Issue 20

The Circuiteer

News from the South Eastern Circuit

Spring 2005

A Note from the Editor

When I read *Catch-22* as a teenager, the phrase which stuck in my mind was, 'they can do anything to you which you can't stop them from doing'. Barristers may feel something similar. The Government, so concerned with restrictive practices at the Bar, is unrepentant in wielding its own monopoly powers. It has the final say in the level of publicly funded fees and in when they are paid. In due course they will also have the final say in how the profession is regulated.

We have just celebrated the fiftieth anniversary of a general meeting of the Bar where the agenda was—low fees and late payments. The wise barrister has a sense of history, keeps well informed and does not panic. The Circuiteer is written for such a barrister.

Sir David Clementi reported last December, and the Circuit's former Leader, Stephen Hockman, Q.C., explains the best and the worst we have to face. Anyone who has read the final report will feel a sense of disappointment. Criticisms and challenging proposals were expected, but one hoped for something that was more magisterial than petulant in tone. And then there is paragraph 13 of Chapter F: 'The absence of an articulated consumer demand, in the context of a market where restrictive practices operate as a barrier to innovative forms of service delivery, would not in itself be a persuasive argument that other forms of service delivery should not be permitted'.

Family lawyers have a revised fees structure to deal with (Carol Atkinson explains how to find your way around that). Criminal Procedure Rules, adopting the vocabulary of the Civil Procedure Rules, have been brought in (Rules Committee member Tom Little issues an appropriate warning). Civil practitioners will remind their criminal colleagues that the amount of litigious work has collapsed since their own 'Woolf reforms', with some of it now being heard in Amsterdam, Paris and New York. However, defendants are unlikely to be able to move their trials to a more conducive jurisdiction, nor to 'cut a deal' with the other side, usually.

The Circuit has revisited Warsaw, to demonstrate the English method of criminal trials, thanks to the organiser, Iain Morley, who last autumn answered Steven Kay's call for pro bono volunteers in the defence of the 'litigant in person', Slobodan Milosevic. As this magazine goes to press, Iain is going to Arusha, to turn gamekeeper by becoming a war crimes prosecutor himself. For those who feel let down by the criminal justice system in England, Max Hardy and Aaron Watkins do not pull their punches about the seamier side of charming old New Orleans.

The Law Lords may eventually move across Parliament Square to the Middlesex Guildhall, where the historic courtrooms are exactly not the sort of room where they like to hear cases. Karen Evans pays tribute to the crown court we still love and use. As for the quality of their decision making in the interim, Charles Hollander, Q.C., analyses the messy completion of part one of the Three Rivers v Bank of England saga, and Noémi Bird speaks up for vulnerable defendants following the Camberwell Youth Court decision.

Some 175 years after the event, the question was posed, 'what was the effect of the French Revolution?' to which the reply was, 'it is too early to tell.' Barristers may always feel that way about the Criminal Justice Act 2003. Professor David Ormerod provides us with a guide to the hearsay provisions. They are already 'on the agenda' even though we are still learning how to cope with 'bad character'. The implementation order for that, we recall, was accompanied by a press announcement from the then Home Secretary. He said it would ensure that 'the strong presumption should be that the conviction should be revealed to the jury'. I recently attended a trial at Blackfriars which would have been a bitter disappointment to Mr. Blunkett. The defendant was charged with assault [on an off-duty policeman] with intent to resist arrest, but the Recorder found that the jury would not be helped by knowing about a single, 5-year old conviction for assaulting his girlfriend; neither would convictions for theft help them decide the inchoate issue of 'credibility' . Prosecution counsel later explained that she was instructed to make a 'bad character' application in all cases. This suggests that the CPS, who had been unaware of the facts of the earlier offence, had not approached the case on its merits. I have since been told that in Kent the CPS is more flexible, and heeds counsel's advice.

Finally we tour the Circuit and Circuiteers. The advantages of sole practice are explained. John Morgans introduces us to the fine Circuit city of Norwich. There are announcements about the Dame Ann Ebsworth Memorial lecture, the annual dinner, the Circuit trip, the Keble and Florida courses, and much else.

Those who consult the April 2004 Circuiteer guide to money laundering should be aware of the decision of the Court of Appeal on March 8 in Bowman v Fels which might be subtitled, 'the nightmare is over'. Barristers are not, after all, required to make disclosures under section 328. The court reached this conclusion in three stages: (i) Section 328 goes further than any EU directive required the Government to go; (ii) even though Parliament was entitled to go there, a court judgment or order is not entering or becoming concerned 'in an arrangement'; and (iii) since it did not expressly exclude legal professional privilege, LPP survives and counsel is not entitled to disclose information about his client to NCIS without the client's permission. There we are, unless and until NCIS appeals.

As before, I welcome feedback and future contributions. This issue's authors include a professor, a pupil, an art historian and the Vice Chairman of the Bar.

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Table of Contents

Leader's Column

As I write this, the wintry, "lion" part of March has transformed itself into a beautiful spring. I am looking forward to visits around the Circuit to see the troops: April in Maidstone and Lewes, and 10 June in Norfolk. The uplifting mood created by the change in season makes me want to start this column with positive news.

The good news

On **24th June** we will be holding the Circuit dinner in a restored Lincoln's Inn Hall. Our guest of honour will be **Sir Sydney Kentridge.** Sydney is a courageous man, a masterful advocate, and a great supporter of the independent Bar. He will, I am sure, put the Bar's present difficulties into a perspective which fortifies us. On **30th June** we will be holding in Inner Temple Parliament Chamber the first annual Ebsworth Memorial Lecture, named after Dame Ann Ebsworth, who gave up her summer holiday every year to teach at Keble. The speaker is the Australian High Court judge and jurist **Michael Kirby.** I expect both events to be well attended and I encourage circuiteers to book early. Our twinning with the Warsaw Bar is going well. They enjoyed a taste of advocacy training in February and are thinking how it might be adapted in their civil system. I have also been encouraged by the Circuit membership's pro-active response to the Criminal Justice Act 2003 and the Criminal Procedure Rules reforms. Andrew Bright, Q.C. and Kaly Kaul have been organising Circuit training. The Cambridge course on 19th March attracted over 100 participants for an intensive workshop at which a range of silks, juniors and judges spoke. Our "sweep up" course on **16th April in London (BPP Law School)** will have over 250 participants. If you have not yet been trained, this really is your last chance to avoid calamity. Remember that the Hearsay and Sentencing provisions come into effect on 4th April, as do the Criminal Procedure Rules. Overall I am impressed by the desire of the publicly funded Bar to maintain its professionalism. This is despite knowing that the Government has yet to agree sensible payment arrangements at all, let alone for the extra work involved as a result of the Criminal Justice Act 2003 and the procedural reforms. I am hopeful that Andy Hall, Q.C. will shortly find a solution for 'cracks'and guilties. And I hope that the same will happen for the new Pleas and Directions hearings ("PCMHs").

In the meantime, the Mess chairmen and I are contacting all resident judges to let them know of the difficulties the Bar finds itself in because there is not yet a payment arrangement in place.

Spring means negotiations

Each spring brings focus to a round of discussions with the Government. This year my concern is about arrangements for 'cracks' and guilty pleas, the graduated fee scheme (under-10-day cases particularly), and the extra work caused by the CJA 2003. I want to encourage all members of the Circuit to continue to achieve the highest standards. This is the way to ensure that the Bar does its best for its clients while beating off competition from the CPS and defence solicitors who want to give more work to Higher Court Advocates. I know that the short-sighted parsimony driven by Treasury officials is dispiriting to circuiteers who have bills to pay and not enough fee income to pay them. The problem is at its most acute for practitioners in London and the South East. I am convinced, however, that if we carry on providing the level of service which we always have, we will help our negotiating position, and of course, make ourselves indispensable to those instructing us. Criminal graduated fees have been "undeemed". If a fee is not a proper one then a barrister is not obliged to accept the brief. The higher our standards, the more marketable we are (for example in regulatory work), and eventually, the CPS and defence solicitors will want to instruct the best advocates for the job at a sensible fee.

Whenever I can, I speak about the skills of the Bar in prosecuting and defending cases such as burglary and offences of violence, and which most directly concern the public. With a general election approaching the Bar needs to make its voice heard as an essential and highly skilled part of our criminal justice system without which society will be immeasurably the poorer. Our argument has not been helped by the distraction caused by the collapse of the Jubilee Line case and the drain on public funds caused by it. The demise of the case is front page news in a way in which the underlying alleged corruption never was. An attack upon an elderly lady by a mindless robber is also, justifiably, front page news, but so should be the absurdly low rate of pay for the barrister who prosecutes or defends those cases before the court. The legal arguments involved in such a case are, particularly with the Criminal Justice Act 2003 in force, likely to be as difficult and complex as those involved in a long fraud. It is this part of the Bar which needs and deserves the particular attention of the Circuit's leadership. We must again forcefully argue for jury trial in the coming months, and for proper funding for those involved in what most concerns society: cases which have an impact on our daily lives.

The Circuit structure

The scale and the size of the South Eastern Circuit brings real advantage for the Bar, particularly with the problems which we face in fees, funding and retention, but without any sense of loss of individual identity or support from one's colleagues. We have a "federal" structure. Each Circuit Mess is separately constituted and has representatives on the Circuit Committee. Each Mess is itself quite large: when the Kent Bar Mess holds its annual dinner around 150 people dine together. The Circuit Messes therefore provide a collegiate "grouping" for practitioners who regularly appear in particular Circuit courts.

Speaking as a Circuit

If each Mess through its committee discusses the issues which matter to the Bar, and feeds its views into the Circuit Committee, it is possible to have grass roots "feedback" at Circuit level quickly, efficiently, and cogently expressed. Because each area representative is able to hear the views of the other area representatives it is possible for the South Eastern Circuit to express a firm view, e.g., about public funding, for barristers practising across a huge geographical region. For example, last year, during the VHCC crisis, our Committee was able to gauge very quickly what was the strength of feeling. As Leader, I could let the Chairman of the Bar and the fee negotiation team know of the views of the Circuit. I could also ask senior practitioners to heed the call from the Chairman of the Bar, during the time when individuals were refusing to sign contracts, to prevent any defendant suffering by appearing pro bono. The South East (and London in particular), has the highest cost of living, and therefore, relatively, the meanest rate of pay for those doing publicly funded work.

If the Government does not come forward with a sensible offer in the near future, I expect the same strength of feeling will be expressed by individuals around the whole Circuit.

Timothy Dutton, Q.C.

Middlesex Guildhall: Crown Court or Supreme Court?

Even before the Constitutional Reform Bill, senior members of the judiciary talked about turning the Law Lords into a Supreme Court, housed in a building of suitable dignity in central London. While the Bill was going through its Parliamentary stages, the Lord Chancellor announced that the building would be Middlesex Guildhall, to be revamped at a cost of £30 million, with a further £15 million earmarked to relocate the existing crown court work. While the battleground shifts to obtaining planning consent from English Heritage, art historian Karen Evans, whose husband, HHJ Fabyn Evans is the presiding judge at Middlesex Guildhall, reminds us of the building we still enjoy.

The Crown Court at Middlesex Guildhall might be dismissed as a minor neighbour to the 'greats' of the Houses of Parliament and Westminster Abbey. Its architect, the Dundee Scot, James Sivewright Gibson, described the site as "one of the finest in London" and for it he conceived a "dainty piece of ornament" as he wrote in the pamphlet accompanying the ceremony for the formal opening by HRH Prince Arthur, Duke of Connaught in December 1913. Gibson provided a unique Art Nouveau Gothic design, for a building of quality which preserved its own individuality.

Steeped in history

The "Broad Sanctuary" address gives a clue to some intriguing history. In the eighteenth century, it was the site of Westminster Market but long before that it was occupied by the old sanctuary building constructed, in the precincts of the Abbey, "by the benevolence" of Edward the Confessor. So as long as a criminal or debtor managed to reach sanctuary here he was safe from arrest. Edward III constructed a belfry (later the 3 Tuns Tavern) to house three great bells rung on royal ceremonial occasions whose "ringings sowered all the drinke in the town". Edward V was born in Sanctuary Tower, while his mother, Elizabeth Woodville, took refuge from the forces of Henry VI. The Queen again took sanctuary, with her younger son Richard, but no sanctuary could save the brothers from their fate in The Tower of London.

In 1782, Middlesex Sessions began to sit in a fine building, financed by the Duke of Northumberland, in distant Clerkenwell. The first Guildhall for the Westminster justices was built on the Parliament Square site in 1809 by Samuel Pepys Cockerell, the "Liberty of Westminster" falling within the County of Middlesex. After the Local Government Act 1888, the Westminster justices became responsible to the new County of London. As a sop to Middlesex's reduced status, and upon payment of £10,000, Clerkenwell was surrendered and the Guildhall site handed over to the Middlesex justices and County Council. F.H. Pownall was called upon to add two stories to Cockerell's building to accommodate both the justices and the county offices, but this was soon inadequate. The building was demolished in 1911, along with the remains of the ancient sanctuary vault (then the court cells) and the support of the medieval tower.

A new building

The new Middlesex Guildhall gave physical expression to Middlesex County history. In it were hung portraits of the great men: the first Duke of Northumberland, Lord Lieutenant of the County (magnificent full-lengths by Reynolds and Gainsborough), Baptist Hicks (probably by Paul Somer); and two portraits of the blind Sir John Fielding, magistrate, prison reformer and Middlesex justice from 1754-1780. There is also silver and other objets d'art, not to mention the Middlesex Regiment War Memorial by Richard Goulden of 1925.

Architecturally, Gibson articulates the compact brown Portland stone exterior of Middlesex Guildhall by using an essentially original combination of Gothic forms and motifs: the symbolic and picturesque tower together with the ornamented attic windows enliven the skyline while the main doorway and windows above are embraced by unusual segmental arches supporting Art Nouveau/Tudorbethan scale friezes. These are very fine and detailed, which are characteristics of the building as a whole. The sculptural programme was carved by the Italian Carlo Magnoni, but designed by Henry Charles Fehr (1867-1940). Born in Forest Hill but descended from a President of the Swiss Republic, Fehr was a prodigy who first exhibited at the Royal Academy at the age of 20. He was admired by Lord Leighton and Sir John Everett Millais. His bronze, Perseus and Andromeda (1893), prominently adorns the steps of Tate Britain. The Guildhall frieze depicts the granting of Magna Carta by King John, Henry III granting a charter to the Abbey of Westminster, the Great Hall at Hampton Court and Lady Jane Grey accepting the Crown of England (Lady Jane's father in law was the then Duke of Northumberland). Between the scenes are the statues of "Justice" and "Prudence". To me, the delight of the Guildhall exterior is the small humorous gargoyle-like half figures who look from above and into the many windows; quaint, imaginative and attractive, they repay close scrutiny.

The decorative scheme

All the ornamental schemes and fittings were designed or chosen by the architect. It is the Art Nouveau unity that gives rise to the uniqueness of the building's style – Gothic planning was 'additive' but Gibson subjugates Gothic detail to the Art Nouveau whole. At the same time, he was modern enough to use steel framing to support the roof of the council chamber (now court 3) and steel trusses to hold the ceiling, which looks like a timber hammer beam supported on corbels covered by finely carved angels. In the chamber, the handsome, carved-oak bench ends, designed and executed by Fehr, are portraits of the Kings and Queens of England. The fine panelling, here and elsewhere, was undertaken by the big Glasgow firm of Wylie and Lochhead, who fitted out the ships which were built on the Clyde.

There is an unusual broad, curving ante-chamber, with commemorative stained glass windows, which is reached by a semi-circular main staircase in an open cage with a flamboyant vaulted top which rises from the grand entrance hall below. The latter houses the Middlesex trophies, a bust of Edward VII by P. Bryant Baker and the illuminated panels commemorating the unique use of courts one and two, during World War II, by Belgian, Dutch, Polish, Greek and Norwegian Courts dealing with military and maritime offences committed by foreign nationals.

Like the ceiling of the Council Chamber, the elaborate fan-vaulting of Court 1 is also a tease. For many years the resident judge feared a wrong decision might bring down on his head a proverbial ton of bricks (or weighty stone) while in fact all he would have suffered would have been a mighty shower of Gilbert Seale & Sons wonderful decorative plaster – most of the 'stonework' in the building is in fact plaster. Courts 1 and 2, both of which extend through two floors in height are designed for ease of communication and to enhance a clear definition of roles: the rooms are dominated by the raised bench for the judges, while the jury box, witness stand and dock are at different levels. Gravitas is further enforced by the elaborate tracery windows fitted with stained glass which in turn are complemented by attention to the smallest details of the door locks and furniture (here as throughout the building). Everything was supplied by the leading makers of the day: stained glass from Abbotts, furniture from Schoolbred,

ironmongery and fittings from Jas. Gibson, not to mention the celebrated Art Nouveaux light fittings and iridescent green/blue tiling found throughout the building. The overall cost was over £111,000. Gibson did not however shun expediency: a shortage of appropriate heraldic devices prompted him to request the council to circulate the Middlesex sheriffs, and the chairman and deputy chairman of the standing Joint Committee for copies of their coats-of-arms.

Like all buildings Middlesex Guildhall had initial teething troubles: cells could be opened with old keys or nails (whereas in the Library there were 19 keys, one for each bookcase), the front door did not shut and workers in Room 48 had to suffer swollen feet and an unpleasant smell from the linoleum paste as the room was situated immediately above the boiler. But the building has always been greatly valued and its integrity admired by those who have worked in it over the past 90 years. Indeed during the 1985-7 restoration and modernisation the booklet produced by the Court Service states, "clearly the original courtrooms and council chamber had to remain unaltered". Let us hope that present and future generations will continue to care for and respect this unique and dynamic Crown Court building.

The Criminal Procedure Rules: A Culture Change

Lord Woolf's tenure as Master of the Rolls left behind the legacy of the 'Woolf reforms', the new Civil Procedure Rules which revolutionised litigation; at the end of his tenure as Lord Chief Justice, he is about to bequeath us the Criminal Procedure Rules, which replicates both the language and the concepts of civil law. Tom Little of 9 Gough Square, Assistant Junior of the Circuit and a member of the Rules Committee, gives us a preview of what is in store.

The Criminal Procedure Rules 2005 ["Crim PR"] come in to force on 4th April 2005. Some members of the Bar and many solicitors are blissfully unaware of their existence and of their potential impact.

The Crim PR consolidate in one document, and for the first time, all of the rules governing criminal practice and procedure in the magistrates' courts, crown courts, and the Court of Appeal. Previously, the rules were scattered amongst numerous pieces of secondary legislation, most, if not all of which, had been drafted with no reference to the other rules. Over time the Rules Committee will seek to simplify the existing rules and to change some of the language, in order to make them both simple and simply expressed.

However, the Crim PR do more than simply consolidate existing Rules. There are two significant parts which are new and which seek to instill a culture change in those who practice in the criminal courts. The first is the overriding objective and the second is active case management.

Overriding Objective

Part 1.1(1) of the Crim PR states "The overriding objective of this new code is that criminal cases be dealt with justly". This is laudable and uncontroversial. The Crim PR then sets out a series of illustrations of how to deal with a case justly. Two of those illustrations are worthy of note:

(A) "dealing with the case efficiently and expeditiously"

(B) "dealing with the case in ways that take into account –

(i) the gravity of the offence alleged,

(ii) the complexity of what is in issue,

(iii) the severity of the consequences for the defendant and others affected, and

(iv) the needs of other cases."

This therefore introduces the concept of proportionality. It will be interesting to see how far this is used by judges to reduce the scale and scope of some prosecution cases.

The Crim PR goes on to state that the "participants" in a criminal case must further the overriding objective. This duty is wide. It relates not just to the parties but to participants who must "prepare and conduct the case in accordance with the overriding objective". Part 1.2 of the Crim PR also introduces a requirement on the participants to "at once inform the court and all parties of any significant failure ….. to take any procedural step required by these Rules, any practice direction or any direction of the Court". It is hoped that this "snitching" provision will not be commonplace. The failure must be "significant" but it will be interesting to see how this develops in practice. As we all know it is a very rare case that gets from charge to trial with both the prosecution and the defence complying with every direction on time.

Case Management

Part 3 of the Crim PR requires the Court to "further the overriding objective by actively managing cases". A number of illustrations of how the Court will actively manage cases are set out in the Crim PR. The important requirements to consider are:

– "the early identification of the real issues"

– "ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way"

- "encouraging the participants to cooperate in the progression of the case".

Focused and active case management with a desire to shorten cases and encourage cooperation will represent a culture change for many who practice in the criminal courts.

Active case management brings with it the requirement for greater 'front loading' of work. It will be necessary to justify which witnesses will attend trial and for the evidence to be reduced to that which is relevant to the real issue(s). The current fee regime in the crown court is not suited to such a system of front loading nor to the new PDHs which are called 'Plea and Case Management Hearings' ['PCMH's']. Negotiations with the Government on this very question are ongoing.

Part 3 of the Crim PR also requires (unless the court otherwise directs) that the court, the prosecution and the defence have a Case Progression Officer. He or she must monitor compliance with directions, keep the court informed of the progress of the case and be contactable about the case. This will require those who instruct us, whether for the prosecution or for the defence, to alter their practices. As far as active case management is concerned, the buck will stop with the Case Progression Officers.

It is too early to say what the prospects of success will be for the Crim PR. We all know that there are so many external factors and variables which ensure that the criminal justice system does not run like clockwork. However, well prepared and efficient trials must be a sensible aim. At the time of writing this article the Case Management forms and an amended Practice Direction are being finalised.

The Crim PR, the case management forms and the Amended Practice Direction will be on the DCA website (www.dca.gov.uk) shortly before 4th April 2005.

Members of the Circuit will need to be ready. Although there will be pilot courts, the Rules will apply across the Circuit from 4th April 2005, with many judges wielding the active case management stick. Enjoy!

Death Row and Debutantes

Max Hardy, pupil in Hollis Whiteman chambers, went to New Orleans with a warning and came home a wiser man.

Max Hardy with John Thompson and John, Jr.

Even before I flew out to New Orleans to work on death row appeals I had been warned that the subject of capital punishment provokes ungovernable passions in the hearts of many Southerners. Under no circumstances should one discuss the matter with strangers in bars. It was thus inevitable that within my first two days I found myself sitting alongside a very 'well-served' fellow, who forcefully enquired what I was doing in New Orleans. I replied *sotto voce:*

'I'm working on death row appeals.'

He looked aghast, then disgusted and said, whilst recoiling from me:

'Wow man, that's heavy stuff. So what exactly are these death row pills then?'

This sort of linguistic catastrophe was to become commonplace.

An eye-opener

My job involved working alongside an attorney called Nick Trenticosta who specialises in capital post-conviction appeals, that is, he represents death row inmates who have been convicted and lost their first automatic appeal, which is normally conducted by the trial lawyer. The post-conviction lawyer will operate as a solicitor, a barrister and an investigator all at the same time, trying to find the new evidence which can now be adduced. This partly accounts for why it is that inmates spend so much time on death row: people like Nick have to devote a lot of time and energy trying to unearth new evidence and to force disclosure from the prosecution.

Though I was familiar with the gross injustices of the U.S. criminal trial process from books, films, articles and lectures none matched seeing them first hand. Reading judgments holding convictions safe in the face of incontrovertible evidence of innocence is a deeply disquieting experience and goes some way to explain why death penalty appeal lawyers work with the fervour of zealots. Our office was very small and situated in the basement of a Baptist church located on smart St. Charles Avenue. It is a street lined with trees garlanded with Spanish moss, and splendid whitewashed mansions with rocking chairs on the porches and Stars and Stripes hanging heavy in the humid air.

The Ortiz allegation

I was immediately put to work on the case of Manuel Ortiz. He had been on death row for some twelve years, since being convicted of contracting the murder of his wife Tracie. The alleged motive was to collect on her life insurance policy which had recently been increased in cover to $900,000. She had been killed in her home along with a friend who was unfortunately with her that day. Tracie had been shot and the other woman had been stabbed which demonstrated that two people had to have been involved. There was no sign of forced entry and so either Tracie had admitted her killer into the house or that person held a key. Nobody has ever been convicted of the murders. At Ortiz's trial the prosecution star witness was a man called Carlos Saavedra, a former friend who gave evidence that Ortiz asked him to kill someone for money.

Max and fellow intern, James Baxter

Apparently Ortiz did not give the future victim's name, but he described her as black, athletic and living in the suburb of Kenner. Saavedra tipped off the FBI, who were interested but failed to take any real action. Some weeks later Saavedra returned and said that the killing was not going to go ahead. A few weeks later Tracie and her friend were dead.

An alibi, but . . .

The gun used in the killing has never been recovered. However the knife that was used was found a few days later in a derelict lot near the house. It was a Gerber combat knife, of a variety used by the military. Half the blade was serrated. Evidence was called that Ortiz had bought in the preceding months a Gerber combat knife. He admitted this, but claimed that one he bought did not have a serrated edge.

The killings took place when Ortiz was in El Salvador. He was informed of his wife's death by his brother-in-law. He was subsequently contacted by a police officer in a recorded conversation. Ortiz did not say that he already knew, and his tone was flat. He said that he would return to the United States once he had resolved his business in El Salvador. His girlfriend there had just given birth. Upon his return to Miami, on a false passport, Ortiz was arrested.

Even if Ortiz was innocent it was not difficult to see why he was convicted. However it rapidly became apparent that things were a great deal more complicated than they appeared. First Carlos Saavedra could hardly have been described as a well intentioned member of the public. He had been an active and leading member of the Honduran hit squads which in the 1980s killed dissidents and students that had the courage to speak out against the regime. This fact was never brought to the jury's attention nor the fact that Saavedra was effectively a gangster who had been caught by his wife in the act of raping their daughter.

A dying declaration

Nick's extremely brave Latino wife Susanna had made a number of reconnaissance trips to El Salvador in order to research the background to the killings. There she met Carlos Saavedra who was on his deathbed. He made a statement to her that he was the killer. My first task therefore was to establish under which hearsay exception the statement might be admissible. In addition, Nick asked me to provide him with a historical overview. A task that would have been utterly straightforward in the Inns' libraries was not so easily accomplished in the Loyola University Law Library where my enquiries were greeted with bafflement by the well meaning but rather ineffectual ladies there who suggested I try Google.

Prior to the Criminal Justice Act 2003, there was the exception pertaining to dying declarations. Unfortunately they must be made by the victim and not by the perpetrator. Of more promise was the exception that extended to statements against interest, but that requires someone who is still alive. Saavedra's death meant that he would never be able to give evidence. It was hard to see the court attaching much weight to his confession.

Also working in our office was John Thompson who had the previous year been released from death row after 18 years when it was discovered that his prosecutor had deliberately secreted blood evidence taken from the crime scene that utterly demonstrated that he was not the perpetrator. He was weeks away from his execution and had exhausted all his appeals. The man who put him on death row had been photographed for a magazine standing behind a desk on which was a model of an electric chair. Stuck on the model were the faces of six black men against whom he had secured death sentences. Five of them have subsequently been exonerated

and freed. No misconduct proceedings have been brought against the prosecutor; he has not even been censured.

Thompson is a remarkable individual who has avoided the hate fuelled self-destructiveness that often makes it impossible for exonerees to reintegrate back into society. Befriending him was undoubtedly the best thing that happened to me in America. He introduced me to a side of New Orleans which even many locals never see on account of the de facto apartheid that exists there. I went with him to a Second Line Parade. These take place on Saturdays in the black parts of town and are organised by Social and Pleasure clubs. These are jazz bands with liveried dancers who follow behind and twirl their canes and ornamented parasols. Behind them follows all the local community (the second line), also dancing to the music. Thompson told me that until recently they were very dangerous as the crush of people made them prime locations for drug dealing and Montagu/Capulet style revenge killings. The routes of the marches meander through some of the roughest and most dilapidated parts of town that at any other time are no go areas, even for the police.

Tonight at eight thirty

If the Second Line Parade was the most exuberantly joyful event I attended in New Orleans then *Le Debut des Jeunes Filles de la Nouvelle Orleans* was definitely the most bizarre. I was present at 'Half after eight of the clock' in the Imperial Ballroom of the Fairmont Hotel for the first debutante presentation of the season. I was escorting a very amusing girl called Brittney Bean who, as a returning deb, was definitely a member of New Orleans' *jeunesse d'oree.*

The only catch was the dress code, which was white linen suit with black shoes and belt. I had brought none of these things, and so was obliged to rent a white tuxedo instead. When the seamstress had finished her alterations I discovered that one sleeve was three inches longer than the other, that the trousers were clown sized and that the bow tie was the sort of thing a 4-year old would wear at a footballer's wedding. Thus unhappily apparelled I approached the hotel. I could see some 200 of New Orleans' brightest and best flowing our way.

The other side of New Orleans

As I sat and admired the sea of white and crinoline Brittney told me the form. The ballroom was split in two with circular tables on either side. In the middle of the room was a runway with a band at one end and a stage at the other. Half way down there were twenty chairs on either side where the mothers of the girls being presented sat and then a little further on was a small dais.

Quite soon, the lights were dimmed and the band played the Star Spangled Banner. Then four young bucks appeared in their white suits wearing boaters that, for some unexplained reason, had around them the hatband of the Brigade of Guards. They stood in a line and were presented by the compere whereupon they stepped forward, doffed their hats and sauntered down the length of the runway to take their places.

At this point the first deb was announced. A dainty little meringue appeared in the spotlight on the arm of a grizzled patrician. The presenter announced: 'Miss Katherine Charbonnet Flower. Daughter of Mr and Mrs Richard Charbonnet Flower will be presented by her *fathurr'.* The band struck up My Girl and father and daughter processed down the runway looking pleased as punch. Midway, the girl curtsied to her mother, climbed onto the little dais and bobbed to the whole room. She was then handed over to one of the blades in boaters and placed on the stage. This procedure was repeated about 40 times with a different tune for each girl until the blushing flower of Louisiana's maidenhood was arrayed splendidly for our delectation. According to Brittney many lessons with a dipsomaniac etiquette instructor went into this fetching spectacle of choreographed loveliness. Then all the girls danced with their fathers and it was free for all at the bar again.

Not a place to stay sober

Finding myself in a glittering ballroom by night and death row by day made New Orleans seems eventually rather unreal. The unbridgeable gulf that separates the rich and the poor, and the impenetrable barrier to positive change, only perpetuate the monstrous things that are done in the name of justice in Louisiana. It accounts for the heavy melancholy that pervades New Orleans. I have never seen such a hard drinking city and given the unpalatable truths that need to be addressed I could see why so many were happy to live their lives in an alcohol induced stupor.

What Happened Next

Max Hardy's successor in New Orleans was Aaron Watkins. A Middle Temple student who is between doing the CPE and starting the BVC courses, he manifested his commitment to human rights and civil liberties by 'picking up the baton' when Max came home. He continues the saga of the appellant, Mr. Ortiz

I followed on from Max as the intern at the Center for Equal Justice. My arrival in late September 2004 was set to coincide with the beginning of an important evidentiary hearing for Ortiz. Since the failure of his automatic appeal after sentencing twelve years ago, he had not been back inside a courtroom. This long anticipated opportunity would allow him to present his three grounds that the conviction had been wrong: outright innocence, prosecutorial misconduct, and prosecutorial conflict of interest. I had scarcely arrived, however, when the threat of Hurricane Ivan intervened, to ensure Ortiz was kept waiting even longer: The hearing was postponed until December.

Outright innocence?

The claim of 'outright innocence' rested largely on the evidence of Carlos Saavedra's wife. Ortiz's lawyers, Nick Trenticosta and Susanna Herrero, had worked hard to locate her in Honduras. They eventually managed to persuade her to come to New Orleans to testify in person. This was a gamble. Whilst oral testimony might be more compelling, it would also be subject to cross-examination.

The prosecutorial misconduct and conflict of interest claims focused on the actions of a notorious prosecutor (and later judge) named Ronald Bodenheimer. In addition to serious misconduct at trial involving the suppression of exculpatory evidence, Ortiz was alleging that Bodenheimer had concurrently represented the victim's family in a civil matter, the success of which depended on the outcome of Ortiz's murder trial.

Prosecuting without mercy

As a prosecutor Bodenheimer operated without empathy or compassion. This alone does not distinguish him from many of Louisiana's prosecutors. However, the proud display in his chambers of a plaque shaped like a lethal injection syringe and carrying the inscription 'The Big Prick Award', surely puts him among the most egregious. It was gratifying to learn that in April 2003 Bodenheimer received another title to add to his already impressive list: he is now 'inmate 27966-034', serving a forty-six month sentence on federal racketeering charges.

Bodenheimer planned to testify at the hearing. At one stage he spoke to Nick and Susanna, and explained his unsurprisingly perverse reason: He considered his job to be much like Nick's. It's all about saving lives. By ensuring men like Ortiz are off the streets he was saving future victims [Editor's note: a recent episode of 'Judge John Deed' proceeded on the same basis: a prisoner murders a fellow inmate whom he is believes is a paedeophile, his Q.C. tells the jury that he was acting in defence of potentially future victims. The jury acquitted] In the week preceding the hearing Nick learned that Bodenheimer had changed his mind. His lawyer had advised him to plead the Fifth Amendment, which confers the right against self-incrimination. What the potential crime was, we did not know. All we were told was that testifying could open the door to a further Federal prosecution.

If Bodenheimer was not going to testify then Ortiz's team faced a number of pressing questions: Should he be required to attend court to plead the Fifth in person? Could he plead the Fifth to some questions but not all? What was the degree to which he had to persuade the judge there was some possibility of self-incrimination? And, most importantly, how was the judge to weigh up Bodenheimer's right to the Fifth against Ortiz's constitutional right to due process? Would Ortiz be able to ask the court to draw adverse inferences from Bodenheimer's refusal to answer questions? This 'last-minute' change of mind had come out of left field, and it meant substantial reassessment.

A surprise witness

Ultimately our concerns were academic. On the third day of the hearing inmate 27966-034 strolled into court in civilian clothes (a distinct contrast to Ortiz in his orange jump-suit and shackles) amidst considerable media interest. Bodenheimer's lawyer announced that, against legal advice, his client would waive his right to the Fifth, and answer questions after all. On reflection, Bodenheimer's appearance should not have come as a surprise. The opportunity to spar in a court he once virtually ran was too good to pass up.

Examining Bodenheimer proved hard work. When he saw the opportunity to score, he was forthcoming, almost long-winded. Yet when he sensed difficulty or danger he repeatedly retreated to the excuse that Ortiz's trial was too long ago to remember specifics. Of course he could say, without hesitation, what his usual by-the-book practices would have been. Bodenheimer fought his corner doggedly. He conceded nothing, not even embarrassment for his own change in circumstances or the excruciating situation in which he found himself.

Miss Sanchez speaks out

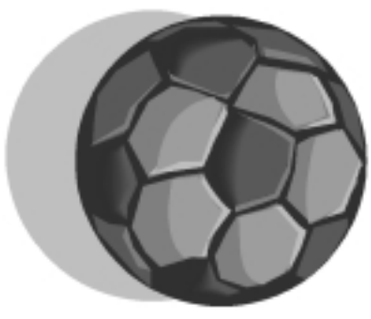
There could not have been a starker contrast to Bodenheimer than Saavedra's wife. 'Miss Sanchez' was much younger than her late husband. She had become involved with him as a student, quite some time after his work for the Honduran government, which consisted of torturing and murdering the regime's political opponents. She did not speak a single word of English. She said she practised as a 'public' lawyer in Honduras representing the poor. With considerable credibility she claimed to be interested in justice and the truth. There were obvious vulnerabilities which were exploited in cross-examination, and rightly so. Most significantly, why had this loyalty to the truth had not prompted her to come forward sooner? But the one unalterable fact was that she had nothing to gain by turning up in New Orleans to set the record straight. Indeed stirring up the past and speaking ill of the deceased Saavedra, whom she clearly loved, in order to speak out for a man she did not even know, was more likely to endanger her back at home.

Throughout the hearing Ortiz participated fully. He sat alongside Nick, and frequently passed him pieces of paper with questions he wanted the witnesses to answer – questions which must have tormented him for years. I doubt the answers brought him any real comfort.

The appellant waits

At the time of writing, Ortiz still awaits the decision. It is impossible to predict what the outcome will be, or even precisely when judgement will be given. From an outsider's perspective it seems clear that the prosecutorial conflict alone should be enough to secure a new trial. The briefest flirtation with Louisiana's criminal justice system however, quickly teaches one to stifle such reasonable expectations.

SOUTH EASTERN CIRCUIT FOOTBALL



The Circuit is looking to form a football team with the possible intention of playing at the World Football Cup of Lawyers in Turkey between 19th May and 29th May 2006. Would any member of the Circuit who would be interested in playing football please contact the Assistant Junior Tom Little at **tlittle@9goughsquare.co.uk** or on **020 7832 0500**.

Hampel Goes to Warsaw

Warsaw in February is not the obvious winter weekend destination. Fortunately, a Presentation of English Advocacy, the first major event since the twinning of the South Eastern Circuit and the Warsaw Bar largely took place indoors.

Five of us travelled out: The Leader, Tim Dutton, Q.C., Sappho Dias, Stephanie Farrimond, Iain Morley and myself. It was Iain who made it all possible: he dealt with the arrangements, wrote the case study and provided an advance copy of his upcoming book, **The Devil's Advocate** for the 24 Polish trainees.

The plan for the Saturday was to present a mock trial, after which our hosts would be given the opportunity to practise examination in chief, cross examination and closing speeches. Iain realised though that we could not simply parachute an English court into central Warsaw. We needed to have some idea of the context in which the Polish lawyers operate.

Welcome from Professor Kryszynski with Bartek Jankowski

The Polish courts

On the Friday, he and I spent a fascinating morning, in the company of Bartlomiej ('Bartek') Jankowski, an advocate with CMS Cameron McKenna in Warsaw. He took time off from the biggest fraud trial in Polish history, to show us the law courts on 'Solidarity Street' (Al. Solidarnosci)

The court house is vast. Built in the 1930s in a style of moderne classicism with cast iron torcheres outside, there are several courtyards, endless corridors, and dozens if not hundreds of court rooms. The entrance hall stretches the width of the building, with dozens of fluted columns and chunky, marble staircases. Criminal, family and civil cases are all heard here. Members of the public may attend trials, though our arrival in a courtroom was treated as an event requiring some explanation. The building is undergoing massive restoration which includes repainting the sludge brown walls of the communist era a more cheerful light green. The courts have no set sitting hours: court days are whatever the judge decrees. They begin about 9.30; they adjourn for lunch whenever; Bartek has on occasion been there until 8 or 9 at night. We were there on a day when most cases finished by 1.

Polish law students, like many of their continental colleagues, have a choice between three streams: the judiciary, prosecution and independent practice. As a result they find very curious the fact that an English barrister can, successively, prosecute, defend, and sit as a Recorder, albeit in different cases, but perhaps all at the same court building.

The most striking aspect of the criminal courts is the lack of juries. Depending on the seriousness of the charge, the tribunal consists either of a judge and two full time assessors, or two judges and three assessors. They sit at a long table. To their right sits the prosecutor. To their left is a double row of benches. The front row is for advocates; the back row is for defendants. There is no dock but police are present if a defendant is in custody. The witness stand is in the middle. Advocates sit when asking questions but stand when addressing the court. Everyone wears a gown, with long, pleated sleeves, a bib and a wide collar. The presiding judge also wears a gold chain with the Polish eagle. The bib and trimming are purple for the bench, red for the prosecution, green for defence advocates and blue for 'legal advisors', who do civil but not criminal cases. The laws and procedure are codified and are contained in a red book which is considerably smaller than Archbold.

The judge acts both in an inquisitorial and adjudicating role. The assessors, who are sometimes referred to as 'the vases', do not take an active part in court. They did not ask questions and they took no notes. We did not see any audio recording equipment. In two courts, a typist at a laptop kept a record of what the judge indicated should be the recorded evidence; in a third court, she was merely armed with a biro.

We saw four fascinating cases. The most bizarre was a local cause celebre which has been running, on and off, since 1997. The allegation is that the defendant, who was employed in a fashionable shop, shot and killed her employer and seriously wounded his wife. Although she was known to them, the defence was mistaken identity. This has resulted in two acquittals to date, both of which have been overturned on appeal. At this third trial, the smartly dressed young defendant mingled in the building with the surviving victim, who, we were told, 'supports the prosecution' by attending the hearing with her own lawyer.

The one civil case was conducted by a judge alone. The expert witness was largely questioned by the judge, with questions by the advocates, one of whom had to be shushed when he intervened at the wrong moment. It was a reminder that behaviour in court is universal.

The most dramatic criminal case concerned four young men who ran a simple scam: they advertised for sale a non-existent car and then robbed the arriving cash purchasers of their money. This case illustrated the role of the 'protocol' or what we might call a deposition which is taken from witnesses and defendants, the latter of whom have the assistance of a lawyer. Evidence in chief, even for police officers, is done without relying on memory refreshing documents. We later amazed our Polish colleagues by explaining that English police officers not only use notes in court but have the benefit of a skill known as 'shared recollection'. In Poland, if the witness gives inconsistent evidence or leaves something out, the judge may read the protocol to the witness and ask him or her if they would now confirm what

It's a result! Triumphant defence counsel Stephanie Farrimond and her acquitted client

it contains. Crucially, advocates are not allowed to ask 'suggestive questions' (i.e., cross examine by putting an alternative version of events) but the judge can. Defendants are never sworn before giving their evidence because, we were told, they have a 'right to lie'. Witnesses are not sworn either although they may be, with dramatic effect, during the course of the evidence if their credibility is questioned.

We saw the first defendant in the robbery scam give evidence. He stood but did not go to the witness stand. The judge read to him his protocol (the original, which is handwritten) as his evidence differed from it. He explained (Bartek translated for us) that he had said all that at the time but it was wrong; he had decided to make up a story as the truth could not be sustained. 'I didn't know I could change my version; no one would believe me', So far, so familiar to English barristers. It was the judge though who went for the jugular in querying this excuse. It will be her task, in due course, to decide whether or not she believes the witness she has herself demolished. Defendants incidentally are unable to plead guilty: they can admit what they had done but it is for the court to decide if this makes them guilty.

The second defendant then stood. He was asked if he understood the charge. He did. He was asked if he wished to exercise his right to testify. He said that he did not. The judge then read out his protocol. Despite his decision not to testify the judge proceeded to question him about it. His evidence was catastrophic: he had not, after all, seen the gun; the statement was rewritten by the prosecutor who took the protocol; although he had read it afterwards he thought it would be better to leave things as they were ('do you think it's better to take part in crime than to tell the truth?' the judge asked him); although the police told him that the co defendants had implicated him he did not think of implicating them in his false confession. Judge Agnieszka Zakrzewska was one of the most formidable cross examiners we had ever seen.

The two Bars at dinner

A mock trial in the English style

The next day, the SEC team arrived at 9 a.m. at the headquarters of the Warsaw Bar, where the twinning ceremony had taken place last year. It is an elegant, late nineteenth century building with a series of handsome meeting rooms which worked very well for our break-out sessions. We did not emerge again until 6 p.m.

There were welcomes and introductions first, from Professor Piotr Kruszynski, who is Dean of the Faculty of Criminal Procedure in the University of Warsaw, and then from Tim Dutton, Q.C., on behalf of the Circuit. Iain Morley and Bartek introduced the case study, and Tim explained the Hampel method. Iain noted the differences in trial procedure between the two countries, having regard to what we had seen the day before. We then had the mock trial in the case of Regina v Plumb. Plumb is a criminal/personal injury barrister who is feeling the financial pinch from publicly funded work and no win/no fee agreements. One day after court he and his instructing solicitor go into a computer shop to look at Psions. He puts one in his pocket, to see if it would fit his jacket. His clerk then rings him on his mobile to tell him that he is not in work on Monday. Distraught, Plumb sets off for chambers, forgetting that the Psion is still in his pocket. He is stopped outside by the officious store detective and charged by the police.

In this case, Mr. Recorder Dutton, Q.C., presided. Iain Morley prosecuted and Stephanie Farrimond defended. Operating on a strict timetable, we got through the case while injecting more realism than the Poles might have realised. Playing the store detective, Sappho Dias altered an important part of her evidence from her statement; she then blamed the discrepancy on a typing error. Playing the part of the police officer I was unable to recall the words of the caution. As the defendant I detailed the horror of a criminal barrister discovering that he will probably be out of work for the whole week. As Plumb's instructing solicitor, Sappho tried to be helpful to the defence by unwittingly contradicting me in a crucial respect. Instructing the jury of twelve local lawyers, Tim Dutton told them that they must accept as true the evidence that criminal barristers are impecunious due to the current fee system. The twelve then retired to an adjoining room from which we could hear gales of laughter. After the ten minutes allotted to deliberations they acquitted, 11-1.

Advocacy Training

We then started to 'train' the local lawyers in witness handling, using the Hampel method of feedback. First came case analysis. After a generous buffet lunch, they were further divided into four groups. Over the course of the afternoon, they did examination in chief, cross examination, and final speeches, with their colleagues playing the parts of the witnesses. The entire session was conducted in English. This was an enormous achievement on their part; I noted, further, that they had not only listened to the evidence in the mock trial but had incorporated some of it in their submissions.

Stephanie Farrimond teaches case analysis

Our colleagues took readily to our methods. Cross examination was the predictable problem, since they had never done it before and indeed would not be allowed to do it. Bartek explained that he had tried to cross examine witnesses and had been stopped by the judge. Still, he assured them, it was a good case analysis tool. The one person in my group who managed to cross examine with the fervour of Judge Zakrzewska was a young woman who had done an LLM at Columbia University in New York.

After the sessions there was a chance for tea and further discussion. There was much eager interest in what had happened that day. At the end, Professor Kruszynski presented the five Circuiteers with a kindly inscribed copy of FOR YOUR FREEDOM AND OURS by two American historians, about the Kosciszko Squadron of Polish airmen who fought with the RAF during World War II. Kosciuszko was one of the great Polish heroes, fighting the Russian occupation after the partitions. Professor Kruszynski reminded us that British and Poles were comrades in arms during the war and that they are, again, in Iraq, fighting the war against terrorism.

Afterwards we were treated to dinner at Rubikon, a smart new nouvelle Italian restaurant nearby.

The hospitality we received was enormous; the generosity of spirit was moving. Already they spoke of coming to London to show us a demonstration of Polish advocacy. We hope that Judge Zakrzewska will come too.

David Wurtzel

Defending Milosevic

Iain Morley, of 23 Essex Street, tells us what it is like to be part of the team helping the best represented litigant in person in legal history.

Iain Morley

In late September 2004, fellow circuiteer Steven Kay, Q.C. put out an email asking for pro bono help in defending Slobodan Milosevic in The Hague. I responded and was honoured to be invited. I arrived on 4 October, spent seven days in the dizzy task of reading up the case and then returned on 22 November for three months. Quite simply, this is the biggest criminal trial in history.

The former President of Yugoslavia is charged with various war crimes relating to the wars in 1991-92 in Croatia, in 1991-95 in Bosnia, and in 1999 in Kosovo. Each war gives rise to a separate indictment.

Three indictments

The Kosovo indictment consists of five counts: four crimes against humanity, namely deportation, forcible transfer, murder, and persecutions; and one count of murder in violation of the laws or customs of war contrary to the Geneva Conventions. The schedules to the indictment plead 608 identifiable murdered between 1 January 1999 and 20 June 1999. The number of those deported is around 800,000.

The Croatia indictment alleges 32 counts: almost all the 'crimes against humanity' are pleaded, namely persecutions, extermination, murder, imprisonment, torture, inhumane acts, and deportation; in addition to various breaches of the Geneva Conventions, namely extensive destruction, wanton destruction, plunder, attacks on civilian objects, deportation, religious destructions, willful killing and murder. The indictment cites 715 identifiable murder victims, and those forcibly transferred as 290,000. The indictment includes the shelling of Dubrovnik and the murders at Vukovar Hospital.

The Bosnia indictment has 29 counts, including two of genocide and complicity in genocide in the murder of 7000 Muslim men in July 1995 when the UN safe haven of Srebrenica fell to the Bosnian Serbs. The remaining 27 counts plead, as in the other indictments, detailed crimes against humanity and offences in breach of the Geneva Conventions. Aside from Srebrenica, the pleaded identifiable murders number 7355, with forcible transfer of 270,000. The indictment includes the siege of Sarajevo and the shelling and sniping of civilians we all remember from television news reports.

In short, former President Milosevic is accused, between 1991 and 1999, of ethnically cleansing almost 1.4 million non-Serbs, imprisoning many in concentration camps, and murdering at least 15,678; 7000 of whom were with genocidal intent.

Inequality of arms

The case is being prosecuted by Geoffrey Nice, Q.C., who appears to have an army of around 70 lawyers and all the western governments assisting his gargantuan task. In stark contrast, defence facilities are thin on the ground. There are several trials going on at once at The Hague, where the defence team usually consists of a lead counsel and co-counsel, with perhaps an interpreter and two student interns, all sharing a single room, with eight computers with all the other defence teams. In the afternoon there are often more than twenty people and a scrum to get online. Equality of arms has been interpreted to mean equality of courtroom advocacy but not equality of case preparation. In court, the prosecution will field the same number of personnel as the defence, and there may be the appearance of parity to the observer, but the prosecution has far more people helping in the background.

A defence team acts as both solicitor and barrister. Before trial and during trial, the team must employ investigators, proof witnesses, file motions, take instructions, and press for disclosure, which is often very late. This leads to frantic enquiries on the ground in the Balkans with little time before newly disclosed witnesses are called. The paperwork can literally crush you. In the Milosevic case, there are tomes of academic research offered into evidence as exhibits. How anyone can read all the material in one lifetime is arguable. The rules of evidence are a hybrid of the adversarial and inquisitorial styles, leading to the admission into evidence of almost anything of possibly probative value. Hearsay in every form seems permissible; multiplicity of hearsay is merely a question of weight.

A change of counsel

The trial had started in February 2002, before Judges May (presiding) from England, Robinson from Jamaica, and Kwon from South Korea. Sadly Judge May passed away in 2004 and was replaced by Judge Bonamy from Scotland, with Judge Robinson now presiding. Milosevic has famously insisted on defending himself, as he does not accept the Tribunal's authority. However, the Tribunal assigned him Steven and his extremely hard-working junior, Gillian Higgins, to be amici curiae, during the prosecution evidence. That finished in February 2004. There were then six months for Milosevic to prepare for his defence.

Thereafter, his health deteriorated, and so in early September the Tribunal elevated Steven and Gill from 'assisting the court' to running and presenting the entire defence. This decision caused great unhappiness in the Milosevic camp, where he is assisted by a team of Serb advisors. A series of unusual rulings then followed. Steven bravely appealed against his own assignment, and then quite separately applied to withdraw on the grounds of embarrassment when the scale of opposition from Milosevic to him became understood. However, despite all the problems argued orally by Steven and so diligently and exhaustively argued on paper by Gill, the tribunal will not let them go. Milosevic argues he does not want nor need them. They have argued they cannot run his whole defence without his co-operation. The Tribunal has replied they must remain on stand-by in case there is a further deterioration in his health, ready to take up the reins. Milosevic, thanks to Steven taking the point, is now allowed to call his witnesses and run his case for so long as he is healthy. The situation is novel. And in fairness to the former President, he appears to an observer to be doing a pretty good job.

The defence

What can possibly be meant by a "pretty good job" given the scale of the allegations? There is no smoking gun in which he can be shown to have ordered ethnic cleansing, murder, torture and genocide. There is a lot of politics involved. To distil the allegations to their core, and to be non-legal for a moment, the case seems to be this: terrible things happened on his watch, he knew most of the relevant bad people, he might have been able to control them, so he must share responsibility. The jurisprudence at the ICTY is vast, and with each judgment it is arguable that crimes against humanity creep towards becoming offences of strict liability for political leaders. There is a respectable argument that an adult can be convicted of genocide for negligently omitting to act after the event. Some think genocide can now require less mens rea than stealing a bottle of whisky from Tesco.

A political leader can be held responsible under the doctrine of command responsibility for the genocidal acts of others if (a) he ought to have known what was going on, but (b) did not in fact know, and (c) the reason he did not know was because he negligently failed to read a report, or negligently refused to believe a report, and (d)

after the event, failed to try hard enough to punish the perpetrators. The actus reus for genocide does not have to mean widespread ethnic murder: some say it can in theory now mean putting an ethnic group in a warehouse without adequate food, water and toilets with an intention to destroy their ethnic identity. While no one would expect a conviction on such a mild factual scenario, it serves to illustrate the chief complaint among defence lawyers: the jurisprudence is in danger of becoming a "catch-all", in which minor war crimes can be elevated into major war crimes (if there can be such a hierarchy), and just about everyone with any authority has no defence.

Read the judgments

The judgments are fascinating. They are long and detailed. An intelligent body of law with world-wide, far reaching consequences has been created here in the last eight years, from relatively little precedent. Steven Kay, along with Geoffrey Nice and indeed Joanna Korner, who prosecuted several significant other cases, have been at the forefront of this new world, from which an international standard of criminal justice is emerging. Practitioners in England should keep abreast of ICTY developments, (and those at the ICTR in Arusha) as they appear to be influencing our domestic legislation – for example, the Criminal Justice Act 2003 relaxes the rule on hearsay and requires considerable defence disclosure, which are twin features of ICTY court practice.

There is a further facet of the judgments which may be of interest: they are often written by Assistant Legal Officers and later approved by the judges. An ALO is usually bright, and young, with a postgraduate degree. What a job! To create war crimes jurisprudence, and get it past the judges! The draft judgments must be carefully scrutinised, but tend to follow a standard formula. Significant differences in style and reasoning can be observed when reading dissenting judgments, which are instead actively written by the judge concerned in a noticeably personal manner. A visit to the ICTY website is thoroughly recommended, at www.un.org/icty, and please read the "Celebici Camp" judgment for an idea of the length and the scale of the new jurisprudence developing.

1600 Defence Witnesses

The Milosevic trial is currently hearing defence evidence regarding Kosovo. The defendant is allowed 50 court days. Witnesses are limited in time. Then he will be allowed 50 days for Croatia and 50 days for Bosnia. There have to be time limits or the trial will never end. Initially, there were 1600 defence witnesses sought. At one point Steven was due to proof and to call the 1600, which is the reason he needed some help from a bag-carrier like myself. The pressure was enormous. However, once Milosevic was permitted to call them so long as he remained healthy, the pressure relented, and the working day was reduced from a relentless eighteen hours to what over here is a standard eleven hours with lots of coffee.

Recently we have heard from generals, and foreign ministers about the nature of the Kosovo Liberation Army on the age-old theme of whether they were terrorists or freedom fighters, and from many academics on the history of Serbia under Ottoman Rule and throughout the twentieth century. Geoffrey Nice cross-examined the former Russian Prime Minister Primakov on whether he is biased, and Serb history professors on the accuracy of their lifetimes' work. It appears he has an astonishingly wide-ranging role. To many Serbs, rightly or wrongly, it seems his case seeks not merely to prove the individual elements of the specific counts, but also to persuade the Tribunal to reach an unusual judgment of history, namely, that the Serbs have been intermittently violent nationalists for over a century. There is in Belgrade regrettably a perception that the prosecution is trying the entire Serb nation. In fairness to Geoffrey, the breadth of the prosecution is a formidable achievement and some may think he ought to be considered for an honorary doctorate or professorship for all the colossal historical, political, military and geographical learning he has had to achieve in order to be able to mount the prosecution case.

The right venue?

For my own part, I do wonder whether a court operating under the adversarial style is the right environment to try so vast a subject as three different wars, and to joust over historical truth. It may be that a more inquisitorial style could be more efficient and accurate, as one observed recently during the Circuit trip to Poland, an account of which appears in this edition.

Perhaps lost to the wider world in all the agony and bloodshed is the tragedy for Serbia, that she was once our proud and valued ally in two world wars. In this context, the former President is doing well. He often points out how the prosecution may not fully understand the complexity of the ethnic mix in Yugoslavia. On a number of occasions, Geoffrey has had to retreat. But not far.

In the end, former President Milosevic faces a formidable task. He has been exceptionally well assisted by Steven and Gill in what for them have been difficult circumstances, and for a non-lawyer, he is presenting an intelligent case. The jurisprudence is tricky for him, as it would be for anyone in his position, but he fights on. The trial will not end before 2006.

Responding to Clementi

The Bar spent most of 2004 apprehensively awaiting the report by Sir David Clementi and which the Government was likely to accept. The Bar will spend most of 2005 responding to the recommendations.
Stephen Hockman, Q.C., former Leader of the Circuit and now Vice Chairman of the Bar is in a unique position to explain what we will have to deal with

Stephen Hockman, Q.C.

In July 2003, the Government invited Sir David Clementi, Chairman of the Prudential, to carry out a review of the framework within which legal services in this country are and should be regulated.

In March 2004, Sir David issued a Consultation Paper, in which he suggested that there was a need for a new regulatory body for the legal profession. Under his so-called 'Model A', the power to regulate the profession would be transferred, in its entirety, to a new legal services authority with full regulatory powers. Under the alternative 'Model B', the right to regulate would remain with the profession itself, but subject to the proviso that a professional body which wished to continue to regulate its membership would have to gather together its regulatory functions and ensure that they were carried out separately from its representative functions ('Model B+'). 'Regulation' includes training, practice rules, complaints and discipline.

In December 2004, Sir David published his long awaited Final Report. The Government has indicated broad acceptance of his conclusions and intends to publish a White Paper in the late summer or autumn, prior to legislation. The Government is currently conducting discussions with interested parties to assist in the preparation of the White Paper.

In broad terms, the recommendations of the Final Report are as follows.

Delegating regulation

Sir David has recommended the setting up of a new overarching Legal Services Board (the LSB), upon which regulatory powers should be conferred. Importantly, he accepts that in order to build on what he calls the strengths of the existing system of regulation, the LSB, while retaining oversight, should delegate day to day regulation to individual professional bodies, such as the Bar Council and the Law Society. This however is subject to those bodies carrying on their regulatory functions separately from their representative functions.

Living with co-regulation

However much we may pride ourselves on self-regulation, the Government, through the Lord Chancellor, already enjoys the power to call in professional rules which it considers objectionable. The system has therefore, for many years, been one of "co-regulation". The merit of the Final Report is that it would preserve and rationalise such a system. Strong representations are being made, though, to ensure that the Legal Services Board is subject to express statutory restraint in the exercise of its powers, so as to match Sir David's recommendations. The existing high standards and ethos of the profession depend heavily upon its right to effective autonomy of regulation.

Bar Council Model

The Bar Council has produced a model for the reform of its own constitution. This has been developed in outline for consultative purposes and includes reformed regulatory committees, new representative committees, and a Bar Standards Board which will be a 'parent' to all the regulatory committees, and answerable to the eventual Legal Services Board when created. A substantial proportion of the members of the Bar Standards Board will be laymen. The barrister members will not be members of the Bar Council. The Bar Standards Board will be ring-fenced from interference from representative interests within the Bar Council. It will be required at all times to put the public interest first. It will initiate proposals. It will provide an independent assessment of the regulatory matters referred to it by the regulatory committees, and of their performance. The Bar Council will however remain the single governmental and representative body for the Bar of England and Wales, subject to this entrenched separation of functions.

The Bar Council recognises that the development of the new regulatory framework can best be achieved with the active support and co-operation of the Inns of Court. It is to be hoped that a transparent division of functions between the Bar Council and the Inns will be reached by agreement, and a working group has been set up. The proposal is that the Bar Council, through an appropriately constituted and empowered Bar Standards Board, will, after full consultation, have ultimate responsibility for defining the rules, while the Inns in all areas of their functions will have acknowledged discretion to apply those rules.

A new ombudsman

One reason for the Clementi review was the widespread dissatisfaction with complaints handling in respect of solicitors. This was not replicated in respect of the Bar's complaints handling arrangements, which have been repeatedly praised by successive Legal Services Ombudsmen. Nevertheless, the Final Report recommended the setting up of an Office for Legal Complaints under the Legal Services Board, to which all complaints against the legal professional would be directed. The Office for Legal Complaints would have powers of substantive adjudication in relation to all complaints but that it would refer issues involving professional misconduct to the relevant front line body. The Final Report decided in the end not to treat the Bar as an exception, or to exclude it from this process. The failure to give more weight to the Bar's excellent record with regard to complaints handling is disappointing. However, it is of particular importance to note that Clementi recommends that the Office for Legal Complaints itself should be subordinate to the LSB. In other words, he appears to envisage that the Legal Services Board will delegate complaints handling to the Office for Legal Complaints which itself would delegate such complaints handling to the front line regulators in so far as professional misconduct was involved. There would appear to be no logical reason why the LSB could not delegate all complaints handling, and not merely in relation to professional misconduct, to a front line regulator in whose systems it had confidence.

LDP's and partnerships

As anticipated, the Final Report favours Legal Disciplinary Partnerships (LDPs). It stipulates that lawyers must represent a majority by number of the managers of an LDP. The Report further supports outside ownership but stipulates that this must be cleared by the regulatory authorities as "fit to own". The fact that the recommended safeguards here are so elaborate may suggest that these proposals are highly debatable. As regards regulation, the Report seems to envisage that LDPs would choose a front line regulator under the Legal Services Board, and that lawyers generally should have a choice as to a front line regulator, e.g., solicitor advocates operating as sole practitioners might be regulated by the Bar Council whereas sets of chambers wishing to have direct access on a wider basis than permitted by the Bar Council might wish to choose a different regulator for themselves. It would be for the LSB to decide.

The Report discusses the Bar's rule against partnership. It states that it is "not obvious" that many barristers operating as specialist referral advocates would wish to form partnerships, but it concludes that the Bar's arguments in favour of the rule "have force, but rather less force than is claimed". Sir David says that he is not convinced that they amount to a conclusive case for preventing under the Bar's regulatory auspices other types of business structures. He makes no final recommendation on this but encourages the Office of Fair Trading (OFT) to continue their review of this area. It is to be noted that the OFT in their response to Clementi indicated that the availability of LDPs might make it easier for the Bar to justify its present rule.

Professional Principles

To many of those imbued with the traditions of our legal profession in general, and of the Bar in particular, some of the recommendations of Sir David Clementi may seem radical, if not revolutionary. However, these recommendations reflect a trend which is occurring not merely in England and Wales but in the rest of the United Kingdom and elsewhere. The Scottish Parliament is currently engaged in a review of legal regulation in Scotland. The Irish Competition Authority has recently published searching proposals in relation to legal regulation in Ireland. We are not alone, therefore, in facing a bracing "wind of change". Some may think, however, that what is crucial is not only to welcome constructive reform, but also to stand firm in defence of those underlying professional principles which themselves ensure that the public interest is protected and upheld.

Life After Three Rivers

What happens when a case has been to the House of Lords three times, but they still don't resolve an essential point? Charles Hollander, Q.C., of Brick Court Chambers, author of Documentary Evidence, provides such comfort as he can for civil practitioners.

The litigation between the assignees of BCCI deposit holders and the Bank of England has kept the law reporters busy for some time. The case has now spawned its third decision from the House of Lords. But whilst their Lordships have sorted out one burning issue in the law of legal professional privilege, they have declined to resolve one just as important.

An action for misfeasance in public office against the Bank of England based on its supervision of BCCI was never likely to be problem-free. It took one appeal to the House of Lords to ascertain the ingredients of this little-used tort; it took a second appeal, decided 3-2, to resolve that the claimants' case should not be struck out.

The bank collapsed in 1991. Lord Justice Bingham chaired an inquiry into it, during which numerous Bank of England witnesses gave evidence. In order better to present their evidence and submissions, the Bank set up an internal unit (the Bingham Inquiry Unit, "BIU") to obtain information within the Bank and to co-ordinate with the Bank's external legal advisers, Freshfields.

Legal advice privilege v litigation privilege

Faced with no evidence of their own, and an unhelpful report from Lord Justice Bingham, the claimants were keen to obtain material not available to the Inquiry. To do so, they challenged the Bank's right to claim privilege. As the Inquiry was not 'adversarial', it was conceded that, following *Re L*, this was not an instance of litigation privilege, the law of which has remained intact. The Bank could therefore only cite legal advice privilege.

Round One to the Claimants

Legal advice privilege can be claimed even though litigation is not in reasonable contemplation; on the other hand, it cannot be claimed for third party documents, such as expert reports, which pass between the third party and the client or the lawyer. They are only privileged if prepared for the dominant purpose of use in litigation.

In *Three Rivers (No 5)*[1] the claimants successfully persuaded the Court of Appeal that legal advice privilege only protects communications passing directly between the client and the lawyer. Where the party claiming privilege was a corporate entity, the "client" was the person or persons within the corporate entity charged with obtaining the legal advice. Since the BIU was "charged with obtaining legal advice", direct communications between it and Freshfields were privileged. It followed that two classes of documents were not: (a) communications from the BIU within the Bank, even though its purpose was to obtain material to instruct Freshfields, and (b) communications between Freshfields and any other individual within the Bank other than the BIU. In June 2003 the House of Lords refused leave to appeal this decision, expressing concern that this might disrupt the start of the trial. In the event, in March 2005 the case is still being opened and witnesses are not due to commence giving evidence until after Easter.

The Claimants press on

Encouraged by dicta in the Court of Appeal decision, the Claimants decided to go further. Their argument was as follows. Legal advice privilege could be claimed for advice as to legal rights and obligations. Where there are no adversarial proceedings, very little of the lawyer's work falls within that test. There is no problem with "do I have to disclose this document to Bingham?" or "will I be in contempt if I fail to answer this question?" But much of a lawyer's job in non-adversarial proceedings is not about legal rights and obligations. Instead, it is 'presentational advice', i.e., ensuring that evidence is presented in the most attractive light. The Court of Appeal in No 6 agreed that this was not privileged. Lord Phillips MR even queried whether there was a place for legal advice privilege today at all: why should instructions in relation to conveying property or making a Will attract privilege?

On this basis, advice taken by Mr Blair before giving evidence to the Hutton enquiry would not be privileged. Drafts of proofs of evidence of soldiers called before the Bloody Sunday inquiry would fall within the same category. This time the House of Lords gave leave.

The House of Lords steps in . . .

The House of Lords resolved the appeal in *No 6*[2] by imposing a test similar to that in *Balabel v Air India*[3] where Taylor LJ had said:

"legal advice is not confined to telling the client the law; it must include advice as to what should prudently be done in the relevant legal context."

There would be cases where a solicitor becomes the client's "man of business", and where his advice might lack a "relevant legal context". But the "legal rights and obligations" test was too narrow. Lord Carswell said:

".. all communications between a solicitor and his client relating to a transaction in which the solicitor has been instructed for the purpose of obtaining legal advice will be privileged, notwithstanding that they do not contain advice on matters of law or construction, provided that they are directly related to the performance by the solicitor of his professional duty as legal adviser of his client."

. . . but only goes half way

So far so good. But what about *No 5?* The Bank argued that the rationale for *No 5* and *No 6* was the same, and that *No 5* was therefore wrongly decided. The House of Lords, despite hearing full argument on the correctness of *No 5,* declined to decide the point. They should not be taken as endorsing the decision in *No 5.* Meanwhile, the Court of Appeal decision would stand, until he was determined in another case.

The point is of acute practical importance. Both companies and lawyers advising them will need to take great care not to create damaging communications which are not privileged. The Court of Appeal decision in *No 5* does not assist in determining who is the 'client' in any given case. Is "the client" only one person "charged with obtaining the legal advice" or can it be more? The BIU consisted of three individuals: can steps be taken to extend the net to several individuals in any particular case? Moreover, those signing lists of documents in litigation will have to address the basis on which privilege may be claimed for documents coming into existence before litigation was contemplated. What test should be applied here? Problems for an in-house lawyer are acute. He will have a commercial function and a legal function. Where he sends and receives documents within the company so that he may take external legal advice, is he fulfilling his role as client of the external lawyer (internal documents not privileged on the basis of No 5) or giving advice within the company himself (privileged). And the external lawyer who picks up the phone and asks (say) the finance director, rather than the person in the company who has instructed him, for information about the dispute to help him advise will find that his conversation may well not be privileged.

It is deeply disappointing that their Lordships did not resolve these issues, which must now await a litigant getting back to the House of Lords. As they heard argument from Messrs Pollock, Sumption, the Attorney General, the Law Society and the Bar Council, it is unlikely they will have a better opportunity.

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[1] 2003 QB 1556 [2] 2004 3WLR 1274 [3] 1988 1 Ch 317, 330

Hearsay Provisions of the Criminal Justice Act 2003 – An unnoticed revolution?

Professor David Ormerod has taken time from editing cases in the Criminal Law Review and from finishing the latest edition of Smith and Hogan to provide a guide to another vexed portion of the Criminal Justice Act

Introduction

> "***practitioners should be encouraged to focus on the principle that all relevant hearsay is potentially admissible as evidence – I stress 'relevant and 'potentially'.*** (HC Standing Committee B, col. 601)

The provisions introduce welcome changes for witnesses, allowing for use of earlier statements in wider circumstances and to greater effect.

The New Rule

It is important, before dealing with admissibility, to identify whether a statement constitutes hearsay. It is still defined as the reliance on a statement made otherwise than while giving evidence to prove matter stated. However, the scope of the rule is reformed:

- S 115(2) redefines statements to include photo-fits and sketches, a welcome reversal of Cook (1987).
- S 115 (3) (a) restricts the rule to cases where the maker of the statement (W) had as (one of) his purpose(s) to cause another to believe the matter stated. Statements of greeting - "Hello X", mere requests for drugs etc, are probably no longer hearsay since their maker does not intend to communicate anything by them.
- S 115(3)(b) extends the rule, making W's out of court statement hearsay if it causes a person to act on it even if W did not intend them to believe it (e.g., W submits expenses claims not caring whether they will be believed, the documents are hearsay if relied on to prove their contents.)
- The rule is more likely to apply to negative hearsay i.e., where W makes a statement by omitting information, if the purpose of omission was to cause someone to believe that/act on that information.

The reform relating to implied assertions is complex and owing to drafting deficiencies may not achieve its objective of reversing the decision in Kearley (1992).

Admissibility of hearsay via the exceptions

S 114(1) offers four routes to admissibility for hearsay evidence:

- invoking a statutory rule – the new statutory exceptions in ss 116 and 117 and some statutory favourites such as s 9 CJA 1967;
- invoking a preserved common law exception;
- seeking the agreement of all parties - the easy escape if your opponent is as intimidated by hearsay as you;
- persuading the court that admissibility is in the interests of justice – the "safety valve".

New Statutory exceptions

Section 116 replaces and extends s 23 of the CJA 1988, (key differences from that section are italicised):

- S 116 admits first hand hearsay *whether oral documentary or other,* of a statement from an identified person who can be shown to have been competent (s. 123) and who is missing for one of the specified reasons (unless the unavailability is caused by the party seeking to rely on it) – dead, unfit, outside the UK and not practicable to attend, cannot be found. *In these cases admissibility is automatic - no leave is required.* Surely this has the potential to open the floodgates to defence fabrication of alibis from abroad? Automatic admissibility of prosecution evidence also raises potential problems with Article 6(3)(d) of the EHCR, although prosecution evidence is subject to PACE s.78. If the witness is unwilling to testify (at all or selectively), owing to fear (as widely construed s. 116(3)), leave must be sought and the court should consider a special measures direction. In all cases, the relevant person's credibility can be challenged under s 124.

Section 117 replaces and improves s 24 of the CJA 1988.

- Section 117 admits documentary hearsay created or received in the course of a trade or business, *provided the relevant person (ie the person who perceived the events if he is different from the one who created the document) is identified and was competent (s.123).* Multiple hearsay (W has received information from A, who has received it from B etc) can be admitted. If the document was created with a view to criminal proceedings, the 'relevant person' has to be shown to be unavailable for one of the reasons in s 116, or the additional option – that he could not reasonably be expected to recall the events. Admissibility is subject to a discretion exercisable against prosecution or defence (s.117(7)) based on reliability. The relevant person's credibility can be challenged under s 124.

Preserved exceptions

Preserved common law rules are described (or defined?) in s.118, creating complexity by grafting old (and often ill-defined) exceptions onto the modern structure. They concern evidence of reputation, *res gestae,* common law confessions and admissions, common enterprise and expert evidence. Given the safety valve these may prove superfluous.

Safety valve

Section 114(1)(d) provides a general power to admit hearsay if it is in the interests of justice to do so – for either party. The Act does not limit the safety valve to cases of potential miscarriage – there is nothing to say it is a "last resort". The court must have regard to the following non-exhaustive list of factors:

(a) the probative value of the statement or its value for contextualising evidence;
(b) what other evidence is available;
(c) how important the matter is in the case;
(d) the circumstances in which the statement was made;
(e) the reliability of the maker;
(f) the reliability of the making of the statement;
(g) whether oral evidence of the matter can be given;
(h) the difficulty involved in challenging the statement;
(i) the potential prejudice to the party facing it.

This may come to be so widely used as to swallow the hearsay rule up in practical terms.

Multiple Hearsay

Multiple hearsay (e.g., W's account that 'A told me that B told him that C stole it') is not admissible unless one of the statements is admissible as a business document (s.117) or, exceptionally, it is a previous statement by a witness in the case, or, where the court is satisfied that the value of the evidence is so high that it can invoke the additional 'safety valve' in s.121(1)(c).

Previous (In)consistent statements

Previous inconsistent statements are admitted on the same grounds as before, but when admitted they will be capable of supplying evidence of the truth not merely consistency of any matter stated. Previous consistent statements become admissible as evidence of truth where they are relied on to

- rebut allegations of recent fabrication
- refresh memory
- where W testifies to having made an earlier statement, that it was true, and
  - ✔ it confirms a previous identification of a person/object/place, *or*
  - ✔ it demonstrates consistency with a fresh statement which W now does not/could not be expected to recall. This represents an enormous change, *or*
  - ✔ it is evidence of a recent complaint by the victim (not just in sex cases) made without threat or promise "as soon as could reasonably be expected" after the crime. Again, a vast change.

Memory refreshing

A witness may refresh his memory by relying on statements made when his recollection is likely to have been "significantly better" when he made or verified the document – the common law "contemporaneity" requirement has gone.

New discretions

The court acquires a power to stop a case where evidence is unconvincing (s.125) and a 'general discretion' targeted at superfluous evidence (s.126) to supplement its discretions at common law and under s.78 PACE.

The Revised Family Graduated Fees Scheme: A Better Looking Frog

The Lord Chancellor may be married to a family practitioner but that hasn't made fee negotiation for the family Bar any easier. After her years of struggle with the DCA, Carol Atkinson of Coram Chambers kindly reports on the regime which members of the family Bar will now have to live with.

At long last, after almost 3 years of "negotiations" the FLBA team have finally managed to "agree" a number of significant revisions to the Family Graduated Fees Scheme.

Although promised a review after 12 months, we were limited to redrafting the scheme within the confines of its current framework. Despite taking a cut in fees well beyond that originally proposed by the former Lord Chancellor, we were told initially that there was to be no more money. However we finally secured what we hope will prove to be an 8% increase overall.

As Andrew MacFarlane QC put it at the recent FLBA training event:

"*We knew that we would never manage to persuade the Government to give us a Prince in place of the Frog, but we have got a better looking Frog*".

The changes are set out in the ***Community Legal Services (Funding) (Counsel in Family Proceedings) (Amendment) Order 2005*** ("the 2005 Order") which needs to be read with the original Order (S.I. 2001/1077) and the 2003 Order (S.I. 2003/2590).

It is also worth looking at the Guidance issued by the LSC. Contact Ruth Symons at ruth.symons@legalservices.gov.uk for a pack. However, remember that the Guidance is just that: the real detail is in the funding Orders.

The 2005 Order comes into force on **28th February 2005.** The changes to the scheme set out below will apply to cases in which a certificate is granted or amended to add new proceedings AFTER 28th February 2005 EXCEPT in relation to the submission of claims. The new time limits for the submission of claims come into force in relation to main hearings which conclude on or after 28th February 2005 and certificates which are discharged/revoked on or after 28th February 2005.

General changes

Functions

Functions remain largely as defined in the 2001 and 2003 Orders. However, there is an important refinement to the definitions of F2 and F3.

Under the 2005 Order, F3 has been expanded to include a "committal hearing" while F2 has had committal hearings specifically excluded from its ambit. A "committal hearing" is defined as "any hearing to determine whether a person should be committed to prison."

This definition was added in order to deal with the inadequate remuneration for committal proceedings within the domestic violence category. As a result, though, the benefit of better remuneration for a committal hearing in injunction/enforcement proceedings is spread across all categories.

SIPS

There are a number of important changes to SIPs – all intended to create greater "graduation" within the scheme. SIPs in the revised scheme are category specific, that is, all SIPs do not apply across the categories. The specifics in relation to each category are set out below.

Of application across all categories is the general point that SIPs will now be paid on all hearing units and at **every** F2 and F3 hearing ***wherever they are of substance and relevant to any of the issues before the court at that hearing.***

Conferences (F4) and other work/ advices (F1)

The limitation of one paid conference and one paid piece of freestanding advice/ other work has now been removed. Conferences (F4) and other work/advices (F1) are capable of being claimed up to twice in a category.

Cases in the FPC and the maximum fee principle

There have been some significant changes here. In circumstances in which there is no authority to instruct counsel in the FPC, counsel will be paid at solicitors' hourly rates – and that includes enhancements which are NOT personal to the solicitor.

Travel

The limitation on the payment of travel expenses within 40 km of Charing Cross or of a local Bar was relaxed following the 2003 Order. Since November 2003 the LSC has accepted that if the local Bar is small and may not be able to cover all cases, or where they simply lack specialist knowledge, it is reasonable for a solicitor to instruct counsel outside of the local Bar. The test is whether the travel expenses have been reasonably and necessarily incurred and in determining this the Commission looks at the complexity of the issues, counsel's particular expertise, the location of the solicitor and client and the need for continuity of counsel, particularly where an earlier meeting has taken place.

Submission of claims

Time limits on submission of claims have been reduced from three months to two months after the conclusion of the main hearing or, in relation to other functions, within two months of the discharge or revocation of the certificate.

Category 1 – Domestic violence

There is little change to this category save, as set out above, the creation of a new F3.

Figures in boxes

New figures

Cat 1	Junior Base Fees	QC Base Fee	SIPs	
F1	£80.00	£200.00	Litigants	10%
F2	£115.00	£287.50	Experts	10%
F3 (for committals)	£172.50	£431.00		
F4	£70.00	£175.00		
F5	£310.00	£775.00		
F5 secondary	£220.00	£550.00		

Category 2 – public law children

There are 2 new SIPs designed to target money where it is generally most deserved.

The new **"client care" SIP** is defined as:

"(ca) representation of a person who has difficulty:

(i) giving instructions, or

(ii) understanding advice;

attributable to a mental disorder or to a significant impairment of intelligence or social functioning;"

The definition of mental disorder is the same as in section 1 Mental Health Act 1983.

The LSC Guidance suggests that there should be a report from a psychologist or psychiatrist before this SIP can be claimed. This may be so if the claim relates to a diagnosis of "mental disorder". However, where the claim relates to a client with "significant impairment of intelligence or social functioning" the evidence may come from a social worker or from the manner in which the client presents to the judge.

The new **"parents/ accused persons" SIP** is defined as

"(cb) representation of:

(i) a parent or parents of a child who is the subject of proceedings, or

(ii) another person (including a child) against whom allegations are made that he has caused or is likely to cause significant harm to a child;"

Payments under the first limb – i.e., to parents – are automatic and turn upon the fact of representation. There is no requirement that the parent/s should also be the person against whom allegations of harm are made.

Payments under the second limb are subject to the substance and relevance test i.e., the allegations that the client has caused significant harm to a child must be of substance and relevance at the hearing in respect of which it is claimed.

This SIP is payable in adoption proceedings but not in child abduction cases.

Figures in boxes

New figures

Cat 2	Junior Base Fees	QC Base Fee	SIPs	
F1	£80.00	£200.00	Experts	15%
F2	£85.00	£212.50	Extra party	40%
F3*	£130.00	£325.00	Foreign	25%
F4	£70.00	£175.00	Conduct	20%
F5**	£430.00	£1,075.00	Care	25%
F5 secondary	£230.00	£575.00	Parent	25%

CMC bolt on – £82.50/£206.25

Category 3 – private law children

There are major changes in this category to the base fees.

The new **"client care" SIP** is available in this Category. Although the "experts" SIP remains the same as in categories 1 and 2 above there has been a relaxation of the rule in relation to the CAFCASS officer. The LSC Guidance now accepts that in this Category "the CAFCASS Officer is regarded as an expert."

Figures in boxes

New figures

Cat 3	Junior Base Fees	QC Base Fee	SIPs	
F1	£80.00	£200.00	Litigants	30%
F2	£75.00	£187.50	Experts	50%
F3	£130.00	£325.00	Extra party	30%
F4	£120.00	£300.00	Foreign	30%
F5	£325.00	£812.50	Conduct	50%
F5 secondary	£240.00	£600.00	Care	25%

Category 4 – ancillary relief and other

There are increases in figures and major changes to SIPs and the payment of enforcement procedures in this category.
So far as the old **"assets"** SIP is concerned the Guidance now makes clear that this may include work involving pension splitting or earmarking.

There is to be a new **"accounts" SIP** defined as follows:
"(cc) analysis of the business accounts of an individual, partnership or company"

Business accounts are expressed to include "accounts relating to trusts and investments whether or not those accounts are maintained for the purposes of, or in connection with, a business"

The **"experts" SIP** in this category has been redefined so that it applies where there is ONE OR MORE expert (as opposed to more than one). The Guidance makes clear that an expert instructed to value the former matrimonial home does not fall into the definition of expert. However, if property other than the FMH is in issue in the case or there are conflicting valuations for instance then the position would be different.

Bolt-ons – the bolt-on for the FDR has been joined by a bolt-on payable in this category only when work is carried out under F2 "in connection with a hearing relating to:

(a) injunctive relief which is contested; or

(b) enforcement procedures"

The LSC Guidance suggests that "contested injunction proceedings" are proceedings where evidence is given, which is likely in the vast majority of cases. However there MAY be instances in which an application for injunctive relief IS contested but the evidence is perhaps not disputed – the argument concentrating upon whether or not an injunction as a matter of law or on the facts is appropriate. It seems to us that in those circumstances the bolt-on would be claimable.

Figures in boxes

New figures

Cat 4	Junior Base Fees	QC Base Fee	SIPs	
F1	£90.00	£225.00	Litigants	25%
F2	£100.00	£250.00	Extra party	10%
F3	£120.00	£300.00	Foreign	25%
F4	£90.00	£225.00	Conduct	50%
F5	£325.00	£812.50	Accounts	50%
F5 secondary	£240.00	£600.00	Experts	25%
			Assets	25%

*** F2 bolt on for enforcement procs or contested injunctions - £100/£250**

**** F3 FDR bolt on - £115/ £287.50**

Being in Norwich

In the first of a series about Circuit towns, John 'Taff' Morgans of Octagon Chambers reveals the 'best' of a city where barristers can find a great deal more to do than just to go to court.

NORWICH IS OUR OYSTER, declared Alan Partridge before whisking his lucky Valentine off to an afternoon at an owl sanctuary. But there is a great else to see and do if your case brings you to Norwich.

Getting to Norwich

If you are arriving by car, you will have seen the signs welcoming you to 'A Fine City'—traditionally attributed to the nineteenth century writer, George Borrow, but a description taken very much to heart by the local council. Their policy of replacing almost all city centre car parks with luxury flats, while simultaneously tripling the number of traffic wardens, means that you have a greater chance of getting a ticket in Norwich than anywhere else in Western Europe. The Bishopgate car park is the one to use for the courts, and it is advisable to pay for longer than you think your hearing will take—the wardens know how cases can run over, and they patrol accordingly.

Trains, twice an hour from Liverpool Street, arrive in the recently refurbished station. From here, one can either take a taxi (there is a rank at the front of the station) or if walking, turn right along Riverside Road, until the pedestrian bridge on your left. That leads you to Bishopgate. The walk takes around 10 minutes.

Places to stay

The hotel closest to the courts is the Maid's Head (01603 209955). Many visiting members of the Bar take advantage of the special rates offered by the Norfolk Club (01603 626767) which is also only a short walk away. For those who are prepared to stay a little further out, and to take their chances with the traffic gridlock, then the four-star De Vere Dunston Hall (central reservations, 0870 6063606) is spoken of very highly.

Maids Head Hotel

Where to lunch

If you like pre-packaged sandwiches or tasteless hot dishes at premium prices, then the court canteen is the place for you. If not, then both 'The Wig and Pen' (01603 625891) and 'The Adam and Eve' (01603 667423) do good lunches at sensible prices and are close enough to the court for the short adjournment. The bacon sandwiches at 'the Wig' are particularly recommended.

Elm Hill

If you have more time, a short walk to Tombland will bring you to the highly recommended Tatlers restaurant (01603 766670), with an innovative chef and an extensive (and potentially expensive) wine list. Over the summer months, La Tasca (01603 776420) is the place to go for the outside tables, but it is a much better bet to sit and have a quiet sangria or two rather than to risk the frankly disappointing (and occasionally still frozen) tapas.

For real tapas, try the Spanish-owned and run Torero (01603 621825) in Fye Bridge Street. This small restaurant is very reasonably priced and popular, especially in the evening, but a reservation is seldom required for lunch. The real problem comes with deciding what to choose from the extensive menu. A member of the local Bar recently just ordered everything on it.

Where to dine

Tatlers and the Michelin-starred Adlard's (01603 633522) are amongst the obvious top end choices, but with some hesitation, I recommend By Appointment (01603 630730) on St. Georges Street. My hesitation stems from it being very idiosyncratic and perhaps not to everyone's taste; its individuality means that the quality of the experience varies—and at times, it can be disappointing. However, when they get it right, they really get it right, with the best food in the city. A meal here can be an occasion which will make a lasting impression. Look out for one of their lobster nights for a real treat.

For a mid-range restaurant, The Sugar Hut (01603 766755) on Opie Street is the best of a surprisingly large number of Thai restaurants which have opened in the city over the last few years, whilst the home-cooked Spanish fare at Don Pepe (01603 633979) on St. Benedicts Street is also consistently excellent.

If you are looking for a great curry then there are a number of places on Magdalen Street that are well worth a visit. The Ali Tandoori (01603 632101) is particularly good and guarantees a friendly welcome.

Places to visit

There can be no excuse for not visiting the magnificent Cathedral. The 315-foot spire (the second highest in England) can be seen from the court. The earliest part of the building is the Bauchon Chapel, dating from 1329; the spire was built in the fifteenth century.

Royal Arcade

The Catholic Cathedral of St. John the Baptist on Earlham Road (01603 624615) was built in a similar, Early English style, of the 13th century, but in fact dates from 1882 and was only completed in the early twentieth century.

It has often been claimed that Norwich has enough pubs for a different one every night of the year, and enough churches for every Sunday of the year. So far my investigations into the 365 are progressing faster than into the 52, but I would recommend visiting the church of St. Peter Mancroft, adjacent to the Market Square, for the spectacular fifteenth century stained glass.

The Market Square itself, which traces its roots to Norman times, is currently being redeveloped and from the current rubble it is difficult to guess what will emerge. Perhaps the Council will use some of the parking fine revenue and pave it with gold. Whatever the future brings, it must be hoped that the highly praised cheese stall remains unchanged and that the man who sells Hoover bags will be allowed to return. If so, the market will still be the bizarre bazaar beloved by locals and visitors alike, and well worth a visit.

For more usual purchases, the excitement is mounting regarding the imminent arrival of House of Fraser as part of the development of the old Nestle factory site. For now (and since 1832) the family-run Jarrold department store (01603 660661) is the place to go. It has recently expanded its floor space and is constantly expanding its range of goods. It has just been named 'Independent Department Store of the Year'. House of who?

Elm Hill is only a short walk from the court, and is home to a number of smaller shops and galleries. Amongst them is the Dormouse Bookshop (01603 621021) where proprietor Philip offers an extensive selection of second hand books, including a good collection of first editions. Also on Elm Hill are the excellent Peter Graham wine shop, the Contemporary Art Gallery (01603 617945) and Antiques and Interiors (01603 622695) amongst a number of other retailers well worth visiting.

I hope this gives some inspiration for a visit to Norwich, and encourages those put off by our recent description from a very brave (and yet strangely anonymous) author as the most unfriendly robing room in England. This fearless critic should not be concerned about revealing his name: witch dunking has almost died out, and the last time we burned a London barrister at the stake was literally years ago (and some claim even that was accidental), so we can almost guarantee his safety. The locals really aren't all that dangerous, and remember, Norwich is your oyster.

Special Measures for Defendants? How far is far enough ?

The Government is rightly concerned about victims having their say, but what happens if the defendant is a vulnerable witness as well? Noémi Bird, a pupil at 6 Pump Court, considers the effect of a recent House of Lords judgment

The House of Lords decision in **R v Camberwell Youth Court ex parte D and others ([2005] UKHL 4)** revisits the question, amongst others, of the extent to which the courts may (or are required to) assist vulnerable defendants. In this case the defendants were children, and therefore unlike the prosecution witnesses excluded from a special measures directions under the Youth Justice and Criminal Evidence Act 1999. The question certified by the Divisional Court (and answered by their Lordships in the negative) was whether section 21(5), which virtually mandates evidence by live link for children 'in need of special protection', breached Article 6, as it prevented individualised consideration of whether a particular witness needed a special measures direction at the stage when the direction was made.

The issue goes further. While acknowledging that equality of arms is a bedrock principle of criminal trial, there has been little clarity as to how this may be achieved in a case in which both witnesses and the accused are children.

Best evidence

The purpose of special measures for child witnesses, and indeed any directions made to help vulnerable defendants, is to assist them in giving 'best evidence'. Achieving this for the prosecution can be neither more nor less desirable than it is for a defendant. Nevertheless, the absence of statutory special measures for defendants is viewed by some as creating an unfair situation in real life terms: " It is really something of a farce that in proceedings concerning, say, a fight between gangs of boys in which one side ends up in the dock and the other in the witness box, only the latter are deemed to benefit from the live-link."[1] Lord Rodgers was not unsympathetic to that view. He thought that jurors had an 'unenviable task' if a special measures direction allowed 'dishonest witnesses to give their untruthful accounts in the most complete and coherent way of which they were capable.' And Lady Hale recognised that many youth court defendants have little support from parents or social services and have few educational skills.

Speaking up for Justice

In 1998 the Home Office 'Speaking up for Justice' Report concluded that special measures should not be made available to defendants. This policy is reflected in S 16 (1) of the Youth Justice and Criminal Evidence Act 1999. Following criticism by the European Court of Human Rights of the conduct of the Venables trial in the United Kingdom, the Practice Direction on the Trial of Children and Young Persons in the Crown Court was produced. More recently, the European Court held that the trial of an 11 year old defendant with learning difficulties breached Article 6 (1), even though wigs and gowns had been dispensed with and he was not required to sit in the dock[2]. The Court's concerns focused on the question of whether the defendant would be able to "participate effectively" in the trial.

In the Camberwell Youth Court case, their Lordships' reasoning in part reflects the thinking behind the 1998 report : special measures for defendants are unnecessary because: "the defendant does not need to give evidence, and he has a legal representative to assist him if he chooses to do so". They rejected the idea that the granting of special measures for children 'in need of special protection' should depend on the nature of the case or the age of the defendant. Baroness Hale went on, 'The defendant is excluded from the statutory scheme because it is clearly inappropriate to apply the whole scheme to him', citing the 'obvious difficulties about admitting a video recorded interview as his evidence in chief'.

However, this judgment does not firmly conclude that special measures could not be extended to defendants by statute. Their Lordships referred to the coming into force of the Vulnerable Witnesses (Scotland) Act under which child defendants will, for the most part, be treated in the same way as child witnesses and stated that there are "no insuperable difficulties" in the way of taking a similar step in England and Wales. In addition, nothing in the 1999 Act prevents the court using its inherent jurisdiction to ensure a fair trial.

How does the law stand at present? In Camberwell Youth Court case, their Lordships concluded that the Court must consider, on a case by case basis, what if anything must be done to ensure that a defendant is not at a substantial disadvantage compared with the prosecution and other defendants. There is anecdotal evidence that courts have done this but there is no scheme or criteria against which this can be measured. Although the judgment found that the absence of statutory special measures for a child defendant is not incompatible with their rights under Article 6, that will not be the case unless the court nevertheless makes use of its discretion to assist a vulnerable defendant to participate effectively in his own trial.

[1] Commentary on the *Redbridge* case by Prof. Birch [2001] Crim LR 473, 477 quoted in *Camberwell Green* at paragraph 54
[2] *SC v UK* ECHR 06958/00

Sole Practitioners

Most barristers believe that there is no alternative to practice within chambers. Sole Practitioner Mary MacPherson explains how there is a different way to provide service to the client, and invites Circuiteers to attend the conference on May 7.

Thanks to computers we can be industrious and prosperous without going out to work. Barristers can research case law and statutes, advise clients, send out opinions, pay bills and make travel arrangements, all on the internet. It is no longer odd for barristers to work at home, clerked at long range via electronic links.

Doing it differently

A growing number of barristers have taken this a step further by practising without either a clerk or chambers. There are now 251 members of the English Bar who are registered with the Bar Council as having opted for this way of working. The numbers have increased steadily since the Bar Sole Practitioners Group was founded in 2000 with a nucleus of seven members. It is under the chairmanship of Robert Banks, who is a committee member of the South Eastern Circuit, and divides his time between a secluded farmhouse in rural East Sussex and a smart London apartment in W. 1.

The South Eastern Circuit was instrumental in setting up the group, and since then has been active in its support, including generous sponsorship of the annual conference. One of the original purposes of the group was to safeguard the option of practising alone and to represent sole practitioners when home-working seemed to be under threat from tighter controls.

Following the rules

All new sole practitioners are required first to have been in full-time practice for a total of three years following completion of a recognised pupillage. Fully paid-up professional indemnity insurance is also mandatory. Notification of the intention to practise alone must be given to Bar Mutual, and to the Bar Council, who insist on proof of fully paid-up insurance and on confirmation of the availability of a law library and of facilities for keeping and storing records. One's Inn of Court should also be informed. Details of these arrangements must be sent to a senior member of the Circuit who will decide whether everything is in order and will also offer advice.

Pros and cons

The obvious advantage of working from home and being your own clerk is that you have sole control of the diary. You can avoid committing yourself to unrealistic deadlines and within limits can fix appointments to fit in with your other work and with the rest of your life. The other big advantage is that you have no chambers overheads and no clerks' fees to pay.

The main advantage to clients is that they can obtain swift access without going through a clerk. A combination of answering machine, mobile telephone and computer ensure personal contact and a reply by telephone or by email within 12 hours. Another crucial advantage for clients is that they share the benefit of the reduced overheads. The key to a successful sole practice is a service which is flexible, accessible and cost-effective.

The disadvantage is that there is no escape from the simple tasks that clerks used to do for you : keeping accounts, and writing and sending out fee notes and receipts is all time-consuming ; so are the trips to the stationers for items which in chambers you took for granted. Although fee negotiation can be simplified by the production of a written scale, it is faintly embarrassing until you get used to it.

One way of avoiding these chores is to sacrifice some independence by belonging to an Internet set of chambers such as BarristerWeb or Clerksroom. Work goes there through the website. It is then allocated to paid-up members and the clerks negotiate the fees and collect a percentage on them.

The Group in action

The Group has fought for sole practitioners to be treated fairly. They made representations to the Legal Services Commission during the setting-up of QualityMark and to the prosecution authorities when the rules for Standing Counsel were being formulated. They have also made recommendations to the Department for Constitutional Affairs and the Bar Council on most of the recent developments : direct access, accreditation, the Diversity Code, the appointment of judges and Q.C.'s, pupillage, Practice Directions, Office of Fair Trading enquiries, funding entrance to the Bar and wigs and gowns.

The fifth annual conference of the Group is to be held on 7th May at 1 Carlton House Terrace, London SW1. Because of the increasing interest in working from home the conference is open to all members of the Bar. The topics have been chosen for their general interest. The four plenary sessions cover the Freedom of Information Act, money laundering, securing a public appointment and the technological advances which facilitate home working. The cost per delegate is £30 to include refreshments and buffet lunch. Attendance is accredited for 4 CPD hours.

Those wishing to attend the 5th Conference of the Bar Sole Practitioners Group (cost £30: 4 CPD points) should contact Robert Banks, Chairman,(DX 94252 Marylebone) or Mary Macpherson (msmacp@aol.com)

The Dame Ann Ebsworth Memorial Lecture – 30 June 2005

On 30 June 2005, at Inner Temple, the South Eastern Circuit will hold the first in a series of annual lectures in memory of Dame Ann Ebsworth.

The lecture will be given by Justice Michael Kirby and will be entitled "Appellate Advocacy – New Challenges". In 1996, Justice Kirby was appointed to the Australian High Court, Australia's Federal Supreme Court, and was President of the New South Wales Court of Appeal from 1984 to 1996. He has written very widely on the law particularly about human rights.

Dame Ann was a judge of the Queen's Bench Division from 1992 until 2001 and a circuit judge from 1983 to 1992. She had the great distinction of being the first woman appointed to be a judge of the Queen's Bench Division. Although she referred to herself as a "safe pair of hands", she was much more than that. She cared deeply about the law, but even more deeply about justice. Those who appeared before her could not have had a fairer tribunal. She retired early because of ill-health but showed great courage in working for as long as possible. She died in 2002 of cancer when she was only 64.

As *The Guardian* wrote shortly after her death, "She leaves a lasting mark on the history of the legal world, and in the hearts of those fortunate enough to have known her well".

Dame Ann devoted a great deal of her time to teaching advocacy. The South Eastern Circuit benefited greatly from her involvement over many years in the annual course at Keble College for young practitioners. As a result, it takes very great pride in establishing this series of lectures as a fitting memorial to her.

Philip Bartle, Q.C.
Director of Education and Training,
South Eastern Circuit

From Around the Circuit

Cambridge and Peterborough

The Mess and its members are I believe in good heart ready to tackle whatever 2005 may throw at them. 2004 ended on a sad note with the death of HHJ David Stokes, Q.C. David was a past chairman of the Mess. He will be sadly missed.

The new Cambridge Crown Court is now officially open. Lord Falconer was heckled on arrival by the pro-hunting lobby. As I did not make the guest list I can't report on what occurred inside the building. A small number of members of the Bar were invited. I suppose this reflects HM Government's plans for the Courts in the twenty-first century: state of the art buildings, a first class judiciary of unparalleled diversity, thousands of "new" defendants to satisfy the "fair-minded" electorate that every thing is being done to protect them and society, and the odd barrister to make up numbers!!!

The Mess held its annual dinner at New Hall, Cambridge on the 5th March 2005. We are a friendly bunch but speaking of friendly bunches I ventured into Norfolk recently. There in the robing room was an article by one "Felix" proclaiming Norwich to be the unfriendliest court in the country. Something to do with "not cracking a trial". Odd really, as the local Bar would find a way to crack a trial whatever the circumstances irrespective of what outsiders do. Cracking trials is like SadoM. It's legal but frowned upon but if you enjoy it what the hell!! Norwich practitioners are masters of the art that's all. [At cracking trials or SadoM I'll leave you to work out]. I suspect Felix came up and made the mistake that many "London" practitioners make, treating the local Bar as country bumpkins! I'm sure this is going to rumble on and on!

Causing death by careless driving the latest electoral gimmick? Scares the pants off me [and I suspect every other driver that does his/her best to drive carefully]. Do you think there will be a defence of "the badly designed junction with next to no visibility either way?" If not who will risk pulling out? Who hasn't encountered the poorly maintained road that doesn't allow a straight course to be pursued? I suspect only Labour ministers could answer that from the backs of their official limo's on that short journey from Department building to Number 10. As I said earlier thousands of new defendants to populate the courts of the twenty-first century. Still look on the bright side, more work for the Bar!!

Cromwell

East Anglia Bar Mess

A big thank you to all those who either voted by proxy or in person at the election on the 21st February. Our new committee, with John Farmer as Chairman, and Luke Brown as Treasurer, are looking forward to taking on their roles. We would also like to extend our gratitude to the previous incumbents, Graham Parkins, Q.C., and Simon Redmayne, for all their work over their years in office.

The tea and coffee making facilities we have provided in the robing rooms at Norwich seem to be popular, judging from the feedback. Apologies for those times when the milk has run out!

The new committee would like to take this opportunity to congratulate Jeremy Richards on his recent appointment to the Circuit bench. As a former Mess Junior, he has worked very hard for the Committee for which we thank him. We wish him every success in his new post.

John Morgans
Bar Mess Junior

Kent Bar Mess

The Mess had a wonderful dinner in the Middle Temple Hall on Friday 3rd December 2004. Our guest speaker was HHJ Warwick McKinnon who entertained us with his natural warmth, and wit, before "strutting his funky stuff" at the Adam Street Wine Bar. He is, apparently, a lovely mover. My informant tells me that the learned judge just about made it home as the sun began to rise over the Purley Way.

We warmly welcome to Maidstone Crown Court HHJ Michael Lawson, Q.C. Michael showed what a great friend of the Bar he is by providing liberal quantities of champers for the Mess on the day of his arrival. The Committee has unanimously passed a resolution commending this initiation rite to all new appointees. On Friday 18th February 2005, in the "short adjournment", he very kindly chaired a seminar for those of us who by then had sobered up, on the government's latest wheeze to keep the CACD in work, the new 'bad character' provisions. That the event was so well supported by members of the Mess reflects, we feel, upon our deep intellectual curiosity and our thirst for learning. It is in no way connected with the fact that attendance at the seminar was worth one unaccredited CPD point.

HH Judge Michael O'Sullivan's proud announcement, "we are a grandfather!" is indeed good news. He tells me that it was no trouble at all. He is already training his grandson not to cry whilst they are watching the Six Nations rugby on TV.

Bench and Bar alike were deeply saddened by the death, as a result of a brain haemorrhage, of HH Judge David Griffiths, 73, former resident judge of Maidstone Crown Court. David died the day after the annual Mess dinner, an occasion that he never missed, even though living in deepest Wales. He was a much loved friend to all of us who practise in Kent. His death, after such a short period of retirement (in 2000), came as a great shock to his many friends. We extend our sympathy to his dear wife Anita and to their family.

Warm tributes to David were paid at Canterbury by HH Judges Webb and O'Sullivan and at Maidstone by HH Judge Neligan (deputising for HH Judge Patience who was sitting in the CACD).

Many travelled from Kent on Friday 10th December 2004 to David's beloved Wales for his funeral.

We hope that there will be a memorial service in the near future.

Fiona Moore-Graham

The Central Criminal Court Bar Mess

The Central Criminal Court Bar Mess has existed in its present form at least since the beginning of the last century, and despite some changes in the décor and the quality of the food, it otherwise carries on much as ever.

The Bailey has sadly lost two of its judges in recent times, first His Honour Judge Michael Hyam, the Recorder of London, and then His Honour Judge David Stokes, Q.C. The Mess was well represented at the services commemorating their lives.

The court has now gained a new Recorder, His Honour Judge Peter Beaumont, Q.C, and there is anticipation of further appointments in answer to a recent advertisement for no fewer than four new judges.

It is often forgotten that the Mess is in fact only available to members. Until recently there was a requirement that non-members had to be signed in. Whilst that rule is no longer thus enforced, it is worth remembering that non-members using the facilities of the Mess are doing so at the expense of those who have paid their £15 per year dues.

The money obtained from membership fees, in recent times, has been used to refurbish much of the furniture in the Mess. Work is also ongoing to improve the library facilities. In collaboration with the Court authorities BTOpenZone has been installed to allow wireless internet access.

Any freeloading members with an attack of conscience can obtain a membership application form from Duncan Atkinson at 6, King's Bench Walk.

Duncan Atkinson

Sussex Bar Mess

Last November, the Kent and Sussex Family Law Bar Association hosted the national Family Law Bar Association Conference in Brighton, chaired by Mrs Justice Pauffley. Nearly 200 people from all over the country attended to hear a variety of distinguished speakers on a wide range of topics. We were delighted to welcome Baroness Ashton, Minister at the Department for Constitutional Affairs, who gave a vigorous account of the Government's proposals for the future of family justice.

In the evening, some 90 of the delegates were lavishly entertained in the banqueting hall of the Royal Pavilion (welcomed by "Dame Margot" Hamilton, in true Brighton fashion). For those who could continue, there was dancing, 'til the early hours and beyond, but that's another story!

In February, the Bar Mess played host to The Honourable Mr Justice Bell at Shelley's restaurant

in Lewes. This proved to be another outstanding success and was enjoyed by all who attended.

Finally, on the 22nd April, Timothy Dutton, Q.C., Leader of the South Eastern Circuit, will be joining us for lunch at the Bar Mess in Lewes. This should be a splendid occasion and all members are encouraged to attend.

Timothy Bergin

Essex Bar Mess

It has been a very sad time for the Mess. The death of two stalwarts, both taken far too soon, has rather overshadowed other news.

John Butcher was 58 when he died. He was one of nature's gentlemen who began his working life as a policeman with the Essex force. By one of life's rich ironies he spent some years as a member of the vice squad, bringing to the darker recesses of Southend life a humanity and humour that no doubt came as a breath of fresh air in those far off days, and from a man whose only known vices were good friends, good food and fine wine. John took the enormous step of coming to the Bar as a middle-aged family man, but he was always brave. After pupillages with two of Essex's finest, Peter Beaumont and Jeremy Gompertz, he knuckled down to the task of developing a fine practice in the criminal courts, primarily in Essex. He was always elegantly attired, always with a smile and a warm welcome. Your scribbler never heard John speak ill of anyone, nor heard any harsh word spoken of him. He was delighted to be welcomed by 2 Pump Court when he had to find new chambers in London, but he remained a loyal part of Tina Harrington's team in Chelmsford. He suffered a heart attack in court in October and whilst colleagues and staff there did all they could, it was obvious that he had sustained major damage. (It was typical of Chris Ball that he visited John that very evening in hospital). He fought back though, and was able to return home for short periods before his death in February, with his beloved wife and children at his bedside.

A huge number of people from all walks of life attended his funeral, including many judges, lawyers and court staff, police officers and other friends. One of John's daughters spoke with enormous dignity and bravery about her father, and Christopher Moss spoke of John as a police officer, a barrister and a lifelong friend. He reminded us of a man who represents the best of what we all try to do. Our thoughts go to his family.

And then came the terrible news of Christopher Campbell-Clyne. He was but 40, married to Emma, father to Lucy aged 7. He suffered a major epileptic attack in his sleep and passed away on 24th February. He had been Circuit Junior and was nearing the end of a successful year as CBA secretary. He was appointed Standing Counsel to the DTI in 2002 and had already developed a remarkable practice, on both sides of the court. He was a hugely valued part of the team at 2 Bedford Row, and will be missed terribly by his many friends at the Bar. He was one of the nicest men anyone could wish to meet. His funeral service was suffused with an awful sadness at the death of such a young man. All members of the Mess and indeed all who knew Christopher, will want to express their heartfelt sympathies to Emma and Lucy.

May John and Christopher rest in peace.

Both John and Christopher would not wish that I overlook other events. May I just extend the congratulations of the Mess to two old boys of the county on their recent achievements. Firstly to Peter Beaumont on his appointment as Recorder of London, richly deserved. And secondly to Robert Flach – on reaching his 82nd birthday in February and continuing to charm jurors into acquitting the (wrongly) accused, not, sadly, so much of Essex these days but of Kent, where Robert's career has undergone something of a renaissance over the last couple of years. Robert is now the oldest practising member of the criminal Bar in this country but is still as sharp and alert as he was back in those pre- PACE heydays at the Bailey. A belated Happy Birthday to you, Robert, and best wishes to Elizabeth.

The Mess enjoyed an excellent dinner in November at the Hilton – our thanks go to the junior, Alan Compton, for organising the event. The Mess chairman, Nigel Lithman, Q.C., entertained us as only he can in what will be his last year as Boss. Chris Ball responded warmly on behalf of the guests before leaving Alan to rise to the challenge of following two first class speeches. And he did with style and good humour. A splendid evening.

'Billericay Dickie'

North London Bar Mess

The best news is that HHJ Sanders is back at Harrow after an absence of four months due to illness. He was sorely missed by staff and counsel alike and we are delighted to have him back at the helm. The retirement dinner for HHJ Barrington Black was a huge success. Gilbert Gray, Q.C., made a brilliant speech, as did Barry Black –heckled by Arlidge--and there was a band and opera. On April 26, at 6 p.m., Baroness Hale of Richmond will open an exhibition for the African Children's Education Trust, of photographs taken by HHJ Nic Madge. A reception will follow.

Snaresbrook continues to be the busiest court in London, accounting for 20% of all London crown court work. Recent visitors include Tarique Khaffur (Assistant Commissioner Met Police) and Tim Workman (Chief District Judge). HHJ Radford says that Snaresbrook is ready for the new PCMH's and hopes we are!

At Wood Green our best wishes to HHJ Stern, Q.C. who has had an accident at home and won't return to work until July. The dinner, last December, to mark the retirement of HHJ Connor was a great success. There are two new judges, HHJ Pawlak and HHJ Hope.

The Bar Mess Spring Cocktail Party will be on April 20th at Lincoln's Inn. This is not only an opportunity to socialise with our judges but perhaps to voice the grave concerns of members about the CJA, the PCMH's and the current lack of fees to cover a greatly increased workload. Please come!

Nigel Lambert, Q.C., is happy for members of the Mess to contact him about the new system or after April 4th, to tell him of any problems that arise in practice. Our Mess gives its full support to the CBA and Circuit in relation to any initiatives that may be taken in the future.

Kaly Kaul-Junior

Circuit Squirrel...in the Jungle

Well life must be getting very boring in TC's room, rumour has it that Horwell and Hilliard are going to audition for the next *'I'm a celebrity-get me out of here',* The elegant Jafferjee only changed his mind about competing with them when he learned he couldn't take his collection of bejewelled cufflinks into the Jungle…who will be the King of the Jungle? In the meantime, the ever brilliant Aylett has developed an obsession with milk, hoses, cold water and washing up liquid, he has even assumed the role of a Superhero, known as Milkoman, who comes to the rescue of his fellow TC's in an electric cart and repeats whatever any one else says-*slowly.* Thank goodness SBJ now has our Zoe to help her sort them all out.

A change from wigs and gowns

Gledhill is also causing his chambers some concern, on the one hand he had designed and had made a new lace jabot and cuffs based on a 19th century painting at Montacute House, on the other he has taken to wearing a red cord jacket, green trousers, pink socks, and plastic bags over his feet. (See picture). Arlidge, who you may see in the background of the picture, has also taken to dressing somewhat unconventionally and seems to be spending a great deal of time in Harvey Nicks buying clothes by *Dolce and Gabbana.* What do you expect of a man whose favourite programme is Richard and Judy? He has also decided to take a hand at designing a new outfit for members of the Bar who will go into battle for revised Grad fees. *(see picture)* Can you guess who is modelling these fetching outfits? Better than that, if you look at the shorter of the two, he appears to have a cod piece or he is very pleased about something! (Answers at the bottom of the page- Adam Davis from Dyers Buildings and Julian Evans from QEB).

In another Court, we had an example of one of the best quotes of the year, from none other than our own Stephen Leslie. His junior was trying to get a helpful message to prosecution counsel during submissions, but Leslie was between them. The next thing we heard, as sotto voce as

Leslie can muster – which isn't very sotto, 'Now…*I really must teach you not to get involved in other people's submissions'*. Apparently two rows of Counsel immediately collapsed in hysterical laughter, and the poor Judge looked very perplexed for the rest of the morning.

Out of Court Elegance

Over at Snaresbrook, avid followers of *'the Bill'* amongst our clients are worried at the inspiration behind the name of their main family of arch villains, the Radfords, especially by the name of the main villain, murderer and drug dealer, one David Radford. Does our David write for the programme? Is it just a coincidence? Is the 'Times' Cartoon, in late February, featuring the aforementioned judge a clue?

The real gossip – as ever, is about Liz Marsh, but I can't possibly tell you what it is, it is really much too secret and I am much too scared of her. You could try asking Blunt or Jennings, they seem to know everything….or at least they *think* they do……..

Thames Valley Bar Mess

All is relatively quiet in the Valley, save for an increasing dissatisfaction at the quantity of major pieces of legislation that the Bar has had to familiarise itself with in no time at all.

His Honour Judge Roger Connor is retiring from Aylesbury Crown Court June 2005. The judge that revolutionised the lovely market town by introducing a laptop to the bench years before his time, will be sorely missed. He leaves big shoes to be filled. We wish him well in his retirement.

At Reading Crown Court, Rafferty J, Silber J and Bell J have graced the bench over recent months and we are told several purple gowns are listed in the diary for the rest of 2005: it seems that Thames Valley is making a significant contribution to the nationwide crime statistics and keeping them busy.

We are concerned that Kate Mallison has been in hospital and has been poorly. We wish her well.

The Mess Committee is very concerned about the imminent impact of the introduction on 5th April 2005 of "Plea and Case Management Hearings". The Chairman will continue to represent the Mess's interests over the additional work involved, and which currently will not attract any additional remuneration .

Members of the Mess are encouraged to make applications to the new Silk scheme now in operation for 2006. The Chairman can be contacted for assistance, and looks forward to helping Members in their efforts.

The Mess Committee aims to take a much more active role in raising the profile and promoting the interests of those appearing regularly in the courts within our patch. These are troubled times.

Anyone wishing to join the Mess or bring any issue to the attention of the Mess Committee should contact the Chairman, Tim Raggatt, Q.C., at tragg@tiscali.co.uk or the Junior Kim Preston on kimpreston@tiscali.co.uk.

Kim Preston

Herts. and Beds. Bar Mess

Our Annual Dinner was held at Old Hall, Lincoln's Inn on 21st January 2005 and was very well attended. We welcomed among our guests two long-standing friends of the Mess, Judge John Slack and Judge Dan Rodwell, Q.C, both of whom clearly very much enjoyed the occasion.

His Honour Judge Ronnie Moss will shortly be leaving Luton after his term as resident judge, to sit at Harrow Crown Court. He is very well liked by all the regulars at Luton and we propose to hold a dinner in his honour in the summer. All members of the Bar, whether they belong to the Mess or not, are cordially invited to attend. Look out for details of the date and venue which will be published shortly.

Surrey and South London Bar Mess

After three very successful years, Hari De Silva, Q.C., has stood down as chairman of the Mess. He brought particular charm and style to the role and under his guidance, the Mess grew from strength to strength. The committee and membership owe him a debt of thanks for his three years at the helm.

Jeremy Carter-Manning, Q.C. was elected the new chairman at the AGM on 3 February. We wish him every success in a role that he has earlier fulfilled with great effectiveness. Steven Hadley and Andrew Turton remain as secretary and treasurer.

Our annual dinner was held on 3rd March at the Crypt. It was, as in previous years, an outstanding success, with 123 attending. Guests included HH Judge Zucker, Q.C., Timothy Dutton, Q.C., Leader of the Circuit, and David Spens, Q.C., chairman of the CBA. We were grateful for the impressive number of judges present from Croydon, Kingston, Isleworth and Guildford. Francis Sheridan was a very well received and witty after-dinner speaker.

Our next social function is the Annual Garden Party, which will be held at Middle Temple on Wednesday, 20 July. We look forward to welcoming members and guests there.

Sheilagh Davies
Social Secretary

Upcoming Events

16 April 2005
Criminal Justice Act 2003
Training at BPP Law School

20 April 2005
North London Bar Mess Cocktail party

7 May 2005
Sole Practitioners Road Show

10-14 May 2005
Florida Advocacy Civil Course

18 May 2005
South Eastern Circuit
Committee meeting

10 June 2005
Circuit Roadshow to Norwich

24 June 2005
South Eastern Circuit Annual Dinner

30 June 2005
Dame Ann Ebsworth Memorial Lecture

4 July 2005
Association of Women Barristers AGM,
House of Commons
Contact Caroline Milroy, 187 Fleet Street,
020 7430 7430

13 July 2005
South Eastern Circuit Committee meeting

20 July 2005
Surrey and South London Bar Mess
Summer Party

29 to 31 July 2005
Circuit Trip to Berlin

29 July to 6 August 2005
Florida Advocacy Criminal Course

30 August to 3 September 2005
Keble 2005

Officers of the Circuit

The Leader	Timothy Dutton, Q.C.	Fountain Court Chambers. tjd@fountaincourt.co.uk
The Recorder	William Hughes	9-12 Bell Yard. willhughes@clara.net
Immediate Past Recorder	Max Hill	18 Red Lion Court. Max.hill@totalise.couk
The Treasurer	Simon Barker	Maitland Chambers. 7406 1200 sbarker@maitlandchambers.com
Asst. Treasurer	Andrew Ayres	Maitland Chambers. aayres@maitlandchambers.com
The Junior	Laura McQuitty	23 Essex Street. LauraMcQuitty@aol.com
1st Asst. Junior	Tom Little	9 Gough Square. tlittle@9goughsquare.co.uk
2nd Asst. Junior	Nicola Shannon	Lamb Building. nejshannon@hotmail.com
Past Junior	Tanya Robinson	6 Pump Court. tlrobinson@clara.net
Director of Education	Philip Bartle, Q.C.	Littleton Chambers. pbartle@littletonchambers.co.uk
Central Criminal Court Bar Mess:		
Chairman	Richard Horwell	Hollis Whiteman Chambers
Junior	Jason Dunn-Shaw	Jason.dunn-shaw@6kbw.com
North London Bar Mess:		
Chairman	Nigel Lambert, Q.C.	nigellambertqc@hotmail.com
Junior	Kaly Kaul	kalykaul@187fleetstreet.com
Central London Bar Mess:		
Chairman	Anthony Leonard, Q.C.	6, King's Bench Walk
Surrey and South London Bar Mess:		
Chairman	Jeremy Carter-Manning, Q.C.	9-12 Bell Yard
Junior	Sheilagh Davies	10 King's Bench Walk
Cambridge and Peterborough Bar Mess:		
Chairman	Karim Khalil, Q.C.	Karim.khalil@uk-bar.co.uk
Junior	Greg Perrins	1 Paper Buildings 0207353 3728
Herts and Beds Bar Mess:		
Chairman	Andrew Bright, Q.C.	ajbright@talk21.com
Junior	Alisdair Smith	alisdair.smith@ntlworld.com
Anglian Bar Mess:		
Chairman	John Farmer	1 Paper Buildings
Junior	John Morgans	Octagon House Chambers. 01603 623186
Sussex Bar Mess:		
Chairman	Richard Camden Pratt, Q.C.	1, King's Bench Walk
Junior	Jeremy Wainwright	jeremywainwright@hotmail.com
Kent Bar Mess:		
Chairman	Simon Russell Flint, Q.C.	SimonRussellFlint@23es.com
Junior	Fiona Moore-Graham	fionamg@btopenworld.com
Essex Bar Mess:		
Chairman	Nigel Lithman Q.C.	2 Bedford Row
Junior	Alan Compton	Trinity Chambers
Thames Valley Bar Mess:		
Chairman	Tim Raggatt, Q.C.	tragg@tiscali.co.uk
Junior	Kim Preston	kimpreston@4kbw.co.uk
Administrator	Sarah Montgomery	SMontgomery@BarCouncil.org.uk

THE SOUTH EASTERN CIRCUIT

ANNUAL DINNER

The Annual Dinner of the South Eastern Circuit is to be held at Lincoln's Inn on

Friday, 24th June 2005 at 7.30 for 8 pm

GUEST OF HONOUR: SIR SYDNEY KENTRIDGE, Q.C.

Those who wish to attend should apply AS SOON AS POSSIBLE

DRESS: Black tie COST: Silks £80 Juniors £65 Under 7 Years' Call £45

Places will be allocated on a first come, first served basis and all applications must be received by Sarah Montgomery at the address below by Friday, 27th May 2005
Please mark the envelope 'Circuit Dinner' and retain this part of the form
Please note a cheque must be sent with your application, together with the names of those who are attending (if there are several)
You will be informed nearer the time whether or not your application has been successful

Sarah Montgomery
289-293 High Holborn
London WC1V 7HZ
Tel: 0207 242 1289, Fax 0207 831 9212, DX 240 LDE
Email: admin@southeasterncircuit.org.uk

Name ..... Year of Call .....

Chambers .....

Telephone ..... DX .....

Email .....

I AM A FULLY PAID UP MEMBER OF THE CIRCUIT

I enclose a cheque made payable to the South Eastern Circuit for £.....

*If possible I would like to sit next to .....

*I have no seating preference

*I require a vegetarian meal Yes/No

Circuit Trip 2005

Berlin 29 to 31 July 2005

'Reborn as the coolest city in the world', Berlin has been selected as our destination this year. There is plenty to do and see, and the weekend will provide the usual opportunity to mix a little business with masses of pleasure and fun.

We intend to meet with the local Bar Associations, with whom the English Bar has had a strong relationship over the years. They do things differently for their members, and we need to find out more, perhaps learning something along the way. It is also a chance to mingle with our colleagues, spouses and partners in a great social setting. Past experience suggests that this will be yet another enjoyable and satisfying trip for all. Come and join us on this away weekend. The beer is very good too.

Proposed itinerary:

July 29: Fly from Heathrow at 19.10 hours, arriving 21.55 hours

July 30: Morning: meeting with Berlin lawyers
Afternoon: cultural tour

July 31: Return flight at 19.40 hours, arriving Heathrow 20.35

Cost: £350 per person, on the basis of a couple sharing

A small supplement may be charged for single occupancy of rooms

First Class hotel accommodation for two nights, transport to and from the airport and dinner on Saturday night included.

PLEASE NOTE: Only 25 seats have been reserved on the flight

YOUR PLACE(S) WILL BE RESERVED BY SENDING A CHEQUE [made payable to SOUTH EASTERN CIRCUIT BAR MESS] to:

Oscar Del Fabbro
23 Essex Street, London WC2R 3AA
DX 148 LDE
Email: oscardelfabbro@23es.com

You are advised to take out suitable travel insurance. Cancellation may not result in a refund.

The Florida Advocacy Course

Civil Course: 10 to 14 May 2005
Criminal Course: 29 July to 6 August 2005

Open to members up to six years' Call. Apply (enclosing a CV) to Laura McQuitty, 23 Essex Street, London WC2R 3AA LauraMcQuitty@23es.com

Florida veteran Tetteh Turkson of 23 Essex Street reflects on his experience and urges fellow Circuiteers to apply:

Under the regime of New Practitioners Points and CPD points, people are always keen to find as painless a way as possible to accumulate the hours. When I first heard about the advocacy course in Florida, I thought it would be a fantastic solution to my own NPP problem. I was a pupil, just coming up to a tenancy decision, and it seemed the perfect excuse for a holiday without the (theoretical) risk of incurring the wrath of either clerks or tenancy committee.

I saw what was involved: a week's course based on two criminal cases—one attempted murder and one sale of drugs—taught by a faculty of Floridian state attorneys, public defenders, and judges, as well as local people who appear in the Federal court. My first concern was that there would be too many applicants but every year, surprisingly, few people apply. I suspect that either everyone thinks it will be hopelessly over-subscribed, or no one quite knows to whom it is suited. My view is that it is best to have at least a couple of crown court trials under your belt before going. Most Floridians had done tens of jury trials. For us, it is a fantastic opportunity to try out new styles and approaches.

The teaching is not as structured or consistent as in England, although there are some of the same features, such as video review. The British approved method was not always followed but most of the trainers used a form of it. Each had his or her stylistic preferences. I found it particularly interesting that the Federal style is most similar to ours—no walking about without express permission (rarely granted) from the judge. As a result, guidance from Federal advocates barely had to be adapted at all. The other faculty members will listen carefully to what is permissible and will give feedback for improvements. On the whole, the teaching staff encouraged a measured approach. Having said that, nothing quite prepares one for the seemingly acceptable practice of making objections for effect.

Best of all, the Florida Bar Association pays your course fee and hotel expenses, leaving you merely to pay for the flights to Gainesville. This results from a long-standing association between the Florida Bar and the South Eastern Circuit. In turn, we have invited some of their trainers to Keble.

A large part of the course is social. It gives an opportunity for the hosts to get to know one another, but it is also a powerful way of maintaining the links between the Florida Bar and us. The atmosphere is suitably convivial.

Everyone stays in the same, comfortable hotel, complete with swimming pool and hot tub. Our hosts were extremely generous and in return we hosted a party with our traditional drinks—Pimm's, gin and beer that tastes of something.

I would recommend the Florida course to anyone. Some of the people I trained with have remained lasting friends.

Keble 2005

The 2005 South Eastern Circuit Bar Mess Foundation Advanced International Advocacy Course at Keble College, Oxford

Tuesday 30th August to Saturday 3rd September 2005

The Foundation runs this established advanced course in Oxford for Practitioners in both Civil and Crime and for members of other professions and the public interested in acquiring or improving their advocacy skills.

Teachers and participants will also be attending from the USA, South Africa and Australia.

Participants will undertake every stage of the process to trial and will:

- ***Conduct conferences with, examine and cross-examine experts in difficult cases***
- ***Conduct full, filmed witness trials before a judge or jury***
- ***Be individually taught on each piece of work***
- ***Be filmed, reviewed and guided on presentation in Court, including at trial***
- ***Have written argument reviewed***

THE FACULTY OF 2005 INCLUDES:

Judges include
Lord Justice Brooke
HH Neil Denison QC
HHJ Michael Lawson QC
HHJ Simon Davis
Mr Justice Mumby

Silks include
Timothy Dutton QC
Toby Hooper QC
Kim Hollis QC
Jo Korner QC
Jeffrey Pegden QC
Anesta Weekes QC
Geraldine Andrews QC
Philip Bartle QC
Philip Brook Smith QC
Richard Davies QC
Edwin Glasgow QC
Charles Haddon Cave QC
Michel Kallipetis QC
Michael Lerego QC
Chris Shanahan SC (Australia)
Geoffrey Shaw QC
Richard Wilson QC

Juniors include
Sarah Clarke
Stephanie Farrimond
Louis French
Siobhan Grey
Ian Lawrie
Bernard Richmond
Philip Shorrock
Bernie Tetlow
Sarah Whitehouse
Catherine Brown
Simon Browne
Richard Coleman
David Dabbs
Paul Gott
Peter Harrison
Rebecca Stubbs
Georgina Kent
Helen Malcolm

The Foundation encourages your chambers to sponsor junior tenants and HSBC provides assistance to successful applicants

To obtain an application form please contact
Sarah Montgomery by email on admin@southeastcircuit.org.uk or by fax: 020 7831 9217.
Circuit Office address: 289-293 High Holborn, London WC1V 7HZ, DX: 240 LDE (Tel: 020 7242 1289)
APPLICATION FORMS MUST BE RECEIVED NO LATER THAN 4PM ON FRIDAY 27 MAY 2005 – BUT APPLY EARLY!

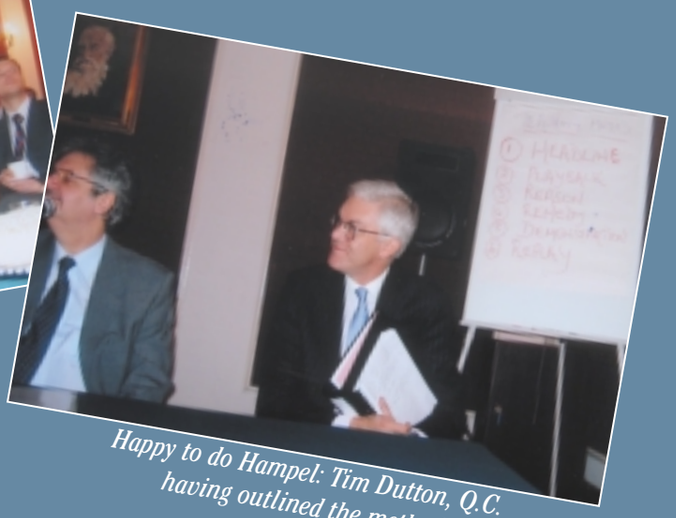
HSBC

NB: THIS COURSE PROVIDES NO LESS THAN 42 HOURS OF THE CPD REQUIREMENTS, WHICH INCLUDES 6 HOURS OF ADVOCACY AND 3 HOURS OF ETHICS

Circuit Trip to Warsaw

See page 9

The attentive local jury



Happy to do Hampel: Tim Dutton, Q.C. having outlined the method

The Warsaw Bar and visitors

Mr Recorder Dutton, Q.C. presides

Tim Dutton replies for the Circuit

The Old Town, Warsaw