

## The Hon Justice David Hammerschlag



On 30 January 2007, David Jacob Hammerschlag SC was sworn in as a judge of the Supreme Court of New South Wales.

His Honour had had a dynamic and flamboyant career at the Bar, specialising in commercial law but also in white collar crime, both on the defence and prosecution sides. Born and educated in South Africa, his Honour matriculated to university in 1971 at the age of only 15 and by 18 and 21 respectively, had graduated in arts and law from the University of Witwatersrand. By the age of 26, he had been made a partner at Werksmans, a large commercial law firm in Johannesburg, and went to the Bar in South Africa in 1983. Following his emigration to Australia in 1985, he rapidly became a partner of Freehil Hollingdale and Page before moving to the New South Wales Bar in 1991 and taking silk in 2000.

In the finest traditions of such ceremonies, Slattery QC unkindly remarked at his Honour's swearing-in that 'Leaving the Dutch-Roman system was not always plain sailing for your Honour. Shortly after

commencing at Freehills you prepared a draft affidavit for the late Peter Hely QC, as he then was. Hely looked it over, handed it back and commented that it appeared to him you had drafted it in Boer.' In the same vein, Slattery QC referred to his Honour's high profile practice in corporate crime, noting that he was 'always able to get [his] message across to juries, loud and clear. In the middle of one criminal case, the jury sent a note to the judge. The judge read it out to the court. It said, "Would all counsel other than Mr Hammerschlag please speak more loudly"'.

Slattery QC continued:

By some whimsy of fate, your Honour was gifted with a surname which translated into English actually means, 'hammer blow'. Your Honour's cross-examinations always gave due honour to this heritage. They were strong, unflinching and determined but nevertheless economical. You asked the hard questions, whatever they were. Your solicitors gathered in anticipation to watch you perform. You became widely known to them as 'the hammer' or even 'the Messerschmitt'. Time on your feet was known as 'hammer time', no doubt for the witnesses under your examination 'getting hammered' developed a whole new meaning.

Your Honour is a man of conspicuous idealism, conspicuous faith and conspicuous commitment to the community. You balance your work with family time and leisure time. A few years ago you decided to take a sabbatical for six months. Apart from your golf you spent much of your time as a volunteer ferrying elderly and immobile residents of Ku-ring-gai to and fro. They were immensely entertained later to find out that they had been transported about by senior counsel. They will be even more astonished to discover their driver is now one of Her Majesty's judges.

The Bar has been privileged to have the benefit of your Honour's professional energy and dedication for the last sixteen years. Now the people of this state will have the privilege of you serving them as a judge.'

The president of the Law Society, Mr Dunlevy, also rightly observed that his Honour 'has been known to display continually superior professionalism, utmost integrity and an encyclopaedic knowledge of all things legal [and] has always been regarded as the barrister upon whom solicitors call when the cards are really down. This is because he possesses a unique talent for finding solutions when none seem apparent. And his Honour never shies away from cases which others deem to be too hard.'

Replying, his Honour recalled his transition to Australia, his happy time at Freehills and then his early encounter with the Hon Andrew Rogers QC, then the chief judge of the Commercial List. His Honour recalled:

Shortly after I was admitted, I found myself having to appear before the chief judge of the Commercial Division as it then was, in a contested matter, counsel having become unavailable on short notice. I received a lukewarm reception. I initially put it down to the fact that the chief judge was having difficulty with my foreign accent or maybe because I was having difficulty with his. Things did, I must say, seem to change rapidly when due to an ingrained habit I called him 'my Lord'.

His Honour also observed that he had been 'the recipient of kindness and friendship across the spectrum of the profession and more than anything what my friends and colleagues in Australia have given me is a background and history in my new country without which today would be inconceivable. By 3000 year old tradition a man should have a teacher and a friend.' His Honour said that he had been fortunate enough to have had many teachers and friends in his professional life, and noted his good fortune in South Africa to be mentored by a solicitor, David Judah, a leading practitioner and as a barrister by I A Maissels QC whom he described as 'undoubtedly one of the greatest practitioners ever in that country, known for his defence of Nelson Mandela in the first treason trial.'