Issue 25

The Circuiteer

News from the South Eastern Circuit

Autumn 2007

The Bar, the Media and Human Rights

Table of Contents

Leader's Column

Circuit Events

On the 19th of April the Circuit hosted a reception for the presiding and the resident judges, which was very well attended. The guest speaker was the Senior Presiding Judge for England and Wales, Lord Justice Leveson, who spoke about matters of mutual concern, particularly the need for the highest standards of advocacy, the use of HCA's, the grant of certificates for two counsel, the death of the mention, and listing practices. It was an informative and enjoyable evening, which brought the judiciary and the Bar closer together; since then it has resulted in greater contact between us. I intend to repeat this next year.

On the 29th of April there was a dinner in the Old Hall in Lincoln's Inn to honour Tim Dutton Q.C., Simon Barker, and Andrew Ayres, and to thank them for the many years of service which each of them gave to the Circuit. It was a splendid evening enhanced by a selection of exceptional wines produced from the Circuit's cellar by Stephen Solley, Q.C.

This year's Circuit trip was to Istanbul. Twenty five of us took advantage of the Whitsun Bank Holiday and the fact that the crown courts were not sitting on the Tuesday to spend nearly four days in the city. Giles Colin had arranged for us to stay in a hotel ideally situated mid-way between the sea and the Blue Mosque, and close to the best fish restaurant in town. We were very well looked after by our hosts from the Istanbul Bar, particularly Umut Kolcuoglu, who amongst other activities arranged a memorable boat trip along the Bosporus. The serious part of our visit involved participation in a conference organised by the Istanbul Bar concerning Public, Private and Penal Law. The highlight was two addresses which robustly defended human rights.

On the 29th of June the Annual Circuit Dinner was held in the Great Hall in Lincoln's Inn. It was well attended by civil and criminal practitioners. Many of our judicial members – of whom there are now 40 – were in evidence. The guest speaker, the Master of the Rolls, made a very entertaining speech.

I should add that since the dinner, the Circuit has invited three former leaders of the Circuit to become our first honorary members. Sir Michael Wright, Sir John Alliott and Sir Anthony Hidden have each accepted.

If any Bar Mess, especially outside London, is organising a social event, I would be happy to attend.

Education

The educational side of the Circuit is of paramount importance in maintaining the highest standards of written and oral advocacy at the Bar. It is not without significance that all the Inns of Court regard education as their main function. We are extremely fortunate to have someone as committed as Joanna Korner, Q.C. as our Director of Education.

I am indebted to Philip Brook-Smith, Q.C., for taking over the running of the Keble College Advanced Advocacy Course this year. This is widely regarded as the best advanced advocacy course in the world. To follow in the footsteps of Tim Dutton, Q.C. and HHJ Toby Hooper, Q.C., must have been a daunting task, but by all accounts he effortlessly rose to the challenge, ably assisted by Sarah Clarke, Richard Coleman, and our administrator, Inge Bonner.

The Advanced Advocacy course run with the Criminal Bar Association at Jesus College in September was also a great success, primarily due to the efforts of Rosina Cottage, John Riley and (for the last time) Julian Bradley.

I would like to thank all those who gave up their valuable time to teach at these two important courses.

Criminal Fees

For criminal practitioners there is some welcome news. The RAGFS, which should improve the rates of pay for those doing the smaller cases by an average of 30 percent came into effect on the first of May. Payments have been made since August.

In relation to VHCC's, in mid-June the LSC announced criteria by which it would in its discretion contract a range of 26-40 day-cases. One of the criteria was any case with more than five defendants. That alone would have removed a large number of cases from the RAGFS and thereby undermined the basis on which that system had been negotiated and agreed. However, after representations from the Carter Implementation Group led by Tim Dutton, Q.C., the LSC has agreed to contract a very much smaller range of 26-40 day cases than it first proposed.

They are (a) terrorism cases, (b) SFO prosecutions, or (c) cases with any two of the following features, - i) more than 10,000 pages of prosecution material, ii) more than 10,000 pages of unused or third party material, iii) more than five defendants, iv) fraud or serious drug cases where the value of the fraud or drugs exceeds £1million. The LSC has stated there were only six such cases (involving 37 defendants) in the 12 months to June 2007. The start date for this scheme has been put back to January 2008

Leader's Column (continued)

although the LSC intends to announce the composition of solicitor and barrister panels in October. The rates of pay remain unacceptably low. When the time comes for contracts to be signed it will, as it has always been, a matter of individual choice whether or not to sign. Between now and January 2008 the Bar Council will be working with the Law Society and LSC to develop the Bar's proposed VHCC scheme which is based on 'whole case' fees rather than an hourly rate.

The timetable for the introduction of One Case One Fee (OCOF) and Best Value Tendering (BVT) has been pushed back to January 2009. The Bar Council is continuing to press the LSC hard that crown court work should be excluded from these schemes.

The Bar Council is also pressing the Bar's case for parity of prosecution and defence fees. A meeting was arranged at the end of the September with the Attorney General and the DPP in which this and the issue of the CPS's use of HCA's will be discussed.

Higher Court Advocates

The Advocacy Liaison Group, which includes the Circuit Leaders and the Chairman of the CBA, meets quarterly with the CPS. The ALG has produced evidence of complaints, not just from the Bar but also from the judiciary, that the Statement of Principles – which the DPP signed up to – and the Criminal Procedure Rules – which encourage case ownership – are not being adhered to. A joint letter has been sent to all CCPs stressing the need for compliance.

It is also important to bear in mind that it must be in the public interest that those who prosecute, whether from the CPS or the Bar, have sufficient experience and competence to conduct cases efficiently and effectively. If they do not, then victims, complainants, and witnesses will suffer; miscarriages of justice may occur; and confidence in the criminal justice system will be eroded. I know that the judiciary is taking an ever-increasing interest in this issue.

On the defence side, the Bar is discussing a statement of best practice with the Law Society and the Solicitors' Regulatory Authority to ensure that if the advocacy element of some cases is kept in-house, cases will only be defended by those with the appropriate level of skill and expertise.

CPS Grading (London)

Approximately 300 applicants appealed against the grades they were initially awarded in May. The appeal process will have been completed by the end of September, and the results of the appeals will be made known in October. I would particularly like to thank the members of the appeal panel – Dru Sharpling, the CCP for London, Nick Hilliard, Alex Cameron, Q. C., and Mark Lucraft, Q.C. for the very hard work they have put in. I would also like to thank all those who provided references, particularly judges.

This is the first time that a grading process has been used on the Circuit and I am well aware of its imperfections. The process is capable of much improvement and is to be reviewed. In particular, we need to examine whether the categories can be more tightly and appropriately defined, and how evidence can be obtained from those best placed to provide it – the CPS themselves. Changes will need to be made before grading is rolled out over the whole of the Circuit.

Rape List (London)

This will be reopened in October / November. I have not yet been given a closing date, but an accredited training course will be provided by the Circuit before then.

Recorderships

The Ministry of Justice has shelved its plans to limit Recorderships to 15 years. The issue of the length of Recorderships will be looked at again in 2008. The Ministry is concerned to refresh the list with new blood. It is likely that there will be new Recordership competitions on Circuits where they were previously cancelled, though I regret this Circuit is not one of those.

Projects

In July the Complaints Commissioner of the Bar Standards Board issued 'A Strategic Review of Complaints and Disciplinary Processes'. The BSB is now preparing a consultation paper in relation to the key changes to processes which will be published in December 2007. The Circuit's working party will respond to it.

I remain concerned that the threshold for instituting prosecutions needs to be raised, and that greater awards of reasonable costs to successful defendants should be available. Both measures will discourage the bringing of unmeritorious cases. Some good news is that the Government has agreed after intensive lobbying by the Bar Council to table an amendment to the Legal Services Bill to make it clear that those acquitted of any wrongdoing will have their fee to the Office for Legal Complaints reduced or waived under the new 'polluter pays' provisions if they have an internal procedure which has been reasonably operated.

I have also set up a working party under Max Hill to examine alternative methods by which to elect the Circuit Leader and to consider whether the existing system could be improved. He will also look at the membership of the Circuit Committee and whether it can be made more representative of the Circuit as a whole.

HHJ Rodney McKinnon

HHJ Rodney McKinnon, who from 1998 was a Circuit Judge on the South Eastern Circuit died on 21st June 2007. He was both respected as a judge and popular with the Bar. He will be greatly missed.

The Bar Conference

This year's Bar Conference is taking place on Saturday 3rd November at the Royal Lancaster Hotel, W2. The theme is 'Human Rights – Taking Liberties'. The South Eastern Circuit's workshop, a debate on 'International Tribunals: Justice or a Propaganda Exercise' has drawn some high profile speakers: Ramsay Clark, a former United States Attorney General and defence attorney for Saddam Hussein, John Laughland, the author of 'Travesty', Sir Geoffrey Nice, Q.C., who prosecuted Slobodan Milosevic, at the International Criminal Tribunal for the former Yugoslavia and Dr. Lara Nettlefield, an academic who has taught courses on the politics of human rights.

The Circuit has sponsored 15 barristers under seven years' Call, each in the sum of £150 to attend the Conference. I would encourage as many of you as possible to go. It carries 6 CPD points.

David Spens, Q.C.

SOUTH EASTERN CIRCUIT

ANNUAL GENERAL MEETING

WEDNESDAY 31 OCTOBER 2007

BAR COUNCIL OFFICES, 5.30 pm

THIS IS YOUR OPPORTUNITY TO RAISE AND ADDRESS MATTERS OF CONCERN TO THE CIRCUIT AND TO THE BAR

Detainees and Habeas Corpus

David Rivkin, well known to circuiteers from his appearances on BBC Newsnight speaking from Washington, D. C., cites statute and case law in defence of the view that the U. S. treatment of individuals captured as enemy combatants on overseas battlefields is correct and lawful

The Bush Administration has been much criticized for adopting certain procedures for determining whether individuals, captured on overseas battlefields or in the continental United States, have been appropriately classified as unlawful enemy combatants and, as such, can be detained for the duration of hostilities and prosecuted, if necessary, through the military justice system. These criticisms are fundamentally wrong.

Significantly, the procedures that govern the handling of captured enemy combatants have not been developed by the Executive Branch alone. Rather, they are grounded in two major pieces of legislation – the Detainee Treatment Act ('DTA') and the Military Commissions Act of 2006 ('MCA') – and, accordingly, reflect the considered judgment of both Congress and the President.

Constitutional

The DTA and MCA fully comport with the United States Constitution and the applicable international law standards. In this regard, the MCA and DTA procedures are streamlined, yet fair. They accord detainees with access to the judicial process that is more than sufficient to enable them to mount a meaningful challenge at the appropriate time to their detention. Meanwhile, the actual procedures currently used by the Department of Defense to determine the status of detainees – Combatants Status Review Tribunals ('CSRTs') – and to try them for war crimes – Military Commissions – are constitutionally sufficient and give to the detainees far more due process than they have had under any other 'competent tribunals' convened, for example, under Article 5 of Geneva Convention (III) Relative to the Treatment of Prisoners of War of August 12, 1949 ('Geneva III') or any Military Commission in history.

The extent to which the United States has decided to provide captured enemy combatants with additional rights is underscored by the fact that the Department of Defense also holds on an annual basis Administrative Review Boards ('ARBs'), which focus primarily on the question of whether detainees held in U.S. custody pose continued danger and whether viable alternatives exist to their continued detention. Indeed, since the notion of enabling captured enemy combatants to be released 'on parole' fell out of practice by the late nineteenth century, the current U.S. practice of releasing captured enemy combatants before the end of hostilities is historically unprecedented.

Indeed, the historic practice has been to punish harshly captured individuals, determined to be unlawful enemy combatants, largely irrespective of the extent to which they personally were involved in any specific combat activities, primarily because unlawful combatancy was viewed as a supremely dangerous phenomenon, to be suppressed and delegitimized. By contrast, the current U.S. practice has been not to prosecute at all the vast majority of captured unlawful enemy combatants.

The test for the court

The MCA and DTA make the United States Court of Appeals for the District of Columbia Circuit the exclusive venue for handling any legal challenges by detainees. The court is restricted in exercising its jurisdiction until after a CSRT or Military Commission has reached a final decision. Substantively, judicial review is limited essentially to two questions: whether the CSRT or Military Commission operated consistently with the rules and standards adopted by it, and whether the CSRT or Military Commission reached a decision that is 'consistent with the Constitution and laws of the United States.'

This scope of judicial review is not only appropriate for non-citizens held abroad, but is constitutionally sufficient for United States citizens themselves. In this regard, the fact that the review does not commence at the district court level, and does not follow in all particulars the non-MCA/DTA federal statutory habeas procedures codified at 28 U.S. § 2241, is constitutionally unexceptional. This proposition is well-established by existing Supreme Court precedent. In *Swain v. Pressley,* 430 U.S. 372, 381 (1977), the Supreme Court stated that 'the substitution [for a traditional habeas procedure] of a collateral remedy which is neither inadequate nor ineffective to test the legality of a person's detention does not constitute a suspension of the writ of habeas corpus.' More recently, the Supreme Court held in *INS v. St. Cyr,* 533 U.S. 289, 314 (2001), that this habeas-type review could be had in a United States court of appeals. Hence, the DTA and MCA set up a perfectly permissible form of statutorily-conferred habeas review by the D.C. Circuit.

The scope of habeas corpus

The scope of habeas corpus review provided by the DTA and MCA is not limited to reviewing merely the legality of CSRT or Military Commission procedures. Under *Ex Parte Milligan,* 71 U.S. (4 Wall.) 2 (1866), it is unconstitutional to bring civilians before Military Commissions or to hold them as enemy combatants if civilian Article III courts are open and functioning. Accordingly, a detainee should be able to claim that he is not, in fact, an enemy combatant, and the relevant factual record of the CSRT or the Military Commission would be judicially reviewable. In this regard, the DTA and MCA clearly allows such a review.

Indeed, this is the same type of review given to Nazi saboteurs (of whom at least one was a U.S. citizen) in the famous World War II case of *Ex Parte Quirin,* 317 U.S. 1 (1942). The Supreme Court rejected their contention that they were civilians not subject to military jurisdiction. It is also supported by the Supreme Court's recent opinion in *Hamdi v. Rumsfeld,* 542 U.S. 507 (2004), which emphasizes that the government needs to provide 'credible evidence' that the detainee is, in fact, an enemy combatant, after which the burden shifts to the detainee to offer more persuasive evidence that he is not an enemy combatant. To be sure, habeas review of this factual determination should not be de novo, but instead should be based on the Supreme Court's 'credible evidence' standard. This concept comports both with the U.S. Constitution and international law.

Correct procedures

The procedures used by CSRTs and Military Commissions also make eminent policy sense and are constitutionally sufficient. While many have criticized the procedures used by these bodies, the practical realities of the situation support the current DTA and MCA procedures. The fact is that, throughout history, it has been difficult to distinguish between irregular combatants and civilians. That is part of the reason why Taliban and al Qaeda members do not make themselves known. And, true to form, nearly all detainees claim to be shepherds, students, pilgrims, or relief workers, collude amongst themselves to support their stories, and name persons thousands of miles away who can 'verify' that they are not enemy combatants.

Accordingly, the only appropriate point of reference for assessing the procedures used by the CSRTs and Military Commissions is their historical and international counterparts – Tribunals organized under Article 5 of the Geneva III to identify enemy combatants, and the Military Commissions used by the United States during, and in the aftermath of, World War II. Here, it is undisputed that the CSRTs and Military Commissions offer far more process to the Guantanamo detainees than either Geneva III's Article 5 Tribunals or World War II-style Military Commissions.

To be sure, if you compare the CSRTs and Military Commissions to civilian courts, they undoubtedly feature more austere procedures. However, the CSRTs and Military Commissions are meant to address a different military reality, and it does disservice both to our legal traditions and to the 'rule of law' to pretend otherwise. The simple fact is that up to today, our legal institutions have recognized the propriety of using specialized military bodies in time of war, where civilian courts lack competence.

Can Habeas Handle Guantanamo?

The issue of the applicability of habeas corpus to the Guantanamo detainees has on three occasions come before the US Supreme Court, who has in turn been assisted by amicus curiae briefs from English barristers. Adam Zellick, of Fountain Court Chambers and co-author of the upcoming edition of* The Law of Habeas Corpus, *worked on those briefs and here analyses the issues and the legal history

For me *A Few Good Men* ranks among the great depictions of law and justice in the arts. I have seen it on stage and film. Even though Lieutenant Daniel Kaffee is no Atticus Finch still the script has a modern resonance which can, I believe, be mentioned in the same sentence as *To Kill a Mockingbird*. Where *Judge John Deed* is risible, *A Few Good Men* is inspiring and as good as it gets in courtroom drama on screen. No doubt many of us on the South Eastern Circuit are still waiting for a cross-examination to go as well as that of Colonel Nathan R. Jessep.

Leaving Colonel Jessep for a moment but with cross-examination in mind, the following is an extract from the transcript of the Guantanamo Combatant Status Review Tribunal ('CSRT') which was considering whether Mr Ait Idir (one of the petitioners in *Boumediene v Bush*, to be discussed further below) was properly detained for associating with an (unnamed) known Al Qaeda operative:

Detainee:	*Give me his name.*
Tribunal President:	*I do not know.*
Detainee:	*How can I respond to this?*
Tribunal President:	*Did you know of anybody that was a member of Al Qaida?*
Detainee:	*No, no.*
Tribunal President:	*I'm sorry, what was your response?*
Detainee:	*No.*
Tribunal President:	*No?*

Detainee: *No. This is something the interrogators told me a long while ago. I asked the interrogators to tell me who this person was. Then I could tell you if I might have known this person, but not if this person is a terrorist. Maybe I knew this person as a friend. Maybe it was a person that worked with me. Maybe it was a person that was on my team. But I do not know if this person is Bosnian, Indian or whatever. If you tell me the name, then I can respond and defend myself against this accusation.*

Tribunal President: *We are asking you the questions and we need you to respond to what is on the unclassified summary.*

Detainee: *Why? Because these are accusations that I can't even answer. I am not able to answer them. You tell me I am from Al Qaida, but I am not an Al Qaida. I don't have any proof to give you except to ask you to catch Bin Laden and ask him if I am a part of Al Qaida. To tell me that I thought, I'll just tell you that I did not. I don't have proof regarding this. What should be done is you should give me evidence regarding these accusations because I am not able to give you any evidence. I can just tell you no, and that is it.*

I have a distinct recollection of leaving the cinema after seeing *A Few Good Men* for the first time in the early 1990s and thinking that, although excellent, its central premise, that the United States had a military base on Cuba, was too fanciful for words. How could the US have a presence in Castro's Cuba? The only relevant bay was surely the Bay of Pigs. On returning home, I looked up Guantanamo Bay in an encyclopaedia (the Internet and Wikipedia were then as foreign as the Gitmo Naval Base) and discovered how wrong I was. Now, years later, there is no-one who has not heard of Guantanamo Bay and its military detention camp. Although, as many will know, the base has long been used as a detention centre for people intercepted in trying to enter the US unofficially or illegally from countries such as Cuba and Haiti, it is Guantanamo Bay's place in the War on Terror that has made it such a *cause célèbre*.

The issue

The Guantanamo detention centre is of course one of the biggest political, legal and moral issues of the day both within the US and internationally. This article is not, however, about the underlying political issues surrounding the Guantanamo Bay detention centre. Neither is it about the overall legality (whether in US law, international law, the law of war or as a matter of comparative English law) of the detention of inmates in the camp. Rather, it is about how the US Government and the courts have approached the question of whether the legality of the detention should be determined by the courts and by judicial process. This article is therefore about a prior jurisdictional question or, in other words, about whether the ancient but fundamental remedy of habeas corpus, to have the legality of the detention tested in court, should be available to Guantanamo detainees. Should those prisoners be entitled to challenge the legality of their continuing imprisonment in court or only through the military CSRT procedure?

Whilst this question may seem a simple one, it is about to be considered by the United States Supreme Court for the third time. I would venture that it is one of the most important legal and constitutional issues to be considered by any common law court anywhere, now or at any time.

Military courts only?

The approach of the United States Government in this legal battle has been and is, in very general terms, that Guantanamo inmates are subject to military jurisdiction and control and ought not to be entitled to challenge their detention in the civil, Federal courts, except on a limited and postponed basis. Obviously, if the detainees could launch such a challenge in the civil courts, the Government might nevertheless prevail. The courts might indeed determine that the Government did have the legal right to detain each detainee at Guantanamo Bay. But the Government has sought throughout to avoid that question being considered by the courts, who, it has always been argued, have no primary jurisdiction over the matter.

The first case

In the first key case before the US Supreme Court, *Rasul v Bush* 542 US 466 (2004), the US Government advanced the contentions that habeas corpus was unavailable because Guantanamo was outside the territorial United States and was not sovereign territory, and because the inmates were not US nationals. The Supreme Court held (by a six to three majority) that the answer was 'clear': US courts did have jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad and incarcerated at Guantanamo Bay. The court ruled that (i) the jurisdiction of the US District Court extended to aliens held in a territory over which the United States exercised exclusive jurisdiction and control even if not ultimate sovereignty, and (ii) the availability of habeas corpus did not vary depending on the detainee's citizenship. The case was remanded to the District Court to consider the merits of the challenge. In reaching this conclusion, the Supreme Court relied extensively (but by no means exclusively) on English authority and was assisted

Can Habeas Handle Guantanamo? (continued)

by an amicus brief on English law, led by Sir Sydney Kentridge, Q.C., and Tim Otty, Q. C., under the auspices of the Commonwealth Lawyers Association).

Following *Rasul*, more than 60 Guantanamo detainees sought to challenge their detentions by habeas corpus in the District Court. The Government responded with legislation, namely, the Detainee Treatment Act 2005 ('DTA'). The DTA provided that no court shall have jurisdiction to hear or consider an application for habeas corpus filed by an alien detained at Guantanamo Bay. The DTA further provided an eventual right of review of the determinations of Combatant Status Review Tribunals (which assess detainee status) and military commissions (which try alleged war crimes). This review was to be within the exclusive jurisdiction of the District of Columbia Circuit Court of Appeals.

The issue returns

Following the DTA, the issue came back to the US Supreme Court in *Hamdan v Rumsfeld* 126 S. Ct. 2749 (2006). Mr Hamdan, a Yemeni national, was alleged to have been Osama bin Laden's bodyguard and personal driver and to have been involved in the transport of weapons used by Al Qaeda and indeed the transport of bin Laden. Mr Hamdan was charged with conspiracy to commit offences triable by military commission and was due to be prosecuted by special military commission established by the President for the purpose. Mr Hamdan accepted that he could be prosecuted by court martial, if for a known offence under the same rules as would apply to US service personnel subject to court martial. However he challenged prosecution by the military commission. The grounds included the argument that the procedures to be adopted violated basic tenets of military and international law and that the offence charged did not exist in law. The District Court granted Mr Hamdan habeas relief but this was reversed by the Court of Appeals.

Before the Supreme Court, the Government argued that the DTA had ousted civilian court jurisdiction and that the civilian courts ought to abstain as a matter of comity from intervening in cases pending in the military justice system. This was especially where Congress had created a subsequent right of review and had created a balance between the military courts and civilian courts which required to be respected. In addition, it was argued that any review had to await the conclusion of the military proceedings.

Again, an English law amicus brief (through the Bar Human Rights Committee and the Commonwealth Lawyers Association, spearheaded by Tim Otty, Q.C.) was provided to the Supreme Court. In it, it was explained that in English law no doctrine of comity or abstention of the sort advocated by the US Government would be respected by a court. It would instead guard jealously the review of any purported detention and the immediacy of such review. It was further submitted that the statutory ouster would not be effective. The amicus brief concluded that if it were the United Kingdom rather than the United States which controlled the Guantanamo Bay Naval Base, then the writ of habeas corpus would be available before the English courts to challenge the jurisdictional propriety and fundamental fairness of proceedings brought against the detained persons. Such recourse would be available at the outset; it would not be necessary to await the conclusion of any other process.

The DTA not retrospective

The Supreme Court held by a majority of five to three (Chief Justice Roberts, having heard the matter in the court below, took no part) that the DTA did not apply retrospectively to cases already pending prior to the passing of the Act. Further, the doctrine of abstention was inapposite, because of the public importance of the questions raised, the Court's duty to preserve the constitutional safeguards of civil liberty and the public interest in a decision without delay. Thirdly, the argument that the challenge had to await the military commission proceedings was unsound.

The Supreme Court held further that the military commission intended to try Hamdan was illegal. It was not authorised by any Congressional Act. It lacked the power to proceed because its structure and procedures violated both the US Uniform Code of Military Justice and the Geneva Conventions, *inter alia* because of the military commission's procedural rules limiting attendance at trial, access to evidence, cross-examination, and objection to the admissibility of evidence. Plainly, in the light of that authoritative ruling from the Supreme Court, the Guantanamo CSRTs and military commissions (in their form at that time) must be regarded as procedurally defective and in violation of the norms of natural justice and US law. For present purposes, it may be re-emphasised that the Supreme Court confirmed the necessity and availability of the right to bring a primary challenge to the detention in the Federal courts.

A further Act

Following the decision, Congress passed the Military Commissions Act 2006, which was signed by the President on 17 October 2006. This provided that no court had any jurisdiction to hear any application for habeas corpus filed by or on behalf of an alien detained at Guantanamo Bay and that this applied to '…all cases, without exception, pending on or after the date of enactment…'.

It is the 2006 Act which has caused the matter to go back to the Supreme Court. The case is *Boumediene v Bush*. The petitioners are naturalised Bosnians originally from Algeria who were arrested in Bosnia and handed over to US military authorities in Bosnia (in defiance of Bosnian court orders) and then transported to Guantanamo where they have been held as alleged enemy combatants without known evidence and away from their families since early 2002. In *Boumediene*, the Court of Appeals answered two questions. First, did the 2006 Act apply to habeas cases already pending? This was perhaps unsurprisingly given short shrift. Looking at the judicial and legislative history and at the words 'without exception' as quoted more fully above, the Court of Appeals held that the argument of statutory construction that pending cases could survive the Act (as in *Hamdan*) was 'nonsense'.

The second issue was whether the 2006 Act was constitutional. This issue arises because the US Constitution provides in Article 1, Section 9, Clause 2 ('the Suspension Clause'), that 'The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it'. The detainees argue that since there is no rebellion or invasion, the 2006 Act is unconstitutional, as being in breach of the Suspension Clause.

The majority in the Court of Appeals (despite a vigorous dissent from Judge Rogers) held that the constitutional argument failed. The reasoning included the ground that the Suspension Clause protected habeas corpus but only and to the extent that it applied in 1789. According to the majority in the Court of Appeals, the law of habeas in 1789 (following their analysis of the English authorities) would not have extended to Guantanamo Bay (because habeas did not then extend to non-nationals or outside sovereign territory) and so Congress was at liberty to pass the 2006 Act which did not infringe (1789) habeas as protected by the Constitution.

On 2 April 2007, the Supreme Court declined to hear the case by a majority of six to three on the grounds that certiorari was premature because the petitioners had not yet exhausted other available remedies. Five of the Supreme Court justices (two of the majority and the three in the minority) took the step (unusual in the Supreme Court) of handing down separate written reasons for their approach to the permission to appeal question. The petitioners sought a rehearing and on 29 June 2007 the Supreme Court changed its mind. The case is due to be heard shortly.

1789 and all that

The Commonwealth Lawyers Association's amicus brief on English law was submitted to the Supreme Court on 24 August 2007. English law is likely to figure in the Supreme Court's determination. If the Constitution protects habeas corpus only as it

Can Habeas Handle Guantanamo? (continued)

existed in 1789, the state of habeas corpus in 1789 will be crucial. That is primarily a question of English common law. The detailed amicus brief – again led by Sir Sydney Kentridge, Q.C. and Tim Otty, Q.C. – explains that since at least 1772 the writ of habeas corpus has been available as a matter of English law regardless of the detainee's nationality and regardless of the existence of pure sovereignty over the territory in which the person has been detained.

With the hearing of *Boumediene* pending, this potted litigation summary is up to date and awaits, as its next staging post, the Supreme Court's decision.

Getting to the truth

In the meantime, I return to the film. In cross-examining Colonel Jessep, Lieutenant Kaffee wanted to get to the bottom of what happened. He wanted to look at the merits and famously he wanted the truth. Colonel Jessep was opposed to reviewing the matter and said with passion and fire:

> *You can't handle the truth! Son, we live in a world that has walls. And those walls have to be guarded by men with guns. Who's gonna do it? You? You, Lt. Weinberg? I have a greater responsibility than you can possibly fathom. You weep for Santiago and you curse the Marines. You have that luxury. You have the luxury of not knowing what I know: that Santiago's death, while tragic, probably saved lives. And my existence, while grotesque and incomprehensible to you, saves lives...You don't want the truth. Because deep down, in places you don't talk about at parties, you want me on that wall. You need me on that wall. We use words like honor, code, loyalty...we use these words as the backbone to a life spent defending something. You use 'em as a punchline. I have neither the time nor the inclination to explain myself to a man who rises and sleeps under the blanket of the very freedom I provide, then questions the manner in which I provide it! I'd rather you just said thank you and went on your way. Otherwise, I suggest you pick up a weapon and stand a post. Either way, I don't give a damn what you think you're entitled to!*

The ultimate question

The primary position of the US Government in relation to habeas, judged purely on the Court's characterisation of its case in the published decisions, has been to seek to avoid the merits of habeas applications and the issue of whether detention at Guantanamo can be legally justified. The Government has sought to deny and to exclude habeas jurisdiction from the civilian courts.

In the Guantanamo context, there are clearly deep and serious questions as to whether it is lawful (no doubt as a matter of US law first and foremost) to detain prisoners there indefinitely and as to whether military tribunal procedures are lawful even with their due process restrictions on speed of decision, on the power of release, on the neutrality of the tribunal and on the opportunity to present evidence, to have counsel, to know the charge and the evidence against the detainee. Against that backcloth, the jurisdictional question has become not only a preliminary matter but the most pressing issue. The question, tendentiously put, is whether the US Government should justify the legality of its acts or whether it can successfully and constitutionally insulate itself against that.

A Few Good Men was all about the need for the rule of law to be understood and to rein in Guantanamo Bay. Just as the reach of the rule of law over Guantanamo was determined in the court room in the film, so in reality it will soon be decided in the Supreme Court.

The author alone is responsible for this article (and in particular nothing in this article represents or should be taken to be the views of anyone else mentioned in the article).

Being a Television Lawyer

For Sophia Cannon, family lawyer in Tooks Chambers and family law expert on ITV's 'This Morning' , the Bar and the media are two complementary aspects of her career. She describes here how it happened, how it works and what occurs when you're recognised in Sainsbury's.

All the world's a stage? Being a television lawyer you are reminded of that phrase often. Of course, most English lawyers on television are fictional. And it does not help that all the famous ones are the traditional types: older, whiter, and male. The only female lawyer the production company could name is the comedic, elfin Ally McBeal. Looking to the examples, I was definitely on my own.

I was reminded constantly that you are not an actor playing a lawyer but informing the public about the law as a lawyer. Accordingly, it is your experience and personality that is what the public want to see. There is a role to play for the television lawyer however. Half of it is to demystify the profession; the other half is to demystify the law for the audience at home. Family law in particular normally operates behind closed doors so that no one can be told the facts of the case. This adds to the mystification. Inroads have been made, and it is hoped that this will lead to the ability of people to take their own lessons from child law.

How it started

This unusual career started as an approach from a researcher who saw me forcefully advising a client during a High Court case. The young researcher was investigating the clamour for openness in family courts, the rise in 'families at war' and campaigning based upon gender lines, rights for fathers, rights for mothers and – often sidelined though – the rights or the former rights for children. I was not blissfully thinking about my Bar career. I was advising a client who had lost his child through the criminal intervention of his erstwhile partner. He was behaving terribly, but with reason. It is a problem, thankfully now being addressed with extensive renovations, due to the lack of proper privacy at the Victorian Royal Courts of Justice – advice, in the most private of cases, has to be delivered in public corridors. The researcher stated that I had a down-to-earth manner that would be ideal for television. I took the card but offered her a traditional barrister to undertake the role. She returned a year later stating that traditional barristers are part of the problem of mystifying the profession. This time I relented.

The other issue for the television I found is the didactic use of the law. Major paradigm shifts in human behaviour are often facilitated by the legislature and enforced by the judiciary. Chastising one's wife was once acceptable and legal, but now domestic violence is illegal and objectionable. As a lawyer, how the law applies in the home or upon the sofa is what the ordinary bloke wants to know, in a manner which they can understand and apply.

Court vs. sofa TV

My specialism of family law is at place with sofa television in the mornings. The process of live television is surprisingly similar to the court arena. I am certain that most judges would not mind being compared to a sofa chat show host. However your function is to inform them of the situation, in a fluid, lucid manner, with reference to the facts and the people involved, and as quickly and succinctly as possible. In court there is your client, on television the audience. The medium of the camera is different to your tribunal. The raised eyebrow is the feedback for an unattractive submission. Your post bag is the equivalent and due to the Internet, is instantaneous. The researchers field the calls and inform you generally about the nature of the question or the problem. Then it is up to you. There is the idea that in court you are intimate with your tribunal. Contrast that with the glare of the world when on live television. Your malapropisms, grammatical errors are captured, beamed out and recorded forever on live television; you remain grateful for a High Court judge's dressing down with your sympathetic colleagues.

The problem that arises however with the onset of technology is that members of the public confuse your role. Once I appeared on television in the morning and in court in the afternoon; the client was amazed to the point of speechlessness. I remind them of the Bar Council guidelines that television is entertainment and that his case is the real thing. Some members of the public have recourse to 'Googling' you and calling the clerks to continue the debate in chambers. The client always comes first, however, and the Bar Council are helpful to reiterate the principle to those who have media careers about what you say to your client and what you say to the audience.

As a barrister, in my opinion you cannot sympathise but you must empathise in order to best represent and advocate for your client. Barristers address audiences of one client and change their language accordingly because they can see how the client is reacting.

It is very different to explain to a camera. I receive a post bag with comments; heartfelt comments that the viewer thought that they themselves were going through this alone.

Being a real barrister

From playing the Archangel Gabriel in a nativity play, I have acted as an advisor for the BBC, ITV and Channel Four, often uncredited. I can say with gratitude to the Bar Vocational Course, some years later, that simple tasks in advocacy, presentation and projection in the bowels of the School of Law were very useful to the television. You become aware that as a lawyer other professionals also require demystification of the professions. The small questions such as, 'Are you a real barrister?' in response to the removal of wigs and gowns are often asked by the researchers and the viewers.

I note that part of the argument for the retention of wigs and gowns is the element of protection for the Bar from the public. The funniest thing was being recognised in Sainsbury's. Another justification is that the older barristers look younger and the younger older. I recall part of my post-bag devoted to my appearance, my clothes, and my make up. Therefore, in Sainsbury's, in tracksuit bottoms, my checkout girl recognised me. She told the queue and stated that I looked 'younger' and 'rougher' but sounded posh. Humiliation apart, I recalled that from that I had people asking the most basic of questions relating to the law and the process. This led to my blog (The Paramount Principle) and my own personal openness to the Bar. There are dangerous downsides though that remind you of the necessity for the lack of direct access to the Bar, that wigs and gowns no longer protect you in the twenty-first century.

I have an agent and a clerk, both with the same name, which is entertaining. The former looks to diversify the image, writing books and giving seminars about the issues that have been raised. The latter is trying to obtain the instructions to maintain my practice. There will be a time where I have to choose.

Burma: The International Legal Community must issue a strong message

This issue's theme of human rights sadly coincides with events in Burma which should shock the world's conscience – as indeed it should have been shocked for many years. The Circuit's former leader, Tim Dutton, Q.C., writing from family knowledge, expertly explains what is going on and what the legal community is now obliged to do

Tim Dutton, Q.C.

In 1962 the military junta seized power in Burma. During the night of the coup against the democratically elected government, armed soldiers, answerable to General Ne Win, marched into my Sappho's family home, rounded up the family, seized her grandfather, U-Raschid of Burma, at gun point and dragged him off to prison. U-Raschid was one of Burma's leading intellectuals and with Aung San (the father of Aung San Suu Kyi), one of the leaders in Burma's independence movement; a Cabinet member, a minister for labour and mines.

U-Raschid, Aung San and others had developed their thinking about a modern independent Burma as students at Rangoon University. U-Raschid was President of the Student Union. He was Called to the Bar by Lincoln's Inn and, like many of the founding fathers and intellectuals in Burma, India and Pakistan, studied and practised law and developed strong ties with the English Bar. The others included Mohatma Gandhi (India), Jinnah (Pakistan), and Nehru (India). They knew each other, and they worked together on the development in their countries of democratic values and the rule of law.

Before World War II

U-Raschid, Aung San and others formed a movement in Rangoon known as the Thakin Movement. The war brought a cruel interruption to this. Because of his and his family's Indian background, U-Raschid was forced to evacuate to India to escape the Japanese invasion. He lived alongside the Nehru/Gandhi family during this period.

They with others negotiated the independence of Burma from the British and set Burma on the path of democracy after the war.

Freedom ends in 1962

Between the end of the war and the 1962 coup, students in Burma were able to study freely. They travelled abroad and brought the benefits of their learning home. My father-in-law studied architecture and became an architect in Rangoon. Others in the extended family became doctors, teachers and engineers. Burma was the 'rice bowl' of Asia. It was (and still should be) rich in oil, minerals, gems, and wood, particularly teak. Before the Junta tightened its noose around the country, Burma was Asia's most literate country. It is now the least literate, and the most impoverished.

General Ne Win and the henchmen who continue his genocidal, bloody grip on power today, stripped Burma of her intellectuals and of her educated. They have closed the universities. They have nationalised businesses. They have plundered her natural wealth. They caused intellectuals to be removed from their positions. Many left the country. Those who remained and who took part in the Movement for Democracy were murdered. If they were lucky they were driven out of their homes, and fled into the jungle and across borders as refugees into Thailand or elsewhere.

U-Raschid was held in prison without trial for seven years. For much of this period he was held in solitary confinement. Once released he immediately began to make speeches inside Burma in an attempt to obtain support against the Junta. He was re-imprisoned and released two years later when the Junta knew he was dying of cancer. In 1969 the family, who had been unable to work or thrive, were told they could leave Burma, with one suitcase each. They fled what had been their home for generations. The friends and family left behind disintegrated. Without the hierarchical support that the extended family provided, nor basic medicines, many died.

The family is dispersed

Sappho (then 11) and her family fled to East Pakistan. When the civil war erupted, they had to flee again, this time to 'West' Pakistan. U-Raschid, lawyer, statesman and intellectual, died in exile in Pakistan of the untreated cancer he had developed in a Burmese prison. The family then moved again. The children were educated in the United Kingdom, in the United States and in Canada. This story has been repeated time and time again in Burmese families. Burma's intellectual core was driven out, and what remained inside Burma has been crushed. The Junta has conducted what Pol Pot did in Cambodia but over a longer and even more agonising period.

In 1989 the Movement for Democracy had its all too brief flowering before the Junta's murderers set to again. The democrats who were briefly elected – the former Prime Minister U Nu and Aung San Suu Kyi – appointed my father-in-law as Ambassador to the United Nations. He has never been able to take up the post. Thousands were murdered. Countless more were driven out of their homes. Where had the Junta obtained its weaponry to murder its own citizens? From China. A lucrative trade in weapons, teak and oil developed between the Junta and the Chinese. The trade has extended to Russia. Apparently, a French oil company has joined in.

The present rising

It has taken nearly twenty years for the peaceful Burmese to be driven to rise en-masse, and, again, peacefully. We need to understand what is happening and the international legal community, which once provided the inspiration for Burma's founders, must now voice its strong support, to underpin the Movement for Democracy, and the long road to freedom under the rule of law. If we do not, yet another generation will be sacrificed whilst we are turning our attention to obtaining legal business from and developing lucrative lawyerly ties with China and Russia. James Mawdsley in his book *The Heart Must Break* gives a vivid account of the break-down of the rule of law in Burma.

The Buddhist monks in Burma live chaste and impoverished. They are supported by the wider community. That community literally feeds them. Monks do not protest about 'oil price rises'. They do not need oil in any meaningful sense. They protest about something much deeper: the impoverishment and suffering which has stretched Burma's people to the breaking point by this illegal military Junta.

So far lawyers have said virtually nothing about this crisis – which is a crisis about the break down in the rule of law under a dictatorship. We in the international legal community must join together to make it clear that:

- Burma must establish and comply with internationally recognised standards for the rule of law
- Every time a soldier in Burma obeys an order to fire on and kill an unarmed civilian the soldier and the person giving the orders are committing murder
- They will be tried before courts for their crimes
- We will provide judges, lawyers and advocates to assist the Burmese to re-establish the rule of law
- We will continue to provide that support for as long as is necessary
- All countries, and in particular those such as China, and Russia, must support the UN Security Council in the imposition of sanctions on the Burmese Military Junta

What we see in newspapers and on our television screens of the suffering in Burma is only a tiny portion of what is happening. This regime performs its murders and torture away from the cameras. The legal community must start to make its voice heard – and heard loudly.

A Professional Amongst the Celebrities

George Carter-Stephenson, Q.C. of 25 Bedford Row was minding his own practice when he received a call from the BBC. They wanted him to be defence counsel – but this time on TV, with one of his old lay clients as a celebrity juror. He relates what it was like to be a real barrister in a fictional case on The Verdict.

HH Neil Denison, Q.C. presides

When I was first approached to appear in the BBC's 'The Verdict', I was somewhat hesitant. The programme was to be a televised rape trial where the defendant, the victim and the witnesses were all actors, and the jury was made up of celebrities.

The scenario concerned a fictional famous footballer, Damien Scott, and his friend James Greer. The alleged rape took place at a top London hotel where they had met the victim, Anna Crane, and her friend, Clare Golding, in the bar. My initial reticence was partially because I have never particularly courted publicity, but also because I had concerns about the ability of the programme makers properly to portray a serious criminal trial. The use of a celebrity jury added to those concerns. I feared it may trivialise the subject. I was however reassured by the fact that David Etherington, Q. C., was the author, that this was to be a serious portrayal, and that those involved, particularly the barristers, would do nothing more than fulfil their normal court role.

No script

For us advocates there was to be no script. We would receive, as normal, a set of papers, and were then free to present our respective cases in our own way. The facts were that the alleged rape had taken place in Scott's hotel bedroom. After drinks in the bar, the two women had accompanied Scott and Greer there. Greer left the room, followed shortly by Golding, whereupon Scott was alleged to have raped Anna Crane.

Greer returned later with another identified male, both of whom also raped the victim. Other witnesses included a publicity agent (to whom the story had been sold by the victim's friend, Golding, for a substantial sum, after the event but prior to reporting the offence to the police), hotel staff and arresting and interviewing police officers. The case was designed to be reasonably evenly balanced between the prosecution and the defence.

As real as possible

Over the years I have feared that certain media coverage has presented the Bar in a somewhat disparaging light. The programme seemed to present an opportunity to allow the public actually to see the way real barristers work in a proper setting and I was assured that this was one of the aims of the programme makers. It was principally for this reason that I agreed to take part. Filming was scheduled for November 2006; fortuitously, a fixture of mine had just been moved from September 2006 to January 2007. The venue was the old Kingston Crown Court (County Hall). Prior to trial, I had a conference in chambers with my lay client, James Greer, which was my first taste as to how matters might progress. The presence of the camera quickly faded into the background and the conference followed very much as one would expect. I rapidly realised that those involved had gone to considerable lengths to ensure that everything was to be as real as possible.

I appreciated from the outset that it may be difficult to achieve normality under the constant gaze of cameras and I wondered whether that would affect my performance as an advocate. I wrongly imagined that the majority of camera work would take place within the courtroom setting. I was very surprised to find that from the moment I arrived at court and throughout the proceedings, the cameras were rolling.

One of the things that I had not expected was the amount of filming that would take place in the robing room. It had not occurred to me that there would be interest in the robing process but in retrospect I understand that it is a side of the Bar that the public never see. I did find it odd to be filmed changing my collar and putting on my bands, as this is normally a private time, when one is focused on what is about to happen in court. In the final analysis however I think that many of those clips provided an interesting perspective on barristers. It effectively demonstrated that we are real people who just provide a specialised service, albeit it in a wig and gown, and are not that removed from reality.

The proper atmosphere

Due to David Etherington, Q.C.'s experience, the papers very closely resembled what one would usually receive. However, for those of us used to defending in criminal cases it was very odd not to be able to make the usual requests for further disclosure. A great deal of thought had clearly gone into how this matter was to be filmed in order to try and keep it as close as possible to a real trial situation. The choice of the old Kingston Crown Court as the trial venue added much to the sense of realism, particularly for me, as I had practised there many years ago. This degree of familiarity made it more comfortable, not only for myself but also for the others barristers involved.

The familiar face of Judge Neil Denison (now retired) presiding over proceedings helped to create the proper atmosphere of an actual trial. Using a judge of his status and calibre together with experienced though retired court staff gave the trial real depth. One of the nice touches which added to the accuracy of the portrayal was that we had an instructing solicitor in court who really was legally qualified and who assisted with the presentation of the case.

It was however difficult at first to get used to the fact that every single action in court was captured on camera and that each corner of the court had a camera crew stationed within it. What reminded me that the matter was not a real case was the intensity of the lights, but one quickly became oblivious both to that and to the camera crews, and remained absorbed in the facts of the case and its presentation. One thing that remained strange was the walk into court - trying to appear normal chatting to co-defending counsel was particularly difficult when one was conscious of a camera man running backwards before you, with his catcher in attendance.

George Carter-Stephenson, Q.C. for the defence

The jury

Working with actors

The talent of the actors taking part in the production was extraordinary. In conference with my defendant (actor Mark Wood) it was impossible to discern anything from him which made me believe that this was other than a real criminal case.

Such was the skill of the actors that never during the course of the case did they deviate from the storyline. Since there was no script, and since – just like a real case – they had the option either to tell the truth or to lie, I had concerns that under the stress and pressure of cross examination, they would be unable to deal with a question or would slip out of the facts of the case and into reality. This never occurred. Apart from the case papers we (the legal teams) had no idea where David Etherington's input ceased and the actors' characterisation took over. We understood that they had 'lived' in character for some time before filming.

The emotional and traumatic portrayal of the victim Anna Crane by actor Alice O'Connell equated absolutely with what is experienced in real rape trials. It was a chilling reminder, for one in practice, that emotional distress does not necessarily indicate a genuine victim. The clever use of retired police officers to play the part of those investigating meant that there was a proper depth of knowledge and experience in relevant matters. All this added greatly to the sense of realism and made it very easy to be absorbed into the facts, rather than to recall that it was a TV programme.

The best evidence of this though was perhaps the jury. In the screened programme, following the acquittals and the simultaneous emotional outburst, their comments made it clear that some had been so immersed in the facts and detail of the case that they then seemed oblivious to the fact that it was all make-believe.

Working with celebrities

The concept of a celebrity jury was obviously geared to viewing figures. I had some concerns as to how I would react. One of them (rap star Megaman from So Solid Crew) I had successfully represented in his recent murder trial. Once in court however, I was surprised how quickly it became 'a case' just like any other.

The programme makers had obviously wanted to try and obtain a mix of jurors – differing views, strong personalities and some who had an acquaintance with the legal system. This was not something that one was able to discern particularly during the proceedings but became very apparent later when viewing the final product. Though not entirely accurate from the aspect of their eligibility to sit on an actual jury, they were perhaps representative of a divergence of personalities and opinions such as one may find with a real panel. Whilst some would not normally have been called for jury service they nevertheless meaningfully contributed. Overall, though, it did not cause me to think that our own jury selection process should be extended.

Because they were kept in very similar circumstances to that of an actual jury (except the food appeared to be of much better quality) I think that it must have felt very much like an ordinary trial for them. A diversity of characters is what one would expect to find in a randomly selected panel. Watching the programme later indicated that they did, as one expects, discuss the evidence as it went along. It was fascinating to note how perceptions swung at different moments in the case. Seeing their final deliberations was an insight into what a real jury room must be like at times. The jurors themselves, clearly engrossed in the facts of the case, were mostly scrupulously fair as to how they approached the evidence, whilst applying the burden of proof. From counsel's side it was compelling to discover, albeit in retrospect, what impact both defence and prosecution points had made at various points in the trial. It was also fascinating to observe the jury's perception of myself and of other counsel, something we are never aware of and something I never expected to see. This was a worry prior to screening though thankfully it was 'all right on the night'.

From my perspective one of the more peculiar things about them (although perhaps expected of a celebrity jury) was watching some of them, even during their retirement, emerge from their room to have their make-up retouched.

On a personal note

One of the nicest things about doing 'The Verdict' was being collected from my home address at 7.30 am, considerably later than the normal time I get to my desk in chambers and being ferried home after the day's proceedings. That was something I missed when it was over. The filming took place over the course of four full days, although there were longer breaks than one would expect in normal court proceeding to allow for such things as publicity photos to be taken.

It was strange being asked during adjournments to vocalise on camera what one had thought of a particular piece of evidence or about one's views of the jury's perception. These are thoughts which one always has but are never spoken or analysed. It crossed my mind after the interview that in the final showing of the programme, particularly in relation to the jurors' opinions, you may have got things totally and completely wrong. Fortunately it was not a problem in the end.

There is a slow realisation post filming that you will have no input as to the cuts to be applied to each day or the particular focus that will be adopted by the various editors. I was particularly impressed with the final version which I first saw when the programme was screened. They managed to encapsulate, from many hours of filming, the day's issues in limited time slots.

One of the effects of being involved in such a project is that my family and close friends were able to watch me in court. Somewhat stranger was that I was able to watch myself – the asides you make in court are much more audible than you realise. Being able to view the courtroom from different camera angles enables you to have much more of an overview of what is actually going on, particularly in the jury box. I like to think in court that I am reasonably aware of jurors' reactions, but it was interesting to note that the camera catches far more than does the eye.

Overall

It was an extremely well constructed programme which did manage (if one ignores the way the jury were selected) to capture a serious criminal trial. I felt it was realistic for those who participated. I was pleased that the programme makers did not reveal the true version of events, thus leaving everyone in the same position that they always are. For my part it was an enjoyable experience if somewhat nerve-wracking about the final cut. Hopefully it achieved the end for which I agreed to take part.

I feel the programme provided the viewing public with a much better perspective of what is involved in a criminal trial, something which many of them will never experience. I also believe it showed how barristers work and it dispelled some myths about us. I hope those watching appreciated that we are people who care about our work, care about those we represent and strive to achieve a just and proper end for the criminal proceeding. The programme perhaps succeeded in demonstrating the need for a proper system of justice. Those accused of criminal offences rely on barristers to assist them in what must appear to them, especially if they are innocent, their darkest hour; when they face the prospect of conviction and imprisonment. On the facts of this case the jury reached the right verdict – at least from my point view.

The Media, Human Rights and War Crimes Courts

This Circuiteer's themes are law, media and human rights. Steven Powles, of Doughty Street Chambers, whose own record in human rights work is already unparalleled, discusses the landmark case of Randal *which established the test of compellability for a journalist in an international war crimes trial – and in which he was junior counsel.*

Long before the lawyers get on the scene, it is often the brave and courageous journalist who is on the front line in exposing the horrific and unimaginable human rights abuses which go on, worldwide, on a daily basis. But what are a journalist's responsibilities when called upon to testify against the perpetrator, at some later trial, about such abuses? Does the journalist's role end once the ink is dry on the page or the image is transmitted the world over on satellite TV? Should they be compelled to give evidence about their experiences before a court?

These were some of the issues considered by the Appeals Chamber at the International Criminal Tribunal for the former Yugoslavia (ICTY) in the case of *Jonathan Randal.* Randal had served as a correspondent for the *Washington Post* during the conflict in the former Yugoslavia in 1993. In February 1993 he interviewed the then housing minister, Radoslav Brdjanin, and published an article attributing anti-Bosnian Muslim remarks to him. Brdjanin was quoted as advocating the peaceful 'exodus' of non-Serbs so as to 'create an ethnically clean space through voluntary movement'. Brdjanin was later indicted and transferred to the ICTY to stand trial, *inter alia,* for crimes against humanity and grave breaches of the Geneva Conventions of 1949. The prosecution sought to have Randel's article admitted as evidence. The defence objected, stipulating that if the article were to be admitted, they would wish to cross-examine its author.

A subpoena challenged

The prosecution promptly sought and obtained a subpoena from the Trial Chamber, compelling Randal to testify. Randal thereafter argued that the subpoena should be set aside. He urged the ICTY to recognise the qualified (rather than absolute) privilege for war reporters not to testify about their news-gathering, based on the long-term public interest in the free flow of information from conflict zones. The rationale was that if war correspondents were routinely made to give evidence, potential sources would perceive them as the investigative arm of a judicial system and would refuse to talk or to grant access. Moreover, the personal safety of war correspondents, who are already endangered, would be further jeopardised, if they became identified as potential witnesses.

The Trial Chamber refused to recognise such qualified privilege. It stated that it existed in respect of confidential sources, but since no issue of confidential sources arose here, the subpoena would not be set aside. Randal accordingly appealed to the ICTY Appeals Chamber.

The test is formulated

On 11 December 2002 the Appeals Chamber allowed the appeal and issued the first ruling from a modern war crimes tribunal granting protection, albeit qualified, to war correspondents. First, it was held that there is a clear *public interest* in the work of war correspondents. They stated that society's interest in protecting the integrity of the news-gathering process is particularly clear and weighty in the case of war correspondents as they 'play a vital role in bringing to the attention of the international community the horrors and reality of conflict'. Second, it was held that compelling war correspondents to testify on a routine basis 'may have a *significant impact on their ability to obtain information'.* The Appeals Chamber envisaged difficulties for war correspondents in gathering information because 'the interviewed person, particularly those committing human rights violations, may talk less freely with them and may deny access to conflict zones'. Moreover, it was feared that 'war correspondents may shift from being observers of those committing human rights violations to being their targets, thereby putting their own lives at risk'.

The Appeals Chambers established a two-part test which must be satisfied before a subpoena may be issued to a war correspondent. First, the petitioning party must demonstrate that the evidence sought is of direct and important value in determining a core issue in the case. Second, it must demonstrate that the evidence sought cannot be obtained elsewhere. This would protect, on the one hand, the public interest in having all relevant evidence put before a court for a proper assessment of the culpability of the individual on trial and on the other, the public interest in the work of the war correspondents in their news-gathering role.

A mixed response

The decision was welcomed by many in media circles as a great step forward in ensuring the safety and future work of war correspondents. However, not all agreed. Ed Vulliamy of *The Guardian* wrote, 'The court needs reporters to stand by their stories on oath. Now we are entering a new world that seeks not only to report the legacy of tyrants and mass murders but to call them to account'. Similarly, the BBC's Jacky Rowlands stated (of her own decision to testify in the Milosevic trial), 'I regard it as a duty and not something to be shirked from. What puts us in some kind of different ethical category from everyone else?'

However, Randal's position before the ICTY was supported by 34 media companies and associations of journalists (including the BBC) who collectively filed an amici curiae brief before the Appeals Chamber. They, like him, called for qualified privilege for war correspondents. Moreover – and helpfully – Randal was able to rely on the words of the former ICTY Chief Prosecutor, Richard Goldstone, who had stated before the Randal case arose, 'Not infrequently journalists come across evidence of war crimes – as eye-witnesses, in discovering a mass grave, or through being privy to statements made by commanders in the heat of the action. Like aid workers and Red Cross or Red Crescent delegates, if reporters become identified as would-be witnesses, their safety and future ability to be present at a field of battle will be compromised. In my opinion the law takes too little account of that reality. They should not be compelled to testify, lest they give up their ability to work in the field but they may of course testify voluntarily'.

Goldstone, like the Appeals Chambers, perhaps acknowledged the 'CNN effect' on the international community that arose from broadcasting the world over, into people's living rooms, the horror and reality of the war in the former Yugoslavia. As recalled in the appeal in *Randal,* 'the images of the terrible suffering of the detainees at the Omarska Camp, that played such an important role in awakening the international community to the seriousness of the human rights situation during the conflict in Bosnia-Herzegovina, were broadcast by war correspondents'. It was images like those, obtained and brought attention to by those embattled journalists on the front line that led, in part, to a call for, and then the eventual establishment, of the ICTY itself. Thus, it was the journalist and not the lawyer that got the 'first scoop'. As stated by the *New York Times* columnist William Safire about the *Randal* case, 'The central issue goes to the heart of protecting human rights: will courageous journalists be able to gain access to war zones as objective observers – not just tell which side is winning, but to bear witness to the murder and rape of innocents?'

While journalists continue to put themselves in harm's way to expose the world's ills, the law, and the lawyers, should, in return, offer them some kind of protection.

The Bar and the BBC

In October 2008, BBC 2 will screen a documentary on the Bar; four, one-hour episodes which will portray us from aspiring pupils to aspiring Silks. It is still a work in progress, but the series producer, Lynn Barlow, explains to the Editor how it is being done.

Lynn Barlow

Duncan Staff at Keble

There were two people at the Keble advocacy course in 2006 who were not there to be critiqued for their performance. Armed with a load of sophisticated camera equipment, they were starting the long process of filming which will culminate in autumn 2008, when four, one-hour episodes on the Bar will be shown on BBC 2. It began with the Circuit in more ways than one: the original suggestion came from our former leader and later Chairman of the Bar, Stephen Hockman, Q. C., who contacted the series producer, Lynn Barlow. I interviewed Lynn in July 2007.

Stephen's proposal fell on fertile ground. As Lynn Barlow put it, she 'earned her spurs' in regional journalism, in which she covered a number of court cases, learning along the way how difficult it is to encapsulate a day's proceedings in a short article. As a BBC social affairs correspondent she attended the Royal Courts of Justice to see judicial review hearings. At Bristol, where she has been involved in documentaries for ten years, she has been the series producer of 'Anatomy of a Crime', which has now completed two seasons of twelve, one-hour episodes. Each deals with a discrete offence, from 'as close to the beginning as we could get' – the 999 call, if possible – to the crown court trial. It recently won the Royal Television Society award for best documentary series.

Gaining trust

All this has taught her not only how to portray the law, but, crucially, how to gain the trust of police, forensic scientists, barristers and judges. Sir Igor Judge, now President of the Queen's Bench Division, has been a particular supporter.

How does one put together a series about the Bar? Once she had successfully pitched the idea to the Controller of BBC 2, there were a large number of approaches that had to be made. There were discussions with Stephen Hockman, Q.C, Geoffrey Vos, Q.C., and Tim Dutton, Q.C., who felt that the Bar needed 'to explain what we do in a better way than we have in the past'. A protocol was duly drawn up and agreed. Then came the details. The BBC team needed to enlist, one by one, the help, support and participation of many individuals: barristers, chambers, pupils, students, an Inn (Middle Temple) and so on. Some were enthusiastic and cooperative, some were against the whole idea. 'We were very keen to reflect how you work,' both the 'aspiration and inspiration'; 'people are very passionate about their jobs at the Bar'. The aim was to identify people with whom they could work collaboratively.

The journey to the Bar

The series will not be 'linear' or thematic. Each episode will be cross cut, with different people in each programme, trying to represent as much of the journey to the Bar as is possible. After speaking to a large number of students, half a dozen Middle Templars – who are 'incredibly diverse' – agreed to take part. They will be shown undertaking the BVC, sitting their exams, being Called, applying for pupillage – including the interview in chambers – and doing pupillage. Barristers (including one in the CPS) will be seen preparing their cases. This has all been shot both in London and in Birmingham. I saw the cameras at Keble, at the 2006 Bar Conference and at the 2007 Middle Temple summer garden party. They will also show people being interviewed for their application for Silk.

By definition the filming will take many months, and it will be followed by further months of editing. Cases have to have been completed before any aspect of them can be screened. To avoid any suggestion of contamination, they can only follow either the prosecution or the defence but not both in the same trial. Having followed the students for such a long period, the programme makers get to know them very well. 'Yes, that is the point, you work up a very good relationship with the people' which is how one can accurately reflect their behaviour and responses. The participants gradually become more confident and comfortable, which makes it easier to show their genuine behaviour and responses.

Is the filming intrusive? 'We can't do anything without everyone's explicit informed consent'. 'It's about negotiating access into those worlds but we cannot do that without you allowing us in. If you say, Turn the cameras off, we turn the cameras off'. As Lynn pointed out, she is bound by the same conditions of confidentiality as is any other journalist. 'When you are working in areas with sensitivity and confidentiality you know there are some things you cannot achieve'. 'The conundrum about making a documentary series about the Bar is that you cannot see the final product, that is, what happens inside court'.

A small, mobile team

The team itself is small: two director producers and two assistant producers. They operate the cameras and do the filming in very self contained teams, 'small, intimate and mobile'. The series is being shot in high definition, so it will look 'absolutely beautiful, which is great because some of the locations are spectacular'. Lynn sees a considerable advantage in the BBC doing the series: it costs a lot of money over a very long period of time, participants could potentially drop out or change their minds – it is a risk which many independent companies cannot take. The series is being supported as well by the Open University. They will bring it out on DVD with learning support back-up for law students.

It is worth remembering that the team has a real background in covering legal topics. One of the men at Keble last year was Duncan Staff, who has portrayed the case of Myra Hindley: he made a BBC documentary about her case for release, he was left her personal papers, and earlier this year – based on those and on his personal knowledge – he published *The Lost Boy,* the boy being the Moors victim Keith Bennett, whose body has never been found.

The fascination of the Bar

I asked Lynn whether she isn't tired of the law by now. 'No, I don't want to get away from the law' – although she would not mind doing a programme that was not so long in the making. What is the law's fascination, I asked? 'Mystique. It is a very very closed world, closed because of the nature of some of the things it does, the vulnerabilities and all of that, there are restrictions on what you can say and do'. Barristers are very cautious.

We discussed why barristers can be so unwilling to explain what they do – but reached no conclusions. I suggested that it was because barristers rarely find people who understand, even when it is explained. I recalled the 1995 BBC series which was allowed to take the cameras into Scottish court rooms, only to spend a significant part of the programme depicting the participants outside court, where they could tell their stories unchallenged. By chance at about the time that I was talking to Lynn, George Carter-Stephenson, Q. C. was writing his article for this issue about appearing on 'The Verdict' – a series which Lynn felt got closest to showing what happens during a trial – and explaining, as it happens, his own sense of caution.

After our talk, Lynn was heading off to Middle Temple, to film that day's Call ceremony. I warned her that although it was in some ways very formal, it in fact marked something more significant than merely successfully sitting the assessments. 'Look at the families', I said. She wrote to me the next day, 'The Call ceremonies were a delight to watch, very emotional'. The Bar is fortunate to be filmed by someone who gets the point.

The Circuit Trip to Istanbul: Diamonds are Forever

This year's Circuit trip was a novelty in several respects: It was longer – spanning the Whitsun weekend – there was more of a chance to play tourist; and, it took place in what is (for the time being) a non-EU country. Circuit trip-aficionado and renowned shopper, Kim Hollis, Q.C., tells us what happened.

The Bar on the Bosporus

A group of us was told that to gaze down at the Bosporus from the heady heights of the aptly named Sunset Restaurant on a balmy night was the stuff that memories and dreams were made of. There was no shortage of either on this year's annual trip by the South Eastern Circuit to Istanbul.

Perhaps it was the stark contrast to the unavoidable but dreadful delays of last year's visit to Barcelona - which left us all exhausted - but this year's trip was relaxed, ran without a hitch (unless organiser extraordinaire Giles Colin managed skilful concealment) and was, as always, a special opportunity to spend valuable time with friends and colleagues and to welcome new circuiteers.

A terrace with a view

The fact that the trip conveniently spanned the Whitsun Bank Holiday was for all a welcome departure from the norm. It found us congregated at Heathrow on a Friday afternoon, seamlessly passing from check-in to departure lounges, and relaxing with glasses of something fizzy before boarding the three and a half hour British Airways flight to Istanbul.

Having checked into the Armada Hotel late at night and having given our rooms the once over, a few 'experienced' circuiteers made our way to where we were told was the late night bar, situated on the roof terrace of the hotel. The bar had just closed, but we were met by our first breathtaking sight of the Blue Mosque, illuminated in the night sky, with circling large birds and stars above. It confirmed that we had indeed arrived close to the world of the Arabian nights, the Grand Bazaar, and the Spice Market, where east and west truly meet.

The following morning, breakfast took place on the same breathtaking terrace, where we were able to appreciate that the hotel was not only in the shadow of the Blue Mosque, the Hippodrome and the Hagia Sophia but that it also overlooked the Bosporus. Breakfast also gave the opportunity for some of us to look over our Trip Programmes for the first time - it was not long before the Circuit Trip 2007 began in earnest.

Sailing by

A short taxi ride later, we were all assembled at the little port alongside the beautiful Ortakoy Mosque, the only mosque in Turkey built in the Gothic style. Here we boarded our exclusive boat for a three hour cruise along the west and east side of the Bosporus. There was so much to take in as we passed the Dolmabahce Palace, the Rumeli fortress and the Beylerbeyi Palace, which served as a summer residence for the Ottoman sultans, as well as the homes sitting on the shores of the Bosporus.

Time and Istanbul floated by in the sunshine, as we lay lazily on huge cushions on the top deck or sat at shaded tables below, sipping coffee and then

Kim Hollis, Q.C.

before shopping - was lunch. With Elizabeth Marsh, Q.C. striding ahead, a group of us followed until we were ensconced, overlooking the sea and selecting fresh fish. By pure luck we had managed to get ringside seats to watch yachts racing. At this time, our thoughts turned to our former leader. Unfortunately, Tim Dutton, Q.C. and his wife, Sappho, were unable to join us this year, but we knew that he would have loved the spectacle of the gleaming brightly coloured sails against the blue sky and that he would have enthusiastically educated us on the finer points of racing yachts.

Take me shopping

Fortified by lunch, the 4,000 shops of the Grand Bazaar beckoned. Some of the girls headed with predictable urgency into one of the main thoroughfares, taking just a few moments before invading the first major diamond jewellery shop. For the next few days, at various intervals during the trip, the Grand Bazaar echoed to the sounds of 'ooh and aah' as diamond rings, earrings, bracelets and necklaces were acquired and then displayed to fellow circuiteers. Our return from major shopping expeditions was often accompanied with tales of bargaining successes. To say that this was 'the diamond trip' is an understatement, but it is fair to say that carpets, handbags, leather or fur coats and jackets were also acquired in large quantities.

The Circuit as tourists

David Spens, Q.C.

Time for culture

Sunday again saw us assembled at a civilised hour for a walking cultural tour of Istanbul's main sights, accompanied by our cheery, friendly guide, Hakan. Following a visit to the Hippodrome, we were taken to the famous Blue Mosque. It is worth noting that later, on the Tuesday, Philip Bartle, Q.C. rightly insisted that Elizabeth Marsh, Q.C., HHJ Price and myself went to see the sixteenth century Suleymaniye Mosque built for Sultan Suleyman the Magnificent. It is famous for its carved white marble and exquisite stained glass windows. It was our joint view that this was much more spectacular than the Blue Mosque and it came as no surprise to learn that its architect in fact was the master to the apprentice who built the Blue Mosque. Both are however very special indeed, and not to be missed by any visitor to Istanbul. They are intriguing especially for me, in the apparent influence of Mogul decoration, bearing many similarities not only to what is commonly seen in Rajasthan but also to the Taj Mahal itself.

Next, Hakan took us to the Haghia Sophia, a Byzantine cathedral which became a mosque during the Ottoman Empire and was declared a national monument by Ataturk in 1934. It was fascinating due to its obvious architectural and religious mix. We were all impressed by the beautiful mosaics.

An early bath

The tour after lunch continued with a visit to the huge underground cisterns and to the stunning Topkapi Palace. The Treasury at the Palace contains some of the finest and largest diamonds and precious stones in the world, as well as beautifully wrought gold and silver.

If only I had been there. Unfortunately, I missed this part of the tour as the result of an accident with a waiter and some yoghurt. As Marsh and I trudged back to the hotel we decided to use the opportunity to further our cultural 'hands on experience' by visiting the local, 300-year old Hamam (Turkish baths). We knew that it had been visited the previous afternoon by Giles, Jeffrey Pegden, Q.C. and Oscar Del Fabbro together with Polly Darling, Delia Pegden, Annette Austin and Martina van der Leij. Apparently, it was guaranteed to leave us soporific and glowing for the evening. The experience was novel to say the least. We were directed towards a circular, ancient marble steam room with tiny little glass windows giving the appearance of stars where we were met by women built like Sumo wrestlers. They proceeded to pummel us all over with pillowcases full of bubbles, with little regard for eyes and mouth, douse us in freezing cold water and then slap us, particularly when they wanted us to turn over. At least I think that this was part of the treatment. We emerged hours later, buffed, shining and aching, having experienced, we had little doubt, the unchanged experience of bathers for many centuries.

Our way

Then onto dinner at the Sunset Restaurant, overlooking the Bosporus. A group of fifteen of us watched the huge bridge intermittently twinkling and changing colour. We dined and drank Istanbul's finest, and rounded the evening off by dancing under the inky black sky, and, as recommended in the guide book, to the strains of Frank Sinatra. Do not worry, young circuiteers; please do not let this revelation or the ensuing joint rousing rendition of 'My Way' deter you from joining us in the future. We only decided to request Sinatra because the guide book said so.

By contrast Robert Colover and his wife found a wonderful jazz restaurant in the middle of Istanbul and had an equally enchanting musical evening albeit of a very different type.

David Spens, Q.C and Giles Colin meeting the Turkish Bar

The serious business

Monday arrived far too quickly. This was our 'work' day and as always the members of the Circuit, when required, presented as faultless ambassadors in the best traditions of the English Bar. We were privileged enough to count Mr Justice Penry-Davey, HHJ Price, HH Roger Sanders, David Spens, Q.C., leader of the Circuit, Philip Bartle, Q.C., John Black, Q.C., Liz Marsh, Q.C., Maura McGowan, Q.C., Jeffrey Pegden, Q.C., and many leading juniors including Oscar Del Fabbro among our number.

David Spens, Q.C. addressed the opening ceremony on Public Guidance and Individual Autonomy in Public, Private and Penal Law. He ably followed the presentation by the Turkish Minister of Justice. Oscar del Fabbro also addressed the Conference on Equality of Arms. Other topics of discussion included 'Human Rights in times of Terrorism' and 'the challenges of international white collar criminality', with contributions from the German, Turkish and English Bars. There was also an interesting seminar on the constitutional perspective of Taiwan presented by Professor Dr Yu-Hsui Hsu. Professor Dr Susan Nash of the University of Westminster was also a participant.

There was a reception in the evening, hosted by the Turkish Bar Association, followed by a dinner, hosted by the Circuit, at the wonderful Sabahattin ('The Fisherman'). The President of the Istanbul Bar Association and his son and daughter-in-law were honoured guests. The Istanbul Bar made us feel truly welcome and we talked late into the night, encouraged by the endless supply of Doluca wine.

The exchange of ideas and views was educative and illuminating, and gave us all a valuable insight into the practical daily operation of the Turkish legal system at a historic time when they were in the midst of an impending constitutional crisis.

Home

We were grateful for a civilised last day on Tuesday which enabled last minute sightseeing, shopping and a leisurely lunch before boarding the coach to return to the airport.

As always, arrival at Heathrow was tinged with sadness as the final good-byes were said. There were enthusiastic suggestions for next year's destination. St Petersburg? Athens? Lisbon? But wherever we go, we hope that you are tempted to come and join us. Be assured of special memories and new friendships that you will hold dear for many years to come.

The Annual Dinner

On June 29, the Circuit sat down together for its annual dinner in Lincoln's Inn Hall. Past Junior Tanya Robinson of 6 Pump Court again reports on the festivities. This year she even found the band.

I don't know what it was about this year's dinner, but I think there was something of 'la lune' about it. Perhaps we had all been working too hard. Given the opportunity to let our hair down, we did – and really meant it. It is not every day that one is greeted by the sight of a dance floor filled with 'raving' juniors, Silks and peers. But this year, for the first time in three years, I found the live band. And so, it seems, did the other guests. Was there something in the wine which affected us?

When the band started unplugging their equipment after their final encore – their third, if I remember correctly – no amount of pleading or offers of money from the lovely ladies, the Silks and the peers for 'just one more song, just one more, go on' could dissuade the band from packing up. We probably looked deranged in our desperation to keep dancing. It had all the classic hallmarks of a night that was going to end in Dover Street.

But I am getting ahead of myself.

A fabulous dinner

Our usual champagne reception was sadly held indoors. What with the summer we had, June 29 felt a bit as if it were October 29. However, Lincoln's Inn Hall looked resplendent. There was a good turn out. There was also a rather interesting menu. It consisted of carpaccio of tuna with wild rocket and truffle oil (delicious); boned quails 'au raisin', stuffed with spinach and ricotta and served with baby carrots, French beans and boulangere potatoes; and Valrhona chocolate truffle with apricot compote. You really cannot go wrong with a chocolate pudding, can you? As for the quail, though, I have to say that I have always thought that there is something almost obscene about a plate of food that bears, in one serving, the entire body of a creature. I resisted the temptation to shield my gluttony from the eyes of God, *ortolan*-style, by eating it from under a napkin.

Clearly, the Circuit officers were determined really to spoil us with their lavish offerings. I was glad to see that the recent tradition of offering a cheese course had survived the change of leadership. That was followed by coffee and petit fours. The wine was gorgeous, as always (thank you, Stephen Solley), dangerously free-flowing (no doubt being responsible for the later excesses on the dance floor), and came from three countries. We were treated to an excellent Gerovassiliou Malagousia 2006 from Macedonia; to the delicious Chateau Gazin 1989, Ancien Domaine des Templiers from Pomerol; and to a 1985 vintage port, Royal Oporto.

Lady Justice Hallett and David Spens, Q.C.

Tim Dutton, Q.C. and Fiona Woolf, President of the Law Society

Tanya Robinson

The 'aged' David Spens, Q.C.?

Replete but sitting comfortably after our short 'comfort break', we awaited the speeches. David Spens, Q.C., the new leader of the Circuit, welcomed the guests but with something of a heavy heart. He was sorry to report that the responsibilities of leadership had already taken their toll on him. A few days earlier, while on a bus to chambers from the Old Bailey, the unthinkable had happened. A young woman, who was sitting on a priority seat 'for those less able to stand,' had stood up and offered him her seat. How to kill with kindness.

Justice on the cheap?

David then turned to the topic on everyone's minds: fees. He was quick to reassure practitioners that the Circuit was doing its utmost to oppose the advent of 'one case, one fee' for the criminal Bar, and to support the Family Law Bar Association in its opposition to the destruction of the Family Graduated Fee Scheme – which was expressly commended by Lord Carter – in favour of the abysmal High Costs Cases Scheme imposed by the Legal Services Commission. 'Justice on the cheap', he said, 'would inevitably drive down standards of representation in the courts'. Addressing an audience with many distinguished judges in it, he took the opportunity (for which he apologised) of inviting them to make their views known, especially about 'one case, one fee', to those in the Government.

Introducing the Master of the Rolls

The leader then turned to introduce our guest speaker, the Rt. Hon. Sir Anthony Clarke, Master of the Rolls and Head of Civil Justice. He described him as 'the epitome of a modern judge – relaxed, approachable and down to earth'; someone who lacked and 'would not suffer pomposity'. Sir Anthony was the 'subject of universal plaudits from all quarters', including from the bereaved for his sensitive handling of the inquiry into the Marchioness disaster. Beneath his compassionate side, though, was a competitive streak. We were told about the occasion when he appeared in a shipping arbitration involving two Greek masters, one giving evidence for each side. 'Greek masters are notoriously prone to take offence at questions,

Jane Oldfield, Emma Gargitter and Matthew Orr

thinking that the questioner is either trying to trick them or to cast doubt on their veracity (both of which are usually the case)'. In this instance, both sides decided to 'liven up the proceedings by making a bet'. The prize was a case of vintage champagne, which would go to the barrister who could get a Greek master to say, 'I have not come here to be insulted'. Both counsel succeeded, but Sir Anthony won, because he got his own witness to say it in examination in chief.

'This competitive streak' had 'also accompanied him to the golf course'. As a very young Silk, he had become captain of the Middle Temple Golf Society. 'No respecter of rank', he sacked every member of the fourteen-man team, including one Law Lord, two Lord Justices of Appeal and a selection of High Court judges. His judgment however proved sound: having failed to win the Scrutton Cup for the previous 38 years, they proceeded to win eight of the next ten competitions. David Spens then proposed the toast to the guests.

Sir Anthony replies

Replying on behalf of the guests and proposing the health of the Circuit, Sir Anthony thanked us for his invitation. It had been 'some time' since he had last attended and he had 'forgotten how many come to the dinner, how much everyone drinks and how little truth is told'. However, it was 'daunting to come' and to speak. He recalled Winston Churchill's remark that 'there were only two things more difficult than making a speech, climbing a wall leaning towards you and kissing a girl leaning away from you'. Proving that the old jokes are still the best, he told the one about the two United States battle ships – but I think you will know it if I remind you of the punch line, 'change course, I'm a battleship . . change course, I'm a lighthouse'.

'Being a judge', he said, 'was not easy'. He had now decided to stick to civil work. He would otherwise 'have to put up with Oliver Saxby in the Court of Appeal Criminal Division' and anyway, in crime 'they change the rules every ten minutes'.

She sits to conquer

Responding on behalf of the Circuit, the Junior, Nicola Shannon, shocked us all with her 'confessions of a Junior'. She had started her career at the Bar, she disclosed, 'on the floor of the ladies' lavatory in Daley's Wine Bar'. This had, she hastened to add, an innocent explanation. The fact that the evening 'had encompassed the commission' of her 'first criminal offence was

Nicola Shannon

merely an unfortunate side effect'. We strained to hear more. The events had taken place 'after a long day of attending keenly' to her pupil supervisor, and 'an evening during which she had drunk deep at the fount of legal knowledge'. She had 'succumbed to the attraction of a little sit down on the floor, just for a moment'. Perhaps two or three moments later, she had 'awoken to find the barmen putting chairs on tables and her friends gone'.

It seems that a 'sober and incisive legal mind' had decided that the continued presence of her coat and handbag at closing time 'indicated that I must have left earlier without telling them'. Helpfully, they decided to take her belongings with them, 'for safe keeping'. And so it was that she had been 'driven to begin a life of crime'. With no tube ticket and no cash, she hailed a taxi, 'aware that there was undoubtedly an implied term that I had money for the fare and keys to the address to which I directed the driver'. In a moment of clarity she realised that 'under oath it could not really be said' that her 'hope of finding a flatmate at home to rescue her was anything other than remote'. 'It was,' she felt sure, 'not a good start. It was quite possibly the end'. And yet, next day, to her great joy, her return to chambers was not met with expulsion. Her senior clerk, Michael Eves, passed comment as she entered the clerks' room, 'Good performance last night, Miss. Excellent addition to the team'. She realised 'that she had joined a profession with soul, with heart and indeed with style'.

How to champion diversity

Madam Junior then turned to the Circuit leader's 'character and skills. . pedigree and provenance'. She had enquired extensively around the Circuit, or at least at the Central Criminal Court. Helena Kennedy met her query 'with a giggle and a coy, "David? I adore David. But what I know of him is unpublishable"'. She did add, 'David is a man who appreciates women and women certainly appreciate him'. Madam Junior took this to be 'a testimony to his deep concern for diversity at the Bar'.

Having thanked the second assistant junior (Alex Price-Marmion) and the Circuit administrator (Inge Bonner) for their help with the dinner, Madam Junior went on to suggest two negotiators for the next round of Carter. During the Circuit trip to Istanbul, Kim Hollis, Q. C. and Elizabeth Marsh, Q. C. had demonstrated their talents with the diamond merchants of the Grand Bazaar *[cf Kim's report in this issue, ed.]*. They were told that they were dealing with men who had 'centuries of trading in their blood', and they took the advice to 'haggle hard' to heart. Four hours later, the merchant agreed to their terms. His spirit broken, he banged his fist on the counter, 'no more negotiation, cost plus ten percent'. With them at the helm, 'Circuit members could remain optimistic despite a difficult future'. Finally, the guests were urged to stay and dance to the sound of the Sixtones.

Back to the beginning

This brings me back to where I started. The guests accepted Nicola's invitation with gusto. Despite Dover Street beckoning, I ran (or limped) in the other direction. Feet hurting, but with an enormous sense of well being, I staggered home after what had been a hugely fun evening. We do know how to throw a good party, don't we?

Charles Burton and Wendy Joseph, Q.C.

Photos courtesy of Andrew Ayres

Human Rights at the Sharp End – *A Child Care Lawyer's Perspective*

Like many barristers, Gabrielle Jan Posner of 2 Gray's Inn Square came to the Bar with ideals. She describes how the law has helped – and hindered – her in achieving the best results for families.

Gabrielle Jan Posner

I was Called to the Bar in 1984 and for most of the time I have practised as a child care lawyer. The majority of my work is in representing parents in care cases, although I also represent local authorities and children. For the past 20 years or so my wheelie trolley and I have been trundling around an area from Milton Keynes to the north, Chatham to the east, Brighton to the south and Reading to the west. There isn't a court inside that area I haven't been to, and I have been involved in cases brought by every local authority, including each of the 32 London boroughs (I know this because I once spent a rainy Sunday afternoon cross-referencing my diary to the A to Z). I feel this has equipped me to give an overview of how human rights have developed and shaped practice and procedure within the care law arena over the last 20 years. I have confined this article to the right to a fair trial, and to the right to respect for private and family life. They are the human rights which are engaged daily in care cases.

I hasten to add that this is not based on any empirical research. It does not contain any learned exposition of statutory materials or reported decisions. It is simply the musings of somebody who started her career with the passionate belief that it is wrong for the State to take away people's children. With age and experience I can now see the justification in many cases, so long as everything is done properly and is seen to be done properly.

It began with the Children Act

From my perspective, the key moment in the human rights chronology was not the date the Human Rights Act 1998 came into force, but 14 October 1991, which is when the date the Children Act 1989 came into force. The Human Rights Act 1998 has made a difference, but it is more in relation to the mind-set and approach of care law practitioners (including judges, magistrates, children's guardians and social workers, as well as the lawyers), rather than anything substantive or seismic. In other words, for the nine years prior to 2 October 2000 we already had a system that afforded a right to a fair trial, and rested on the belief that children are best looked after within their own families and the State should only intervene when the child's welfare requires it. We used to call this 'the spirit of the Children Act', a phrase that has fallen out of fashion and been replaced with references to human rights.

The 14 October 1991 was the momentous day when everything changed and care law as we know it today came into being. Prior to then there was a hotch-potch of legislation by which children could come into care. The best one in terms of being non-human rights compliant was the Schedule 2 resolution. I have to confess that I've now forgotten the words of Schedule 2 or the statute to which it belonged. It affected poor, hapless parents who weren't coping and it put their children into voluntary care. If they hadn't sorted themselves out after a certain period, the local authority could pass a resolution so that, without anyone having to go anywhere near a court, the children were available for adoption. As I recall there was no right of appeal, a discharge could only be obtained on very restricted grounds and the first opportunity to contest what had happened was in the actual adoption proceedings, by which time it was usually far too late. If the parents struggled on with the children at home, another route for local authorities was to take out a summons in the juvenile court. The proceedings were in two stages. At the first stage the local authority had to prove what had been going wrong, but you did not get any proper notice of its case and there were no written statements or reports. I remember being instructed to go to Seymour Place Juvenile Court to do a matter that my solicitor had told me involved an inappropriate sexual relationship between a teenage girl and her step-father. As the evidence unfolded, it was clear it was actually about truancy. At the second stage you were given the reports, but no chance to consider them properly or to instruct your own expert.

At least there was wardship

Prior to 14 October 1991, it wasn't all bad. There was wardship which was the fore-runner of our present-day system. Here the child was separately represented by the Official Solicitor, experts were instructed and you got all the reports in advance of the hearing. Wardship was very flexible. As well as committing the child to the care of the local authority, the court could pretty much impose any resolution it saw fit to ensure the best outcome for its Wards. I remember doing one case where the local authority was compelled to fund a place in a very expensive therapeutic community outside its area. Detailed reports had to be sent regularly to the judge and we all trooped back once a year to update him on how the child was doing. However wardship was only available in the High Court or a District Registry and tended to be used only in the most serous cases of sexual and physical abuse. The majority of care cases are about children who are neglected because of their parents' inadequacies, including drug and alcohol addiction, mental health problems and learning disabilities.

A unified code

What the Children Act 1989 and the various enabling statutory instruments – such as the Family Proceedings Rules – did was to create one unified code for care proceedings. It set out exactly what local authorities have to establish in order for care or supervision orders to be made. This is the significant harm test, commonly known as the 'threshold criteria'. It made every child an automatic party to the proceedings represented by a guardian ad litem (now called a children's guardian) and solicitor and made it possible for relatives and friends to be joined as parties where appropriate. It also provided for obtaining assessments and instructing experts and ensured that no child was subjected to any form of examination or assessment without the leave of

the court. All statements and reports had to be in writing and filed and served before they could be relied upon. In addition certain county courts became care centres and judges had to have the appropriate training and approval before they could hear care cases.

Needless to say, the new system has not been without its difficulties. Much of the Act has had to be interpreted, refined and altered by case law, new legislation, practice directions and, latterly, the Protocol for Judicial Case Management in Public Law Children Act Cases. The framers' greatest omission was not to deal with adoption law which has only recently been overhauled in the guise of the Adoption and Children Act 2002. The Children Act 1989 severely curtailed the use of wardship (now known as the inherent jurisdiction). Moreover the flexibility of wardship was lost as the courts have the power only to make a limited range of orders and have no ongoing supervisory role once a care order has been made. This means that courts frequently endorse what they consider to be less than perfect care plans (usually because of scant resources) as there is no alternative to the making of a care order.

Predicting change

Nonetheless, had I been asked on the eve of the Human Rights Act 1998, 'Is it going to make a difference?' I would have said something along the lines of 'Not really, except of course, if our whole approach to what happens to children once they are made the subject of care orders is ruled invalid'. I probably would have added 'And I expect I'll be bringing lots of applications in the High Court for breaches of human rights, that is, if I happen to notice any'.

My first comment was borne out of the fact that, as far as I am aware from talking to my counterparts from North America, the Antipodes and a number of other European countries at an international convention (I did say this article wasn't scientific), this country is almost unique in the way it favours adoption for young children. I hope I'll be forgiven for stereotyping, but if little Chelsea and Kayleigh are taken into care because their parents are having problems, they will get a new mummy and daddy (hopefully, if they don't end up languishing in the care system), whereas little Lars and Gudrun will go into foster care or a children's home until their own mummy and daddy get better.

Change that did not happen

I didn't really think that such a wholesale invalidation would happen. For years before the enactment of the Human Rights Act 1998, we had been signatories to the European Convention for the Protection of Human Rights and Fundamental Liberties, and similar challenges in the European Court of Human Rights had failed (e.g., *Scott v UK* [2000] 1 FLR 958). European decisions concerning care law prior to the Human Rights Act 1998 seemed to emphasise that it is the right to *respect* for family life which is subject to protection. Interference by a public authority is permissible if it is necessary and proportionate to protect the health and well-being of the child. The margin of appreciation means that you can have a system even with draconian consequences as long as you apply it fairly across the board. That is probably a gross oversimplification, but, in any event, in March 2002 the House of Lords declared that the Children Act 1989 is compatible with the Human Rights Act 1998 (Re S (Minors) (Care Order: Implementation of Care Plan; Re W (Minors) (Care Order: Adequacy of Care Plan) [2002] 1 FLR 815; [2002] UKHL 10).

Any dream I may have harboured of forging a name for myself in the High Court as a protector of human rights was short-lived. It was decided quite early on in a series of cases that separate claims in respect of alleged human rights violations are to be deprecated and, once a point has arisen, it should be taken as soon as possible in the court in which the proceedings are continuing.

But then it did

Therefore the wheelie trolley and I carried on going round and about on our little circuit, with occasional forays to such exotic locations as Norwich, Liverpool and Portsmouth. For a while it seemed that nothing much had changed. However, slowly and almost imperceptibly, I found that things were beginning to change. Whether in a family proceedings court, a care centre, the Principal Registry of the Family Division or the High Court, applications on behalf of parents that used to be a struggle were being allowed. I found an increased willingness to grant applications for a fresh assessment or a second opinion from another expert and to join grandmothers and aunts to the proceedings where there might be a possibility that they could care for the children. Often these applications would be granted with the agreement of the other parties without having to have a contested hearing. This is what I meant by a change of mind-set.

Even more astonishingly, I started winning care cases for parents and losing them for local authorities. I won my first care case for a parent in 2001. This sounds like an appalling track-record, but I am not counting cases in which the parent won their own case by making a Herculean effort to overcome an addiction or improve their parenting skills and those where the children's guardian disagreed with the local authority about the necessity for a care order. Time was that the local authority and the children's guardian always seemed to be in bed together, but not any more. This is in part due to local authorities being less effective due in turn to increasing budgetary constraints and problems of recruitment and retention of personnel. However, it is also due to many children's guardians perceiving themselves as bound by their independent role to safeguard the human rights of the child and his family.

The tide turns

Sadly, just as slowly and imperceptibly, I feel the tide turning back, as the courts become ever more clogged and the cost of care cases rises. Residential assessments have been made practically unattainable by a recent House of Lords decision. There are increasing emphases on having a single jointly-instructed expert in most cases and on completing cases within the 40-week Protocol period. Yet cases often have a life of their own. For example, a parent whom everyone thinks has mental health problems may actually have learning difficulties, so the instructed psychiatrist recommends seeking an opinion from a psychologist. A parent may decide to kick their drink or drug habit in week 21 and any addictions expert will tell you that their resolve needs to be tested over time. Moreover, alternative carers from within the family don't generally come forward until the parents have been ruled out, for fear of undermining them.

There is serious talk of a Pre-Proceedings Protocol, with most of the assessments being undertaken before the proceedings are issued (in the ostensible hope of avoiding proceedings) and of experts being drawn from a local NHS panel instead – as now – the lawyers being free to select the person they consider best equipped to undertake the report in question. I presume that under these proposals lawyers won't become involved until all the work has been done, and the court process may become little more than a rubber stamp. I have no doubt changes along these lines will happen. They have to unless the Government injects more cash into the system, builds more courts and appoints more judges. But where will it leave our system in terms of human rights, and are we in danger of returning to the dark days of Schedule 2 resolutions?

Fears for the future

My final great fear for the future of care law is the current proposals for legal aid reform in the wake of Carter. If it becomes no longer financially viable for the many barristers and solicitors who, like me, work day in and day out at the sharp end, what kind of service are some of the most vulnerable members of our society going to receive? Not one that safeguards and promotes their right to a fair trial and their right to respect for private and family life.

Some Languedoc Wines

Our wine correspondent, Thomas Sharpe, Q. C., of 1 Essex Court takes a nostalgic journey to the Pays d'Oc and reports back with some excellent discoveries, and perhaps one or two things to avoid.

Thirty-five years ago, armed (if not exactly enriched) with a College travel prize, I set out to retrace the Albigensian Crusade, retracing its steps through the *garrigue.* This was to prove my first exposure to Languedoc-Roussillon, sometimes known as the Midi, but for me always, Pays d'Oc, with its distinct culture and language. Television has virtually eliminated the language, except in street names. Now it is quite rare to hear Occitan spoken but then it was still alive and real, and starkly different from what they used to call the patois, spoken by the French in the north. One need not go further back than Deuteronomy to learn that this was a land of "wheat and barley, vines and fig trees" [viii.8] – it is parched stony terroir, a landscape of extremes, steep slopes, and much history. All true, but, thirty-five years ago it was also a land of vast volumes of very bad wine, heavy, fruitless and cheap. I vowed never to drink the stuff again. I took a quite irrational dislike to all wine bottles with dimples round their neck. They reminded me of the Corbières, which flowed like slaughter house blood beneath the ancient wooden doors I saw while walking through shuttered, shadowy, silent, villages.

Look again

The old wine ways could not last. The domination of the undistinguished Carignan grape has been supplemented by 'imported' or 'improving' varietals – grenache, syrah, merlot, and sauvignon added to older types such as cinsaut and mouvèdre. And some of the old guard of growers has moved on as well. Prices for land in Bordeaux and Burgundy are out of reach of the young French, British, American and Australian winemaker: by comparison, until recently at least, Languedoc land has been pretty cheap. This has gone hand in hand with a more flexible system of regulating wine production, the creation of the 'vin de pays' in 1979 rather than reliance on the old AC classification, so 'varietals' are 'in'. Now the Languedoc produces more than 70% of France's vins de pays, of which the vast majority are labelled 'Vin de Pays d'Oc'. So, innovation and young talent have come together with good wine growing land and the results have been spectacular. As Hugh Johnson put it, standards are rising 'dizzily'. It is worth another look.

This interesting region, viticulturally speaking, is limited in the west by the area surrounding the great Viollet le Duc fantasy at Carcassonne, along the Aude river, the Minervois, Corbières, east through Hérault, slightly to the south toward Perpignan, through Fitou to the Côtes du Roussillon, and then back north eastwards to the Gard and then to the Rhône. Taking the coastal route, it stretches from Banyuls, near the Spanish border, past Perpignan and Narbonne, to Montpellier.

The coteaux

It is too painful to revisit Corbières: call them generously 'vigorous bargain reds' suitable for student bottle parties, if such still exist. Fitou is not unknown in the United Kingdom and, for me, unexciting. There must be a good minervois but I have yet to find it. But if we move slightly east to the strip of land between Nîmes and Narbonne, capturing Montpellier and Béziers on the way, we find the land to which One Essex Court clerks retire. This is the 'Coteaux du Languedoc'. That is

its 'generic' name, at least since 1985 when they discovered marketing. It consists of about 120 villages and produces about twelve million bottles of wine each year. But, predictably, as soon as one wine maker feels he has reached the stage in quality and reputation that he can break from the ruck, he will de-emphasise the Coteaux link, while still remaining in the broad geographical area known as the 'Coteaux'.

This is overwhelmingly red wine country, oak barrelled, using carignan, grenache, cinsaut, mouvèdre and syrah grapes, sometimes in quite rigidly regulated proportions. In fact, the introduction of the newer varietals has encouraged a greater sensitivity to the use of the older grapes. They are, after all, the classic grapes for a warm climate, as the Romans knew. There is now a greater willingness to experiment with differing

proportions; as elsewhere in France, yield has given way to quality and new techniques have been introduced such as temperature controlled vinification.

Leading the field

What is on offer? Leading the field is Mas de Daumas Gassac. This lies in a valley thirty kilometres north west of Montpellier. It was bought in 1970 as a holiday retreat by a lawyer (some refer to him as being a Parisian glove-maker; perhaps he was both?), Aime Guibert, who had the soil analysed, took advice from Emile Peynaud, the renowned oneologist, and today the red wines he produces are known variously as the 'Lafite/Latour/Petrus of the Languedoc', any one of which would convey the right message. This is Cabernet Sauvignon-based, but over the years since the first vintage in 1978 merlot, cabernet franc, tannet, pinot noir and, surprisingly, nebbiolo, barbera and dolcetto grapes have or are being used. This is a finely balanced wine; it requires bottle age of at least five years and some say much more. If you like a good St Estèphe, you will like this wine. Berry Bros offers a case of the 2004 vintage at £17.95 per bottle. Not bargain basement but it is an immensely satisfying and strong wine, not a regional novelty, and fantastic value for the quality it offers. I would counsel against drinking it too young as I think, despite its mahogany ring and deep colour, it has quite a long way to go. The grower has an excellent web site.

For the rest, it is not easy to make sense of the Coteaux. There are, perhaps, seven identifiable sub-regions, and perhaps three crus, but the position is changing and there is no ready hierarchy as in Bordeaux or Burgundy. This will emerge, probably sooner rather than later.

Best of the rest

Starting west of Narbonne, I recommend La Clape. As elsewhere in the Coteaux, the cépage is strictly controlled: 70% must derive from grenache, syrah and mouvèdre, with a minimum of 20% Grenache. The River Aude silted up old islands and the land is limestone, red clay and gravel. This is excellent

Some Languedoc Wines (continued)

terroir and wines made are improving annually. Nearby is Quartourze – named after the low, one fourteenth, tax once levied on the local poor. Here I recommend Complazens, a syrah-based wine. I tasted the 2005 (from Majestic at £6.49): at this stage it is too rich on the palate and quite tannic. But it is easy to foresee that, given time, this will develop very well, and is good value and worth laying down.

Swinging to the most north easterly extremity, to Pic Saint-Loup, the leading wine is Domaine de l'Hortus, with the same combination of grape varietals on limestone and tough stony ground: day and night temperatures are quite extreme, which encourages balance. I recommend Domaine Haut Livron. Two other sub-regions can be bought without risk. First, St Georges d'Orques from west of Montpellier, where I recommend Domaine Henry. There is a slight natural acidity here and the wines age well, and should not be drunk too young. The second area is Montpeyroux. Actually, these are mostly wines from the enlightened old guard, which has adapted to the new regime and is making wine of real quality. These wines were ranked with Burgundy in the eighteenth century and it is not difficult to anticipate this comparison in the near future.

A final note

So much for the sub-regions of note. A final note on one of the crus, Faugères. This is virtually twenty kilometres north of Béziers on the edge of the Cevennes in the characteristic schistus or shaley landscape . The area is quite homogeneous, and produces rich red wines, deep fruit, slight liquorice, with light tannins.

Quality Oc wines are not easy to find. The recent history of wine making in the region is inspiring and well worth an effort in exploration. It has taken me thirty-five years to revisit the wines and it has been a pleasant rediscovery. I can only agree with Stendhal: he remarked that '…he had turned himself into a man of the Midi, and it was not difficult after all.'

Note: the usual wine books have a page or two on the Pays d'Oc but nothing too deep. Strang's book, Languedoc Rousillon: The Wines and Winemakers, 2002 is a good introduction. To obtain wines I recommend Berry Bros, Majestic and also two English ladies based in the Coteaux du Languedoc, who will ship wines from their list: www.picwines.co.uk

Photos courtesy of Mas Daumas Gassac

The Circuit and the Bar Conference

At the Bar Conference to be held on November 3, the Circuit will again play a prominent role. Circuit Recorder Fiona Jackson previews our contribution and urges everyone to attend.

This year's Bar Conference is taking place on Saturday, November 3, at the Royal Lancaster Hotel, London. The theme for 2007 is 'Human Rights: Taking Liberties'. The South Eastern Circuit is once more providing a key workshop

Began in The Hague

The Circuit workshop is 'International Tribunals: Justice or a Propaganda Exercise?' and will be moderated by the Circuit leader, David Spens, Q. C. The International Criminal Tribunal for the Former Yugoslavia will loom large. Panellists will include one person who can speak from the point of view of having appeared there, along with a writer and an academic who analysed what took place: Dr. Lara Nettlefield of Columbia University, who wrote her doctoral dissertation on the ICTY; Sir Geoffrey Nice, Q. C., who was the leading prosecuting counsel in the trial of Slobodan Milosevic [cf. *The Circuiteer,* Autumn 2006] and also happens to be a former Treasurer of the Circuit; and, on the other side, John Laughland, the author of **Travesty: The Trial of Slobodan Milosevic and the Corruption of International Justice.** The credentials of the fourth panel member go back even further: Gandhi Peace Prize winner Ramsey Clark defended Saddam Hussein and was Lyndon Johnson's Attorney General of the United States (1967-9). Taken together with video footage, this workshop promises a stimulating, thought-provoking and contentious debate.

For keen delegates, and for those with plans to have breakfast at the hotel, this year's Early Bird Session will be on the topic of 'Pro Bono: Getting the Help to where it is Needed', moderated by Tim Dutton, Q. C., Vice Chairman of the Bar and a former leader of the Circuit.

Sir Sydney's Keynote

The keynote speech will be given by Sir Sydney Kentridge, Q. C. Most circuiteers will recall the Circuit's extremely successful 'Masters of Advocacy' lecture series in 2003, when Sir Sydney gave a standing room only talk in Inner Temple Hall, and his address to the Circuit dinner in 2005. Even those who have not heard him will recall that he was knighted for his international human rights work over half a century. In South Africa he defended Nelson Mandela on treason charges and the family of the civil rights campaigner Steve Biko. Most recently in this country he represented Britons detained at Guantanamo Bay and the Countryside Alliance in opposing the ban on fox hunting.

A full day

During the rest of the day, there will be a diverse series of sessions. There is the COMBAR round table discussion, 'Commercial Lawyers and Human Rights: an Unholy Alliance?', the Family Law Bar Association workshop, 'Human Rights and Divorce: Have the Rights of Wives Gone too Far?', the Criminal Bar Association workshop;, 'Freedom of the Individual or Prevention of Serious Crime: Do we Have to Choose?', the Chancery Bar Association's workshop, 'Family, Property and the Love Rat: The Proposed Law on Cohabitation, Expropriation of Property and Human Rights', the Employed Bar Committee's workshop, 'Advocacy Beyond the Courtroom – Independence, Integrity and Human Rights', and the ADR Committee's workshop, 'A Mediated Settlement – an Alterative to an Article 6 Hearing?' There are also workshops organised by the Bar Standards Board and by the Judicial Appointments Commission.

For those under ten years' Call, a shortened lunch break will be compensated by the Young Bar Committee's forum, 'Human Rights: The Young Bar at Home and Abroad', with three young barristers speaking of their own direct experiences of working in international criminal courts and tribunals, doing human rights work in countries across the world, and working on human rights cases pro bono in England and Wales.

Join the debate

The day will conclude with what promises to be a fascinating and hotly contested debate: This Conference Believes that the Human Rights Act should be Repealed. It will be proposed by Dominic Grieve, MP: (Shadow Attorney General) and by Melanie Phillips (*Daily Mail* columnist and *Moral Maze* panellist) and will be opposed by Shami Chakrabati (Director of Liberty) and by Ben Emerson, Q.C. It will be followed by contributions from the floor.

The Conference has been accredited with 6 CPD points. In light of the financial difficulties for barristers who do publicly funded work, tickets are available at prices which are lower for all practitioners than at any time in the last four years.

A Circuit Town: Oxford

In the latest of our series of 'circuit towns', Tim Boswell of King's Bench Chambers, Oxford and 13 King's Bench Walk gives us a tour of one of the most civilised places to go to court

Radcliffe Camera

Oxford is a perfect size: large enough to have all the facilities one would expect from a modern city, yet with an historic centre compact enough to make getting round on foot easy. The visiting barrister will also be impressed by some of the finest architecture in the country, an excellent selection of pubs and a crown court that is housed in a former showroom for Morris cars.

Getting there

The railway station is about 15 minutes' walk from both the Combined Court Centre (crown court and county court) and (just around the corner in Speedwell Street) the Magistrates' Court. Trains leave London Paddington every half an hour and take approximately one hour to get to Oxford. However, with a standard peak day return costing an eye-watering £39.30 it may be that pupils and others of a sensitive financial disposition will want to explore alternatives. The Oxford Tube coach service leaves London Victoria every half hour in the early morning and costs a far more reasonable £14. But be warned: with rush hour traffic, the journey can take about two hours. For those driving, beware Oxford's impenetrable one-way system. The best option for motorists is to use one of the five park and rides that are scattered around the ring road.

The courts

The Magistrates' Court consists of five courts. Advocates should sign in at reception when they arrive. The advocates' room, CPS and Probation are all located on the main concourse. If your case is listed in court 5 then you will need to go through the door to the right of the reception desk. It's normally controlled by a swipe card but smile sweetly at the ushers and they'll let you through.

The crown court's robing room and canteen are on the first floor on the left (ask security for the code to get through the door), around the corridor from the CPS office. Probation is on the main concourse, as are the court rooms and access to the cells. There is the normal Xhibit computer system in the robing room. Plans for a further court room are in the works, although rumours that the development will include a roof top terrace for the judiciary remain unconfirmed.

Lunch

The crown court canteen is of the standard one would expect, so if time permits, turn left out of the building and head north. You will pass La Croissanterie which serves an excellent range of baguettes. Remember, if the weather is good, that the court happens to be across the street from Christ Church Meadows which is as fine a picnic ground as you will find anywhere.

When you reach the High Street ('the High') turn right and go to the Covered Market which has a huge number of sandwich shops and salad bars. Particularly recommended are the Oxford Sandwich Co. and Ricardo's (who do a fantastic hot ciabatta with roast chicken and stuffing). For those with healthier tastes I'm told there is a very good salad bar which will fill a bowl with your selection of ingredients.

If you have a bigger appetite then the Old Tom on St. Aldate's has a good, reasonably priced pub menu and the High Street has several bars which serve a filling lunch (All Bar One, Quod etc).

Drinking

Oxford provides many options for the barrister in need of liquid refreshment after a hard day in court. In summer the obvious choice is the Head of the River. Turn right out of the court building and a two minute walk will take you there. It has a large riverside terrace that is an excellent place to sip a pint of London Pride in the evening sunshine. In the winter you would be best advised to go to the city centre. Braziers, mulled wine and toasted marshmallows are available at the Turl Tavern, which can be found in the alleyways between Holywell Street and New College Lane. Walk along Broad Street ('the Broad') and you will see the White Horse, an eccentric little pub located in the middle of Blackwell's bookshop. It boasts a cosy atmosphere and a good range of real ales – the pub that is, not Blackwell's.

Carry on down the Broad, turn right and then left into the unfortunately named Friar's Entry and you will discover Far From the Madding Crowd, where members of the local Bar can generally be found in various states of disrepair. Past highlights of FMC's frequent beer festivals include a bright orange cider that tipped the scales at 7.8% abv. One for weekends only I suspect. Just past the railway station is The White House which has re-invented itself as a new-style bistro-bar with an impressive menu. Traditionalists will prefer to cross the road and head down Mill Street to the Kite, as friendly a neighbourhood local as exists in Oxford and only a five minute walk to the train station.

Eating Out

If you are feeling peckish after your post-court pint, then Oxford caters for a broad range of tastes. The best Chinese in town is the Peninsula on George Street, whilst connoisseurs of Indian cuisine should head for Chutneys on the corner of St. Michael's Street and New Inn Hall Street.

However, the best selection of restaurants in one space can be found in the recently re-developed Castle complex, which is less than ten minutes' walk from the railway station, via Park End Street and New Road. There is a lively bar called the Living Room after which there is the choice of Italian food, a tapas bar, and a restaurant specialising in chargrilled dishes. The Castle also has an open air theatre which is very popular in the summer months.

Places to Stay

Also in the Castle complex is the strangest addition to Oxford's hotels, Malmaison **(www.malmaison-oxford.com),** but not a normal Malmaison. Converted from the former Oxford prison many of the rooms are former cells that have retained original features such as bars on the windows. Prices start at about £150 for a double bedroom. There are plenty of cheaper options in Oxford. Of particular interest are the wide variety of bed and breakfasts on the Abingdon Road; some are only a few minutes' walk from the courthouse. **www.dailyinfo.co.uk** is an excellent website that contains full details of a wide range of places to stay and details of any current special offers.

Sights to See

There is plenty to see and do in Oxford for those with time to spare. Walk up St. Aldate's from the court, turn right into the High and you'll find yourself walking into the historic heart of the city. There are more college quads than you can shake a mortar board at and the architecture is, at times, stunning. Turn left off the High, past the University

An unusual hotel

Church and wander through Radcliffe Square, where you'll find the grandeur of the Radcliffe Camera and All Souls' College. Carry on out of the square via Catte Street and pass the smaller scale beauty of Hertford College and the famous Bridge of Sighs (which looks more like the Rialto, but there we are). Stop off for a well earned pint at The King's Arms before sampling the delights of the Natural History Museum and the Pitt Rivers Museum (shrunken heads included), both located on Parks Road. Turning back to the Broad and then onto Beaumont Street the Ashmolean Museum, with an outstanding collection of painting and decorative arts.

This is just the tip of the iceberg. Oxford is a city of almost infinite delight and an unplanned wander through the side streets can often be just as interesting as a planned walk around the major sights.

SOUTH EASTERN CIRCUIT BAR MESS COMMITTEE
ELECTIONS 2007

This year the Circuit will hold its elections for Circuit Officers and General Committee members on the following dates:

General Committee members:

General members (seven elected annually) serve a term of three years on the Circuit Committee. General members are expected to attend the quarterly Committee meetings and the Annual Circuit Dinner. General members are also entitled to vote as part of the electoral college in the Circuit Officer elections.

Any Circuit member may stand for election, but at least two of the seven General members must be under 10 years' call at the date of their election.

Nominations in writing from another Circuit member and the consent of the nominated candidate should be received by **10th October 2007** by the Junior of the Circuit (Nicola Shannon, Lamb Building, DX 1038 LDE.)

General Committee members will be elected by postal ballot of the entire Circuit membership on Thursday **1st November 2007.**

Circuit Officers

This year, elections will be held for four Circuit Officer posts, namely Recorder, Junior, 1st Assistant Junior and 2nd Assistant Junior. These posts must all be filled by junior members of the Circuit.

The post of Recorder is held for a term of two years. The posts of Junior, 1st Assistant Junior and 2nd Assistant Junior are each held for a term of one year.

Nominations in writing from another Circuit member and the consent of the nominated candidate should be received by **19th November 2007** by the Recorder of the Circuit (Fiona Jackson, Furnival Chambers, DX 72 LDE).

Circuit officers will be elected by an electoral college of the Circuit Committee on **Monday 3rd December 2007.**

Formal notices will be sent out to all members of the Circuit, but any questions or issues should be directed to the Recorder of the Circuit, Fiona Jackson at Furnival Chambers (tel. 020 7405 3232).

Northern Ireland Revisited

Our restaurant critic, Tetteh Turkson of 23 Essex Street, returns 'home' to play tourist. Fortunately the scenery is fabulous and the oysters are the best he has ever tasted.

It comes as a shock to many that Northern Ireland extends beyond Belfast - no matter what those of us brought up in the city might think. There is plenty to see around the province and it was because I had neglected it whilst living in Belfast that I resolved to go and have a look myself.

Going south

The plan on this trip was to take in the south of Ulster, in particular the Mountains of Mourne in County Down and Lough Erne in Fermanagh. Much as I would like to have travelled to both by public transport the only possibility of doing so was by bus via Belfast, there being no train service to either. Outside Belfast the public transport system in Northern Ireland is quite dire. Therefore we hired a car and headed south.

On our way to Newcastle we stopped off at Dundrum Castle. This is a well preserved example of a Norman castle in motte and bailey style, with a round keep. It is exactly the sort of thing that is the subject of school visits - I went there myself aged 10 - possibly because it is free. The ruin has no staff present but does have information boards to tell you about it. One can climb to the top of the keep and get spectacular views of the Mourne Mountains.

Good for walkers

On to Newcastle. Newcastle is a bit of a faded seaside resort, the sort of place where Irish people holidayed before cheap foreign travel. Tourists there are likely to be walkers in the main, taking advantage of its proximity to the Mournes. Accommodation is quite easy to find. I would recommend that you do some research before you book. Many B&B's will be conservative in Newcastle as elsewhere in Northern Ireland outside Belfast and facilities seem to vary enormously. We stayed in the Donard Hotel - a hotel above a pub at the north end of the town. It was a decent place, without much in the way of frills but was clean and the staff were helpful. Nearby is the considerably more impressive Slieve Donard Hotel. Owned by the Hastings group, this 100-year-old 4-star hotel has recently been refurbished at a cost of £15 million. It is located by the sea and the Royal County Down golf course and offers fine dining and a spa.

Up to the col

The sandy beach gets busy in the summer, but when we went in early April it was reasonably quiet. Work is currently being done on the promenade at the beach front which will improve facilities. However the beach is but a bonus to the main attraction. The Mournes are said to have been an inspiration for C.S. Lewis amongst others. The highest mountain and probably the most popular climb is Slieve Donard. It can be easily reached from the town and there is a path up to the col, which is most of the distance to the peak. Naturally the final assault on the peak is the most demanding. By the time one reaches the col, one has climbed 500m in height over a few miles distance. The climb to the peak, following the Mourne Wall, is not particularly easy, but as it is completed by young children and the elderly, it should be within the compass of all but the most unfit.

It is impossible to see all of the Mournes in a short trip. There are too many peaks for most people to scale even half in a weekend. One can get a flavour very quickly though and one should not be put off due by the size of the area. The hills are adorned with sheep, heather and gorse in seemingly equal measure. The views from the summits are breathtaking, particularly those down to the sea from Slieve Donard. For me it is a close run thing whether I prefer that to the view down Silent Valley including the reservoir. There are a number of reservoirs secreted in the Mournes of which the linked Silent Valley and Ben Crom reservoirs are probably the most interesting. Steep mountains covered with scree fall down to the dammed river that forms the reservoir for the Silent Valley and Ben Crom complex. Luckily someone decided to put an access road alongside it, so the miles that we had in our legs from the previous day did not feel so heavy as they could. As one walks down road at the side of Silent Valley, the dam of the Ben Crom river hoves into view. It is a surprisingly easy climb up the stairs at its side and again well worth it for the view of both reservoirs.

Climb more mountains

If I had been fitter and had more time, I could and would have spent more time climbing in the mountains or walking around Tollymore Forest Park. Even dedicated walkers will probably find it

Northern Ireland Revisited (continued)

best to use a car to get to the best sights. We drove round to Silent Valley where there is a park and information centre and walked from the car park.

Where to eat

Northern Ireland is not known for its culinary expertise and I have to admit that some of the smaller eateries are not very good. I can however recommend a superb restaurant near Newcastle – the Mourne Seafood Bar in Dundrum. It is no longer a bar but a restaurant basic in decoration but excellent in every regard. The food is sourced locally – whatever is landed by the fishermen at Annalong and Kilkeel that morning, supplemented by the shellfish reared on their own beds in Carlingford Lough.

The style is simple natural food. We both opted for oysters as a starter. My half dozen came 'au naturel' with the usual accompaniments. I cannot improve on the description given to them by our neighbours as 'the Dolly Parton of oysters'. They were voluptuous to the point of huge. I appreciate that that is not to everyone's taste, but they tasted absolutely superb. I believe they were the best I have ever had. JC's oysters were a great alternative for those who do not like the texture of raw oysters. Her platter of half a dozen were cooked but served in the shell. Sadly decorum (and JC) would not allow me to try the entire range, but I am assured that the two pesto, two spinach and mushroom and two cheese oysters were no less nice than mine. The portion I was able to negotiate for certainly bore that out. So often the flavours added distract rather than complement the oyster but not in this case.

It's the quality

It is the quality of the ingredients that amazes at the Mourne Seafood Bar. I am pleased to say that the main courses were up to the standard set by the starters. Again we chose simple dishes, tempted as I was by the hake fillet with curried mussels. JC chose the whole buttered lobster. Given I was paying for this birthday dinner my initial shudder was replaced by a broad smile as I saw that it was under £20. When it came it was delicious – simple certainly but again of the highest quality. It was sweet and meaty and obviously fresh. The fear that it might be small was unfounded.

Despite how marvellous it was I still think that I won the competition for best main course. I chose the whole roasted sea bream with samphire and lime butter. I ordered some champ - mashed potato with lots of butter, milk and scallions - and seasonal vegetables to go with it. Again there was nothing I could fault which is pretty annoying as a reviewer. The texture of the fish itself was firm but it was beautifully moist. The skin was crisp. The samphire and lime had just the right amount of sour kick to accompany the sweetness of the seabream. Excellent. For connoisseurs of champ it too was very good. Like the best champ it is a combination of comfort food and luxury.

Finally to dessert. We shared an apple strudel and a crème brulée. These were nice without being great – the sort of thing that any competent restaurant could reproduce. What was rather more exemplary was the dessert wine we had with it. It was a Sauvignon Blanc by Errazuriz of Chile. 'Late picked and botrytis-affected fruit is cold fermented and left with a residual sweetness' said the label. It was right. A much cleaner taste than some dessert wines, probably quite akin to a sauterne.

I cannot recommend the Mourne Oyster Bar enough – it was well ahead of the Loch Fyne or Livebait restaurants I have been to and a fair bit cheaper. We were told it has a sister restaurant tucked away in Belfast city centre. If it is anything near as good as the Dundrum branch it must be very busy, but I wonder if it will have a chef as prepared to trust his ingredients or to have ingredients quite so fresh.

Back to touring

Back to the journey. We left Newcastle to drive cross country to Enniskillen the county town of Fermanagh. Situated in the south west of Northern Ireland, it is the only county not to border Lough Neagh. In compensation it has its own lough, Lough Erne, which is divided into upper and lower loughs.

Enniskillen is a bit off the beaten track for tourists but still caters quite well for them in terms of accommodation. Again the majority is B&B's. We stayed in the Belmore Court Hotel which was to the east of the town and convenient walking distance away. It was functional, but it should be noted that it does not serve breakfast, although one has a cooker to prepare one oneself.

We had very little time to see the sights of Fermanagh, so went for the one thing I had heard about as a child – the Marble Arch Caves. In fact these are found a short drive from Enniskillen towards the border with the Republic of Ireland, near the town of Belcoo. The Caves are only open from Easter to autumn due to the fact that they flood in winter – I suppose they may even have been closed this summer. These are a series of underground caves, some of which are only accessible by boat. Luckily after paying the entrance fee of £8, your entire tour is guided on a pre-determined route. Once underground, one sees a bewildering array of stalagmite and stalactite formations. I felt it was well worth the entry fee because I had never seen anything like it. JC told me that there are larger such caves, certainly in France, but she also felt it was a worthwhile trip. It is sufficiently impressive to have been made a UNESCO European Geopark and I suppose that is a rather more important seal of approval. Also part of the Geopark is Cuilcagh Mountain Park. Cuilcagh Mountain at 665m is the highest in Fermanagh and affords, so we were told, excellent views across the county and into the South of Ireland.

The other thing we had wanted to do was a cruise on Lough Erne, but, irritatingly, there are very few outside high season. The nice woman at the tourist information centre gave us some suggested driving trips around Lower Lough Erne instead. We took this the next day and it was great fun and very beautiful. We went through the town of Belleek, well known in Ulster for being home of the province's oldest pottery. The main joy of the drive was the view.

After that we went back to Belfast and an urgent appointment with the U19 Rugby World Cup. We didn't even have time to go to Enniskillen Castle, Devenish Island or any of the other things there are to do. Perhaps we'll go next time.

A Crown Court Closes its Doors

In an earlier issue of The Circuiteer, Karen Evans explained the history and architecture of one of London's best loved legal landmarks, Middlesex Guildhall. Despite the best efforts of her and of her husband HH Fabyan Evans, the curtain was brought down on March 30.

Court 3

Like a fine Edwardian performer, Middlesex Guildhall had an extended farewell tour. There were many months of what the presiding judge, HH Judge Roger Chapple describes as the sad task of dismantling the machine. There was then some time for valedictory parties. I attended the one for the Bar and the staff on March 22. For those of us who had done cases in the building, it was the ultimate in nostalgia. That night we were able to wander, alone, into the court rooms and to conjure up edited memories of forensic triumphs and defeats. I found it impossible to step into court 1 without hearing Judge Suzanne Norwood's voice demanding, 'ask a question' of counsel who persisted in putting a statement to the witness. 'Ask a question' she reiterated, and so the battle between her and my opponent would go on, day after fruitless day, leaving the jury not with a memory of what the witness had said but only of a conflict of wills, between bench and Bar.

Theme park Middlesex

As we all know, the court house is the future home of the future Supreme Court. The set up costs for this project will be £56.9 million, made up of £36.7 million of renovation costs (to be repaid over 30 years) plus £20.2 million for professional fees, programme team costs, furniture, IT services and library costs. The plans drawn up by Foster & Partners will, more or less, gut the place. The contents of court 1 will be comprehensively removed to create a 'dramatic and contemporary' library which, having removed the present floor, will be double height. The judicial chairs will be moved to a basement heritage centre where visitors will be able to watch a film about the history of the building. As Lord Falconer has put it, 'we have struck the right balance of preserving a historic building while bringing new life to that building and providing for greater public access'.

In the former Council chamber, the carved bench ends, with their themes of royalty and heraldry and designed by the sculptor Henry Charles Fehr, will be cut off and put back on the furniture once the council chamber floor has been levelled and the axis of the room altered. The rest of the furniture will be sent to Snaresbrook Crown Court. It should be recalled that the furniture was designed in 1911-13 to harmonise with the building's character.

Not this afternoon

Whatever one's feelings about the plans and the principle of changing the building's use, on March 30 everyone put on a brave smile. The last presiding judge, HH Judge Roger Chapple presided over a distinguished gathering. One need only note that The Rt Hon Sir Igor Judge, President of the Queen's Bench Division and Head of Criminal Justice, began his speech, 'Lord Chancellor, Lord Lieutenant, Lord Mayor, High Sheriff, ladies and gentlemen'. He told a story about a case in which the then chairman of Middlesex Court Session put his head in his hands and said, 'oh God, oh God' during the defendant's evidence in chief. Defence counsel thereupon began his address to the jury by pointing out that Judge Jeffries was the first to sit in this court and that between him and his Lordship, 'every judge was a lot more for fairness'.

HH Judge Roger Chapple and Sheilagh Davies bid farewell to the court

He went on to praise Judge Simon Smith, who was now retiring, and whose 'interest has been on the people who were before him, whether defendants or witnesses, or jurors, or members of the Bar, or the solicitors instructing them. And this is justice administered at its best; quiet, calm, patient, un-self-seeking, focusing on the human beings who happened to be in Court, on the particular occasion'. Sir Igor concluded, 'we must cherish the time when the individuals come first'.

That was my joke

Speaking on behalf of the Bar, Jo Korner, Q. C., 'complained' that Sir Igor had stolen her story. She did though reveal the identity of the participants: Euan Montagu was the chairman and the young Sir Harold Cassels was the brave counsel. She recalled that she had begun her pupillage in the building under Ann Curnow when she was the last Treasury Counsel to Middlesex Crown Court. Jo went on to do her Yard test there and in due course her judicial pupillage.

She asked rhetorically, 'Why would anyone seek to prevent the closing of this crown court, the last one in central London, which has been operating in this building since 1913, and which has some of the most beautiful panelling to be found in any building, whether a court or otherwise?' 'First of all the Titanic, and now this court' which had been refurbished between 1982 and 1988 without

The entrance

destroying any of the features 'which make it so unique'.

She answered her question, 'It should have been obvious that all of these factors, far from making the case that Middlesex Guildhall should remain as a crown court meant that its closure was assured.' She thanked HH Fabyan Evans and others 'as some of the great fighters on behalf of a lost cause'. She extended the Bar's gratitude to all the court staff.

If it ain't broke

Judge Chapple noted the happy side of his job: 'The court simply works, and one is left to get on with the business of judging'. To close a court means to take the whole thing apart, a 'sad and dispiriting business', especially as Middlesex has been 'a happy, extraordinarily busy, efficient court, shifting huge amounts of work, trying many high-profile cases. All that has had to be dismantled'.

'As I was forced to look under the bonnet to start the process of dismantling the engine that wasn't broken, what I saw, with admiration, was a finely-tuned, well-oiled machine.' 'There are few good things to report from that bleak business, but I have learned a great deal about just what it takes to make a court work, and just how many people it needs, all working together. I'm very much wiser as a result'. He thanked everyone who had worked there, many by name, and who had together notched up a total of 380 years of service.

A national symbol

The then Lord Chancellor, Lord Falconer, admitted that Middlesex Guildhall had been a well-run and effective court which has served the nation admirably. 'I know that there is a very great sadness surrounding the decision to close it' but 'much of the sadness is because of personal memories'.

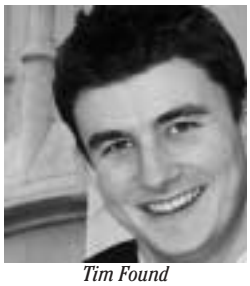
The Guildhall, having been a symbol of justice will now be a symbol of justice for the whole nation. The Supreme Court will have a home of its own, 'separate and with a role that is understood and respected by the public'. 'The Supreme Court will encourage the public to visit. It will be as accessible as Middlesex Guildhall has always been accessible. It will be welcoming, and it will be visible'.

The building will next be open for business in October 2009.

I am indebted to the article by Dr. Kathryn Ferry in THE VICTORIAN, the Journal of the Victorian Society, about the current plans for Middlesex Guildhall. The Society, in stark contrast to English Heritage, is still fighting the good fight.

Florida: The Civil Course

Every year the Circuit sends a delegation to the Advanced Advocacy course in Florida. James Rickards of Outer Temple Chambers and Farrar's Building pupils Tim Found and Kate Webb relate their first experience with civil trials with juries



Tim Found

Kate Webb

In May this year, the South Eastern Circuit and the Florida Bar kindly sent us out to Gainesville, USA. At the home of the University of Florida 'Gators' football team, we all participated in the Florida Bar's Advanced Advocacy course and were welcomed with the warm hospitality for which the South is famous. Michael Soole, Q. C., of 4 New Square participated as the faculty member, deftly demonstrating cross-examination, the role traditionally reserved for an English Silk. He performed with great wit, attention to detail and spontaneity, much to the admiration of all in attendance.

No small case study

The case study is a 500-page bundle on a personal injury and clinical negligence matter, concerning a young amateur golfer who is injured on a water slide and then suffers from medical negligence. In this country, he would receive general damages of between £15,000 and £150,000 – with perhaps a further £100,000 in special damages – depending on the future deterioration of his symptoms and assuming that the claimant would not, without the accident, have become the next Tiger Woods.

One of the most fascinating parts of the course was viewing the video-taped deliberations of two juries. Both were given the same written materials to review (though neither jury did so), and both heard the same opening and closing speeches given by the skilled American advocate faculty members. Individual comments ranged from '…that lawyer should get an Oscar…' to '…well we can't accept that evidence just because the lawyer told it to us…'

Both juries reached unanimous verdicts but each was different. Jury A dismissed the claim; Jury B awarded approximately $6,000,000 for the claimant against the first defendant who by most accounts was the least blameworthy.

Trusting lawyers

Strikingly, at least two plenary sessions concentrated on the lack of trust and respect for our American counterparts – perhaps with good reason, having regard to the jurors' comment above. In one presentation, the speaker displayed a graph placing lawyers second from bottom in the results of a survey enquiring as to the most trusted professionals. This problem has largely been avoided by the Bar – so far – because of the independence that it works so hard to preserve. However, it is a problem which must be kept under review. The contingency fee basis used extensively in the United States must be one to avoid in all but the most exceptional circumstances if the Bar is to retain its independence.

The course method is similar to that used at Keble and on Inn-organised pupil advocacy courses. As already alluded to, the greatest difference is that one's advocacy should be tailored to a jury rather than to a judge. We did opening and closing speeches and much 'direct examination' (our examination in chief) and cross examination, including of expert witnesses. The major difference for an English civil practitioner is that direct examination is still used in respect of every witness. The deposition statements which they made were not read to the court. The main difference in cross examination became evident when a witness strayed from what they had said previously. Rather than merely referring the witness to the previous statement, there was a formal process of 'impeachment'. This had tactical ramifications of its own. It was considered ineffective to impeach a witness unless it was on a matter of some significance, as one would otherwise lose the jury's attention on more important matters.

Trusting juries

Though the jury was commended to us as the jewel of the US civil justice system, there were distinct fears amongst participants and faculty members that the jurors themselves were rarely in possession of more than the most basic intellect. This was illustrated in the video-taped deliberations which showed some jurors straying wildly from the evidence and coming to conclusions which could not have been reached had they applied the most basic logic to the case.

The civil jury's abolition in English legal process was in no small part due to delay and the requirement for the courts to cope with the caseload that was upon them. It is interesting therefore to consider how America, which our media would have us believe to be the most litigious in the world, can possibly deal with all its civil cases by means of a jury.

Two factors which explain how the US copes are (i) a greater use of ADR and (ii) the deposition process. In the latter, the parties' lawyers are able to question each witness before the final hearing, seemingly with fewer constraints about the style of questioning than would apply in court. These two factors decrease the number of matters which ultimately end up in front of a judge, a result which is reflected in the practices of younger lawyers in the US. On talking to other participants on the course, it seemed that it was not unusual to have appeared in court approximately five times in five years of practice. One recalls that there is no solicitor / barrister split of the legal profession so being a lawyer in the US encompasses both disciplines.

What the judge wants

A remarkable (and transferable) feature of the Florida legal system is the publishing of 'Judicial Preferences,' which was initiated by Florida's young lawyers' association. This is not a collection of reviews or of dramatic re-tellings of court battles. The association sends out questionnaires to the judiciary, asking how they like their courts to be run and identifying what most rapidly would lose their attention. Those judges who reply and who are willing have their preferences duly published on the website.

It is easy to see the advantages of such information in any legal system where significant judicial discretion may be exercised. For example, the listing practices of some courts afford judges little time to read additional materials such as bundles of authorities or skeleton arguments in any given day. Even when such time is afforded to a judge, he or she may wish to limit additional materials to a certain number of pages of a minimum font size.

It was also fun

The faculty and other participants were most welcoming to the British contingent. Towards the end of the course, a dinner was held for everyone at which it is traditional for the Brits to introduce Pimm's to our American colleagues. As with previous years, Pimm's was well appreciated in the Florida warmth.

Our sincere thanks to the Circuit, to the Florida Bar and to our respective chambers for enabling this valuable exchange to continue. We conclude with a quote from a vignette which explains to the civil jury, tongue firmly in cheek, how to they will have to exercise their function:

'Though you have and will receive no training in the complex areas about which you have to make decisions, you will be allowed to ask no questions.'

Keble: It does what it says on the tin

As our authors would say, 'once you have had the Keble experience you want to tell people about it'. Four who attended the Circuit's Advanced Advocacy Course do just that:

Noémi Byrd, Lucy Luttman and Adaku Oragwu

Noémi Byrd and Lucy Luttman of 6 Pump Court on the 'criminal side'

We must admit that we left the pre-course briefing somewhat heavy of heart. There seemed to be an alarming amount of preparation involved. It was a good idea to get most of it done in advance, not least so we could concentrate on feeling queasy about being 'immortalised on tape,' as the preparation materials so ominously put it.

There is no denying the fact that the course is long (Tuesday morning to Saturday afternoon, 8.30 to 6.30-ish each day), intensive and rigorous, but in spite of (and to some extent because of) that, it is a truly superb experience for any junior advocate.

Feedback at last

One of the most disconcerting things about the early years in practice is the lack of feedback. It is a lot easier to spot a bad advocate than to be a good one. No one tells you if you get it right, and you only know you've got it badly wrong if the judge shouts at you. This is where the course comes into its own. The faculty of advocates and judges happen to be good teachers – perhaps a more difficult skill to acquire.

Our exercises (apart from those involving expert witnesses) were based on a criminal case. The charge was one of wounding with intent. The defendant was a knife-wielding hysteric claiming self-defence; the victim was her knuckle-dragging bonehead of an ex-husband. Needless to say we had a great time playing witnesses. On the final day of the course we would conduct a full trial in front of a 'real' Oxford jury.

We were surprised to be asked to prepare our closing speeches for the very first exercise but found it to be a helpful way of focusing on what our case was all about and getting used to performing in front of the three faculty members at each session, and the ever-present video camera. Strangely this was far more nerve-wracking than any court appearance, probably because here the focus is entirely on you. However, there really isn't a substitute for watching your own performance with a critical eye.

All in a week's work

During the course of the week we worked through applications, opening speeches, cross examination, examination in chief, closing speeches and - most fun and tricky of all - examining expert witnesses. We prepared to examine and cross-examine experts in the field of endocrinology and neurology about why a claimant suffered brain damage following a hypoglaecemic attack. We were extremely fortunate that these doctors were prepared to give up their time to be our guinea pigs for a day. Thankfully we only had ten minutes to cross examine, but, as with the rest of the course, you learn just as much by watching others.

It wasn't all work: the bar was open every evening and we had a dress-up-for dinner on the Friday night. There were wonderful musical performances by faculty and helpers; particularly beautiful was a performance of *Nessun Dorma* soaring over the candle-lit listeners and up to the high carved ceiling of Keble hall. The next morning our 'jurors' for the mock trials arrived earlier than any reasonable court would sit. I'm sure everything we had learnt during the week was put into practice, and it was invaluable to get feedback on why a particular verdict was reached. There were several different 'trials' going on at the same time and huge differences in the outcome.

Recommended

We can't recommend this course highly enough. It is 'advanced' in the sense that it advances your skills. It is probably the most concentrated dose of good advocacy training available. We both left knowing much more precisely our weaknesses as advocates, but with the skills to overcome them, and the confidence that we can.

Doris Brehmeier-Metz, a German State Prosecutor, took time off from her duties in The Hague to attend

Doris Brehmeier-Metz

I came to Keble with a group of five fellow lawyers from the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY) at The Hague. Their home jurisdictions include Spain, Italy, the United States, Great Britain and my own country, Germany. Even our English colleague was a little worried how everything would work out and whether it would be *very* embarrassing for us.

The importance of preparation

Preparation, preparation, preparation – those three magic words, without which real advocacy seems impossible. The fact that we had been requested to send skeleton arguments in relation to the oral submission exercise some four days prior to the beginning of the course helped a lot. For the non-native speakers in our group that included learning and pronouncing ('hypoglaecemia'??) a new foreign language – medicine – in order to understand the medical expert's case. We arrived on Monday afternoon which was the only time I ventured outside the college grounds. From Tuesday morning onwards we were kept inside, moving on from exercise to presentation, always combined with demonstrations given to us by the tutors and instructors.

Performing not only to colleagues but in front of a video camera proved to be less nerve-racking than I had thought. In the professional atmosphere one immediately forgets that this is not real life – unless, as happened to me, one gets completely stuck and has to ask for a new start. That indeed was an embarrassing moment, but I am pleased to say that it was the only one, and I received great help and assistance from the tutors who understand what is going on inside the pupil, who have not forgotten their own first years and who always found kind and constructive words both immediately after the performance as well as during the video-review. We never observe ourselves in the court room; we never see what we

do with our hands, with our faces, until we watch such a video. Over the days one gets more and more accustomed to seeing that funny person on the screen.

Growing confidence

Having been very nervous at the start about how everything would go, I grew more and more confident over the days; watching my English colleagues, learning from them and finding that I could somehow come near them.

Of course there were also the meals, the bar and the delightful dinner on Friday which brought us all together. The mock jury trial on Saturday served as a great punch line – juries do not exist in most civil law jurisdictions, and they certainly don't at the ICTY, so none of us had ever experienced this. Trying to address and convince lay people was an incredible experience, even though my English colleague and I, prosecuting the knife-wielding hysteric, got a complete acquittal in the end.

This is the course to attend to gain confidence, to strengthen one's skills and to diminish one's weaknesses.

Are young barristers too old for feedback? Not according to James McClelland of Fountain Court chambers, who did the 'civil side'

James McClelland

My experience of the Keble Course started in London with an introductory seminar in Inner Temple. I was handed a glass of wine and three inches of papers in a glossy file tied up with pink ribbon. My first thought was that I would rather have been handed the one without the other. Having banished this frivolous reflex, my overriding impression was that the papers which I had been handed looked menacingly professional. The course itself lived up to that impression, albeit with less menace.

Once you have started out in practice the focus inevitably shifts away from reviewing your own performances to anticipating, digesting and, where necessary, advising upon the outcomes of the hearings themselves. For my part, I have received virtually no meaningful feedback on advocacy since starting practice. On the few occasions when a judge has muttered something at the end of a hearing, it has invariably been so perfunctory as to amount to little more than a polite but dismissive pat on the head. There is therefore a very obvious need to return to advocacy training during the early years of practice. The Keble course is unique and does more than revisit what you might remember from either the BVC or the Inns.

First, and most importantly there is the content. Its length (including three days' prep before arrival) gives it space to unfold and allows

the lessons learned on one day to be rehearsed and embedded during the next. It also allows the course to cover a wide variety of different types of advocacy before concluding with a full trial in which the various elements are all brought together. There is probably the most transparent and intensive feedback any advocate will receive over the course of their entire career.

Another unique aspect is that it addresses the handling of expert witnesses. Professing only a rudimentary acquaintance with accountancy, I was relieved to discover that no prior knowledge was assumed. Before tackling the witnesses themselves we therefore had a lecture on the method of examining experts and a presentation on the financial concepts in issue. We then had two conferences with our allocated expert. Finally we spent a morning examining our own expert and cross-examining our opponent's. This was a more complex and rewarding task than that offered by any other advocacy programme in which I have participated or of which I am aware. A final point is that it is all brilliantly organised. Virtually no time was lost between one event and another, the different classes seeming to run together seamlessly.

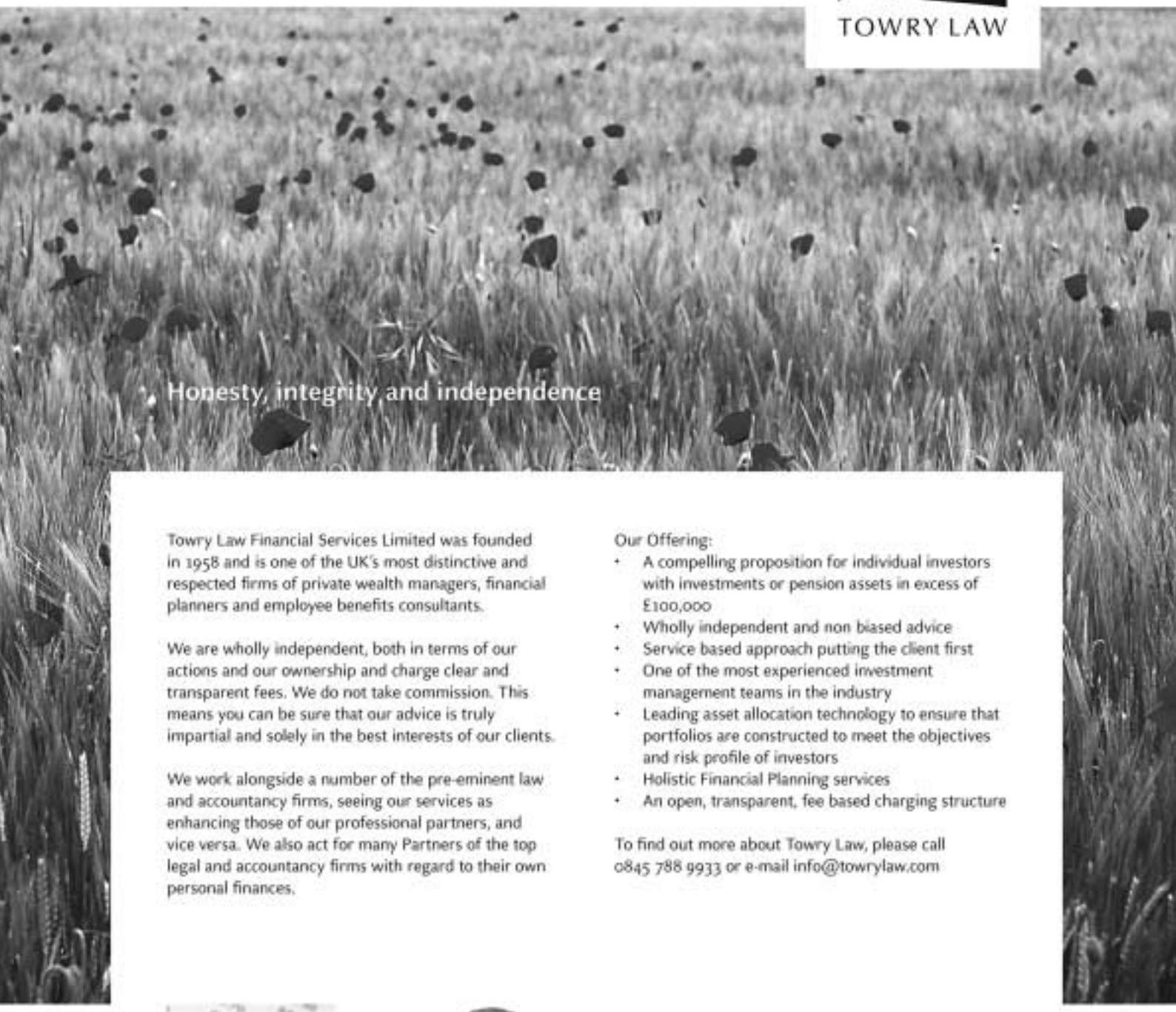
Two further things stand out. The faculty comprises judges, barristers (both Silks and senior juniors) and a number of practising advocates from other jurisdictions. Many of the barristers that I met were names I knew already either from the law reports or the legal press and it was an obvious privilege to be instructed by people at the top of their game. At 6.30pm on the Thursday evening when you receive your umpteenth instalment of critical feedback, it is easy momentarily to entertain a defensive and unworthy suspicion that perhaps your critic might not themselves have done it any better. The short answer at Keble is that they invariably would. Moreover, the strength and sheer size of the faculty injects a healthy frisson of terror into the whole affair. No-one wants to come unstuck in front of a gathering of the great and the good of their profession.

The other participants were also an impressive bunch. Everyone on the course was there because they had positively chosen to be. This is not to say that the course was oppressed by an air of high seriousness – it was both good humoured and engaging. In fact, I think that exactly because it was hard work, we developed the camaraderie of the fellow afflicted. By the end of the week I felt that I had both made new friendships and strengthened existing ones.

In short it is without doubt the best advocacy programme of which I am aware. I cannot think of any new practitioner who would not derive real and lasting benefit from participating in it.

Photographs by Stephanie Farrimond

TOWRY LAW



Honesty, integrity and independence

Towry Law Financial Services Limited was founded in 1958 and is one of the UK's most distinctive and respected firms of private wealth managers, financial planners and employee benefits consultants.

We are wholly independent, both in terms of our actions and our ownership and charge clear and transparent fees. We do not take commission. This means you can be sure that our advice is truly impartial and solely in the best interests of our clients.

We work alongside a number of the pre-eminent law and accountancy firms, seeing our services as enhancing those of our professional partners, and vice versa. We also act for many Partners of the top legal and accountancy firms with regard to their own personal finances.

Our Offering:

- A compelling proposition for individual investors with investments or pension assets in excess of £100,000
- Wholly independent and non biased advice
- Service based approach putting the client first
- One of the most experienced investment management teams in the industry
- Leading asset allocation technology to ensure that portfolios are constructed to meet the objectives and risk profile of investors
- Holistic Financial Planning services
- An open, transparent, fee based charging structure

To find out more about Towry Law, please call 0845 788 9933 or e-mail info@towrylaw.com

From Around the Circuit

East Anglian Bar Mess

Hintlesham Hall in Suffolk was the venue for a dinner on July 13th where the Mess thanked HH Judge Devaux for his many years of service as resident judge at Ipswich and welcomed HH Judge McKitterick as the new incumbent. A good turn-out of members (including a representative from Octagon House) had a very enjoyable evening and we were reminded just why the Mess has a 'no speeches' rule.

Our next dinner will be at the Norfolk Club in Norwich later this year. Full details will follow.

John Morgans – Mess Junior

Cambridge and Peterborough Bar Mess

News from the Fens. Cambridge Crown Court entertained yet another High Court judge. Mr Justice Bean was hosted by our very own Bar Mess Chairman, Karim Khalil, Q.C., in court and out of court by the normal suspects much emboldened with fine wine. Where all this wine comes from and who pays for it I have never been able to work out. The new crown court is proving very attractive to M'Luds and Lady's! Long may it continue!

The nation may not get an election this year but the Mess had one in order to elect officers and reps. Our 'ghost' of a Junior, Greg Perrins, was replaced by Angela Rafferty [Mrs Perrins to all those in the know!]. The new Junior promises much on the social front. Watch this space for future events.

If you can't wait that long come along to our dinner on the 26th October when the Mess ushers in a new era for Huntingdon Crown Court. Details from Georgina Gibbs at 1 Paper Buildings. HHJ Coleman [resident judge at Peterborough] has promised to speak at the event.

On the 7th September the Mess raised @£2000 in memory of Ros Mandil-Wade who passed away in December. Thank you to 'The Eye' a group of men in their 40's who provided the musical entertainment. [There were two female singers but I learnt a long time ago not to insult a lady about her age]. There must be a record deal out there now that Pav has gone to sing with the angels! Karim Khalil, Q.C. plays a mean saxophone which is just as well with things getting pretty tight for the criminal Bar. It was remarked upon that he was as good as Lisa Simpson. Thanks to all who made a donation.

More sad news to report with the death of Stephen Franklin, a tenant at East Anglian Chambers and a past tenant of Fenners Chambers in Cambridge. Stephen tragically died in a shooting accident whilst carrying out conservation work. He was well liked by all who knew him.

Cromwell

Old Bailey Bar Mess

As readers of the last report of the Bailey Bar Mess will know, 2007 marks the centenary of the actual building on Old Bailey. Although this big Bailey birthday has already been officially marked by the visit from Her Majesty the Queen and H.R.H the Duke of Edinburgh on 27th February, the Mess is to hold its own celebration in the autumn.

This will take the form of a dinner in the hall of Middle Temple on Thursday 15th November. Tickets are available at the cost of a mere £75, from Duncan Atkinson at 6, King's Bench Walk (Cheques payable to the Central Criminal Court Bar Mess). Readers are encouraged to book early to avoid disappointment.

Since the last report, the Mess AGM has taken place. Amongst the issues raised was the admission to Mess membership of solicitor advocates who regularly appear at the Old Bailey. The views of the membership on this issue are encouraged. Steps are also being taken to improve the facilities in the Mess. This caused a degree of upset when half the tables were taken away for re-varnishing, but I am pleased to say that they have now returned in gleamingly re-invigorated form. Steps are also being taken to tidy up the library. If anyone wishes to take on the role of librarian they should contact the Chairman, Mark Ellison.

Duncan Atkinson

Essex Bar Mess

We bade a fond farewell to HHJ Deborah Taylor this summer, as she moved from Basildon to Inner London Crown Court. She will be greatly missed – she brought a much valued air of metropolitan glamour and sophistication to us country folk in south Essex. She was no soft touch but a wonderfully sensible and compassionate tribunal who settled in quickly and happily at the court that her late father was due to open in 1986 before his untimely death. She will have the undoubted pleasure of meeting at her new court another former protégé of HHJ Clegg's, Roger Chapple who is shortly to take over there as resident after HHJ van der Werff's distinguished 14 year reign comes to an end with his retirement this autumn. There are hearts still broken in Basildon, missing the urbane Chapple whose time there was all too short.

Basildon has also lost – temporarily this time – HHJ Worsley who has succumbed to a nasty bug that has laid him low for some few weeks. For such an energetic character it must be agony having to submit to bed rest. We wish him a speedy recovery – as indeed we do for HHJ Adrian Cooper, still sadly absent from the bench in Southend.

We hope that when HHJ Clegg is finally allowed to retire – next spring is the best guess, his incredible efforts at Basildon will be publicly acknowledged. He was the first resident judge when the new court was opened and has remained very much in charge ever since, welcoming new judges and anxious Recorders, nurturing many young stars as they began their careers on the bench before seeing them move on to greater things – Zoe Smith and of course Roger Chapple amongst the most recent. He has had to deal with many a challenge over the last 11 years but has always done so with great charm and efficiency. The Mess will of course be organising a dinner in his honour.

Life at Chelmsford has been, by contrast, rather quieter on the judicial front, although the court was lucky enough to be visited during the summer by a new face on the High Court bench – Nigel Teare, fresh from the arcane world of charter parties and admiralty disputes. He came to try an old fashioned multi-handed Essex murder. Criminal law and procedure presented no problem to His Lordship – rumour has it however that he was more than a little bemused at the sight of advocates such as our very own Chair, Trish Lynch, Q. C. and Liz Marsh, Q.C. getting well and truly stuck into their cut throat defences. It seems that their darts occasionally went a bit wide of the witness box and prosecuting counsel – none other than Stephen Hockman Q.C. Our recent Chairman of the Bar was seen flinching once or twice. The utterly charming and fair Hockman was left thinking that perhaps crossing the Thames from Kent was not such a good idea. Happy to report, of course, that peace did eventually break out – mediated by the thoroughly good natured and unflappable J. All are looking forward to the case dinner.

Another recent visitor to Chelmsford was Andy Hall, Q. C., the outgoing Chairman of the CBA. He deserves the thanks of every criminal advocate in the land for his hard work not just over the last year but for the years during which he and others have fought the Treasury on our behalf, beating their heads against brick walls. Delighted to see that his successor, Sally O'Neill, Q.C., is a former Essex girl, educated locally. Her deputy will be none other than our very own Peter Lodder, Q.C., who has just been elected Vice Chairman. This is a great honour for Peter and suggests that his experience of successfully prosecuting an entirely innocent man for rape has not held him back; a few years ago Peter (ably assisted by one Dyble) saw a man called Mitchell convicted at Chelmsford on the basis of some, as it turned out to be, misleading circumstantial evidence. There was DNA evidence in the case which later, with the more advanced techniques then available established that another person was responsible. Peter of course did the honourable thing in the Court of Appeal.

Delighted to report that our very own Richard Kelly and Ashley Thaine have had a baby – as has Narwaz Daruwalla. Narwaz has endured some very difficult times recently – we wish her and her husband much joy in the years to come. Congratulations to them all.

This year's dinner will be held, appropriately enough, at 'Greenwoods', a hotel in Stock near Chelmsford on Friday 16th November – the day after the Old Bailey's 100th birthday dinner. Tickets will be, as usual, ridiculously cheap and can be obtained from our tireless Junior, Jackie Carey at 2 Bedford Row.

'Billericay Dickie'

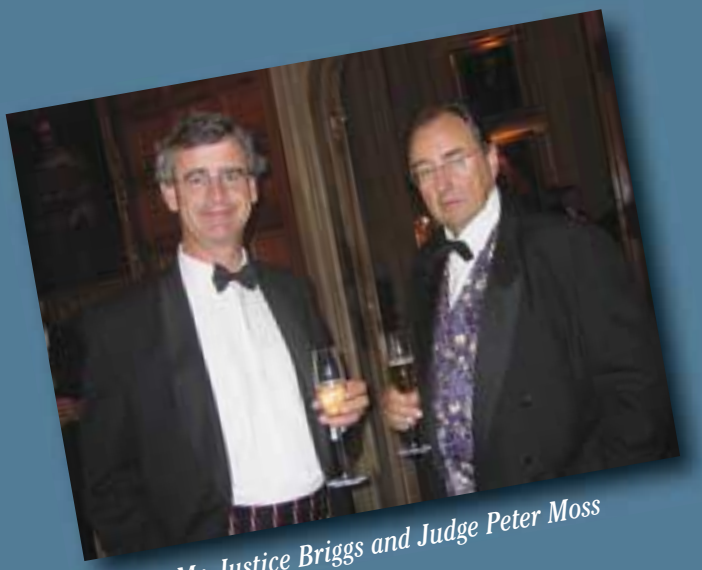
Surrey and South London

The Mess moved fiscal impropriety a shade further when, this summer, it held a free – to members - champagne party on the lawns of Middle Temple. Our judges moved forward (and sometimes backwards) to a competing party in Inner where a long established set were celebrating their move to a new building. The double offer is unlikely to be repeated.

This November sees the constitutionally forced retirement of the Chairman, the Secretary and the Treasurer. The Mess could not have done without Hadley and Turton – each of whom have been both Secretary and Treasurer.

But we will now go from strength to strength. Another (full- cost paying) dinner will take place in March; there is deep discussion about a get together in Guildford in November. Membership is healthy – although it would help if people paid full subscriptions. Send a cheque for £20 to Steven Hadley (9-12 Bell Yard) or Andrew Turton (Carmelite Chambers). You will get a standing order form in reply. You can feel proud to belong to a Mess where the subscription has only increased 20 fold in 120 years.

The Annual Dinner



Mr. Justice Briggs and Judge Peter Moss

HHJ Michael Lawson, Q. C. and Edita Ligere

HHJ John Bevan, Q. C., HHJ Nicholas Lorraine-Smith, Q. C., Owen Davies, Q. C. and Jo Korner, Q. C.

Nicola Shannon and Ann Curnow, Q. C.

Stephen Moses, David Durose and Natalie Sherborn

Stephen Hockman, Q. C. and Deborah Charles