The Unreasonable, Querulent and Vexatious as Litigants in Person

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LITIGANTS

- THE SPECTRUM OF COMPLAINT
  - NORMAL
  - DIFFICULT
  - SECONDARY TO MAJOR PSYCHIATRIC ILLNESS
  - QUERULANT (MORBID COMPLAINANT)

- THE UNREASONABLE AND VEXATIOUS LITIGANTS IN COURT

- JUDICIAL DISTILLATIONS
- **Querulant** (morbid complainant)—Relentlessly driven by a ‘pursuit of justice’, their complaints cascade in type and target over years and secondarily devastate their own lives.

- **Vexatious Litigant** – institute legal proceedings, habitually, persistently and without reasonable grounds.

- **Unreasonable Complainant Behaviours**—unreasonable or vexatious complaint, demanding, persistent, uncooperative or aggressive (anger, intimidation, threats and violence).
The Normal Complainant

- Aggrieved and seeking legitimate redress

- Proportionality and perspective maintained
  i.e. values other life domains.

- Focus and specificity maintained.

- Able to negotiate and accept reasonable settlement.
The Difficult Complainant

- Aggrieved and seeking redress.

- Language of ‘being victimised’ with or without loss of specificity i.e. pursuing ‘for the public good’.

- Over-optimistic expectations of compensation or major changes to institutional structures.

- Difficult to negotiate with and rejecting of all but their estimation of a just settlement.

- Though persistent, demanding and occasionally threatening will ultimately settle albeit still complaining of injustice (maintains proportionality).
The Difficult Complainant

- BADLY MANAGED.
- SOCIAL ACTIVIST
- ‘WHISTLEBLOWER’.
- COMPLICATED GRIEF.
- OBSESSIONAL PERSONALITY
- NARCISISTIC PERSONALITY.
- PARANOID AND CHRONIC GRUMBLERS.
- AVARICIOUS AND MENDACIOUS.
CLAIMS ARISING FROM PRE-EXISTING SCHIZOPHRENIA

- Aggrieved by loss and (often) persecution.
- Claims arise totally or in part from the delusions and hallucinations associated with a pre-existing schizophrenic illness.
- Claims often bizarre.
- Nature of claim usually in constant flux
- Often impossible to define let alone resolve the claim
THE QUERULANT
(MORBID COMPLAINANT)

- Aggrieved by victimization, persecution and loss.
- Emotionally charged beliefs of being victimised, unjustly treated.
- Loss of focus and proportionality.
- Relentless and prolonged ‘Pursuit of Justice’.
- Inflexibly focussed on grievance but if offered ‘total’ reparation will extend complaints.
- Overtly seeking reparation and retribution, covertly seeking vindication.
STUDIES ON THE QUERULANT

Age: 4\textsuperscript{th}, 5\textsuperscript{th} or 6\textsuperscript{th} decade
Males:Females 4:1
Premorbidly: - reasonably high functioning well educated.
Majority had had partners
Criminal history - uncommon
Psychiatric history - uncommon
Substance abuse - not prominent
No one is born a querulant.
THE QUERULANT
(MORBID COMPLAINANT)

- Communication;
  - Multiplicity of modes.
  - Volume of material.
  - Variety of material.
  - Internet, emails and c.c.

- Language;
  - Emphatic, third person, ‘legalese’.
  - Ununderstandable and repetitive.

- Multiple complaints and litigation (cascading).
STUDIES ON THE QUERULANT - PERSONALITY

“A rough, irritable, egotistic person, defective in his notions of justice”

Krafft-Ebing (1897)

“Restless, excitable, irritable, inflated self esteem, assertive, combative, defiant, fanatical”.

Kolle (1931)

“A obsessional and distrustful individual, combative and insensitive to all but his own needs, hypersensitive to criticism and liable to misinterpret communications”.

Lester (2003)
Developmental Challenge

- Ageing
- Face mortality and loss of power.
- Face non accomplishment of goals.
  - “To start to hate for ever, the chances for love must appear to be disappearing.”
The ‘Blow’

- Environmental stressor in majority:
  - Threats to self image, prestige, position, power, property and rights.
    - Marital break up/custody issues,
    - Educational or career setback e.g. failure, negative evaluation, dismissal or lack of promotion,
    - Physical or psychological injury or illness.

- Majority had an associated stressful court case.
The Querulant and the Law

THE QUERULANT IN COURT

- ‘Voluntarily’ self-represented’.
- It is ‘a moral issue’ hence emotionally labile, self righteous and indignant.
- Legally ‘Hypercompetent’ yet disorganised and seeking adjournments.
- “A wearisome diffuseness of conversation and argument ” leading to Bower Birding.
- Websites, Support Groups, McKenzie Friend and Marriage.
Vexatious litigants in England and Wales 1990-2006

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- 105 individuals
- 85 are male and 19 female
- Cluster into the age range 50-70.
- Actions are “domestic”: disputes with neighbours, tenants or landlords over property; with family over a divorce, children or the effect of a will; or with banks, lawyers and creditors over the failure of a small business. In most of these cases, the litigant was initially defendant rather than claimant,
- Vexatious litigants are not just the unusually persistent, but those who have proved unusually persistent and particularly unsuccessful.
VEXATIONAL LITIGANTS

Type I, the “rubber-ball” strategy.
Type II is the “conspiracy” strategy.
Type III is litigation as a life-style choice.

- Type I: 5%
- Type II: 49%
- Type III: 46%
Managing Unreasonable Complainants and Litigants

- Management is in three phases:
  - Legislation.
  - Procedure and regulation.
  - At the ‘Coal-face’.
Judicial Distillations

- **First**: Without appropriate legislation and procedure you will struggle.
- **Second**: Recognise the 5 V’s (victimised, voluminous and vague communications, variable demands, seeks vindication).
- **Third**: Do No Harm. Success is measured in ‘containment and safety’ not ‘completion and satisfaction’.
- **Fourth**: Firm boundaries and normal practice.
- **Fifth**: Maintain ‘Wigs and Gowns’.
- **Sixth**: They are legally hyper-competent yet disorganized and overwhelmed.
- **Seventh**: Maintain Focus for yourself and them.
- **Eighth**: Control through limits.
- **Ninth**: Silence is Golden.
- **Tenth**: More time granted equals more confusion created.
- **Eleventh**: Thick Skin and Share the load.
- **Twelfth**: Don’t personalise the encounter.