

Fly on the Wall

Fly has often thought that, instead of a blacklist, the glory days of which are now a thing of the nostalgic past, and the utility of which Fly should never be heard to question (heaven forbid), his siblings could well have done with a secret booklet of sorts on The Instructing Attorney. The sad fact is that, by the time the Young'uns have learnt a thing or two about discriminating among Instructing Attorneys (and have become equipped to handle the slings and arrows of outrageous application of the cab rank rule), they are less in need of the fruits of such erudition than when in that early state of bright-eyed anticipation that tends to view The Instruction with somewhat more deference than its objective merits at times may warrant. Such a booklet might have solved many a pressing dilemma for many a puzzled Young'un.

Fly muses on those occasions when the sordid vied with the vague for primacy as the defining characteristic of The Instruction, and the soul of the Young'un was wrenched with what appeared to be a sobering bout of growing up to the Machiavellian realities of The Practice of Law, and when the agonies of his insistence upon what he was made to feel to be an embarrassing unfamiliarity with the worldliness of real life cost him so much unnecessary anxiety for the sake of those respectable appearing gentlemen whom he seemed churlish enough to allow his confused scruples to disappoint in the heat of what was to be a hard man's battle. What teenage blushes might he not have saved himself had such a booklet declared as Rule number 3: 'When an arrogant swine asks you to do something despicable without affording you too much time for reflection, there is no need to feel pain about telling him to confine the instruction to the depths of an appropriate aperture, or to pass it on to one of the many you are so scoffingly assured would be quite happy to assume responsibility for the routine yet lucrative assignment.'

Some rules of thumb would have been handy indeed (again, never to employ as an excuse for shirking the noble ways of the cabman, but merely to ease the path and open the eyes).

Such as, say, 'Beware of gratuitous promises of future wheelbarrows full of fascinating cases as an adjunct to an instruction. Such promises usually, although not always, have more to do with encouraging underselling in the present than with any intention to act in any particular way in the future.'

Or, 'Surprisingly few instructing attorneys milk a matter for the sake of milking a matter. But those who do, do not like tones approximating sanity, temperance or reasonableness stemming from the likes of counsel within earshot of the cow. If you find yourself going easy on the bad news to spare a fretful attorney, look harder at the bad news and speak up sooner.'

'Some attorneys appreciate being engaged about the law. Some do not. Some believe they are paying you (forgetting that they are using the client's money for it) to find and apply the law to their matter, not to bore them with it. So be it. If your attorney is of that school, don't despair. Just stop boring him or her with the law. Say that the matter is certainly arguable, although there be many interesting aspects to it. But rest assured. When the judge disagrees at some point with what you say about these aspects, your attorney will acquire a sudden fascination with the law commensurate with his or her disappointment at your having neglected the nuances of jurisprudence. So, see how much discussion is warranted. But never mistake a lack of interest in the law for a lack of appreciation for the importance of appropriate and fruitful application by you of the law, to the benefit of the client.'

'Some attorneys will bug you daily about matters that are not urgent by any stretch of the imagination. Others will be blissfully elsewhere despite a nagging sense on your part that this might well be the kind of situation where you

could not fairly complain too heavily in the event of some serious bugging. The former will serve as a source of irritation. The latter may augur disaster. Rather they bug you than leave you in peace. You should worry about those matters where there's not enough worrying going on, and relax about those that are constantly worrying you at wrong times of the day.'

'Always let them know that you say what you think. Most will appreciate that this is what they briefed you for. Good riddance to those who do not.'

'If you receive letters "confirming" conversations you do not remember, sit up and write back. These guys have been around creating misleading paper trails longer than you've been breathing. Next time, be quite sure you are not perhaps unavailable.'

'You will find some attorneys very entertaining about the defects of your opponent. You may even laugh at this, at your opponent's expense. Don't. Make a note of the certainty that similar caricatures of yourself will soon bubble from the lips of the raconteur, if this has not already happened. The same thing applies to scathing criticism of the efforts of your predecessor in title. These tend to explain the unexpected unavailability of your predecessor and to reveal the likelihood of an objectively hopeless case. Have fun.'

'Bear in mind that, although your attorney often has a comically favourable view of the character of your client and the justice of his cause, he tends to know the matter a good deal better than you do. An attorney with a good nose is a beacon to guide your preparation. Try your best to smell whatever it is that makes him uncomfortable, if you cannot see it in the law books. It's very often nowhere to be found in the law books. If, however, you find it difficult to understand how the attorney can be missing a smell that is all too pungent to your nostrils, it's usually because he smells it too, but refuses to see it. If so, revert to the Rule about the milkman. Save the cow.' 

From the Publishers

Delict Sibergramme Yearbook 2005 and Civil Procedure Sibergramme Yearbook 2005

By Mervyn Dendy
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Surveys of developments in the South African law of delict and civil

procedure during the period December 2004 to November 2005, arranged according to subject. 