
Occasional Address

THE KEYS TO OPPORTUNITY - EDUCATION, PERSISTENCE AND HARD WORK

UNIVERSITY OF WESTERN SYDNEY LAW ALUMNI OCCASIONAL ADDRESS

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THE HONOURABLE JUSTICE IAN ROY COLEMAN*

Growing up and attending a state high school in outer western Sydney in the 1960s, I barely knew what judges did, much less that I would one day become one. With few exceptions, the parents of children born in the decade following World War II were fiercely determined to secure the best possible start in life for their children, and saw education as the means of doing so. For my parents' generation, university education was rare, essentially for the well off, and, having been diverted into one aspect or other of 'the war effort' for five or six years after leaving school, not something which was then realistically available to them, if it ever had been. Without necessarily understanding why, that generation realised the value of university education, and I do not mean value in a purely financial sense, although that was certainly part of its attraction. I do not recall when I first thought I would like to go to university, or why, which is not surprising, as I really had no idea what a university was. I confess that the prospect of working at Warragamba Dam, or the gravel quarry, or, worse still, in the bank provided powerful motivation to apply myself at school. By the 1960s, universities, of which there were then two in Sydney, were more accessible by children from 'working class families' as ours undoubtedly was, via Commonwealth Scholarships. To university students who have only known HECS, the all expenses paid, no repayment scholarship, for not one, but two undergraduate degrees, must sound too good to be true, but it was. My siblings and I, and thousands of other Australians, only gained a university education because of the availability of Commonwealth Scholarships. Our parents could never have sent us to university otherwise, and even then, could only do so by making personal sacrifices. The scholarships

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cannot have been too hard to 'win' - I got one with passes which, even now, I prefer not to reveal!

I would like to say that the prospect of commencing university in 1968 was a daunting experience, but it is hard to be daunted by, or about, something you had no idea about, or expectations of. I can say however that my first year was unfailingly intimidating, and that, within days of commencing, I wondered what I was doing at university, and was certain that I would only be there for one year. The term 'westie' did not emerge until after I had completed my university studies, so I can perhaps suggest that, for the first and only time, I was ahead of my time, in being a westie at Sydney University. Every morning, we westies boarded the train from Penrith and headed east. The journey took one roasting, or freezing hour, depending upon the time of year, packed sardine like in the 'red rattlers'. From Redfern station, we walked to the campus. Each afternoon, we reversed the journey, and did it all the day after, and the day after that. No money, no sophistication, no fancy clothes, we felt, and were, very much 'out of it' in the first year at university. Knowing what our parents were giving up, we stuck at it: train, lectures, Fisher Library, more lectures, train, do it all again tomorrow. It was not unenjoyable, and I did not expect it to be anything more, but, to this day, when I hear people talk about the great times they had at university, I wonder where I must have been going all those years.

To my considerable surprise, and immense relief, I passed all my first year subjects, only just in one or two instances. To my further surprise, so did all my westie friends, whilst many of the 'cool' set did not. I suddenly thought that it might just be possible for me to go the distance! Not that anything changed, except perhaps that some new trains were put onto the western line, and the vending machine under Fisher Library began stocking finger buns with pink icing. The years passed quickly, or so it now seems, and I suddenly found myself entitled to write Bachelor of Arts after my name. The tangible benefits of that acquisition were soon realised - my pay as a casual postie delivering mail around Penrith on a pushbike went up - because I had a university degree. Three years later, I was entitled to write Bachelor of Laws after my name, and did, countless times on sheets of paper I would stare at in amazement. After six years at university, it was time to venture into the real world, and get a job that did not involve milking cows, or pumping petrol, or delivering mail.

To be admitted to the practice of law in the 1970s, two years articles of clerkship needed to be served with a senior solicitor. This could be anything from being paid for two years to learn the trade from barristers and solicitors whose services were in great demand, and priced accordingly, as was my good fortune, to collecting dry cleaning, washing cars and standing in queues for hours at the Stamp Duties Office, as was the fate of many less fortunate articulated clerks. For many well connected graduates, and the honours brigade, to neither of which I belonged, gaining articles was not difficult. For those of us who barely knew what a solicitor was, much less knew any, what can best be described as hand written 'begging letters' were despatched to the best, then the second best, then the....law firms in Sydney. This I did, 110 times. The big firms would invariably grant us also rans interviews. They were generally of short duration, three minutes was my shortest. Once it was realised that you were a state school educated westie, with no likelihood of attracting any but the wrong kind of work to the firm, the prospect of articles dissolved. It was probably after about my 106th three minute interview that I began to suspect that I had been 'dudded'- a westie could complete university, but actually gaining admission to the legal profession was something else altogether! My lucky break, letter 110, came when I gained an interview with a small Sydney commercial litigation firm, the partners in which were state school educated, albeit at North Sydney and Sydney Boys High Schools. The time and effort those solicitors put into my apprenticeship, when they could have been earning huge fees for themselves, and the knowledge of law and humanity I gained in my two years articles with them, are things I have never forgotten. Fortunately, and particularly in recent years, I have had the opportunity to help a number of young lawyers from backgrounds similar to my own in a small way.

In early 1974, I became entitled to call myself a solicitor, attorney and proctor of the Supreme Court of New South Wales, a grand way of saying that I had become a lawyer. My pay soared from \$23.50 a week to the stupendous sum of \$150 a week. However, the joys of life as a solicitor were short lived.

The nation's economy was in some difficulty by mid 1975, and Sydney taxi cabs were increasingly being driven by recently qualified solicitors. Faced with the prospect of being 'let go', I did what any lawyer with no money, no contacts, limited ability and virtually no experience does - I went to the Bar. Not having floors of barristers clambering to persuade me to bring my talents to their chambers, or

parents who could stump up \$50,000, I could not hope to buy a room in Selborne or Wentworth Chambers. My applications for a reader's room there were essentially hamstrung for the reasons that my pursuit of articles had proved so problematic. In desperation, I turned to one of the few sets of 'fringe' chambers which then existed in search of a room, or corner of a room as it turned out to be. The chambers were in a run-down building awaiting re-development, in Phillip Street. Though not far in distance from Selborne or Wentworth Chambers, the chambers I entered might as well have been on another planet, so inferior were they to those learned establishments. The members of the chambers could most charitably be described as 'colourful', or unfashionably eccentric. The lifts in the building did not work, the plumbing worked intermittently at best, air-conditioning meant opening the window, if there was one, the succession of clerks, and most members of the chambers had a dearth of work, and powerful liking for strong liquor, but my postage stamp sized desk in the corner of the bordello-like chambers of a criminal barrister who took pity on me was a start. For some members, chambers were a home away from home. For others, they were home. My memories of life in chambers were recently, and with terrifying accuracy, revived, by Cleaver Green in the ABC television 'documentary' Rake.

A 'gritty' existence would accurately describe my early years at the Bar. Not surprisingly, the highly respectable, and even more highly lucrative, commercial and equity work which flooded Wentworth and Selborne barely trickled into our chambers. The flotsam and jetsam of Sydney's litigants however found their way to the chambers with unflinching accuracy. I think State governments of the 20th century created the incredibly complicated provisions of the landlord and tenant legislation with the survival of starving barristers in mind. Invariably, the cases were adjourned, over and over and over again, until the tenant died, the landlord paid the tenant to vacate the premises, or the tenant was simply 'persuaded' to vacate. In the meantime, every six weeks or so, a half hour wait in a suburban court for the next adjournment meant a \$30 fee. The cases were never actually heard and decided, or ever going to be, so knowing anything about landlord and tenant law was not required. Another 'earner' for which legal knowledge was scarcely required was entering pleas of guilty for street prostitutes at Central Petty Sessions Court. If represented, the prostitute's case was dealt with early in the list. If unrepresented, the prostitute might have to sit around waiting at court until well after lunch. It made good economic sense for a prostitute to pay a barrister \$15 to say 'usual case of prostitution your worship,

nothing to add', pay the standard \$80 fine, which was fixed by reference to the 'going rate' for services rendered, and be free to get back to business. As a struggling barrister, I pondered more than once the disparity in the fees commanded by the two oldest professions. I did however appear regularly in the High Court, or, more accurately, at the High Court, courtesy of an old friend who worked for the Commonwealth Crown, to receive reserved judgments. The fee was \$15 - good money for about one minute's work, and not even having to open your mouth, and hoping to goodness that you would never have to. Barwick CJ was usually present on those occasions. I would not describe his demeanour as avuncular, but at least his Honour was clearly alive, a conclusion less readily reached in the case of McTiernan J, who was then aged eighty five plus. On one occasion, Barwick CJ looked at me and said 'costs'. From behind me, I heard a whisper - 'make the usual submissions'. 'I make the usual submissions your Honours', I whimpered. My opponent said exactly the same thing, though rather more confidently. The Chief Justice paused. I waited for the ceiling to collapse. 'We make the usual order', his Honour pronounced as he rose to leave the bench. I learnt later that the Commonwealth had won the appeal, and been awarded costs. I also learnt that costs followed the event. Naturally, I did not allow the truth to intrude when recounting my early success in the High Court.

Very occasionally, a brief to appear in the equity court, usually for an impecunious party destined to finish out of the prize money, would escape from Selborne and Wentworth, and seek refuge in our chambers. In all honesty, and with due modesty, I can say that I only ever lost two cases in the equity court. With equal fidelity to honesty, I must disclose that I only ever had two cases in the equity court. Analogies to fishes out of water are apt when I reflect on my equity experience. The judges, without exception, seemed terrifyingly intelligent. So did the barristers who regularly appeared there. Thankfully for me, the judges were unfailingly polite, and suffered fools patiently, if not gladly. Cases proceeded more like games of chess, played quietly and courteously, punctuated by polite sessions in the judge's chambers, with tea served in fine china cups. Raising one's voice during cross-examination was not on, nor was interrupting an opponent. Objections were an unnecessary disruption. Cross-examination which elicited hostile, loud or tearful responses was considered excessively robust. Unless the Bar table was decorated with at least several dozen volumes of law reports, preferably of obscure cases, decided by judges with quaint titles, the case was under prepared.

By comparison, the criminal cases with which I was becoming increasingly familiar, were more like a game of rugby league in which the referee was largely absent, or tended to side with one team, usually the prosecution team. The judges in crime in my early years had generally served in World War II. Of course, there were no women on the bench. In the District Court, it was often 'rough justice', but 'justice', it inevitably was. Perhaps not surprisingly, not much fazed the judges who had seen active service, and were quick to see through the plausible rogue, or spot the rough diamond. The law might not have been the strong suit of some of those judges, but their knowledge of people, and sense of fair play more than made up for anything lacking in the book department. Outwardly, the old school judges were hard. Cruel but fair is a term I have heard used, half accurately, to describe them. Those judges were inevitably fair. A barrister's pedigree counted for nothing in their courts. It was how well you were prepared, and how well and humbly you fearlessly conducted the case, that mattered. Substance mattered a lot, form very little, humbug even less. Judges in those days said things, often in the presence of juries, which would see them carpeted before the Judicial Commission these days, but the inadequacies, or incompetence of counsel, were never visited upon the unfortunate client. The lash of the judge's tongue was never felt by barristers who had prepared to the best of their ability, and tried their hardest for their client. The ill-prepared could expect a torrid time. The reception which awaited the ill-prepared and pompous barrister is too hideous to recount, even thirty years later! The few, and modest, skills I acquired at the Bar were gained more at the hands of the judges of the District Court in the 1970s and 1980s than as a result of subsequent experiences with more learned judges in higher courts, and seriously eloquent senior counsel. I soon came to realise that, provided you hung in there, and did your 90% preparation, 10% presentation to the best of whatever ability you had, where you came from, went to school, what your parents did, had little impact on what you could achieve.

With belated hindsight, being a 'Westie' was an advantage at the Bar, though I most certainly did not see it that way at the outset, or for a long time after. Many of my contemporaries, justifiably, anticipated successful careers at the Bar, and many were obscenely successful. But many who had things 'served up on a plate' for them did not succeed, and struggled to understand why. Having the benefit of humble beginnings, and no contacts, I never expected anything that I did not work for, and only started to think that I might just avoid bankruptcy after five or six years at the Bar. I could not pick and choose what work

I would or would not do at the Bar - every brief could have been my last in those early years, and I valued it accordingly. I can honestly say that no brief, or the fee for it, was too lowly for me for some years after I started at the Bar. By default, much of my work was in the comparatively unfashionable field of criminal law for the better part of my sixteen years at the Bar. Crims weren't greatly interested in where you went to school. Over time, I also gained a practice in the even less fashionable field of family law. Those clients too were more interested in performance than pedigree. My acquisition of a family law practice illustrates how work for barristers can come 'out of the blue'. In 1978 I received two phone calls, from barristers I barely knew, telling me that I would be receiving a few briefs in the Family Court which they no longer required - code for 'I'm being made a judge'. Several boxes of briefs arrived in chambers over the ensuing days. Almost overnight, I thus went from having a rough idea of where the Family Court was, to having a sizeable family law practice.

Not all work that came my way was intended for me. I once received a brief to appear in a criminal case in the District Court at Griffith. I should have been on notice that something was amiss when the solicitor told me that the client, who I had never heard of, had asked him to brief me as I had done such a good job for him on his last malicious wounding case. I arrived in Griffith early on the morning of the case to confer with the client. He blanched, and, with quivering voice, said 'you're not Mr. Coleman'. I did not know much, but was fairly confident that I knew my own name. The penny then dropped - the client thought that the very experienced and capable Michael Coleman, one of the four of us then at the Bar had been retained. The judge smiled benignly when I informed him of my client's difficulty, and offered to adjourn the case. The prospect of paying a return airfare for no fee is not attractive to many barristers, much less to battling barristers. Having rung Michael Coleman in Sydney, the client informed me 'you'll do'. Incredulous, I asked him what Michael had said. He replied, 'that you're the best barrister in Australia'. If my client ever believed that, he could not have for long after the case began, but still seemed happy enough as he was taken into custody to commence his four year sentence. I remarked on his apparent good humour, only to be told that 'the blokes in the pub reckoned I'd get six or seven'.

Although I never kept a tally, by the time I had been at the Bar for a decade, I realised that most of the 109 firms who had discerned my lack of potential in the early 1970s had briefed me, some on a regular

basis. Though re-assured, I made it a rule never to raise where anyone grew up, or went to school, just in case!

Perhaps surprisingly, criminal law and family law have a good deal in common. In both, the best and worst in people are revealed, often painfully, and with life-long repercussions. The personal stakes for the clients are highest. Reliance upon the lawyer is immense. The former High Court judge, Michael Kirby, has long exhorted barristers to embrace the 'unfashionable' litigants and their causes. The wealthy have no difficulty attracting, and retaining, the best counsel money can buy. The less well-off are no less deserving of fearless and competent representation, and generally much less able to recover from the consequences of inferior representation. In criminal and family law, the skills of the advocate are more likely to make a difference than in most other areas of law. Drawing the line between appropriately empathising with the client's plight, but avoiding identifying too closely with it is perhaps more difficult, but more important, in these than in many other areas of practice. I believe that the value of experience of life in the real world in the practice of the law cannot be over-stated, no matter what area of the law is involved. Probably the most valuable thing to be learnt from real life is humility, a virtue which does come naturally or abundantly to most barristers. The humble barrister copes best with opponents with the upper hand, judges with the whip hand, and clients whose hopes have not been fulfilled. Being humble, and being fearless are not mutually inconsistent. The best and most fearsome QCs are generally the most humble. Particularly in crime and family law, the temptation to intimidate, insult or humiliate witnesses who are often frightened, nervous, or unsophisticated, by 'cheap shots' in cross examination, or other advocacy skills, is often considerable. So is the temptation to hold back some of the truth when it seems advantageous to do so. The barrister who does not succumb, and refuses to compromise his or her professional integrity is, in my experience, guaranteed success at the Bar. Judges and opponents have long memories, particularly of sharp or unethical conduct, and it is amazing how quickly 'what goes around comes around'. Ultimately, all a barrister has is a good name, which is slowly earned, quickly forfeited, and then often never regained.

On a Friday afternoon just before Easter in 1991, I received a phone call from someone who said he was Bob Hawke. As I tried to decide which of my friends was impersonating the Prime Minister, I thought I heard the words 'we want to make you a judge' uttered by whoever it was on the other end of the phone. Fortunately, I restrained myself from

abusing my leg puller. After 'take all the time you want to think about, and ring me back on Monday to accept', the caller was gone, but the call was genuine. Given my success at the Bar to that time, I could have rung straight back to accept the offer, before the government came to its senses, or realised that the wrong Coleman had again been telephoned. I played it cool, waiting until 9.05 on the Monday morning to ring the PM to accept. The Attorney-General's Department then contacted me to 'clarify a few' things. These did not include where I grew up, where I went to school, or what my parents did, though the government was very anxious to know that I had paid all my tax. I had.

After more than two decades on the bench, I still marvel at where my journey started, and where it has taken me. My success, if I may call it that without undue immodesty, is no doubt referable to a good deal of hard work, and, quite honestly, being in the right place at the right time, or good luck. In my case, a chance conversation about judicial appointments with a solicitor I did work for whose brother was in the cabinet three weeks before I got 'the call' sounds a bit like luck, or being in the right place at the right time.

But, without education, it could not have happened. Education has enabled me, and my family to have a life which we could never otherwise have had. To suggest that I had to 'overcome' obstacles to success would be a considerable exaggeration. Competing against others who started with a few handy advantages would be closer to the reality. Many years ago, I realised that having grown up in what could fairly be described as a working class family was a great blessing. The work ethic was in our DNA. We never imagined that the world owed us a living. Being humble was easy - we had plenty to be humble about. My siblings and I were left in no doubt, from the time we started school, that education held the key to our futures, and that they were limited only by our own aspirations, and our willingness to work to fulfil them. Everything I have experienced, in the practice of the profession of law, and in life generally, leads me to believe that nothing has changed in this respect. If I can make it to the bench of a superior court, so can any student, or graduate reading this article. Focus on substance, and don't allow yourself to be distracted or intimidated by impressive appearances; the legal profession has no shortage of show ponies, or lions in chambers, lambs in court, if I may push the metaphor perhaps a little too far.

With education, persistence, application, and the great strengths of your origins, you can make a difference and achieve things you may not have thought possible. As a boy chasing a football, or wielding a cricket bat on the clay-pans of western Sydney, I never dreamed of a career which could have so fortunate an ending.