

Remarks of the Hon Justice O'Meara at the Victorian Bar Readers' Dinner in Melbourne on 18 May 2023



Hon. Justice O'Meara
Supreme Court of Victoria

Good evening, ladies and gentlemen and thank you for the very warm welcome.

I acknowledge all distinguished guests as well as any Aboriginal or Torres Strait Islander peoples present.

Justin Graham KC sent me this letter asking me to give this speech. It says, in terms, you can talk about 'whatever you want'.

Think about that for a moment.

It's not that long ago that a Supreme Court judge wanted to speak at the Bar dinner about his own grandfather's experiences during World War I.

Nor is it really that long since a County Court judge addressed a dinner about the detail involved in certain changes made to the Civil Procedure Rules.

For that matter, a judge once delivered an extremely lengthy speech concerning his own love of cricket.

Mindful of these and other such examples, I thought that I would adopt a relatively conventional course and, at least for a while, simply talk about myself.

You've already heard about some aspects of my career at the Bar. Let me summarise that for you: I came to the Bar in 1998. I proceeded to lose a great number of cases. I was so good at that, apparently, that it

qualified me to become a silk in 2011. I then proceeded to lose an even greater number of cases. Ten years later that qualified me to become a judge. I then faded into relative obscurity for exactly two years to the day until addressing this dinner tonight.

In my time at the Bar, however, I was lucky enough to work and become friends with some truly great barristers.

One was the late, great, RJ Stanley QC.

Dick was a natural. Handsome, debonair and with an easy charm akin to that of Robert Redford: if any of you know who that is.

I did a few cases with Dick early on, and several years later we became colleagues in chambers. I was proud to call him my friend. He was also my hero; insightful, kind, hard-working and humorous.

One day I was led by him. Dick did everything; I did practically nothing.

Dick opened the case to the jury. He was so charming, magnetic and persuasive that it was not unknown for jury members to clamour for his attention.

In this case, his opening was so powerful and intoxicating that even the normally flint-eyed defendant got the wobbles. A good figure was offered and the case was settled at the Bar table.

We retired to Dick's chambers, victorious. The client sobbed with gratitude and relief. She said, 'I can never really thank you enough'. When she said 'you', she really should have said 'Dick'.

At one point, overwhelmed by emotion, she extended her arms widely and came rushing across the room. Dick removed his wig and placed it on the desk bracing himself for the inevitable impact.

The client sailed straight past him, and, completely inexplicably, threw her arms around me. I feigned protest; but nowhere near hard enough.

To be perfectly honest, Dick was a bit miffed, and rightly so; but realistically he probably had only another day to wait until his next triumph.

Another great was, and still is, Jeremy Ruskin KC.

I also worked with him from early on, and we also later became neighbours in chambers.

One uncommon day we were due to go to the High Court in Canberra. We discussed the argument, which I said was about the law of negligence. The Full Court had also said something about the law of bailment, whatever that is.

Jeremy asked me about that part of the case, and I waved dismissively and said, 'Don't worry about it.'

That was a rookie mistake. If they don't teach the following rule in the Readers course then they should: don't ignore the parts of the argument that you don't like or understand.

But I'd just broken that rule, and in so doing coaxed my leader into ignoring something that the Full Court had thought was important in deciding the case against us. And the following day we were facing the kind of people who don't usually miss these kind of things.

The next morning we were sitting in Court 2 in Canberra opposed to a true great of the Sydney Bar, BW Walker SC.

Legend has it that Bret travels to Canberra with a custom-made attaché case with internal moulding crafted to cradle a chosen volume of the CLR's or other suitable tome.

The idea is that the book can be extracted at the critical moment and deployed to vanquish the argument of the opponent.

It's the barristerial equivalent of the sniper who can open his case, assemble his rifle and shoot a bullet through the head of his target; all within 3.9 seconds.

Jeremy and I were sitting at the Bar table, fretting. Bret was also sitting at the Bar table, initially with his back to us. By contrast to us, he looked completely at ease.

At one point he swung around, and open in his right hand was a book, presumably extracted from the attaché case.

Bret started telling us rather airily about how he'd been in Court 1 for five days in a case involving Constitutional claims over water. He then said that our case raised what he described as 'an interesting question'.

He might have said some other things too, if either of us could hear them. We were transfixed by the title of his book: *'Palmer on Bailment'*.

Time stopped as Jeremy and I turned and looked at each other in utter horror. It was rather like in the cartoons where the characters are looking in every direction and no direction all at the same time. Except that we were sitting at the Bar table in the High Court of Australia in Canberra and each of us had realised that we were very likely cast in the role of the Coyote to Bret Walker's Road Runner; imminently to be crushed by a giant anvil bearing the words *'Palmer on Bailment'*.

Jeremy eventually managed a strangled whisper: 'You told me not to worry'. To which I searched for my most useful and articulate response and said: 'Um'.

The Chief Justice of Australia then said: 'Yes, Mr Ruskin.'

Jeremy started talking about the law of negligence. I started contemplating life beyond the Bar.

Then a miracle happened: Bret was waving his copy of *Palmer on Bailment*, but either no one on the court could see it, or no-one was interested, and we emerged unscathed.

Later we got the result: appeal allowed. The solicitor said that he was grateful to both of us. Jeremy was appropriately gracious. If I was gracious at all, I was nowhere near gracious enough.

None of this was really that long ago. However, few of the people involved were not male or white.

Happily, your world is a little different. I now have the occasional privilege of sitting on admission ceremonies and getting to see the

modern and diverse profession. That diversity is also evident in tonight's group of readers.

I'm reliably informed that more than 50% of tonight's group are female; and that there are readers hailing from Kenya, the Philippines, the United States, the United Kingdom, Canada; as well as Australia. It's absolutely fantastic, and in some ways affirming, to see significant change for the good take place over such a short period of time.

Now, for me, the days that I've spoken of were good days. There are many days in which the barrister is the undeserving beneficiary of the miracles of the universe.

You'll all have your share of miracles too. Enjoy those days. Because there's others.

In personal injuries litigation, it's common – even customary – for the plaintiff to give evidence of experiencing 'good days and bad days'. However, I've never heard any barrister speak of good days and bad days at the Bar. Yet they're all around us; even for BW Walker.

Sometimes the bad days are just a bit annoying. But other times it can be quite confounding, and even distressing.

An example of the latter might be when one manages to lose the unlosable – a topic on which I might be regarded as having 'specialised knowledge' within the meaning of s 79 of the *Evidence Act*. But there are actually lots of ways in which a barrister can have a bad day.

For me, one of those came when I was a young silk. There were lots of barristers in that case. Some were my friends. The judge had been a friend of mine too when he'd been at the Bar.

The case went for a long time. From the start, things went wrong. For me.

The judge got into me. Once he started, so did my opponents. It's a contest, after all; and their client's interests could be advanced. I don't mean to suggest that the judge or anyone else did anything improper or wrong. It might have been professional dereliction for my opponents to have done differently.

But it wasn't happening to anyone else in the case, and it came to feel personal. Very personal. It felt that way; day after day.

I sought to project calm and control; and to cover the hurt with a thin and bitter humour. But this time the randomness of the universe was against me.

Some colleagues who weren't in the case got wind of it, and tried to jolly me along by joking about it all in a well-meaning sort of way. Some of that involved passing on

commentary concerning my performance in the case. For me, there was no escaping the torment.

Many months later, in epic written submissions, my opponents named and criticised me personally, and in great detail. By that point, the hurt and anger within me was so great that I could feel nothing.

At that point, a miracle finally occurred, and the case settled. But my appreciation of miracles was gone. I felt irretrievably angry, hurt, and alone.

I blamed myself. It doesn't much matter whether I was right or wrong to do that. But the consequence was that in the years that followed I worked even harder. Fuelled by anger and hurt, I thought that I would redeem myself – and that my wounds would heal – if I worked and fought cases like a devil.

But the situation became worse; much worse. I lost my joy. I took my joylessness home. I saw it etched on the faces of my wife and then little and beautiful children. I was on a path to losing them, and myself.

And what of my colleagues and friends? I didn't tell any of them what I'd felt, or was feeling. How could I ever tell them about something that I didn't understand and was pretending wasn't happening? I could do no more than laugh with an intractable bitterness; sometimes meanly, and at the misfortune of others.

Dick Stanley died in his sleep in 2020. He'd been sick for some time; but for me, the final nature of his death was sudden and a little unexpected. I was in no position to feel any normal form of grief. Dick passed without me ever being able to tell him what he meant to me. I regret that very deeply.

Ironically, in the midst of all of this, I became more and more successful professionally. The most ironical moment came when I was confirmed as senior counsel assisting the Royal Commission into Victoria's Mental Health system. What did they know about any of this? Nothing. Ever.

One morning I was sitting alone at the kitchen bench. The day before I'd been in an appeal. Like the client in Dick's chambers many years before, I started sobbing uncontrollably. But unlike her, I couldn't stop. And I now had a dark feeling deep within me. I couldn't retrieve myself, not even with work. As the days went on, I didn't know what to do.

Fortunately, I searched something that hadn't existed when I started at the Bar: namely, the VicBar website. And I found something on it that I didn't know existed at all: namely, the VicBar crisis service. That service saved me, and my family. I would not be here today without it.

There would be people – maybe even people in this room – who would think that I shouldn't tell this story. What? A barrister who lost it? And now he's a judge. What if he loses it again? How can he sit dispassionately and hear cases? Particularly cases involving psychiatric injury? He should stick to funny stories about the good times. That's what people want to hear, particularly Readers.

I understand all of that. But for me, that kind of thinking led me to the abyss. Critical, suspicious, unforgiving and cruel.

And I would like to think that my suffering has made me more just; not less.

It's something that is still in me, and probably always will be: although I've accepted it and have sought to make peace with it. But this is the first time that I've spoken of it in this way.

So what has any of this got to do with you, the Readers' group of September 2022?

In 2023, you are the future. You are the inheritors of the system. And it is a good system that on the best days delivers real justice. None of you came into the system because you wanted to destroy it, or anyone else, or yourself.

But all of you will experience bad days, and more than one of you will experience something similar to what happened to me. And when that happens, you shouldn't feel alone. We shouldn't be pretending that everything's fine; and you shouldn't be left blaming yourself and pretending that it's ok.

In a profession which is competitive, and intrinsically involves winning and losing, and in which the people that you're competing against also double as your peers and friends, it's probably no more realistic to tell you to seek support from your friends than it ever was for me. After all, how could I turn to anyone when I didn't even know what was happening?

The real point, I think, is to recognise that it can happen to you and to recognise it in yourself when it's happening. When it happens, seek professional help as early as you can.

So, enough. You are all barristers now. Undoubtedly you will already have felt some of the ups and downs. And they are actually what makes it the greatest job of all. As Ross Gillies KC says, 'God loves a barrister'.

However, it is so much more than a job; it's a calling. Even the best solicitors are still in the stands when the action really starts in court.

Each one of you has been called onto that field of play to represent real litigants in real cases. And those cases are meaningful: which is why the client was sobbing that day in Dick Stanley's chambers.

No-one rational wants to be a litigant. It's stressful, unpleasant and uncertain. But you – the barrister – are the shepherd in your client's hour of need. You are also their advisor and their avatar. It's a calling of true nobility within a system that exists for the just determination of conflict and issues of real importance.

Within that system – if you look – you will see every part of life: the elegant, the ugly, the just, the unjust; and the hilariously funny. In one moment, you see the sobbing and grateful client, the next Bret Walker's attaché case; yet another is your own tears and moment of reckoning.

And all of that happens because what you're doing really matters.

There's really nothing like it.

To each of you I say –

- a) when you've won the unwinnable and lost the unlosable;
- b) when you've sat with a lump in your throat awaiting the verdict of a jury;
- c) when you've felt the bitter and real sting of loss;
- d) when you've prepared so assiduously that your argument transcends the mere notes that you prepared to guide it; and
- e) when you've seen the gratitude in the eyes of your client and the admiration in the eyes of your opponents –

then in those and other such moments you'll really know that you're alive.

And you'll also know – and really feel – an appreciation for life and the human condition.

And in the end, the feeling of life is not only better than the alternative; it, like every single one of you, is beautiful. BN

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