

# Caesuras

By Advocata

It was 27 January and the gun metal of the Wentworth lift had smothered the last of my holiday cheer by level 5. Slack-jawed, I watched the illuminated numbers edge higher as my spirits tipped with each passing floor. A grinning chap in the corner wearing chinos and a polo shirt ignored all my non-verbal cues and beamed a hearty 'Hello'. I didn't know his name but we have smiled and nodded in passing for years and the window for asking it seemed to have long ago ended. 'Hello' I said 'How was your holiday?' 'Brilliant' he replied, turning his goggle tanned face my way. 'Did you go skiing?' I obliged. 'We did actually' he said. By rote, I asked 'Great, where did you go?' 'A little town near Salzburg whose name I can't tell you because no other barrister in Australia knows of it' he near-yodelled as he strode out.

As I later workshoped my *l'esprit de l'escalier*, I couldn't help having some empathy with my skier friend. There is something quite dispiriting about taking a very long trip away only to discover that half the bar has the same idea of a dream destination. I shared the January that I spent shunting around the green runs of Colorado with enough floor members to constitute a quorum. Another year, I was tucking my little child into a pretendie jail bed at Alcatraz when I noticed one of my leaders peering through our cell bars with his audio guide headphones on. I once spent the entire drive home from the south coast scrapping with my husband because I let our toddler walk out into the surf rather than lean down in my bikini to pick her up in front of the retired judge I was chatting to. Another time, I was robustly trying to free my child's hand from a lolly jar in an LA airport lounge when a judge materialised to assist on the (I think still uncorrected) misunderstanding that I was one of the court's staff.

The obligatory January exchange of

holiday experiences may be permanently tainted by something between a spot and a lot of boasting but the currency has perhaps recently changed. Desirability of destination seems to have been overtaken, at least amongst the junior bar, by the time spent away. Wagging December to facilitate a three month 'sabbatical' somewhere that is typically experienced by people in their twenties with backpacks may now speak success louder than a cosy couple of weeks in an Aspen condo or a stay-cation at a house in Palm

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Beach that you happen to, well, own. These sabbaticals are not, of course, to be confused with the kind where you aim to achieve a goal. Those remain monopolised by the serial overachievers and their country cousins, the workaholics.

As much as right-minded people are compelled to mock the ostentatiousness, it seems compassionate to focus upon each other's enjoyment of holidays in late January rather than to fossick around peoples' frames of mind. The prevailing assumption is that any holiday was better than being back in chambers. One of my readers described her holiday as 'a joy' which 'amounted to the suspension of selling my time to strangers so that I could finish breakfast and provide my GP with my banking details for the Medicare rebate'. A colleague said that

he had enjoyed the entire Elena Ferrante series while his wife and mother-in-law packed up his late father in law's estate around him. 'The best part of the court vacation' said my friend 'was that I felt less tired when I woke up than when I went to sleep'. Another told me that he spends January replacing his mind's swill of random details about other people's business affairs with bits and bobs about his children. All proof that happiness doesn't write white.

People's routines around returning to chambers are idiosyncratic. For some, freedom dies slowly and never before Australia day. Birkenstocks and half-suiting can linger for weeks. Beards erring a little far towards Kenny Rogers well into mid-February. Children, and the occasional pet, are cheerful companions. Active wear all day is not entirely out of the question. Others resume normal operations, including Silks sandwiches for lunch, by the first day of term.

In the words of my friend explaining his deferred retirement 'I bill therefore I am', and perhaps the true mark of a return to enterprise is time recorded. It's alarming that there appears to be an increasing cohort of barristers who don't take a break of any substance in January. A smaller group claim not to begrudge this. I have heard those who work through the court vacation described as 'the needy and the greedy' but this ignores the nuance. A batch of urgent interlocutory briefs taken before Santa has made it back to Mrs Claus seems to have founded many a new silk's first year of practice at the inner bar. Two weeks on the south coast may not seem as enticing if you got a bit carried away in the spring property auctions. More often than not, though, the holiday was murdered by a hearing that was imprudently set down for the first few weeks of term.

People, as they justify this bungle, can rarely put their finger on exactly how it

happened. A silk, bitter about leaving his extended family behind in the Dolomites, once told me that he was now intending to go to all directions hearings in each of his matters as a prophylactic measure. Putting litigation costs to one side, there may be sense in this. My biggest disaster of this kind occurred when I thought we were before the judge to set a timetable for expert evidence. There had been some defaults. His Honour was demonstrating the phenomenon of being deeply certain about how long was needed to prepare a joint report on the basis of a fleeting familiarity with

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the pleadings. People were wanting their money. Suddenly, the focus took a nasty and unpredictable turn towards a hearing date. An early hearing date in the new term. Before I could stop the buzzing in my ears to say something honest like 'But we are going to India' there were three weeks in the diary from 31 January; with submissions by Christmas Eve and replies on Australia day. There was a little joke about work product on Australia day being unpatriotic, so the judge made directions for the 25th.

'Do you think that judges forget the human cost of a big case at the start of term' lamented one of my colleagues after receiving a casual email to confirm that a matter had been set down for many weeks at the start of the next year 'or is it *Schadenfreude*'. 'It's the solicitors' said another 'the senior associates have to work in January anyway and it keeps

the billings up'. 'Old silks love it too' he continued 'they only get a couple of cases at a time and at their rates if they work all of January that's sorted September in Tuscany. And it's not like they really need to spend weeks with their kids anymore'. The conversation continued towards developing an algorithm until our wronged friend said 'But how am I going to deal with this?'

His question transported me back to my Sisyphean effort that January and how I still haven't gone to India. As a counterpoint, my silk spent the summer in France and had not returned by Australia Day for the reply submissions. I dutifully emailed my draft to him sometime before this with an apologetic covering email. I told my solicitors that we should allow a day or so and then perhaps try to organise a call - maybe from the airport. Surprisingly, he replied a mere half an hour later. From the first glance the email seemed uncharacteristically long. I read it with a certain nervous foreboding as I rather hoped to spend the next few days camping with my children to rustle up some abridged happy holiday memories.

I can no longer repeat perfectly what my leader wrote but at least the first page of that email was a very fine description of Paris. The restaurant, the dinner, the matching wine. The contagious Frenchy bonhomie. Bridges, mist, moons and the cheese and armagnac trolleys; he captured them all. For a moment, I too was lost in the beautiful city. Finally, my leader left a few lines and wrote:

'So serve what you want'.

This seems now, as it did then, a perfect response to the dilemma.