

## Tempus Fugit

By Advocata

There are rare peaceful pockets of practice. When you have wriggled out from the suffocating time pressure to focus on a single matter long enough for the issues to seem clearer and the odd embryonic answer to emerge. I found one of my friends in that state recently. He was sitting in a newly pristine room reading the only document on his desk. With his 21<sup>st</sup> birthday present fountain pen in hand and his face set in resolute concentration; he was commanding the task. The tea cup and saucer that his great aunt would have been proud of enhanced the statesman-like scene. He didn't even register me at the door. Shamed into silent retreat, I made all kinds of pledges to myself about focus and professionalism and generally straightening up to fly right. I shoved my towel and goggles into a cupboard as an immediate start.

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My friend later revealed that he became almost hypnotically contented that afternoon by the rhythmic process of reading a paragraph, comprehending the proposition and then placing a small neat tick in the margin. He said that his idyll disappeared about two thirds into the document when he recalled that he was reviewing his opponents' submissions. This caused what he described as 'excavating folders of documents, about 100 emails and a conference call with

Chicago around midnight'.

There are barristers amongst us who practised at a time when that response was not possible. I once asked my former clerk what people did in crisis before email and he said 'it was either a phone or a fax and if that didn't work - it didn't happen'. Unmoved by my incongruous stare he added 'things were stepped up by computers and mobiles but the world changed after email'. In more detail than I can recall even this morning's events, he described a kind of fantasia to me: documents unable to be reliably produced or distributed after hours; photocopying taking days and smelling great; barristers who were out of chambers being uncontactable other than by a home visit (discouraged); people calling chambers from phones outside the court; and transcripts that were collected from a box on the corner of Phillip and Hunter Street after 6pm. In the words of a reader on my floor 'no wonder they were able to put those jaunty little pink ribbons around the briefs'.

In my smaller moments I resent people who enjoyed their professional prime before email. The high income/house price ratio, free tertiary education, a smaller competitive pool, pre-CGT chamber purchases, fringe benefits free frolics and southern highlands holiday homes off the back of a cancellation fee are also regrettably gone with the wind. Yet they all pale in comparison to the freedom from immediate and direct solicitor communication.

One of my contemporaries decries the 'grinding repetition' of reacting all day to emails and postponing serious thought until after conventional work hours. Others I know turn off their email and ask reception to take a message for half the day to achieve tangible product before lunch. 'Sometimes that involves misrepresentations' one says 'but it's an ends orientated approach'. Increasingly

people seem to be working from home to fulfil their professional commitments rather than their personal ones. 'I feel less anxious if I stay at home and put an 'out of office' message on for the day' says my contemporary. Otherwise I am either engaging with people or ignoring them'.

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Some solicitors remain beguilingly confused about the time-lag between them sending an email and it being received, read, considered and formed a view about. A senior silk went as far as describing email as 'the passive aggressive personality's weapon of choice'. His prime example was emails which commence with 'I have just left you a message to call me ....'. 'Basically' he said, 'the moment the solicitor presses 'send' the issue that was their problem becomes my problem'. 'Not just passive aggressive' says another, 'just plain passive as well'. 'What does 'FYI' or 'see below' mean?' he continued. 'Am I to read it and react in some way or not? Most importantly, are they expecting me to charge for it'. A solicitor friend tells me that increasingly barristers' fee agreements include that they will charge for printing large volumes of material. 'That will be attachments' says my friend 'and some of those turn out to be emails that involve further attachments'.

It may well be that email, and the documentary evidence it has spawned, has led to more just decisions as most cases are less dependent upon 'oath on oath' cross examination. Barristers' complaints that briefs have grown vast do not wet the

eyes. It's hard to see how fewer printed documents can be a bad thing and the freedom from chambers that technology has brought assists the bar to be diverse. Perhaps the longing for the happy golden days of yore is borne of the inherent unpredictability of practice that email took nuclear.

One senior junior told me that before he restructured his practice to focus on a highly specialised area of public law he felt like he was 'living out survivor'. He exuded the joy of sufficient time to prepare a case about issues you have previously considered for a client you have become familiar with. A newly minted silk identified one of the reasons for making her application as a reaction against 'lurching in an adrenaline filled haze between procedural deadlines which were set without any reference to me'. Another of my colleagues eschews 'to do' lists on the basis that what he has to do evolves so much each day, that it is 'impossible to list, let alone prioritise, what I have to do'. 'The most infuriating thing' he says 'is that if you smoothed out the busy periods with the quiet it would be a relatively genteel existence'.

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I eye with envy the small group of barristers who do head off to catch the same ferry every night with not even a newspaper tucked under their arm. There

must be a plethora of reasons for this degree of prepossession. Disposition, skill, luck combined with seniority and market power come to mind. Whatever the cause, most people at the bar that I know don't achieve it. As tempting as it is to pronounce that you can't even consider an email until next Wednesday, few juniors blurt that out. Once we accept a brief, with rare exceptions, the prevailing expectation is that we will be available to meet whatever arises irrespective of our other commitments. In the words of a now Federal Court judge 'multiple concurrent deadline syndrome' waits always for us.

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Time spent's direct connection to professional remuneration illuminates the daily compromises we each make. 'I once tried to calculate how much I sold my youth for' joked a senior silk. Which surprised me because I had understood from the age difference between him and his current wife that he was still enjoying that stage of life. More soberingly, my tutor told me when I was about 2 weeks late with an advice that I was devilling for him that 'often the only difference between a good barrister and a bad barrister is time'. 'It's a circle of life. You have plenty of time, you are responsive, you do a great job and you get another brief. Too many impressed people and

you are hard to catch, possibly short tempered and late. Which leads to you having more time'. 'The best work I ever produced was as a reader' claims my contemporary. 'Every now and then I dredge up one of those advices and am embarrassed by how many cases I read and how little I charged for it'. The public lament of a retiring floor member about only earning when he personally worked, not having enjoyed a margin and ending up with no good will to sell was described by his colleague as 'our very own *A la recherche du temps perdu*'. 'Or an advertisement for taking an appointment' said another.

Last week a judge growled at my opponent 'this is taking your client a long time, why is it taking so long?'. An avalanche of potential responses ran through my mind: they have other things to do, they can't face litigation, they don't want to pay lawyers, their children have needs, their dog died. 'I don't have specific instructions your Honour' my polished opponent said. 'It's taking a little longer than they expected'. 'Very well' said the judge. His Honour turned to me and gruffed 'Do you have anything you wish to say?' At the tip of my tongue was 'you haven't given me judgment in that strike out application for a year; how could it possibly take so long?'. Instead I said, 'May it please the court'.