

Fly on the wall

... a clear view on the matter?

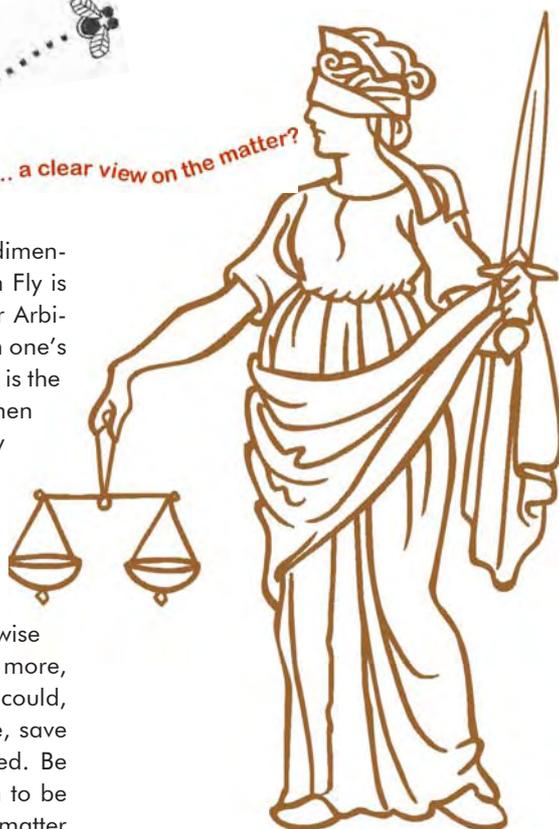
Fly recently spent some time on The Other Side Of The Wall. Or rather, of The Bench. For a proper perspective on things, this was definitely the superior side. It was, however, also always the perspective of someone from whom everyone in the thick of the action very keenly wanted something important, and displayed anxiety if it appeared to them as if there were some danger that they were not going to get it. This dynamic at times put an odd complexion on the debate.

Fly argues, often for the sake of arguing. It's what he does. He enjoys the ebb and flow of argument as points appear to gain or lose their power in the wake of counter-points, and he knows the frustration of experiencing the failure of making any impression on a determined audience with what ought by all rights to be making an impression. Debate is the most interesting when one is not entirely clear where it may end in one's own mind, and quite excited to find out. The more firm the view one holds of something, the less interesting an exercise debate about it is. In a debate that promises much interest and intrigue, it is disconcerting to have an exaggerated significance attached to one's every utterance, to one's every query, and especially to everything that may be interpreted as a hint that reveals One's Clear View On The Matter. Especially when Fly does not have a Clear View On The Matter, and wants to form one by the method of testing the arguments for and against. Because they don't trust Fly on this. No, no. As far as they are concerned, Fly definitely has a Clear View of the Matter, and they are desperate to trick him into revealing what it is. Since then they may be able to deal the better with it.

For reasons not quite clear, this dimension appears more prominent when Fly is addressed as 'My Lord' than as 'Mr Arbitrator.' Although the degree to which one's decree will determine who gets what is the same, and in fact even more so when review rather than appeal is the only check, the relationship is still experienced as more vertical when robes interact across a bench than when suits interact across a desk. Or so it seemed to Fly.

It became clear very quickly how wise was the Old Hand's advice, to listen more, and to put a sock in it wherever one could, to temper the temptation to engage, save where it really could not be avoided. Be careful, it seems, of what you seem to be thinking, as this may alter how the matter is argued. Now Fly knows this. Next time, he may improve implementation of the insight. When the leopard changes its spots.

There's also something different in the Agonising. Fly couldn't quite understand it. The need to get it right is the same. But somehow, in the one case, where the parties have chosen their fate, they are to live with it, whatever it may be, whereas in the other, where the State in its wisdom has imposed Fly upon the litigants, their absence of any say in the matter appears to demand more agonising about getting it right for them. Getting it right feels slightly different from being 'correct,' especially given the epistemological impossibility, or at least the extraordinary scope of latitude, attending anything vaguely like the latter notion. The agonising stops when there's some acceptable equilibrium between where the law appears to have taken the thing, and where it seems it ought to have gone. And



when you can still say with a straight face it was the law that took it there, and not something entirely different.

We can all do with a little Perspective. The great jurist HLA Hart understood the importance of the Internal Point of View as essential to grasping a concept. For an advocate, the degree to which one can understand and internalise The Other Side often determines the level of understanding of a matter, and may decisively influence one's ability to isolate what is best about one's own side of it. Obtaining the Internal Point of View from the Other Side of the Bench was, for Fly, one of the most important perspectives he had yet acquired in his game. Although the judge can hardly be described as Thine Enemy, (much as it sometimes seems an apt description), it does not hurt to get to know his or her point of view a bit. It can also entail tremendous fulfilment and satisfaction. **A**



Legal Crossword Number 21 Answers

- Down** (in order from left to right)
- 1 A piece of the action (COMMISSION)
 - 2 Alienate again (ONSELL)
 - 3 Not if you reprobate (APPROBATE)
 - 4 What you cannot appeal of an exception (REFUSAL)
 - 5 Discarded from statute (REPEALED)

- Across** (in order from top to bottom)
- 1 State entity (ORGAN)
 - 2 Lie (MISREPRESENT)
 - 3 The subject of appeal (ERROR)
 - 4 American headnote (SYLLABUS)
 - 5 Paying piece (INSTALLMENT)