



Précis Paper

"I Object"

A discussion about Martin Einfeld QC's new book, "I, Object", a collection of stories garnered along his long career as Queens Counsel.

Discussion Includes

- Summary
- Examples of anecdotes/stories
- The importance of natural thinking
- The more serious side
- The courtroom: Now vs Then
- Conclusion

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"I Object"

1. In this edition of BenchTV, Martin Einfeld QC (Barrister, 11th Floor St James Hall, Sydney) and Natalie Obrart (Barrister, Ada Evans Chambers, Sydney) discuss Martin Einfeld QC's new book, "I, Object", a collection of stories garnered along his long career as Queens Counsel.

Summary

2. The book, "I Object" is a lovely and light hearted compendium of a series of Martin's experiences throughout his long and interesting career, providing an insight into his more colourful experiences as a Barrister.
3. It seeks to provide readers with a doorway into the humanity that exists behind the legal profession
4. The book contains a collection of anecdotes and stories, that are not just Martin's experiences, but a collection of experiences he has garnered throughout his time in the legal profession, some of which go back a long way historically. These stories are designed mainly to amuse or entertain but also to give an insight into the human side of what happens in the court room.

Examples of anecdotes/stories

5. Martin tells of a story where there was a bench of seven judges, all of which were hammering him with questions, one after the other, such that he was unable to answer one question completely before being asked another question by another judge. Eventually, he asked the junior for a white handkerchief and held it up as a flag of submission.
6. Martin tells of another story in which he was acting. It concerned a case in Papua New Guinea, with a client who was the first to be charged with exporting items of importance to the national cultural heritage under the national heritage act. The client claimed that the one thing the crown could not prove was that the artifacts were actually authentic native artifacts that were of importance to the national cultural heritage of the country. Ultimately, they put the artifacts in question before an expert curator of the Papua New Guinea museum, who could not tell the difference between the genuine artifacts and those made by a local tribesman who was an employee of the client and not of relevance to the cultural heritage.

7. In the days where there were lots of juries, Mr Einfeld notes that the use of props, were a very big influence upon the juries being something that they can physically see and handle. '

The importance of natural thinking

8. In his book, Mr Einfeld notes that in a very large number of cases, natural thinking becomes very important. This is because in these matters, the direct approach does not work as effectively because opponents and witnesses often expect the direct approach.
9. "I try as often as possible to encourage juniors to think outside the box" he states noting that if you ask something that is unexpected, then you have more of a change of persuading both the witness and the court room as a whole.

The more serious side

10. Aside from the comedic style of stories, the book also contains recount of some of the more serious moments in the courtroom.
11. In one such story, Mr Einfeld details the memory of a barrister who asked the judge to warn his client. This took place in the Federal Court where the witness was giving doubtful answers. The barrister turned to the judge and said 'the time has come for you to warn my client against self-incrimination.'
12. Another more serious tale that Mr Einfeld recounts, was an instance where a witness he was cross-examining pulled a gun in the courtroom.

The Court room: Now vs Then

13. In Mr Einfeld's view, courts are much blander these days than in the past. Barristers are much less colourful and provocative than they used to be.
14. There were legal giants at the bar back then who had a following, that is people who would follow them from court to court to watch them in action One such person which Mr Einfeld perceives to be such a legal giant, was Clive Evatt Senior. Mr Einfeld provides a whole section of the book to him noting that he used a lot of colour in his presentation
15. Mr Einfeld surmises that the 'blander' courtroom antics of today compared to in the past is not the result of people being less colourful, but is more likely to do with the subject matter being less colourful.
16. The law is much less judge made than it is statute made these days. As such, it is hard to be colourful when making submissions about complicated sections of an Act that does not lend itself to light-hearted, colourful or provocative submissions. When the law was more judge made, there was much more that could be said about individual judgements

of English and Australian judgements from the past upon which one could put one's own slant on their submissions.

Conclusion

17. There are emergent philosophies that comes through the book; firstly there is the economist attitude towards winning and losing and secondly there is the notion that judges, barristers and everyone in between are very much people.
18. The book gives an underlying understanding of the humanity that lies beneath everything that the law is, underneath all the seriousness and the protocols and the rules and rigidity of the legal profession.

BIOGRAPHY

Martin Einfeld QC

Barrister, 11th Floor St James Hall, Sydney

Mr Einfeld has over 40 years' experience in practice at the Bar. He accepts briefs to advise and appear in all areas of law, with particular emphasis on appeals, commercial law and equity matters. He appears in all Commonwealth and State jurisdictions, but most regularly appears in the Supreme Court of NSW, the Court of Appeal, the High Court of Australia and the Federal Court of Australia.

Natalie Obrart

Barrister, Ada Evans Chambers, Sydney

Ms Obrart was called to the Bar in 2000. Prior to this, she was a tipstaff to the then Justice Bryson, Judge of the Equity Division of the Supreme Court of New South Wales. Her main practice areas are commercial law and equity including property and trusts, banking and finance, probate and trade practices and consumer law disputes.