

Let sleeping judges lie

Richard Barr warns overworked solicitors about the dangers of sleep deprivation and the dire consequences of falling asleep on the job



Richard Barr is a consultant with Scott-Moncrieff & Associates @scottmoncrieff www.scomo.com

We all do it. Even the famous and successful do it.

All members of the Leave campaign did it, but they might now not be doing it so much. Even Margaret Thatcher did it, but not a lot. Sometimes it creeps up on us unexpectedly. Sometimes it does not come to us, however much we try.

It would happen without warning to one of the partners at a firm where I worked. He sat occasionally as a deputy district judge. During the afternoon sessions, the warmth of the courtroom would combine with the tedium of the proceedings and he would find himself gently nodding off.

Fortunately, he had a very attentive usher who was able to give him an unobtrusive prod with the long handle of a broom so that he could become fully alert – until the next time.

I am, of course, talking about the S word. In our frenetic lives, the one way of making more time for all the things we have

to do is to cut down on sleeping. I know of many eager and harassed young solicitors who, desperate to ensure that they record the necessary 8,760 billable hours each year, work ridiculously late into the night and are blearily back at their desks at daybreak.

Sleeping on the job can have dire consequences, as several judges have found to their cost. Last year a deputy recorder was found guilty of serious misconduct when he fell asleep during a rape trial, causing the trial to be abandoned and the victim to have to repeat the ordeal of giving evidence.

One American website has documented the occasions when appeals have arisen because of slumbering judges, including a judge who had a full 30-minute nap during a war crimes tribunal hearing. A lawyer in Canada, noting that the judge was nodding off, dropped a 2,000-page copy of the criminal code onto his desk to get his attention. In another Canadian case, the judge was heard to be snoring loudly.

Curiously, not every case involving a sleeping judge resulted in a successful appeal: the law allows a certain amount of leeway for tired judges.

But what about tired lawyers? US law allows some latitude. In the case of *Muniz v Smith*, the defendant was charged with shooting his ex-girlfriend's boyfriend. During the trial, a juror saw defence counsel sleeping during cross-examination of his client.

The defendant appealed but the appellate court concluded that there would have been a denial of justice only if counsel slept during a 'substantial portion of the trial'.

The take-home message therefore appears to be that judges snooze at their peril, but an occasional nap by learned counsel is permissible.

If you sleep in your office, you are probably less likely to suffer serious consequences (so long as you keep up your billable hours), but I did once win a client from another solicitor who, according to the client, spent his time yawning during consultations. From that time onwards I have always made a point of not yawning, however monotonous the client's voice.

There are also the scary clients who are so menacing that you not only stay awake during discussions with them, but also fail to sleep for several nights afterwards for fear of what they might do to you next. I have had a few of those as well.

I am still capable of falling asleep at inappropriate times. I once managed to nod off at the beginning of a James Bond film and sleep through the gunfire, the car chases, and the love scenes, only to wake up for the closing credits. I also find evening television to be very good at inducing sleep.

There is a serious message behind all this. I am sure that many solicitors are chronically sleep-deprived. That is not good for either your physical or mental wellbeing. According to the NHS

website, sleep boosts the immune system, wards off heart disease, prevents diabetes, can keep you slim, and boosts mental wellbeing. That said, there is apparently a Goldilocks zone (of around six to eight hours' sleep) on either side of which health problems increase.

Interestingly – but please do not show this to office managers – we have not always done our sleeping in one go. Until the end of the 19th century, slumber was often divided up into first sleep and second sleep, with two to three hours in between which were taken up with work, social activities, and even sex (with apologies to the sensitive for using another S word). Let not the time-recording police seize this opportunity to demand a further 20 plus units from hard-pressed paralegals, please.

Perhaps a more user (or fee earner) friendly solution would be for firms to provide rest rooms (in the English, not the American, sense) so that those who start to flag in the middle of the afternoon can take a brief siesta and emerge alert and ready for the fray half an hour later.

I do just that occasionally: 22 minutes is my optimum time. This is easier to achieve when you work from home. That little boost sets me up for the rest of the day. The downside is that I then cannot sleep during evening television.

Which reminds me – is that the time? Must go. See you in 22 minutes. **SJ**