

Non Sequitur

By Advocata

The first barrister I ever briefed was appointed to the High Court. A few years before that elevation, he conferred with me. I don't pretend that our meeting was a milestone along his path but he did appear to take it very seriously. The matter concerned a shareholders' dispute. Everybody involved had the same last name and the amount at stake required the valuation of both cattle and pride.

I prepared over some weeks by fairly constantly sending documents for his clerk to update his brief and preparing an agenda. I was very nervous when we met. Senior counsel was not. No doubt he greeted me politely but I don't recall it. He sat a long way from me at the head of a very grand table and told me directly what he thought of our prospects. He made no small talk. I am sure he didn't refer to me by name. There were a few things that he told me to do. He showed no regard for whether they were possible, or achievable by me. In what seemed like moments after he had finished conveying his view I was back in the gun-metal grey lift. I think that I left without seeing his teeth.

Back at the office my partner cut off my pidgin rendition of the advice with 'not that, what did you think of [senior counsel]'. 'I hated him' I said, 'he was awful'. 'I knew it' my partner slapped the desk - almost aglow with chortling joy. His miniscule attention span snapped back to his file 'Doesn't matter' he mumbled 'he's brilliant'.

Experience has taught me that the partner's pleasure in my abjection was the satisfaction of knowing that some famous senior counsel's poor opinion of you is not personal. Of realising that all kinds of pleasant people are treated in the same offhand way. It belongs with the relief of watching another person being reintroduced to a leader of the

profession for the 13th time without a flicker of recognition on that luminary's face. I also now know that sometimes, at the bar, being brilliant isn't enough.

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There seems to be a cornucopia of reasons why particular solicitors won't brief certain barristers. The explanations given by solicitors for rejecting my recommendations for various first rate silks have included 'he is getting a reputation for being underdone', 'we are having a break from briefing him at the moment because he acted against the firm', 'he charges like a bull', 'he is too busy', 'she makes me feel pressured', 'we had him against us in ... and he was pretty unimpressive', 'he's not aggressive enough for this', 'he never gives anyone coffee', 'he is a complete ^*#%&' and 'I don't think the client will want a woman'.

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Enjoying a moment of wilful blindness about the last, these reasons are at least understandable. I suppose it's comforting that no one has suggested to me that a silk was not intelligent or learned enough to run a case. Less soothing is the number of conversations I have endured

about whether a particular judge was sufficiently able to correctly decide it.

It seems that the situation becomes more psychedelic the more junior the barristers being briefed. I know solicitors who will only give junior barristers two chances to accept their work; if you are too busy twice they won't call again. My clerk tells me that the preclusive behaviour identified to him over the years includes: 'over preparing; preparing too late; being a bit of a stick in the mud; refusing to give out a mobile phone number; not being a team player; being too busy; being pompous and doing a bad job'. Conversely he says 'you can get a brief because you are good value, went to the same school, worked together as paralegals, have a good sense of humour and presumably because you come highly recommended or did a good job before'.

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An allowance must be made in all this for *schadenfreude*. There are some lawyers who ooze professional generosity of spirit. They are humble about their own achievements and joke about their failings. Their steady message is the superior ability of others. These are the people we like to see in the kitchen. Most of us though, wearying on with our chip of self-doubt, cannot resist having at least a small go at those we suspect possess a little more engine under the bonnet. There is a skill to damning

with faint praise and the touchstone is 'judgment'. Every time some university medalist is described as brilliant but 'prone to over-complicating', being 'unable to see the wood from the trees' or 'wouldn't know how to get short service' I do wonder.

The highest compliment, according to one of my colleagues, is to be briefed by the opposition's solicitors. The reality she posits is that sometimes you think you did a very good job and never hear from those solicitors again. Other times you come back from court to peruse ads on Seek.com and the next week those same poorly-serviced people call back with more work. The trick she says, whatever you do, is to not make anyone on the team feel bad about themselves. She maintains, for example, that there is minimal personal upside in implementing a radical change of strategy to win a case that was being chugged along a doomed path for years if the solicitors will then be too embarrassed to brief you again. It's akin to people being too shy to call you when they have become aged debtors in other matters.

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Some barristers must have moved beyond wondering why people brief them and who will continue to do so. They are the barristers who speak of their 'stable' of solicitors. There is a such a barrister on my floor who also does a steady trade in gift receipt. One corner of his desk doubles as a trophy table. There are Ye Olde tributes like bottles of whisky and cigars; there are sincere notes once attached to bridal sized bouquets; there is a knitted lap rug for wintry nights, which I am told came from an opposing litigant in person. 'No particular reason' he relentlessly claims 'the case finished, that's all'.

When my cases finish there are handshakes, fee notes and the occasional celebratory lunch after judgment. There have never been gifts. 'That's because you need some soft skills' said my clerk, 'Most women have that over men'. 'It's all about bedside manner

now' agreed a colleague. 'Nobody is interested in Moses bringing his tablets down from the mountain and handing them over any more. They want you to be consultative, flexible, available and likeable. They want to socialise your advice with the client'.

A silk of impeccable interpersonal skills once identified for me seven fortunate qualities that a barrister may possess. They were something like intellect, industry, charm, availability, pedigree, judgment and tenacity. 'You don't need them all to succeed' he said 'but you need a couple'. I took the man seriously and some years later reminded him of what had become a bit of a mantra to me. He looked at me uncomprehendingly and then said in a kind and measured tone 'That may all be true but mainly you need luck'.