More Helpful Advice

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Abstract: a further collection of anecdotes involving bold, insouciant, or impudent behaviour by counsel directed towards the court or the practice of law.

We have been told by one in a position to know that last year saw the first decline in active members of the Bar for many a year. More people left last year than joined. We at Bar News feel there is some causal connection here between the advice offered to newcomers in the Spring edition for the last two years and the negative growth rate of the Bar. Those readers who believe this to be a good thing are most welcome to deposit tokens of their appreciation with Briefless’s clerk — preferably used and of small denominations and, even more preferable — lots of ‘em. Those readers persuaded that this is not a good thing are invited to vent their spleen on the editors (on extensions 7417 and 7730).

Bewdy, Norm

Mr Geshke, who retired on 29 February, said that in 13 years as Ombudsman no minister had “sought to unfairly influence my decision.”

“Lawyers, however, used “balance of probability, fantasies (and) oddball dictionary meanings” to justify some indefensible situations. “My view (is) that a barrister’s opinion does not have the scientific basis or the reliability of a Melbourne weather report ….”

The Melbourne Age (18 May 1994).

The Lawyer as Instrument for Change

No one was injured in the [bomb] blasts, but the FBI conducted an intensive investigation, and seven men were eventually charged with the bombings. At their trials, the seven were represented by John Blue Hill, an extremely skilled attorney and yet another member of Montgomery's most prestigious political family, and all were acquitted. Finally, however, the bombings and related incidents subsided — a consequence, some would say, more of the size of Hill's legal fees than the FBI's diligence.

Yarbrough, Judge Frank Johnson and Human Rights in Alabama (1981) 57
THE RICH ARE DIFFERENT (AND HOW THEY GOT THAT WAY)
When Carl Icahn, carrying a briefcase, and his uncle, Melvin Schnall, carrying an umbrella, go to a restaurant together, Schnall takes Icahn’s briefcase so that they don’t have to leave more than one tip to the checkroom attendant.

Bruck, The Predator’s Ball (1988) 189

IN LEAN TIMES IT MAY BE NECESSARY TO MAKE WORK
Sir William [Owen] was always intent on preventing any waste of public time by undue prolongation of evidence or argument. “How long will the next case take?” he once asked. The counsel engaged agreed that three days would be required. His Honour thought the time stated excessive, and asked, “Do you mean that it will take three days or that it may be made to last for that time?”

Blacket, May it please Your Honour (1927) 52-53

An incompetent attorney can delay a trial for years or months. A competent attorney can delay even longer.

Attorney General of California, Evelle Younger quoted in the Los Angeles Times (March 3, 1977)

It isn’t the bad lawyers who are screwing up the justice system in this country — it’s the good lawyers. If you have two competent lawyers on opposite sides, a trial that should take three days could easily last six months.

American humorist Art Buchwald

HELPING OUT YOUR INSTRUCTOR
Sir Julian Salomons was an adept in the matter of fees. He was cross-eyed, and once when a solicitor brought him a brief marked thirty guineas he read the figures with a painful squint and said, “You make extraordinary fives, Mr Blank,” and at once changed the three to a proper five.

Piddington, Worshipful Masters (1929) 208

A PERSUASIVE SPEAKER
He was good at raising money. His personality was attractive and he was a compelling speaker. Years later he laughingly described one cocktail party that he attended after already having “one too many scotches.” Deciding that “it would do more damage not to show up,” [Thurgood] Marshall began his solicitation, “Those of you who don’t drink probably suspect that I am drunk; those of you who do drink are
certain of it.” The event was successful, and Marshall later said that his “only regret was that he was too drunk to remember whatever was so persuasive.” What made him persuasive, though, was the ability he demonstrated as an appellate advocate. A “suave and confident” speaker, Marshall spoke “extemporaneously”, getting to the heart of the issue he was talking about and making a compelling case in terms his audience, whether judges or potential donors, could immediately appreciate.


**Law School teaches one to think like a “lawyer”**

In the winter of 1944 Enrico [Fermi] went to Site Y [Los Alamos] on a business trip. One Sunday morning Emilio Segre and Hans Bethe, a German-born physicist, suggested a skiing trip. A question arose. Should Emilio or Hans waste precious petrol allowance and drive their cars, or could they take the military car at Enrico’s disposal during his stay? This car was to be used for strictly business purposes, and a skiing excursion could be hardly called business, as Enrico conceded.

“It is not business for you, and therefore you should not take the car,” clarified lawyer Baudino [the bodyguard assigned to Fermi], who was anxious not to miss the trip. “But should you decide to go, it would be my business to accompany you. Hence I can take the car.”

The story does not say what car they drove in the end. Anyhow, they went. Baudino must have blamed himself for having encouraged the expedition: by the end of the day he was so completely exhausted that Fermi had to carry his gun. An Illinois boy out on his first mountain experience was no match for Bethe, Segre and Fermi, who had tramped the snow of the Alps [in their youth].

Laura Fermi, Atoms in the Family (1955) 230

**You're a better man than I am, Frank McAllery!**

Cross-examined by Doug Milne QC, for Mr Rogers, Ms Wentworth denied her evidence was motivated by hatred and rejected propositions she was dishonest, unladylike and uncouth.

The court heard Ms Wentworth had about six cases before the High Court, eight cases in the Court of Appeal and 10 to 12 cases before the Supreme Court.

Mr Milne: “It would be a fair description of you … that you are a habitual litigant?”
Ms Wentworth: “No. Not at all.”

She denied she had made accusations of impropriety against “many, many people.” “I have only taken action against 18 people,” she said. The hearing continues today.


**TAKE THAT, SEXIST PIG**

Ladies’ Days were reserved by a few members of the faculty as occasions for the women in their class to perform like circus animals. Only women were called on. “All the women were made to look very smart,” recalls Hope Eastman, a member of the class of 1967. “The professor would gently guide the women through the Socratic analysis, the point being — ‘If these dumb women can do it, how come you gentlemen can’t?’” In the mid 1960s, according to Carolyn Clark, class of 1968, Ladies’ Day met a sudden death in the classroom of property professor Barton Leach, who had been the tradition’s greatest enthusiast. [Quaere. How traditional can a practice be when it only came into being after women were first admitted to the Harvard Law School in 1950? Eds.] Leach had asked the eight women in his class, including Clark to recite a case in which the chattel in question was ladies’ underwear. They had prepared themselves ahead of time and each came to class dressed in black, wearing horn-rims and carrying a briefcase. After making their presentation from the front of the classroom, the women opened their briefcases and showered a red-faced Leach with a cascade of frilly lingerie. The professor called off Ladies’ Day for good.


By contributing to women’s political mobilization, to the success of new [political] candidates, and to governmental attention to policy issues of special interest to women, [Justice Clarence] Thomas’s critical judicial nomination advanced in [Carol] Mueller’s words, “[t]he dream of the suffragists and the nightmare of the political bosses.” Those political leaders and candidates who felt threatened by the emergence of women as competitors for political power found themselves scrambling for ways to react to these new developments. In one of the more dim-witted reactions to the success of female candidates in 1992, the former chairman of the Pennsylvania Democratic Party remarked that the women candidates “seemed to be saying, ‘Here,
I’ve got breasts. Vote for me.” Claire Sargent, the female candidate for US Senate in Arizona who was running against incumbent Republican John McCain, fired back by saying, “Some of our opponents say we’re running on a slogan of ‘I’ve got breasts. Vote for me.’ Well, I think it’s about time we voted for senators with breasts. … After all, we’ve been voting for boobs long enough.”


For instance, [Barbara] Billauer recounted a case in which a male attorney threw a fit over her request for documents. “It’s OK,” she told him, “you've got PMS. It happens to all of us.”

Podgers, “Talking (back) to a Sexist”, 80 ABA Journal 119 (April 1994)

**CHOOSING YOUR LAW SCHOOL**

And you thought Melbourne was snooty about Monash revisited [97 Vic Bar News 52 (Winter 1996)]

“When I went to take the law school admissions test, I went with a friend of mine from Wellesley,” she [Hillary Clinton] recalls. “We had to go into Harvard to take the test, and we were in a huge room, and there were very few women there, and we sat at these desks waiting for the proctors or whoever to come and all the young men around us started to harass us. They started to say, ‘What do you think you’re doing? If you get into law school, you’re going to take my position. You’ve no right to do this. Why don’t you go home and get married?’” She sits up very straight. “I got into Harvard and I got into Yale, and actually I went to a cocktail reception at the Harvard Law School with a young man who was, I think, a second-year Harvard law student. And he introduced me to one of the legendary Harvard Law professors by saying, ‘Professor So-and-So, this is Hillary Rodham. She’s trying to decide between us and our nearest competitor’. And this man, with his three-piece suit and his bow-tie, looked at me and said, ‘First of all, we have no nearest competitor, and, secondly, we don’t need any more women’. And that’s how I decided to go to Yale.”


**NEVER COMMIT YOURSELF TO PAPER**

The value of privacy that [Charles] Fried favoured, as a law clerk to Justice Harlan and as a young scholar, was embraced by the Supreme Court in its landmark decision about abortion, Roe v Wade. Among his Harvard colleagues, Fried applauded this
ruling and defended it from attack by others then on the faculty, including his colleague John Hart Ely. To Fried’s fortune as a prospect for political appointment [as Solicitor General] in the Reagan Administration, he did not emphasise his support for Roe v Wade in print. One of his lawschool colleagues said, “Right before he went to Washington, we were together and someone asked him flat out: ‘Does the Administration know your position on abortion?’ He smiled and said, ‘Well, I’ve never written it down.’”


DEMONISHING YOUR OPPONENT’S EXPERT

David [Buchanan], turning over the pages of a book he took from the table, began by mildly asking: “Tell me, Doctor, have ye ever read aboot cases like this in Brown on Gunshot Wounds?”

The witness hesitated and then replied: “Brown on Gunshot Wounds? No, I cannot say that I know the book.”

“What!” exclaimed David fiercely, “have ye no heard of the book?”

“No, Mr Buchanan,” was the reply, “I can’t say that I ever have.”

“Then I’ll no ask ye another question,” said David, and turning to the jury, he added with the deepest indignation, “A doctor that has never heard of Brown on Gunshot Wounds!”

Then, turning to his [instructing solicitor], he hoarsely whispered, “Take the book out of court and lose it, for if Martin calls for it I’ll be damnably done.”

His whole defence was that the jury could not, as “rarshional men”, convict on the evidence of a doctor who had never heard of this great medical work; and there was an acquittal.

Blacket, May it please Your Honour (1927) 21-22

CHOOSING YOUR LAWYER

The narrator is Simon Rifkind:

“But we finally convinced [Justice William Douglas] that the matter was serious and that he needed counsel. If possible, we thought his attorney should be a young man, in his forties or fifties, preferably a Republican and a WASP. That’s how I got elected.”

(Rifkind was sixty-eight years old, a Democrat and a Jew. He was also a former federal judge, was a senior partner in the powerful New York law firm of Paul, Weiss, Rifkind, Wharton and Garrison, and was generally acknowledged to be one of the
toughest and shrewdest attorneys in the country.) [Also, along with singer Paul Robeson, Rifkind had been a classmate of Douglas at Columbia Law School in the 1920s.]


TELL ’EM HOW IT IS WHEN YOU ADDRESS THE BENCH
As always, careful thought went into the selection of the lawyer who would conclude the NAACP’s argument before the Supreme Court. It would not be Houston; there was no telling what he would say once he was caught up in the argument. In another case Houston had been interrupted by Mr Justice James C McReynolds. “I don’t understand your point,” McReynolds told Houston. Without missing a beat Houston replied, “You’ve never been a Negro.”

Ware, William Hastie: Grace under Pressure (1984) 188

FOLLOW YOUR DADDY’S ADVICE
Be prepared, be sharp, be careful and use the King’s English well. And you can forget all the other rules unless you remember one more: Get paid.

Robert Nix, quoted on the occasion of his son Robert Nix Jr being sworn in as Chief Justice of Pennsylvania.
You’ve got to guard against speaking more clearly than you think.

His father’s reaction to Howard Baker Jr’s first court appearance as an advocate.

He also gave fatherly advice when his children confronted professional dilemmas. When Hugo Jr lost a particularly hard case in the Supreme Court of North Carolina, Black wrote to him: “You had a hard case, one in which the court was not likely to feel much sympathy for your client. … It’s all in the year’s work. … It is time to go into Court but I just wanted you to know that you are not the only lawyer who has ever been disappointed at the dumbness of judges.”

Ball and Cooper, Of Power and Right: Hugo Black, William O Douglas, and America’s Constitutional Revolution (1992) 31

JUSTICE IS A LADY
Justice has been described as a lady who has been subject to so many miscarriages as to cast serious reflections upon her virtue.

Prosser, The Judicial Humorist (1952)
**NEVER OVERCHARGE YOUR CLIENT**

David Henderson’s early experiences in the law were not materially different from those of most young lawyers. Finally, he was retained in an estate which involved large interests. The future Congressional Speaker was very “hard up”, and was seriously thinking of asking the heirs to pay his bill, which he had never rendered. He was meditating whether to charge them $200 or $300, when one of the heirs, representing them all, stepped into Henderson’s office and, taking out a roll of $500 bills, said, “Mr Henderson, I want to pay your bill.”

At the same time he began laying down $500 bills until he had $2,500 before the astonished young lawyer. With a glance at Henderson, the heir asked, “Is that enough?” The young lawyer, with that self-possession that was always with him throughout his career, calmly said: “Peel off another one, and we’ll call it square.”

from the *Green Bag* magazine.

**ETHICS**

Another example of counsel’s resource in an emergency was that of a young barrister who afterwards became a famous King’s Bench Judge and was raised to the peerage. He was called before his Benchers to explain his conduct in taking a fee of less than £1 3s 6d, the minimum fee a member of the Bar may accept, namely a fee of 13s 6d.

Appearing before his Benchers, the young man pleaded that he was not guilty, adding: “and in my view, far from having committed any offence lowering to the dignity of my profession, I have carried out the highest traditions of the Bar in taking every penny my client possessed.”

Bowker, *Behind the Bar* (1947) 52

**A SOFT BENCH**

New York Judge Bruce Wright is popularly known as “Turn ’em loose Bruce” because of his perceived leniency towards those accused of crimes.

74(2) *Judicature* 58 (June-July 1990)

**LAWYER IS IRISH FOR “LIAR”**

As we watched Judge Clarence Thomas’s Supreme Court confirmation hearings, all of the commentators said the same thing: “One of these people in the room is lying.”
Do you believe that? You've got two lawyers and fourteen senators in the room, and only one of them is lying?

Jay Leno

**CONCISE ELOQUENCE**

A distinguished Oxford don had a particular way of snubbing clever young undergraduates. He would invite the student to accompany him on a long walk, leaving it to his companion to start the conversation. After a lengthy silence the embarrassed student would usually make some banal remark, and would immediately be crushed by the don’s reply.

The undergraduate F E Smith, aware of the don’s tactics, set off for the walk with his own plan of action carefully worked out. The two men walked in complete silence for more than an hour, and for once it was the don’s turn to feel embarrassed. “They tell me,” he was finally compelled to utter, “they tell me you’re clever, Smith. Are you?”

“Yes,” replied Smith.

No further word was exchanged until the men returned to the college.

“Goodbye, Sir,” said Smith, “I’ve so much enjoyed our talk.”

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