

Quips, quirks and courts | Marcel Strigberger

By **Marcel Strigberger**

Law360 Canada (October 21, 2022, 2:31 PM EDT) -- The magic to practicing law successfully? Mark Twain said, "All you need is ignorance and confidence; then success is sure."

OK, so he wasn't focusing on the legal profession. Nonetheless, the confidence part is understandable. The ignorance, maybe.

As lawyers, we have to be persuasive. For this it helps to be observant and to attain and use certain information or to know when not to use it. I found it all boils down to understanding and appreciating the human element. Those you have to persuade have to like you and/or your case. Or as Tweedledee in *Through the Looking Glass* said, "contrariwise." They have to dislike the other side or their case. (My quote of Tweedledee is confined only to the "contrariwise").

Everyone, be they judges, jury members or clients have quirks which govern their likes and dislikes. And to ascertain these quirks, it helps to notice their reactions and assess which way the wind is blowing.

I recall being in a motions court once. The judge seemed impatient, periodically interrupting counsel saying, "Your argument is not enlightening me." This concerned me as I waited to be called. I thought initially my chances of were about 30/70. Given the judge's apparent mood my confidence level plummeted a bit. So did my assessment.

My opponent, more seasoned than I, was dressed to kill, wearing a fancy three-piece suit and sporting a gold chain pocket watch in his vest. He reminded me of barrister Sir Wilfrid Roberts, portrayed by Charles Laughton, in the iconic film, *Witness for the Prosecution*.

He rose to argue first, frequently looking at his pocket watch. He sounded smug, suggesting my opposition to his motion was a complete waste of the court's time. The judge did not interrupt him at all. Uh oh! He did however fidget uncomfortably whenever "Sir Wilfrid" touched his pocket watch or even his vest.

My turn came. I took a risk, opening with, "Your Honour, I trust you will find my argument enlightening."

The judge emitted a quick smile and said, "Proceed sir."

He eagerly lifted his pen to make notes. I did not know what to make of it. I did not dare sneak a gaze at my wristwatch.

Fortunately, his ruling was favourable. Did he like my case? My opening quip? Or just maybe he did not like the other lawyer's gold pocket watch. I'll never know. But he must have liked (or disliked) something that enlightened him.

I recall another case soon after getting called to the Bar where I attended traffic court representing a client on a minor offence. It was raining. Once in the courtroom I did not know I had to take off my light-colored trench coat. When my case was called, the J.P. discretely hinted to me about removing my trench coat saying, "It's not raining in here, Columbo."



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I apologized and took it off. After a short trial, the J.P. said to me, "Summation Lieutenant?"

The charge was dismissed. I did not think my argument was that great. And my confidence was a bit rattled. Was success aided by my ignorance? Or maybe the judge just liked Columbo? Something persuaded him.

I was not that successful in another trial where I wanted to argue an evidentiary point just before the lunch break. I confidentially said to the judge, quoting Shakespeare, "I'll be quick. 'Brevity is the soul of wit.'"

The judge responded quoting French humorist Rabelais, "OK sir but remember, 'An empty belly has no ears.'"

To this day I regret going with Shakespeare over Rabelais. My ignorance here did not achieve success.

And can candor and honesty sometimes hurt? Whenever I would interview a client in a personal injury case, they would ask me, how long will this case take? (This question followed "how much will I get" followed by the terser, "how much will you get?")

As these cases can take years to resolve, I would point to a tall old maple outside my suburban two-storey office and say something like, "Before this case is done, those leaves will change colours, then fall off, then the branches will be snow covered and then the leaves will grow back. This cycle will repeat"

Not long after this spiel in a potentially lucrative case, the client bolted, switching to a high-rise downtown office lawyer. I asked my successor why the client jumped ship. He told me I had left him with the impression his case will drag on forever. The client especially did not like my story about the tree.

This explanation upset me. It was the truth. At least he did not file a disciplinary complaint with the Law Society alleging something like, my lawyer is callous and cold-blooded. He compared my case to a pile of leaves.

And so what does it take to persuade successfully? We all know about methods like do not overreach, keep it simple, and use stories and analogies. All true though here I struck out with that analogy of that maple.

We have to realize we are constantly being judged by what we say or do or, at times contrariwise; what we do not say or do. Aristotle said, "Wisdom is the reward you get for a lifetime of listening when you would rather have talked." No doubt he meant listening and observing.

But does it not all come down to having a sense of the human element?

One more thing. Did I persuade you?

Marcel Strigberger retired from his Greater Toronto Area litigation practice and continues the more serious business of humorous author and speaker. His book Boomers, Zoomers, and Other Oomers: A Boomer-biased Irreverent Perspective on Aging is now available in paper and e-book versions where books are sold. Visit www.marcelshumour.com. Follow him @MarcelHumour.

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