. On behalf of the solicitors of New South Wales congratulations, your Honour. As the Court pleases.

PRICE CJ: Thank you, Ms Warner. Judge Smith.

JUDGE SMITH: Thank you. Chief Judge, Mr Attorney, Ms Warner, fellow judges, former colleagues, family and friends, I too acknowledge and pay my respects to the Gadigal people, the traditional owners of the land on which we meet today. Thank you, firstly, Mr Attorney and Ms Warner for those extremely generous and kind words, you certainly do do your homework. You seem to have had a colourful array of different sources for the purposes of doing your speech.

My path into law started in an unusual place. As you have heard, it is true it was a sandpit. I was nearly seven years old, happily digging in the sandpit, discussing with my similar aged cousin what we would like to do when we grew up. After my cousin expressed a desire to be a childcare worker or be one of those waitresses they had on the aeroplanes that served food, I declared loudly and firmly that I was going to be a barrister. Unsurprisingly my cousin's response was "What is that?" I told her that all I knew is that you get to go to Court, you get to talk a lot and people have to listen to you.

There were no lawyers in my family, as you have heard, lots of teachers and school principals. The sole source of my understanding of what a barrister was had come from a very reliable source, and I am the only person that

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recalls this, it was a single episode of Rumpole of the Bailey that I chanced upon the adults watching the evening before and I proceeded to ask a number of questions about. It still surprises me greatly that somehow I found my inspiration in Rumpole, him being a middle-aged man of generous proportions with a booming voice and all of that. Nevertheless my mind was set, having got my first glimpse of a courtroom I just wanted to be in it and I can honestly say it is correct that from that point on my desire to do law was fixed, it never wavered.

Now the fact that my mind did not waiver may be viewed by some as having tunnel vision or perhaps even as indicative of stubbornness. Personally I prefer to call it determination.

I am so lucky that my parents and two brothers were entirely supportive of my legal aspirations and unquestionably believed in my ability to do it. They made me believe that I could do whatever I set my mind to. They also made sacrifices in order for it to happen.

With my father being a State school principal you have heard we moved every couple of years to various locations around the State of Queensland, with the size of dad's school growing with each move. For the record I ended up going to seven different schools throughout my primary school and secondary school and the places have been named for you. They may not mean very much, but perhaps it is easier if I just describe them as follows. There was the sugar cane country, there was the cattle country, there was a mining town and the list goes on and on.

It has been observed that that part of my history provided an interesting and important insight into different communities and ways of living and it

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certainly did that. A decision was made when I was in year 10 and we were living in the mining town at that time in northern Queensland to send me to a private boarding school in Brisbane for the final years of my schooling, for the sole purpose of ensuring that I would be in the best position to achieve the
5 extremely high entrance mark that was required at that time for law. Whilst it was never mentioned by my parents, I now appreciate what was involved in such an undertaking and that other things must have been forgone in order to make it happen.

My desire to do law was also further fuelled in my final years of schooling
10 by my Nana, who I was very close to. She had a social worker background and she enjoyed going along to court to watch court proceedings. She believed watching certain criminal trials was better than television. I could not have agreed more. I have fond memories of us seeking out together criminal matters to watch on holidays as the best entertainment there could be. Having
15 seen on one occasion a Crown Prosecutor skilfully cross-examine an accused in a murder trial, I walked away dreaming about being that person one day.

Both my parents were passionate about their careers as a public school principal and teacher. They were extremely hardworking, dedicated,
innovative, humble and also driven by just giving something back. These are
20 characteristics that I admire greatly and hopefully have sought to replicate in some form in my career. I could not be prouder to have you here today, Mum and Dad, and I am just so relieved there were no last minute border closures.

My two brothers, Jason and Aaron, are also here. They have always been like rocks to me and they have been very good at keeping me very well
25 grounded, shall we just say. I know no matter what that they will always be

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there for me. Their wives, Kristy and Miranda, are like the sisters I never had, and their two daughters, Mackenzie and Georgia are like the sisters that my daughter, as an only child, would have loved to have had.

It means so much to me that you have all travelled to be here today for
5 what I will describe as your maiden court adventure. Whilst you never got to see me in action as a barrister, you have now had the opportunity to see me from a very different angle and in a very different outfit.

I would not be where I am today without the support also of my partner, Dave. I know being so dedicated to my career has come at a price. It has not
10 always been easy for those that are closest to me. However, you, Dave, have allowed me to fully pursue all my aspirations and you have kept things going on the home front, even when I have engaged in little things like an extremely complex six month trial, with your sister Marie providing backup support when required. You have never questioned all those weekends I had to work or the
15 late nights of preparation. You have been there when I have had moments of self-doubt, steadfast in your support and belief in me. I cannot thank you enough.

That brings me to our daughter Ella, my proudest work to date. Ella, you are a kind, thoughtful, engaging young woman with a wicked sense of humour
20 who I am immensely proud of. Thanks for your understanding in relation to some of those school events you would have loved me to attend "like the other real mothers" but simply could not because of the demands of my job.

Symbolic of your kindness is the fact that you realised that leaving the DPP after 23 years was not going to be an easy task for me, and you volunteered to
25 give up two of your Sundays to help me pack up my chambers because you

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knew it would be less burdensome and emotional if you were by my side, which it certainly was.

You also of your own volition created a beautiful scrapbook for me containing the generous and extensive well-wishes I received upon my
5 appointment being announced. My life is better every day for having you in it. However, there is just one thing I need to note for the record, I do have a good sense of humour, it is just not as quirky as yours and your dad's.

My first week 23 years ago when I started as a level 1 lawyer at the DPP at Parramatta was one of the happiest of my life because I knew even during
10 that first week that I had found what I definitely wanted to do. At the time I was slightly amused by the fact that I was being referred to as Madam Crown. Can I just at this point note the word "madam", although then again I was soon after also referred to as a try hard Ally McBeal by the accused when leaving Court one day, so perhaps "madam" was not so bad. Nevertheless it was the role for
15 me. How lucky was I to find a job that I was so passionate about and that was so fulfilling. It has been a role that has carried immense burdens and responsibilities and has not always been easy to undertake, but I have honestly never looked back.

At all levels of my career I have worked with some amazing people. I
20 was inspired and mentored by so many, and to my delight many of them are even sitting here on the bench with me today or in the audience.

When the three recent judicial appointments were announced it was noted that they were intended to replace three judges who were retiring, one of whom was his Honour Judge Blackmore. That particular judge had given me
25 his wig when I first became a Crown Prosecutor, which I wore with pride my

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entire career. There seemed to be a nice symmetry there.

Now whilst on the topic of the announcement of judicial appointments there is a matter I need to raise with you, mum and dad, and that is the common nature of my surname Smith. There are now three Judge Smiths. I
5 know the recently sworn in his Honour Judge Craig Smith well and respect him enormously, so at least I know that I share my name with someone so impressive. I have not had the pleasure yet of meeting the original Judge Smith, but I have it on good authority that he is also delightful so there is that consolation. There is also the fact that at this point, at least, I am the only
10 her Honour Judge Smith.

During my period at the DPP I had the pleasure of mentoring so many fine prosecutors, being instructed by some remarkable solicitors and generally working with people I admired. I have also been lucky enough to acquire along the way so many wonderful friendships. I have decided I am not going
15 to name names because there is just too many and I fear that I would be left feeling like I had missed someone out, which if you know me you would know I could not stand. I would like to think that you also all know who you are and how much you mean to me, and that my departure has provided me with a further opportunity to actually reinforce on a one on one basis to you your
20 importance to me.

I am absolutely thrilled that so many of you are present here today in the courtroom. I know there is also a number of people online, for a moment I was trying to forget there was a camera operating, but I would like to acknowledge those that are also logged on and watching wherever they are.

25 To have the opportunity to be in positions of leadership within the DPP

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has been an honour and a privilege. I cherished the opportunity of being the acting Senior Crown Prosecutor for a period of six months last year. It meant a lot to me to be the first woman to ever hold that role.

In my role as Deputy Director I worked with an incredible team of people.

5 The highly talented legal advisers and support staff made every day of working a joy, and, yes, I may have been a little bit noisy, I think it is a bit quieter there at the moment. As for the Director and my fellow Deputy Directors I truly could not imagine a more lovely and inspiring group of men to work with, thank you.

I respect the importance of every role within the criminal justice system
10 and have relished having had so many opponents that have performed their role to such a high standard. I am particularly pleased to see some of those gifted opponents who I have admired greatly here today. In my opinion there is never a need for things to ever become personal. Everyone has an important job to do and respectful relationships should be able to be
15 maintained.

Prior to applying to be a judge, I spent a great deal of time contemplating what I think makes a good judge and whether I really had the characteristics that were required for such an honourable position. Whilst it was something that I had truly desired, was it the right position for me, in particular did I have
20 the right instincts and temperament because I readily recognised that without it nothing else would matter. So, as I am prone to doing, I created a list, which used many colours, of what I had observed in the judges that I had admired and respected throughout my career. It included absolute integrity and fairness, respect for others, patience, calmness, courage, compassion and
25 commonsense.

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Now after writing that list out it seemed like an extremely high bar to meet, nearly enough to make me think twice, however it is a bar that I would like to endeavour to meet. Luckily I like nothing more than a good challenge.

I have greatly appreciated the warm welcome I have received from the
5 Chief Judge and my fellow judges. I anticipate it may take me a little bit of time to adjust to this new role, with old habits unsurprisingly dying hard, but I have been comforted by stories from former colleagues who became judges of them in their new role finding themselves yelling out “objection”, calling one of the parties “your Honour”, forgetting to adjourn before walking off the bench, and
10 even walking off in the wrong direction off the bench. All of these I must say are feeling like distinct possibilities at this point.

So as I embark on this incredibly exciting new challenge please bear with me as I find my feet, which I assure you will always be in a good pair of high heels. Thank you.

15 PRICE CJ: Thank you, judge. I warmly welcome everybody here this morning to join us for morning tea. The Court will now adjourn.