

# Read 'em and Plead 'em

*Why every defendant needs a barrister*

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Most people would struggle to explain the difference between barristers and solicitors. The answer is that barristers are experts at running court hearings and applying the rules of evidence. Solicitors have the same rights of audience as barristers but tend not to share their skills and experience. As a result, many solicitors advise their clients to plead guilty simply because they are unsure how to run a particular hearing.

Barristers refer to this practice as “read em and plead 'em”. The solicitor reads the brief, says the case is hopeless and offers a cheap rate to handle the guilty plea. This arrangement works well for all concerned - except the client! The police are happy to accept a guilty plea, the court saves time and the solicitor makes easy money.

So, what's wrong with that? Surely, only guilty people would agreed to plead guilty?

If only that were true. Sadly, many innocent people agree to plead guilty. What they all have in common is that they are poor. If you have money, then this will never happen to you. Even the worst solicitor in Sydney will brief counsel if the client has the money.

## Three Examples

When presenting this paper to solicitors I start by giving three examples that came to me from the NSW Legal Aid Commission. I ask the solicitors to raise their hand if they would advise a guilty plea in the following situations:

1. A young man in Mount Druitt accused of assaulting his girlfriend is arrested and confesses in the Electronically Recorded Interview,
2. A man charged with assaulting a woman in the Kings Cross McDonalds – the entire incident captured on CCTV, and
3. A sixteen-year old charged with larceny of a car licence plate - a car was stolen and next day the licence plate from that car is found attached to a different car with the client's fingerprints on the reverse.

Every solicitor agrees to advise a guilty plea in at least one of these situations. As such, they are all very surprised to learn that these were all real cases and that on all three occasions the charge was dismissed.

## The Mount Druitt Assault

The Mt Druitt matter came to me at short notice. I rolled up at court and told the prosecutor I didn't have the brief. He made some enquiries and informed me that it was because the police 'forgot' to serve it. As such, none of the police witnesses could be called. But the police pressed on regardless on the basis that the ERISP DVD had been served and that was all they needed to prove the case.

I hadn't seen the ERISP but submitted that whatever it showed was irrelevant as the police had no witness through whom to tender it. The magistrate dismissed the charge and made a costs order against the police. This is an example of winning on a procedural issue.

## The CCTV Case

In the Kings Cross matter, the police failed to get a statement from the CCTV operator. As such, the CCTV was not admissible. In addition, the alleged victim didn't come to court and the police could not exclude the possibility that she had consented to some horseplay. This is an example of winning on an evidentiary matter.

## The Licence Plate Case

In this case I didn't attempt to exclude any of the evidence. In fact, I consented to the prosecutor tendering the entire brief. I then submitted there was no case to answer. The police carried the burden of proving beyond reasonable doubt that my client:

1. Appropriated property,
2. With an intention to permanently deprive the owner, and
3. That he had done so dishonestly.

The fingerprint by itself proved only that my client had touched the licence plate. It could not be inferred that he had appropriated it or that he intended to permanently deprive the owner of it or that he was acting dishonestly at the time.

It might look dodgy and raise suspicions, but everybody has the right to remain silent and no adverse inference can be drawn from that silence. As such, there was reasonable doubt and the charge was dismissed. This is an example of the police failing to meet the burden of proof.

## Conclusion

Had any of these clients been assigned to a different practitioner it is highly likely that they would "read 'em and plead 'em." This is because even competent solicitors with experience can feel overwhelmed by unfamiliar evidential and legal principles. In all such cases, the solicitor should seek a second opinion from counsel before advising a client to plead guilty. They may be surprised at how reasonably counsel will charge for genuinely deserving clients.

Should you require further assistance, I am available every day..

Chris Nowlan  
Barrister-at-Law  
Ph: (02) 8251 0066  
[chris@chrisnowlan.com](mailto:chris@chrisnowlan.com)