

Self-reflections from a Pond ... A A Robins

Kelly Wright asked me to write a review of the Bar Reader's Course and its aftermath. To be fair to her she asked me to write a review of the course that isn't like this one. What follows speaks only for myself and is a totally unreliable summary of the course. It is also a very odd way to express gratitude. A "white knuckle flier", by the way, is a person whose public terror is in part proclaimed by the visible draining of blood from his lectern-impaled hands. The rest of this is a bit harder to explain in advance. You had to be there.

This is a one-frog perspective on pond life.

Many of you, during the course, did not take notes and did not ask questions. You were asleep. You were asleep for four weeks until the speaker from NIDA asked you to sing "Oh What a Beautiful Morning".

I was not asleep. I took notes and asked questions.

I don't do show tunes.

Here is what you missed - in question and answer.

PART 1

WE ARE POND LIFE

Who were we?

I'm not sure we ever found out who we had all been in our former lives. *We were too busy.* Nevertheless I am sure we were very interesting.

Well, who were we?

It no longer matters. It is not relevant. It is not admissible.

Who are we now?

In the first few days we found ourselves defined by inference.

Well, who are we now?

We are now elementary pond life. We are delusional. We are a triumph of hope (ours) over experience (theirs). That must come as more of a shock to some than others. *It doesn't shock me.*

Yet we are the white knuckle fliers - the future of the Bar.

How long will it take to fly with pink knuckles?

About five years.

Who are they, who speak to us?

They are tact in action.
They are depending on us.

Are we grateful for the time, effort and learning of the speakers and those three-metre-thick folders of know-how we could never hope to gather (*or carry*) by ourselves?

Yes *extremely* - pathetically, actually.

How long will it take us to read it?

About five years.

Then why are they, *the speakers*, depending on us, *the speechless*?

They are depending on us to be nicer to solicitors and their clients. Remember some of us were solicitors a few weeks ago. Were barristers nice to us?

Why be nice to solicitors and their friends?

We now know that the categories of humility are never closed. We now know why we must be nicer to solicitors. They are the morning sun and the evening star. But they are not pleased with us. They want to drain the pond and reclaim the land for solicitor advocates.

Their friends - who are not really their friends - want to abolish us. They want to drain the pond for lay advocates - little Maoist barefoot doctors of advocacy.

But for now the solicitors and their friends will keep us - some of us - for now, in case we are useful.

How can we be nicer to solicitors?

By not being so condescending for a start, all of us, right now. Stop before we start. Then we can consider market realities and behave accordingly.

There are 25,000 barristers in Wentworth/Selborne alone not counting those on the roof.

There are 25,000 law students who will be released next week. All of them want to do what we want to do and have average TERs of 99.3 and have read all the cases.

There is enough work at the Bar for 103 people and it is being done by our non-judicial speakers plus two or three others who would talk to us but are too busy with briefs too fabulous for our imagination.

What can we do about this?

Nothing.

Nothing? Nothing comes from nothing. Speak again lest you mar our fortunes.

Your fortune

If you really must have money then marry it. Marry someone with a proper job. Marry a litigation solicitor, banker, plumber or dentist.

What should be our motto?

No flicks - no fees - no dog - no fleas.

Fees

The Bar is cheap. It really is cheap. It is dust and dog boxes, not palaces and time sheets. Solicitors have palaces and time sheets. They are very expensive. Why doesn't the public know that?

Is this a communication thing, senior speakers?

No it's not, with respect to the questioner. Our speakers explained the problem. Too many junior barristers have been doing their work for money.

We must provide a service that is seen by the public at large - that part of our public that has been left at large - that we are *both excellent and cheap*. Let's not be mealy-mouthed about this, we are very cheap. All right then, special limited offer - we are *excellent and free*.

Money will come to those who wait.

Then one day, said the speakers, they will have more money than we can imagine.

Flicks

Nothing, we were told and knew already, annoys a solicitor more at 9.55 a.m. on day one of two days' GBH at the Dizzo to discover his barrister has flicked him for a special sitting of the Federal Court on Lizard Island for a fine point of shellfish. That's very selfish. We must promise not to do that and we do. *We are not flickers, not us. We are flickees.*

What is it that barristers can do that solicitors don't want to do?

Advocate and understand the laws of evidence, our speakers told us.

What do we need to know about evidence and advocacy?

Everything, perfectly, now.

What do we in fact know about evidence and advocacy?

A little, imperfectly, before the first hearing date - we promise.

Does this matter?

No, because the law of evidence is about to be changed by a temporary House of Reps voting alliance of the Labor Party, the Mardi Gras Party and the Birthday Party to include everything which is audible, non-heterosexual, gender-neutral or neatly written on coloured paper with little clowns on it.

Will this affect us?

Yes.

Why then after all these centuries are they changing the laws of evidence just when we need it to justify our new existence?

Because as a result of public outcry over sentencing the next wave of judicial appointments will be lay separatist hangers and floggers who left school at 12 and think *LA Law* would be even better if they filmed some executions. *The existing laws of evidence might confuse them.*

Will this make a difference?

We'll have to wait and see. It may make no difference at all.

How can we be nicer to the public?

It can be hard at times but we must always try. 50% of them will lose and blame us. Their solicitors will tell them how to blame us. We will tell them how to blame their solicitors. The other 50% will blame us because they didn't win enough. We must try to be nice notwithstanding or they will nationalise us. Then we will be public servants and we will not have to be nice to anyone.

Was the course just a tad condensed?

One day, which was the first Tuesday, someone asked if it was Thursday. I left my body around about then and by the time I'd decided it wasn't Thursday it was.

By day 3 we were astral planers like Women's Weekly Discovery Tourers Concordeless over Europe, blinking and missing Belgium.

I think the course was just a tad condensed.

A DCM for services to ADR
The Exalted Order of the White Elephant

As some of you know I have been away and this lot puzzled me. Why would anyone receive the Distinguished Conduct Medal for an American Depository Receipt? These days you can't even get a paperweight, let alone a medal.

Then at last I understood what "ADR/DCM" means.

I found the meaning of "ADR" in a gardening book next to aphids. When you go away and find your green tree is now blue there can only be one answer - an infestation of management consultancy. It is incurable. It can only be treated with management consultancy of another strain.

"DCM" means "Don't Confuse Me".

In the end, however, we'll just have to get used to *blue leafed bewilderment* and working at the speed of light.

The NIDA demonstration

At this final point most of you who had slept throughout were woken for a show tune. It was "Oh What a Beautiful Morning".

In fact it was not a beautiful morning it was *an* afternoon of audience participation.

We were shown silly things to do with silly parts of the body including the act of throwing them away. But some parts don't travel. We were told we can project if we can rumble.

We learnt to be trees.

The Burning Bernasconis

As veterans of the mock pleas, mock notices of motion, mock lots of things we faced the moot (arson/insurance) with this knowledge

1. duff advice from a solicitor is not a personal injury
2. if an Arthur Boyd looks relatively cheap it's because Mary did it
3. do not go to Fiji in the hurricane season.

The moot itself was a triumph for all of us *mooters* (and some of the *Bernasconis*). We spoke in public in front of a proper judge. We are not dead. That is a triumph.

Upon Leaving the Leagues Club for more graceful grazing in the shadow of the Mid Life Crisis Centre

As we walked away from the post moot bash we heard Kelly rushing back to the Bar Association with the last of our addresses for service memorised. We must all have an address for service for our summonses to attend *CLE*.

These last words came floating from a bench in Hyde Park from a redheaded figure deranged by relief cradling a flagon of industrial-strength claret singing a Kentucky folk song far removed from our now finished course.

*"The speaker killed a bar in 1923
Practising in courts which haven't seen me
Accepting his invitation without a single word
To speak upon a topic
Of which I have never heard."*

This was our release point. We were celebrating course survivors, contemplating the fearful Monday. The ne plus ultra Monday - the day of the miraculously stopped train - the Lake Eyre phenomenon - NOTHING - as far as the eye can see.

PART TWO

THE WHITE KNUCKLE FLIER

Monday Day
Ground Zero
Floating on insignificance

Did you ever get the feeling that you wanted to stay just to get the feeling that you wanted to go?

The \$2 books

I went to a bookshop with *someone else's* bright idea. They would deck me out in factory seconds. Was I pleased.

Day 2. The terror of not doing anything

This is the Lake Eyre terror. But there is one worse terror than the terror of not doing anything.

Day 3. The terror of doing something

I don't know how it found me, hiding as I was under a QC's second desk, but it did and there it was - chambers work. I beavered, I devilled, I delivered, it disappeared. I haven't seen it since. I think of it as an orphan.

Day 4. The \$2 book

Unfortunately the \$2 books were now the \$2 book - on international law. The law of nations is easy to overlook on the way to the Local Court.

Now I can say things like "The decision to wage war is beyond good and evil".

I can work with that.

"Your Worship Robins for the defendant. Your Worship the decision to lift a strawberry doughnut from the Bayswater Road deli in question is beyond good and evil."

Day 5 - ish. Speaking in Public The Baptism of Public Bleeding

Number two master found me through four floors across the atrium of cold war air conditioners.

"Just pop up to the Federal Court for a mention. It's a consent adjournment. They want it, just agree. It's nothing to worry about. It might be worthwhile to look at the file. It's a copyright matter."

I have heard about this kind of thing. I hoovered the file with my nose.

His Honour *Mr Justice Gummow*, who is interested in *copyright*, wanted to know a little bit about it. He wanted to know everything about it. He wanted to ask me.

"I see. Is this a section 35 matter?"

These thoughts flayed the sealed lips of the white knuckle flier.

"Yes your Honour and no. There are two schools of thought."

Then an amazing thing happened - out popped "equitable assignment of copyright" - all by itself.

I wrote a memorandum.

Then it occurred to me - this is possible. □