

Judge Has His Say

Judge Gordon Lewis of the Victorian County Court in Victoria expresses some amusing, but obviously heartfelt and intensely practical views on behaviour in court in an article entitled "Court decorum or how to tell the difference between a court and a public telephone box" which appears in the June edition the Law Institute Journal.

Among the matters that concern him are the following:

"Young practitioners should remember that the positioning of the judge affords him or her an unprecedented opportunity to both see and hear what goes on in court. Accordingly, the following actions represent conduct unlikely to attract the court's sympathy:

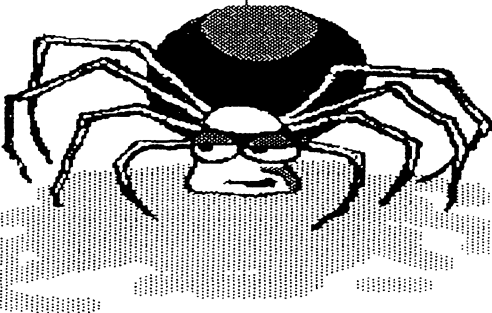
- picking one's nose for a protracted period;
- reading a newspaper with a legal document wrapped around it;
- perusing a rawcing guide with similar disguise;
- sketching the judge, counsel or the parties;
- checking personal bank statements with the use of a calculator;
- announcing your appearance by saying "Hi" to the judge;
- discussing the football results or your sex life on a loud voice at the back of the court."

Lest young lawyers feel particularly picked on, it is worth noting that the judge also makes reference to some rather bizarre court behaviour from more senior practitioners

He notes that for some decades, he has detected a tendency in counsel to indulge in asides at the Bar table, many in a stentorian voice, apparently forgetting that the table is wired to the general recording system.

"A recording of the day's proceedings in a civil case last year revealed that counsel, in conversation with his instructor, had referred to the judge as a "silly old bastard". Freedom of speech demands that he should be able to say it,

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common sense dictates that he should not."

His Honour continues on to give some practical and humane views on behaviour of witnesses in court and has this to say:

"My tolerance of how a witness addresses me has not been reached either, and in a recent trial where a witness turned to me in response to a question that seemed to be at least unrealistic and said, "Mate, do I have to answer a bullshit question like that?" I was pleased to note that the witness at least addressed me in affectionate terms."

Sexual Politics

The Perth *Sunday Times* (via *Rear Window* in the *Financial Review*), June 6 provided a description by consultant Dr Brian J O'Brien of the government's approach to environmental governance.

He refers to it as the Kama Sutra approach because "you invent more and more complicated ways of performing what should be a natural and enjoyable task and get so tangled up that you never actually do it. Either you're too exhausted or you can't find the most important bits, or if you find one, then another is missing, or you've taken so long you've forgotten what you were trying to do in the first place."

Well and Truly Nailed

Thanks to Freda Evans from the Supreme Court Library who found this sad but true story from the European Court of Human Rights in the New Law Journal, April 11 1997.

Apparently a group of sado-masochists met on occasions to indulge in various practices as beloved by those of that bent (that being the operative word as one of the aforementioned practices was that of nailing a penis to the table).


All activities were between consensual adult males, took place in private and no permanent injury had been caused to any of the participants.

It would appear that their biggest mistake was to make videos of this entertainment which later fell into the hands of the police. Charges were laid and the case proceeded to trial where the trial judge ruled that the defendants could not rely on the consent of the victims. The defendants pleaded guilty, received prison sentences and subsequently appealed to the Court of Appeals, the House of Lords and finally the European Court of Human Rights.

Needless to say, this process and the attendant publicity took its toll with the applicants losing their jobs, requiring psychiatric treatment, and one died before the conclusion of the matter.

Their application to the ECHR sought to establish that the conviction and prosecution was a violation of the right to privacy under Article 8 of the Convention. However, the ECHR ruled that their conviction and prosecution was a necessary intervention into their privacy to safeguard health.

It was interesting to note that the ECHR was unanimous in its decision, whereas the appeal to the House of Lords had been split against them 3-2.



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