The Circuiteer

News from the South Eastern Circuit

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LEADER'S COLUMN

TIME FLIES

BY STEPHEN LESLIE QC

The saying, "Time flies when you are having fun" could not be more apt for me and I would like to begin by letting everyone know how much I have enjoyed working with the SEC Executive and Committee. Especial congratulations go to everyone involved in organising the marvellous SEC trip to Bruges in October 2009. You can read about the wonderful time had by all on that trip in these pages. Bruges is a truly beautiful city, enhanced for us by its tenuous Circuit connection: Penry-Davey Jnr. had directorial involvement in the film 'In Bruges'; a dark comedy that I warmly recommend. To continue with the theme of dark comedy, Giles Colin earned the admiration of the group for his powers of observation and courage, in chasing and physically apprehending a thief on our outward journey (while I identified the lookout – the more violent of the two accomplices – who, in vain, faked an epileptic fit to earn our sympathy). Giles also drew inspiration from the film in booking an incredible hotel featured in it. By day two, everyone felt they could get used to champagne for breakfast daily. Giles has negotiated another incredible hotel, amongst the best in the world, in Malta for the forthcoming Circuit trip; it promises to be unmissable.

In November, Michelle Fawcett, Claire Harden, Maura McGowan QC, Pam Oon, Ben Summers, James Thacker and Jon Whitfield QC were elected as members of the Circuit Committee and in December, Dermot Keating, John Dodd QC, Pam Oon, David Brock and Sheilagh Davies were selected to sit on the Executive Committee for 6 months. I am grateful to all of them for accepting the appointment and extend my thanks to their predecessors who have made a valuable contribution to the work of the Committee.

The Committee bade farewell to Jeremy Gold QC and Ian Darling upon their appointment as Circuit Judges. They will be sorely missed; we wish them the very best on the bench and are sure they will not forget us.

Our Committee meetings are fortunate to be attended by distinguished guests, such as three of the Presiders: Bean J, Cooke J, Saunders J, Paul Mendelle QC along with Christopher Kinch QC from the CBA and Rebecca Wilkie with Robin Knowles QC of the Bar Pro Bono Unit, all of whom spoke passionately about the work they do. Next time, we will have Keir Starmer QC, the DPP, and after that the Chairman of the Bar Council, Nick Green QC. Attendance by such guests at our meetings is an important feature, promoting the work of the SEC, fostering a better understanding of that work with our guests and getting their take on different issues. Accordingly, I intend to keep issuing invites, using my contacts in a way that is good for us, in getting our views across, and for them, in learning of our concerns and how we wish these would be tackled.

In September 2009 and January and March 2010, we were treated to Masters of Advocacy lectures by Jonathan Sumption QC, Dinah Rose QC and Andrew Hochhauser QC respectively. Each lecture has been extremely well attended and received, with hundreds of people turning out on each occasion. We are extremely fortunate to have such experienced and skilled advocates at the top of their game, prepared to give up their valuable time to educate and entertain us. Their respective interviewers were Timothy Dutton QC, Desmond Browne QC and John Hendy QC, each a respected star in their own right. Well done to Anesta Weekes QC on a triumphant feat of organisation in arranging this outstanding series of lectures.

February saw the exciting news of the Silk appointments and March, their consequent ceremony and parties. My congratulations to all the new SEC QCs appointed: I wish them the very best of luck in Silk. I also hope and trust that they will involve or continue to involve themselves in Circuit matters. We need all hands on deck in these difficult times. My particular congratulations go to Sean Larkin QC, who has been a longstanding and loyal member of the SEC Committee and Executive.

In the same month, we were honoured to have Lord Hoffmann deliver the Fifth Ebsworth Lecture, when he spoke about Libel Tourism. Suffice it to say, there was standing room only after all 350 seats were filled in record time. I found myself hastily re-writing a number of things I had planned to say at the end of the lecture (which taught me that you can't believe everything you read on the internet) as Lord Hoffmann demolished a number of preconceptions about his views on a fascinating and highly topical subject.

The Bar Council and Bar Standards Board road shows 'All Change: Or Not?' were a tremendous success. I – as I'm sure did everyone in the audience – learnt a great deal about a possible brave new world. These events are an extremely important part of Circuit activity and I am extremely grateful to all those who assisted in making them the success they were.

I have now visited every Mess, save one, on the Circuit and have been treated to some extremely warm and generous hospitality. I have also visited a number of sets of Circuit chambers after court in order to meet as

many barristers as possible. I have found these meetings to be extremely valuable in listening to local concerns and gathering information to feed back to the great and the good. Please remember that by taking advantage of these opportunities or of separately getting in touch, I can have first hand examples to relay back to decision makers, and myself, make more informed decisions on which issues to progress because of strength of feeling. Input from you is essential in informing me how to allocate limited resources of time; please continue to make contact if there are issues that concern you.

I am pleased to report that SEC membership continues to rise. My particular thanks in this regard go to Ann Cotcher QC and Georgina Gibbs, who are on something of a mission to ensure we continue to be a force to be reckoned with.

Progress is being made in relation to the CPS and unpaid fees. Many of you will have seen the letter from Alison Saunders, Chief Crown Prosecutor, in February, which was circulated by email. For the first time ever, the CPS has instituted making hardship payments in cases where there will be any substantial delay in settling fees and real proven hardship. All applications for hardship payments must be forwarded through me. You can rest assured that I will keep my foot on the accelerator in relation to unpaid fees. I am also continuing to work on the thorny issue of HCAs.

Double sitting start in two London courts shortly. Sarah Forshaw QC is in charge of this for the Circuit. I am keeping a cautiously welcome eye upon it. I believe that it could work for some sections of the Bar but I look forward to seeing how it works in practice.

We are now looking forward to the Circuit trip to Malta in May, the May and August Florida advocacy training trips and the Annual Dinner in June. We are fortunate enough to have Lord Neuberger, the Master of the Rolls, as the guest speaker at the Annual Dinner. Anyone who reads the papers should know that with such an intelligent and outspoken speaker as well as a great friend of the Circuit, we are in for what promises to be a very interesting evening.

The Keble Advanced Advocacy Course is at the end of August to the beginning of September. On the subject of Keble, I wish to extend my special thanks to Inge Bonner for all her hard work on this and all previous events. Keble, and indeed all events organised by the SEC, would not be managed half as well without her. I also cannot thank enough Philip Brook Smith QC, for this will be his last year as Director of Keble. His has been a magnificent contribution over the years of both a personal and professional nature. Philip Bartle QC will take over as

Director, and we look forward to working with him and the continued success of Keble as a world-renowned advocacy programme.

While I enjoy being able to work for the SEC, I am also able, ever so occasionally, to combine my work as Leader with genuine play. Four out of five of the other Circuit Leaders, together with their better halves, are coming to stay at my home in Spain for the first May Bank Holiday. We hope, amidst all the discussions and work about the Bar, to engage in a little eating and drinking. Rest assured we will fly the flag for the English and Welsh Bar all the while, and behave circumspectly… That said, all work and no play would make Stephen a very dull boy, and I know none of you would want that – neither do I!

I wish you all a very happy and successful summer and I look forward to continuing to do battle on your behalf in the year ahead.

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IN BRUGES

BY PRITESH RATHOD

Last year's trip to Bruges was my first Circuit Trip. I was a little anxious as I thought about what it would be like to spend a weekend with people who I did not really know and most of whom were twice my age! I should not have worried, however.

The trip began with some drinks at the champagne bar at St Pancras Station. We then piled into the first class carriage of the Eurostar and off we went. The quality of the food served on-board was surprisingly good. The train journey provided a good opportunity for us all to break the ice and get to know others who were on the trip. We had all barely begun to settle into the carriage properly when, before we knew it, we had arrived at Bruxelles Midi Station.

And then the drama commenced. Standing in the main concourse with her handbag was a Circuiteer. From behind, a Belgian youth managed to get hold of her handbag. Up stepped Giles Colin. Many reading this magazine will know Giles as the Circuit's Assistant Treasurer. Few know him as the Circuit's "have a go hero". Giles effectively made a citizen's arrest on the mugger. Unfortunately, due to police bureaucracy, we were unable to ensure that the thief was charged.

With all the drama out of the way, we boarded a train for Bruges. An hour later and we were there. A handful braved the chilly night and walked to the hotel. Most of us waited for taxis, although the taxi rank was deserted. Credit goes to Kaly Kaul for having a brainwave and phoning the hotel to send taxis for us, after no taxis had been in sight for half an hour. The Relais Bourgondisch Cruyce Hotel was stunning. The spacious rooms were decked out with rustic and classy furniture. The views from most rooms were spectacular. There was an authenticity and homeliness about the whole place. Those who are familiar with the film In Bruges will be pleased to note that a scene was filmed in the restaurant in the Bourgondisch.

The next morning started with a champagne breakfast. We then had a fascinating meeting with lawyers from Bruges, including the Chairman of the Bruges Bar and a former Vice Chairman of the European Bar Association.

One of the issues that we discussed was multi-disciplinary partnerships. Lawyers in Belgium do not practice in collaboration with any other professional. This was decided several years ago following a general meeting of the Belgian Bars. It was discussed again as a result of an enormous lobby by the big accountancy firms in Holland and later in Belgium, who argued that they should be entitled to provide full legal services under the EU anti-competitive framework directive. The matter was adjudicated upon by the ECJ in favour of the professions. Despite further rumblings and attempts to get this topic back on the agenda of the Belgian professional body it seems that the lobby has relented in the aftermath of the ENRON case.

The Bruges lawyers expressed dismay at proposals in the UK that one-stop shops would permit partnerships or associations with non-lawyers. The whole essence of the legal profession was based on its professional independence in representing clients. That would be lost with a significant negative impact for clients. The fear of many in Europe was that new regulations in the UK would quickly allow other EU countries to follow suit. It would be disastrous if the independence of a self-employed professional in the legal system could be undermined by commercial considerations of this kind.

Also on the agenda was cuts in public funding. Unbeknownst to any of us, the Belgian Bar had gone on strike to protest at cuts to their own public funding budget. Apparently, the strike had been effective. We were all extremely impressed with the knowledge that the Bruges lawyers had not only of our legal system but also of the issues that our lawyers faced. They suggested greater awareness and communication between Bar associations in each EU member state so that all would be aware of the issues that each was facing. Both groups of lawyers felt that they had learned some new and very important things in the meeting.

Following the meeting, we got a chance to see what Bruges is all about. A half an hour boat trip revealed that Bruges is a beautiful city. It is no exaggeration to say that that there really is no place in Europe like it. It has been a UNESCO World Heritage Site since 2000. Some call it "The Venice of the North". Rivers and canals wound their way to places as far away as Amsterdam. All the roads were cobbled and, buildings and streets seemed to have remained unchanged for centuries. The rest of the afternoon provided ample opportunity for Circuiteers to explore this extraordinary city. An interesting way to orientate one's self quickly in the city is to go on a tour by horse and cart. It covers a remarkable number of places over a relatively short period of time. Of particular beauty were the Church of Our Lady, which houses the Michelangelo sculpture Madonna and Child, and the Burg Square, which is home to the 12th century Basilica of the Holy Blood, the City Hall and the Provinciaal Hof (Provincial Court).

The dinner at the Maria van Bourgondië restaurant (owned and managed by the hotel) on the Saturday night proved to be a big success. The food looked delicious and, I am informed, tasted every bit as good as it looked (I cannot vouch for its taste due to a disagreement between my stomach and some moules-frites earlier that afternoon). We were joined again by the Bruges lawyers, who provided us with an interesting insight into Belgian culture and history. They drank copious amounts of alcohol and even joined in with an Anesta Weekes QC-inspired game of charades (although quite how anyone is able to communicate the title of the novel The Reluctant Fundamentalist without using words is beyond me). New friendships were made with our Belgian counterparts, who promised to come to London where the Circuit will be more than pleased to host them.

Sunday was left for more sightseeing and shopping (shops in Bruges specialise in selling three types of goods: chocolate, lace and lingerie – some shops even combine the three!). As we were leaving, all were agreed that the service provided by the hotel staff was first rate. It is only right to place on record our thanks to Eddie and Frederik at the Bourgondisch for really pulling out all the stops to make our stay in Bruges a memorable one. Thanks also go to Giles Colin, who organised such a wonderful trip. I wholeheartedly recommend both Bruges and South Eastern Circuit trips to all Circuiteers. I for one am looking forward to the next Circuit trip and I hope to see some of you there.

Pritesh Rathod is a barrister at 1 Crown Office Row, the SEC's Law School Liaison Officer and Secretary of the SEC's Minorities Committee

EBSWORTH LECTURE

LIBEL TOURISM

BY LORD HOFFMANN

Dr Rachel Ehrenfeld is the principal director of the American Centre for Democracy, which declares itself to "fight[s] for the freedom to expose and monitor threats to the national security of the US and Western democracies." She was born in Israel but lives in the United States. Dr Ehrenfeld has firm views on the Palestinian question and considers the British to be soft on terrorism. Towards the end of 2003 she published a book called Funding Evil, How Terrorism is Financed and How to Stop It. It contained allegations that a well-known Saudi businessman named Khalid Bin Mahfouz had contributed millions of dollars to Al Qaeda and other terrorist organizations. It is hard to think of more serious allegations which could be made against an Arab doing business with the West. The book was not an international best seller but it appears that 23 copies were sold to persons in the UK

by internet sellers like Amazon. In addition, a chapter of the book containing some of the allegations was put on the internet by ABCnews.com and accessed by people in this country. Mr Mahfouz and his sons were known in financial and energy circles in London; they owned at least one house here and one of their business interests at the time of publication was an oil exploration company which had its headquarters in London.

Mr Mahfouz commenced proceedings for libel in London on 30 June 2004. Dr Ehrenfeld and her publisher were served out of the jurisdiction. She instructed English solicitors but did not acknowledge the proceedings. Instead, she started proceedings against Mr Mahfouz in New York for a declaration that her allegations were not actionable under US law and that an English judgment against her would not be enforced. The judge in New York dismissed the action on the ground that he had no jurisdiction over Mr Bin Mahfouz and his decision was upheld by the New York Court of Appeals.

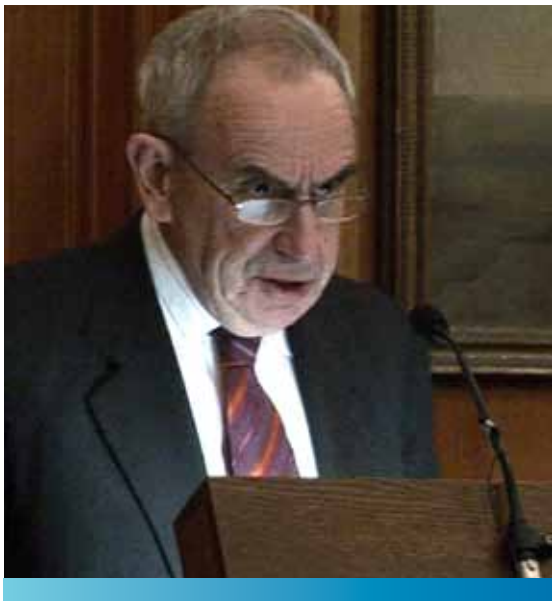
Dr Ehrenfeld did not defend the action when it came before Eady J on 3 May 2005. It is perhaps worth pausing at this point and asking what defences would have been open to her on the merits or whether she could have challenged the jurisdiction of the court to hear a case against her, a non-resident, at the instance of Mr Mahfouz, who owned a house in London but was not ordinarily resident here. As to the merits, her preface suggested that she intended to plead justification, but given that her sources were likely to have been confidential, it might not have been an easy defence to run. She could however have relied upon the public interest defence created by Reynolds v Times Newspapers Ltd. This enables the publisher of a defamatory statement to plead that it concerned a matter of general public interest and that he or she acted responsibly in checking his sources and, where appropriate, giving the person defamed a reasonable opportunity to rebut the allegation. An example of a successful defence was Jameel v Wall Street Journal, decided by the House of Lords a year after Dr Ehrenfeld's case which, as it happens, also concerned the alleged funding of terrorism. The House of Lords decided that the subject was one of considerable public importance and that the Wall Street Journal had acted responsibly in checking and publishing its story.

The subject of Dr Ehrenfeld's book was likewise of undoubted public importance. Nevertheless, she did not put forward the Reynolds defence. One can only speculate about why she did not. Perhaps she had some doubts about whether she would satisfy the English test of responsible publication.

Jurisdiction

As for jurisdiction, the old rule was that a single publication within the jurisdiction is sufficient to give rise to a cause of action (Duke of Brunswick v Harmer). But that is no longer English law. In Jameel v Dow Jones Co Inc the Court of Appeal decided that if the damage to reputation in this country was insignificant, the court could out the proceedings as an abuse of process. In Shevill v Presse Alliance SA the Court of Justice of the European Communities decided that Article 5(3) of the Brussels Convention conferred jurisdiction in libel cases on the courts of any Member State "in which the publication was distributed and where the victim claims to have suffered injury to his reputation." It was for the national law to decide what counted as distribution and injury to reputation. In that case, Miss Fiona Shevill who lived in Yorkshire wanted to sue France-Soir, which sold 237,000 copies a day in France, 230 in the United Kingdom and 5 in Yorkshire. The House of Lords, following the decision of the Court of Justice, held that she was entitled to do so. In such a case, governed by the Brussels I Regulation, the United Kingdom is obliged to take jurisdiction. In other cases, it can still apply the doctrine of forum non conveniens and decline jurisdiction on the ground that there is another clearly more appropriate forum in which justice can be done between the parties.

In Berezovsky v Michaels, Lord Steyn said that it was right to take jurisdiction because "the distribution in England of the defamatory material was significant and the plaintiffs have reputations in England to protect." As it happens, I dissented because the judge had found that Mr Berezovsky has not suffered substantial damage to his reputation in



England and I did not think that the Court of Appeal should have reversed him. But there was no dispute over the principle to be applied. Whether Dr Ehrenfeld could have obtained a stay on the ground that only 23 copies of her book had been sold here must be a nicely balanced question. But then there is the internet publication. The internet is a means of publication in every country in the world and therefore a means of causing damage to a person's reputation, if he has one, in any country in the world. Logically, therefore, the courts have decided that the tort is committed where the material is downloaded (Godfrey v Demon Internet; Dow Jones and Co Inc v Gutnick). The website ABCnews.com appeared from the evidence to have a substantial readership in England and Dr Ehrenfeld may therefore have found it difficult to persuade the court that the claimants were not alleging a real and substantial tort in this country.

The claimants were aware of Dr Ehrenfeld's claim in the New York proceedings that they were "hiding the truth behind the screen of English libel law" and therefore did not rely upon the burden of proof being upon a defendant to justify a libel or put forward some other defence. They applied under the summary disposal procedure in sections 8 to 10 of the Defamation Act 1996 and dealt in detail with the grounds upon which the book alleged that they had been supporting terrorism. It is not easy to prove a negative but Eady J said: "I think it is fair to say that they have done everything they can to demonstrate the falsity of the allegations and to vindicate their reputations." The judge made a declaration of falsity and awarded £10,000 damages, the maximum allowed under the summary procedure, and costs.

The Libel Tourism Protection Act

The Ehrenfeld judgment created a great stir in the US. Dr Ehrenfeld and her supporters campaigned for legislation to protect Americans against foreign libel laws. In 2008 the State of New York passed the Libel Terrorism Protection Act, an odd name which presumably implies that Eady J is a libel terrorist. It provides that a foreign judgment in defamation proceedings should not be enforceable in the US unless the foreign law provides "as least as much protection for freedom of speech and the press as would be provided by both the US and New York constitutions." It does not seem to matter whether the claimant is a national of the foreign jurisdiction, suing to vindicate his reputation in his home country or even whether the defendant submitted to the foreign jurisdiction. Similar legislation has been passed in California, Illinois, New Hampshire, Florida and Hawaii. A Bill has been introduced into the US Senate by Senators Arlen Specter and Joseph Lieberman which goes further and gives the defendant a cause of action in the US to recover any damages he has paid and costs he has incurred in the foreign proceedings, as well as damages for "the harm caused to the US person due to decreased opportunities to publish, conduct research or generate funding."

To be a beneficiary of this cause of action, you must be a "United States person", which is defined to mean a US citizen, an alien admitted for permanent residence or a business entity lawfully doing business in the US and the publication must have been "primarily" in the US. It is important to notice that these provisions, if they become law, will impose liability upon British citizens suing in British courts for libels affecting their reputations in Britain. They can hardly be described as tourists. All that can be said is that they have had the temerity to sue an American. The lesson for all foreigners is clear. If you have assets in the US, beware of trying to defend your reputation in the country in which you live and have been libelled by an American. You may find yourself on the receiving end of a counter-suit for damages. No doubt publication on the internet through an American server will count as publication primarily in the US, however many people may access the libel in your own country.

The World's Most Illiberal Libel Laws?

The American reaction to Dr Ehrenfeld's case has been seized upon by some of the media in this country as support for a campaign to introduce the New York Times v Sullivan rule here. Is it the case that we have the democratic world's most illiberal libel laws? The rule in New York Times v Sullivan was adopted to deal with a very special and local political situation which existed in the US in the early 60s of the last century. Racist politicians and juries in the southern states were using the law of libel to punish any expression of support for the civil rights movement. The Supreme Court decided that the only practical remedy was virtually to abolish the law of defamation for "public figures", an expression which came to include not only politicians but anyone who involved themselves in public life and even "involuntary public figures" who had became caught up in some newsworthy incident. For such people, the bar against liability is set so high as to be virtually insurmountable. The social conditions which gave rise to the rule have long passed away and it has not

escaped both scholarly and judicial criticism, even in the US, although this has tended to be drowned out by the approval which it naturally receives from the media.

As evidenced by the Ehrenfeld affair, Americans tend to believe that their way is the only way for the whole world. The United Kingdom is obliged under Article 40 of the International Covenant on Civil and Political Rights to submit periodic reports on its compliance with the Covenant. In 2007 it submitted its report. On 8 July 2008 the representatives of the United Kingdom were summoned to appeared before the Committee in Geneva and explain our position. The American representative on the committee was Professor Ruth Wedgwood of John Hopkins University, Washington. When it came to the Committee's concluding observations, there was a rap over the knuckles for the United Kingdom for its failure to adopt the American law of libel. In a passage which I imagine was drafted by Professor Wedgwood, since she quoted it on an internet blog in support of Dr Ehrenfeld's campaign, the Committee said: "The Committee is concerned that the State party's practical application of the law of libel has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work, including through the phenomenon known as 'libel tourism'. The advent of the internet and the international distribution of foreign media also create the danger that a State party's unduly restrictive libel law will affect freedom of expression worldwide on matters of valid public interest (Art 19). The State party should re-examine its technical doctrines of libel law, and consider the utility of a so-called "public figure" exception, requiring proof by the plaintiff of actual malice in order to go forward on actions concerning reporting on public officials and prominent public figures…"

The suggestion in this passage is that failure to follow American practice may be a breach of this country's international obligation under the Covenant to uphold freedom of speech and the press. This is a remarkable proposition, because if state practice is any evidence of international law, it must be of some significance that the rule in New York Times v Sullivan appears to prevail nowhere except in the US. The Supreme Court of Canada gave it careful consideration in Hill v Church of Scientology of Toronto but rejected it on a number of grounds, one of which was that it was unduly skewed in favour of people who published defamatory statements and gave too little protection to reputation. As Binnie J said in WIC Radio Ltd v Simpson, "An individual's reputation is not to be treated as regrettable but unavoidable road kill on the highway of public controversy". In Australia the High Court in Theophanous v Herald and Weekly Times likewise gave careful consideration to the New York Times v Sullivan defence and rejected it for much the same reasons as in Canada. It has been rejected in New Zealand. In the United Kingdom a proposal to introduce the defence was rejected by the Neill Committee in 1991 and not argued by the appellants in Reynolds v Times Newspapers Ltd. In the common law world, therefore, the US is the only country in step.

Justification

The other criticism of English libel law is that a defendant, if he chooses to run a defence of justification, has the burden of proving that the defamatory allegation is true. This rule is frequently expressed in America by saying that in England the defendant is guilty unless provided innocent. The European Court of Human Rights has several times been invited to rule that it infringes the freedom of speech and the press under article 10 of the Convention. It has consistently refused to do so. The most recent occasion arose out of the Jameel case, in which the Wall Street Journal petitioned the Strasbourg court after losing in the Court of Appeal. Not satisfied with their victory in the House of Lords, they pressed on with their complaint about the burden of proof. The court dismissed it as manifestly ill-founded. They pointed out that the Reynolds defence does not require the defendant to prove the truth of the statement. It is only if the article is not about a matter of public interest or the defendant has not acted responsibility that any question of the truth of the statement arises at all.

And then, what does the burden of proof in practice mean? If a newspaper alleges that Mr Smith, a school teacher, has sexually assaulted a child, what can Mr Smith do to prove the negative if the burden is upon him? True, he can go into the witness box and deny it. But in practice he will do that even if the burden is upon the newspaper. Any libel practitioner knows that he cannot afford not to put his client in the witness box. Whichever party bears the burden of proof, the newspaper will then be at risk of losing unless it brings some evidence to rebut the denial and support its allegations. The burden of proof only becomes relevant if the jury are left in doubt. How often does this happen? Anyone who has sat as a judge will know that cases which turn upon the burden of proof are very rare. Usually, one makes up one's mind one way or the other, whoever has the burden of proof. And in those rare cases, what should one tell the jury? As Mr Eady J remarked in a talk which he gave in December, do we really want the judge to say to the jury: "This is a case in which there is no public interest in publication, or the newspaper has not acted in accordance with the standards of responsible journalism, but their right to publish is so important that if you are in doubt as to whether he assaulted the child or not, you are to find that he did it"?

Conclusion

I do not want to suggest that English libel law is perfect. No doubt there are improvements to be made and in relation to costs in particular, Lord Justice Jackson has made some helpful proposals. But the complaints about libel tourism come entirely from the Americans and are based upon a belief that the whole world should share their view about how to strike the balance between freedom of expression and the defence of reputation. And naturally the American view is enthusiastically supported by the media in this country. But before we are stampeded into changing our law, we should bear in mind that the points about which complaint is made are either binding on us as a matter of European law, as in the Shevill case, or have been approved by the Strasbourg court as compliant with the right to freedom of speech under the Convention. Finally, we ought to inquire into whether in practice libel tourism is a serious problem, not just for the odd American who would prefer us to have the rule in New York Times v Sullivan, but for the administration of justice and the public interest in this country.

This, abridged, Fifth Ebsworth Lecture was delivered by Lord Hoffmann on 2 February 2010. Dame Ann Ebsworth (1937-2002) was the sixth female High Court judge to be appointed and the first to be assigned to the QBD. She left a lasting impression on the legal world and the SEC

SEC ROADSHOW: 'ALL CHANGE? OR NOT?'

BY JON WHITFIELD QC

On 12 January at the Bar Council offices, Stephen Leslie QC introduced the SEC roadshow entitled "All Change? Or Not?" which followed an historic announcement by the Bar Standards Board (BSB) on 20 November 2009. Bar Chairman Nicholas Green QC, Chair of the BSB Baroness Deech and Financial Adviser Richard Watkins summarised the potential changes and consequences. The evening concluded with a lively Q&A.

Potential changes to the way barristers supply legal services were created by the BSB's decision to permit barristers to:

- Make use of entities such as companies or partnerships to procure and administrate (but not supply) legal services
- Manage Legal Disciplinary Partnerships (LDPs) without re-qualifying as solicitors
- Practice in the dual capacity of manager or employee of a procurement entity and as a self-employed practitioner

The BSB has also decided to consult upon whether it should regulate procurement entities since, unlike the Solicitors' Regulation Authority (SRA), the BSB and Bar Council only regulate individuals. The BSB's decisions are yet to be ratified by the Legal Services Board (LSB) but it is hoped this will occur in the next three months.

A procurement entity run by or for barristers may bid for a contract to supply legal services. It may then employ barristers and others to provide advocacy services for the contract. The key is a clear division between the entity procuring the service contract and the barristers who actually provide the legal services. LDPs are fusion by any other name since they may include solicitors and barristers and 25% of the partners may be non-lawyers. The same may be said of companies. 'Barrister-only Partnerships' (BOPs) may be unworkable given the rule against conflicts raising its head if, for example, you are against a business partner in a case.

The main change wrought by these entities is that barristers control the process, not solicitors. As the roadshow title suggests, no-one quite knows what this means. All present wished to remain 'one Bar' but recognised this did not mean one style of practice. Civil practitioners voiced a preference to remain a referral profession however this is no longer tenable for many publicly funded barristers. The reason is simple: a client's first point of contact is a solicitor and solicitors now have full rights of audience so there is no need to refer to the Bar and good commercial reason not to. Solicitors have the dual benefit of a monopoly on client-access and unfettered rights of audience. Now that monopoly has been broken the Bar has a chance to fight back.

Nicholas Green QC advised he had seen several procurement entities that appeared to meet the necessary requirements and agreed to try to publicise these. Baroness Deech stated that these are the most important and far reaching changes to the Bar in a century. In taking two years to make its decision the BSB focused on the needs of the consumer, promoting access to justice and maintaining the rule of law. It wished to maintain an independent Bar, keep the cab-rank rule and promote the Bar's pro bono tradition. The intention is to facilitate barristers bidding for contracts through corporate or partnership vehicles whilst maintaining their independent practice. Richard Watkins advised that the changes will require guidance and assistance since procurement vehicles such as companies or LDPs have differing regulatory and tax implications, although there may also be business.

Whilst all present supported these ideals, the sting in the tail came from the comment that the BSB does not focus on the business-needs of a chambers. The time taken to make the decision has seriously disadvantaged the Bar. There are now but two months to create a procurement vehicle and business plan, employ staff and tender for work. Furthermore without the LSB's ratification of the BSB's decision, tenders may only be on the basis that they expect to be tender-compliant. If the LSB do not ratify, any tender will fail. These contracts are for three years, extendable to five.

The Q&A session proved quite lively. Baroness Deech said it would be expensive for the BSB to regulate entities which prompted this query, "The SRA has been regulating entities for years. Why bother?" Further, given the delays to date, practitioners may prefer their entity to be out-with the BSB's remit, albeit that individuals would remain subject to the BSB code of conduct. The prospect of the BSB facing the SRA in a best value tendering competition to regulate entities caused some wry laughter.

It was generally acknowledged that government funding bodies had no concept of 'best value', only 'best price' (cheapest). A particular concern of the young Bar was that bids for block contracts would result in fees being driven down particularly those of the junior barristers. Nicholas Green QC acknowledged the risk but said the Bar Council could do nothing to prevent it; it was a matter of commerce.

A poll of those present at the roadshow suggested that approximately 25% feared fusion but 40% (criminal practitioners in particular) saw benefit in replacing the existing rules that prevent the publicly funded bar from competing for work with permissive regulations that take account of business.

Jon Whitfield QC is a barrister at 15 New Bridge Street

THE SOUTH EASTERN CIRCUIT
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SEC

THE BAR PRO BONO UNIT: LITTLE PAIN, ALL GAIN

AN INTERVIEW WITH PHILIP BROOK SMITH QC

BY TIM DUTTON QC

Philip Brook Smith QC is a member of the Management Committee of the Bar Pro Bono Unit and Joint Director of the Keble Advanced Advocacy Course

How did you come to be involved with the Unit?

Many years ago, I was asked to become a Unit reviewer and accepted, not really knowing what I was letting myself in for, subsequently joining the Management Committee.
In these early days, the Unit was a small operation, and relied heavily on arms being twisted to fill its posts. Nowadays we are highly organised following good governance principles; but I like to think I'd still be asked! The Unit grew to become what is now a highly efficient outfit, staffed by a dedicated and hardworking team.

So how does the Unit work?

It's relatively simple. An applicant has a legal problem; proceedings may already be in place. The applicant goes to a referring agency, such as a Citizens Advice Bureau. The agency will help in completing an application form (downloadable from our website), and submit it, with a summary of the problem and key documents. Our skilled caseworkers will make sure that sufficient information is in place for the case to go forward to one of our specialist panel of reviewers. Reviewers have expertise in the relevant area of law; they decide whether assistance should be provided, and if so what. The caseworkers will then try to find suitable counsel from our list of panel members. If, happily, counsel accepts the case, the applicant is put in touch with the barrister. The Unit effectively drops out of the picture - it has done its job. The relationship is then directly between the applicant and counsel.

Hang on. Aren't there restrictions on barristers accepting instructions directly from the client?

Not given the Unit's involvement. We have a Bar Council licence, permitting direct instruction, so long as the Unit has stipulated the piece of work to be done. There is no need for Direct Access training. The barrister is able to do the work without the involvement of an instructing solicitor.

How many panel members are there, and how do barristers join?

We presently have over 2200 panel members, including 300 silks. The commitment they each give is a willingness to undertake a minimum of 3 days of pro bono work through the Unit per year. That said, some panel members do much more than that. We would hope that when barristers qualify they look to join our panel, perhaps encouraged by other members of their Chambers. Certainly, at Keble this year I shall be making every effort to encourage Circuit members to join the panel, if they are not already. Although in some areas of law there will be insufficient cases to take up the 3-day offer on a regular basis, many barristers will find a source of pro bono work through us. The more panel members we have, the better service we can provide, and less reliance is placed on those who regularly do pro bono work. So – if you are not already on our list, please step forward and give your commitment! It is as simple as that. You will find it very rewarding, and no more onerous than you would wish it to be.

We all know that cases tend to mutate and involve more work than anticipated at the outset. What are panel members letting themselves in for?

The Unit has a 'piece of work' approach. It identifies a specific task which it asks counsel to do. That might for example be representation at a forthcoming hearing, or advice on the merits at a conference. Counsel is not lumbered with additional work; any other work will be subject to a further application to the Unit, and we look again. In some cases, for example, the advice given may be that a case is without merit, and so it would be unreasonable for further pro bono assistance to be offered.

This idea of 'merit'. Is this just the legal merit of a case?

Not necessarily. We look to assist in cases which are 'deserving'. For example, an applicant might be in danger of losing their home, and quite apart from the legal merit of their case they might benefit from pro bono assistance. Or they may have received prior legal help which has not been entirely satisfactory, and would gain from being told

authoritatively why their case is 'bad', if it is. So the legal merits of a case are important, but not determinative. A panel member can be sure that if a case is offered to them, it has been looked at by a specialist reviewer and been assessed as deserving of pro bono assistance – all they then have to do is the work.

What about financial resources? Are these relevant?

Yes they are. Panel members cannot be expected to offer their services pro bono to persons who have the ability to pay for them. Applicants provide details of their financial circumstances, and the Unit reviews them. In some cases, public funding is not available due to these, but we consider them in the round and form a view as to whether pro bono assistance is nevertheless appropriate. For some applicants it is unreasonable to expect them to spend their limited resources on legal costs, particularly when they might have no clear idea of where the legal merits lie. And in the current financial climate, the existence of equity in a home may mean that it is not reasonable, or practical, to treat that as an asset capable of release to fund legal services.

What happens when a pro bono barrister wins a case – can the losing side escape a costs order, as no legal costs have been incurred?

Now that we have section 194 of the Legal Services Act 2007, pro bono costs orders can be made, requiring the losing party to pay the costs to a central pro bono fund, to be used for the benefit of pro bono activities. This should mean that the other side approaches litigation against a pro bono assisted client in exactly the same way as a privately funded client: with a heightened sense of costs risk. So a 'settleable' case may do just that.

What other organisations does the Unit work with?

There are many, for example FRU, LawWorks, the Personal Support Unit and the RCJ Advice Bureau, together with the professional bodies – the Bar Council, the BSB, the Inns of Court, the Institute of Barristers' Clerks, the Law Society and ILEX. The Unit operates within a grouping of bodies which share our commitment to providing pro bono legal services to those in genuine need. The recession has played its part in increasing that need; and Legal Aid has not responded. These are more than difficult times for the profession too, but our experience has been that the profession is not prepared to neglect those who are most vulnerable. Working collaboratively in partnership with other key organisations means that our service can effectively reach those in need.

How is the Unit funded?

It relies entirely on funding from the profession, and could not function without it. This year, funding pressures are pronounced; the Unit needs all the help it can get. So all donations are gratefully accepted!

The Unit's website also deals with Bar in the Community. What is this?

It is the Unit's sister charity. It promotes volunteering by those with legal skills, allowing individuals to contribute to their community in ways other than simply providing legal advice, for example by becoming a member of a management committee for a charity. This way, barristers can be put in touch with organisations that would benefit from their legal skills and knowledge.

What message would you like to give to members of the Circuit?

That the Unit is their vehicle for providing pro bono services to those in genuine need. I'm certain that every member of the Circuit has capacity for a minimum of 3 days work per year of pro bono work. Circuit members already provide a considerable bulk of our panel members and I'd like there to be an expectation that all will participate. The Keble Advanced Advocacy Course is an outstanding illustration of the Circuit's commitment to promotion of advocacy skills, key to our professional lives. A willingness to provide pro bono services through the Unit should be viewed as part and parcel of what it means to be a Circuit barrister; as a further badge of excellence. The benefits of undertaking pro bono work are considerable. Solicitors and clients increasingly have regard to pro bono commitment in their choice of barrister, quite apart from any internalised 'happy glow' that pro bono work brings! So please participate with and through the Unit in every way you can. Visit our website at www.barprobonounit.org.uk to find out more.

Tim Dutton QC was Leader of the SEC from 2004-2006 and Chairman of the Bar Council in 2008

JONATHAN SUMPTION QC ON APPELLATE ADVOCACY

BY GERALDINE CLARK

"I wish I'd heard this talk 50 years ago"
Sir Sidney Kentridge QC

Rarely in my experience is a talk so gripping and helpful that you wish it was longer. A packed Inner Temple Hall was treated to such a talk by Jonathan Sumption QC on 29 September 2009 as part of the SEC's Masters of Advocacy series of lectures. Sumption's subject was Appellate Advocacy and throughout the talk he delighted the 300-strong audience with quips such as: "Appellate judges are bigger than you and they hunt in packs". These mild digs at judges reminded everyone that this speaker was not a judge but a practising barrister like them.

Sumption shared some instructive insights into the judicial mind based on his experience. He said that judges had become less reverent of authority than in the past and that they cited fewer cases in their judgments these days. There was now a tendency to set out broad principles of law exemplified by the authorities across a range of subjects rather than applying authorities directly to the case being decided. He also noted and welcomed an increasing willingness by judges to consider the social and economic implications of their decisions in their judgments.

Based on the premise that: "Judges start with an instinctive view and work backwards to justify it", Jonathan made some practical suggestions for skeleton arguments and oral advocacy. Here are five out of a much longer list that will be at the forefront of my mind when I appear in the Court of Appeal:

- The first paragraph of a skeleton should grab the judge with an interesting legal principle or interesting facts. It should not begin: "This is the hearing of…"
- Bad points drive out good points. List your points in order of merit and briefly set out your position on them.
- Make it as pithy as possible. Use unusual turns of phrase.
- Forget your skeleton once the hearing begins – do not make your oral presentation a mere commentary on your skeleton, but say things freshly so the judge listens to you rather than reads.
- Add historical or social context to make what you say more interesting.

Can you imagine the improvement to our lives as advocates and to the lives of our judges if the Bar were to adopt at least one of Jonathan's tips on appellate advocacy?

Following the lecture, Tim Dutton QC played the chat show host to Sumption's reluctant celebrity. It was skilfully done and it elicited lesser known facts about the advocate's life. Many in the audience will have been heartened to learn of Sumption's two year struggle as a pupil to find a tenancy. Those with a life outside the Bar will have been glad to hear him say: "I don't love the law. I like to practise it. I love history." Asked by Dutton what he considered to be the qualities of a great advocate, Sumption replied "Intellectual ability, application, luck. Humility is useless. Humour helps." He only demurred when asked to identify his own faults as an advocate.

The evening ended with questions to Sumption from the floor. Perhaps the best question was: "What can you do about the difficult judge?" To this Sumption said: "You can't force him to listen, you can only hope he makes a real mess of the judgment. It is good to lose as comprehensively and unfairly as possible to make it easier in the Court of Appeal." Alas, that such excellent advice should be of small comfort in civil work; with permission to appeal nearly always required, the judge rarely giving it and the costs of seeking permission from the Court of Appeal so high, the difficult judge may well escape his comeuppance.

It was a memorable evening for all the right reasons and Sumption, Dutton and the organiser, Anesta Weekes QC (Director of Education and Training for the SEC) richly deserved the long and warm applause which followed the lecture.

Geraldine Clark is a barrister at Serle Court

DINAH ROSE QC ON PUBLIC LAW ADVOCACY

BY RACHEL SCOTT

On 14 January, the SEC turned out in force for the first Masters of Advocacy series lecture of the year. Inner Temple Hall was packed: there was no chance of a snowflake or two keeping this audience away when the guest speaker was Dinah Rose QC and the subject advocacy in public law. Dinah needed little introduction. Barrister of the Year and Human Rights Lawyer of the Year in 2009, her involvement in some of the highest profile judicial review applications over the last two years (including the Binyam Mohamed, Cornerhouse and Jewish Free School cases to name but a few) have made her a household name.

The opening remarks of her address recounted how affected she had been as a history student by the lectures of Martin Gilbert, who would present evidence without emotion or judgment, allowing the facts to speak for themselves and leave only one conclusion to the listener. That was clearly a profoundly influential experience on Dinah, whose style of persuasion is famously direct. She told us that the first thing she does in reviewing a junior's skeleton argument is to excise all the adjectives.

Engaging and thought-provoking, Dinah proceeded to bestow upon us her tips for success in a notoriously competitive field of practice. "Be the advocate you are" was her shorthand for discouraging mimicry of those whose styles we might admire. "Questions are your friend" was the heading under which she explained how to engage with and use to one's advantage judicial intervention, although there are limits. Dinah described a period during her submissions in the JFS appeal when such was the bombardment of questions from the nine-strong Supreme Court that she was forced by pressure of time simply to ask for permission to move on. One had the impression that if anyone could silence their Lordships with grace and diplomacy, it was Dinah.

Perhaps the best insight into her art came when she encouraged us to, "Find the story in a case." Not to be confused with playing an empathy card, she was referring to the need for a neat and easily-understood hook upon which to hang a set of submissions. When members of Equitable Life's failed pension schemes won their claim for judicial review of the Treasury's decision to reject the Ombudsman's damning findings against the company, the hook she found was not the inherently emotive story of a group of impoverished pensioners but rather the unreliability of the actuarial report which had been used to prop up the Treasury's conclusions. The Court needed a reason to find for the claimants. The discredited report was it. This was a fresh and appealing approach to case preparation and one of universal application across practice areas.

The lecture over, our speaker retreated to the comfort of Inner Temple's finest brocade armchairs to join Desmond Browne QC in a Q&A session. The recently-departed Chairman of the Bar gave a commendable impersonation of a talk show host and teased out some of the personal and professional history of his subject (her hobby: embroidery; her first memory of pupillage: receiving a ticking-off over her unruly hairstyle). She came across as refreshingly honest and self-deprecating during the course of a wide-ranging discussion.

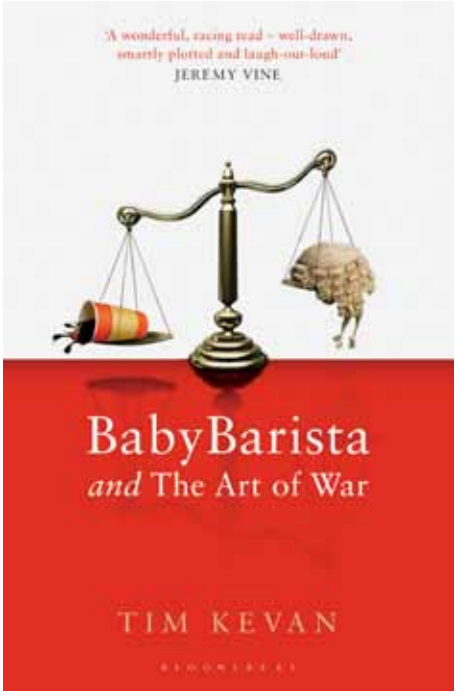
Despite her plainly fierce intellect, Dinah did not appear to consider herself an academic lawyer, professing only to find the law interesting when used as a weapon. Although unsure whether advocacy could ever be taught ("I have never seen it done"), she clearly does view it as craft to be honed. This no doubt came as comfort for those quarters of the Bar struggling not to feel battle-weary in their attempts to put the case for specialist advocates in publicly-funded work.

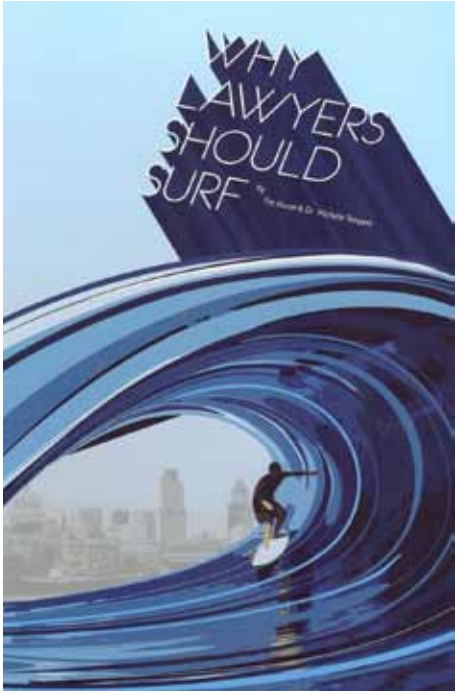
Following further questions from the audience, we went shivering into a wintry night, encouraged and inspired to find that winning story in the next day's case. At the end of the evening, Dinah had argued that in her view the lecture had been mis-described; she was no Master of Advocacy but a mere apprentice. On that, and that argument alone, we were unpersuaded.

Rachel Scott is a barrister at 3 Raymond Buildings

THE MAKING OF BABYBARISTA

BY TIM KEVAN





Back in early 2007 I had been practising as a barrister at 1 Temple Gardens for some nine years and was enjoying the life of a common law practitioner based in London. But I'd always dreamt of living by the sea and the surf and maybe even writing a novel. I just couldn't quite see how it could be done. At that time I'd just finished co-writing a motivational book entitled 'Why Lawyers Should Surf' with Dr Michelle Tempest, a book which encourages people to look for inspiration outside of law and used surfing and the power of the ocean as metaphors for living the day to day. Next I wanted to sit down and write a legal thriller. But instead what popped out was a legal comedy about a fictional young barrister doing pupillage. I called him BabyBarista which was a play on words based on his first impression being that his coffee-making skills were probably as important to that year as any forensic legal abilities he may have. It's a strange thing to say but I discovered that this bold, irreverent and mischievous voice along with a collection of colourful characters had simply jumped into my head and the words started pouring onto the page.

I wrote it as a blog and was hopeful it might raise a few smiles but in my wildest dreams I hadn't imagined quite the extraordinary set of circumstances which then unfolded. First The Lawyer Magazine commented "If this is a fictional account, it is genius". I then emailed a few publishers and started getting interest as well as taking on a literary agent who had approached me directly. In the meantime, I was contacted by Alex Spence of The Times and he very kindly offered to host the blog and finally, I got a book deal with Bloomsbury Publishing (of Harry Potter fame), all within the space of less than three months.

Since that hectic start, it's been a long haul. I've finally taken a break from the Bar and moved to North Devon where not only have I been able to go surfing a little more frequently but I also finished the first book in the BabyBarista series as well as continuing to write the blog. The book finally came out last August and does seem to have been well-received with broadcaster Jeremy Vine describing it as "a wonderful, racing read - well-drawn, smartly plotted and laugh out loud" and The Times Law Section calling it "a gallop of a read" and their Books Section mentioning its "relentlessly racy, rumbustiously Rumpolean humour".

The book is called BabyBarista and the Art of War and centres on BabyB's first year in chambers where he is fighting his fellow pupils for the coveted prize of a permanent tenancy. It's a fictional caricature of life at the Bar and includes characters that probably exist in most workplaces such as UpTights, OldRuin, BusyBody, Worrier and even JudgeJewellery and her penchant for stealing cheap jewellery. Alongside the pupillage race is an altogether different battle with BabyB's corrupt pupil master, TheBoss, whose dishonest fiddling of chambers' records to avoid a negligence action all starts to unravel and threatens to embroil BabyB's entire career.

With the first book finished, I'm continuing to write the blog as well as working on book two in the series. Ultimately I intend to return to the Bar part-time and based in Devon but hopefully through my chambers in London. In the meantime, I continue to enjoy life down here by the sea.

Tim Kevan is the author of 'BabyBarista and The Art of War', published by Bloomsbury. For more information visit www.timkevan.com

YOUR CIRCUIT NEEDS YOU

BY TIM FORTE

You cannot read the press or the emails flowing from the CBA or Bar Council without seeing that the criminal justice system is ever increasingly a victim of the economic climate and budgetary constraints with immediate and pressing impact upon you, the practitioner.

There is no more money. Our fees are first capped and then cut, and it appears soon to be cut again. Court centres and judges are driven to be more "efficient". What does "efficient" mean? It means more work by us, less time for us to do it and less and less money coming to us for doing it.

High Court Judges have repeatedly warned us that they are subject to increasing pressure to ensure that cases are heard promptly, punctually and swiftly. And they have told us that, if results are to be achieved, they have no option but to bring that pressure to bear at the coal face of criminal proceedings, i.e. the pressure is transmitted from them to us. As a prime example, that means an end to the culture of "I need more time before we start because…"

It is with this "because" that we need your help. There are (seemingly) 'unavoidable' problems at the beginning of many trials; some CPS-engendered, some defence solicitor-caused, some "just one of those things". We need to started avoiding them.

Given that we will be on our feet either asking for time, explaining the delay or the problem, it behoves us to try to preempt the problems in the first place. The judiciary expects them to stop.

In order for the Circuit to approach the Courts and Resident Judges with suggested procedures to minimize the problems that "waste valuable court time", we need to collate evidence of what problems practitioners face at the outset of trials, such as:

- Non-service of evidence
- Non-disclosure
- Witnesses not warned
- Defendants not proofed
- Late returns
- Late applications
- Late indictment changes

For example, the case stayed at the close of the Crown's case due to disclosure problems caused inter alia by late return to counsel of the prosecution brief. Or the case where the trial was aborted after 7 days because of late service of a vital schedule, causing the need for a three week re-trial 7 months later. Or even the court centre where all anticipated trial problems have to be raised with the Resident Judge before any trials can be vacated, leading to a number of trial listings being ineffective.

These are not meant to form an exhaustive list but an idea of the various problems that we face day in, day out.

So please contact us to tell us:

- Any problems that you have encountered over the past months which threatened to, or did, delay, or even de-rail, your trial;
- What measures you or others were able to take to avoid or minimize any delay or de-railment;
- What procedures a specific court centre has to minimise delay or derailment, to what extent it works, whether it penalises the practitioner fiscally (i.e. incessant "freebie" mentions) and to what extent it is fair.

Only if we have this sort of information from all our practitioner members can we begin to formulate a proposal to Court Centres and Resident Judges to get the best possible procedures in place to ensure that the system works efficiently. If the system is efficient, then the budget has theoretically more money to pay the practitioners. We can work more effectively, with less aggravation and time wasted.

So please send the information we need to help you to the following places:

- Instances of problems caused by the Crown, i.e. so CPS/police, etc (but not CPS fees, which is a discrete issue being dealt with separately) to Alisdair Williamson at alisdair.williamson@3raymondbuildings.com
- Instances of problems caused by defence solicitors, Courts, those responsible for the defendants' custody, etc – to Tim Forte at tim.forte@dyerschambers.com

Please do get in contact as soon as possible. We need only few lines but feel free to make it longer if you have more information. We cannot begin to help you unless you help us.

Tim Forte is a barrister at Dyers Buildings

RESTAURANT REVIEW

THE MEADOW, HOVE

BY JEFFREY LAMB

Anyone who has had to visit Hove Crown Court will know it to be an ugly, seventies building with the look of a prime example of the brutalist school of architecture. The internal décor of the building became unfashionable approximately ten minutes after the building was opened, and has remained that way ever since. However, there is some hope for those attending this ghastly building who are fans of good food and wine.

No more than 500 metres due south of the court is a newish restaurant called The Meadow. It is on a site that in the past has been a bank and an Italian restaurant, somewhat bizarrely called Red Rum. Since becoming The Meadow though, it has brought a breath of culinary fresh air to the locale.

It is decorated in an almost Shaker style taking great advantage of the quite enormous windows and with an elegant simplicity synonymous with such interior decor. The simplistic style is set off quite brilliantly by an enormous triptych of an Alpine meadow (geddit?).

With the menu we were brought a bowl of fresh, and it has to be said, most unusual, breads. Enjoying these of course serves to fill one up prior to the arrival of the main course but it also helps to pass the time whilst the food arrives; especially if the only conversation available revolves around how brilliant your companion was in court and how s/he put the judge in his/her place.

The menu is changed daily and, after many visits, I have yet to be disappointed by the fare. The day my wife and I last enjoyed a meal there, the menu contained starter offerings including wild garlic and potato soup, Portland crab and rabbit terrine and main courses of Sussex beef, Romney Marsh lamb, pork and Brill as well as nut roast.

For the main course I opted for the lamb (well, I would, wouldn't I?) and my wife, the beef. The well cooked meat came off the bone with ease and was, quite simply, delicious. My wife, something of a connoisseur of beef, was equally well satisfied with hers, describing it as "perfectly pink". In addition, a variety of ample vegetables are provided in a separate, stylish, pot. Ours combined sautéed spätzle, leeks, tomatoes and spinach. Between the two of us we were able to pick and choose as we liked, and there was ample.

All of the puddings are homemade and the ingredients are locally sourced. For an unusual change, if you are lucky enough to go on a day when they offer baked chocolate soup with vanilla crème fraîche and almonds, I suggest you dive straight in. It was delicious. Other desserts on offer included apple and hazelnut crumble with custard and egg custard tart with rhubarb ice cream.

The wine list on offer is not extensive, but to my mind, that makes it all the more appealing. Our menu included a 1997 Château Lamothe sauternes and a 2004 Château Theulet monbazillac. We tried a glass of each and were delighted with them.

The Meadow is a welcome appearance in the Hove area and it being a very short walk from the Crown Court is an even more welcome addition to the growing list of restaurants available to the discerning diner. This is an excellent place to enjoy delicious and well presented food. The only word of caution I must give to is that you are unlikely to get through the entire meal within the usual hour that busy practitioners have to revivify themselves during the middle of the day. That being said, if you have more time on your hands, take the opportunity to enjoy the experience that is The Meadow.

Cost: £35 + per person for 3 courses
Verdict: An excellent place to enjoy delicious and well presented food

Jeffrey Lamb is a barrister at Westgate Chambers

Florida Advocacy Course

The South Eastern Circuit invites applications from Queen's Counsel for the post of

Florida Advocacy Course Grade 'A' Advocacy Trainer

Attending the University of Florida, Gainesville

The program is accredited by the Bar Standards Board for CPD

Applications will be considered with regard to the following criteria:

1. Membership of the South Eastern Circuit (compulsory) – visit www.southeastcircuit.org.uk/members/register
2. Demonstration of first class written and oral advocacy skills.
3. "Grade A" advocacy trainer skills with experience of training in the last six months.
4. Obvious transferable social skills and a sound understanding of the independent UK Bar.
5. Recent court experience of prosecution and defense work.

This is a remarkable opportunity to act as an ambassador for the independent UK Bar. We encourage applications from suitably qualified candidates eager to fulfill that role.

Applications are invited from candidates to attend The South Eastern Circuit

Criminal Law Florida Advocacy Course

Held at the University of Florida, Gainesville

The program is CPD accredited by the BAR Standards Board awarding participants with 9hrs advocacy, 3hrs ethics and 33hrs CPD.

Applications will be considered with regard to the following criteria:

1. Membership of the South Eastern Circuit (compulsory) – visit www.southeastcircuit.org.uk/members/register
2. Demonstration of above average written and oral advocacy skills.
3. Demonstration of diverse experience and a detailed knowledge of criminal law and procedure.
4. Obvious transferable social skills and a sound understanding of the independent UK Bar.
5. Recent court experience of prosecution and defense work.

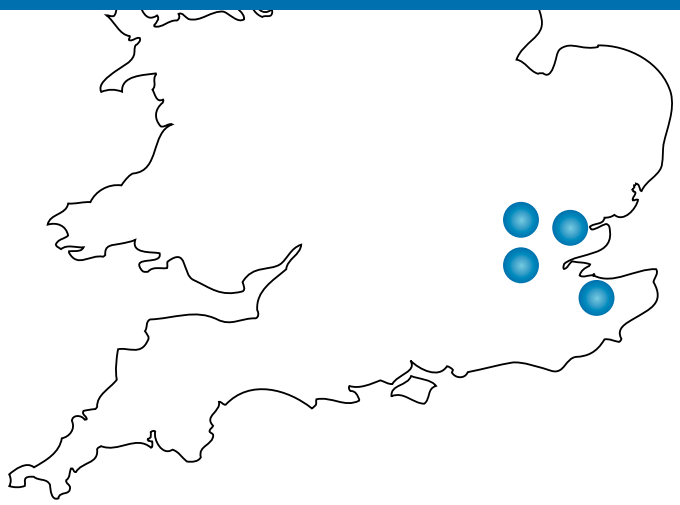
Application from previous program attendees and those with three years post-tenancy experience will not be considered. This is a remarkable opportunity to showcase the independent UK bar. We therefore invite applications from candidate who will be regarded as ambassadors to our profession.

31st July - 6th Aug 2010

Applications for this year's Prosecutor/Public Defense Trial Training Program held in conjunction with the Florida Bar and the University of Florida should be made to Samuel Magee by email (smagee@2bedfordrow.co.uk). Applications must be made in writing in the form of Curriculum Vitae and supporting covering letter; short listed candidates may thereafter be invited for interview prior to selection.

The successful trainer will be expected to travel to Florida in time to attend the course on 31st July 2010. A bursary will be provided to assist out of pocket expenditure. Accommodation and course materials will be provided.

BAR MESS REPORTS



CENTRAL LONDON

The Mess hosted an excellent dinner at the Reform Club on 4 March for the Presiding and Resident Judges and a few others. We were particularly honoured that Penry-Davey J jetted back down from Hull, where he had been sitting, to join us and say grace.

By the time The Circuiteer reaches you, up-to-date antecedents will no longer be required in Court 4 at Inner London. After 18 years on the bench, Judge Nicholas Philpot will hang up his wig. He will be joined in June by Judge Charles Gibson, who also sat at Lambeth County Court. Sticking with Inner London, the refurbishment of the Mess (well, new lino by the serving counter and a lick of paint) will be finished by the end of April, having taken a mere 6 months to complete.

Many more of us will be in a position to enjoy the scenic walk from Plumstead Station to Belmarsh in the future, as it looks increasingly likely the car park at Woolwich Crown Court is to be reduced in size for the provision of four 'Portakabin' temporary courts to cover the predicted influx of work from the Olympics. Given the longevity of the 'temporary' chocolate box courts at Inner London (nearly 30 years) we can safely say that they will be a fixture for some time to come.

Though not strictly one of the Central London Bar Mess courts, we have been involved in the pilot scheme for split shift court sittings at Croydon Crown Court. The idea is two trials can take place in one court in a day in order to reduce the backlog of trials in London. One will sit in the morning from 9.30am to 1.30pm, the other from 2pm to 6.30pm. Only short, straightforward trials will be used. We understand that due to their contractual arrangements, CPS in-house advocates will not be used for these trials. If it works, it may spread to our own Blackfriars. So we wait and watch.

'Prendergast'

CAMBRIDGE & PETERBOROUGH

The Cambridge and Peterborough Bar continues to soldier on, CPS and solicitor advocates not withstanding. Our Annual Dinner appears to have been a great success, Grigson J was on form and we were able to welcome back HHJ McKittrick in his new incarnation as Resident Judge for Peterborough. He seems to have survived the savages of the Suffolk Bar more or less intact.

Fresh faces abound on the Bench: HHJ Bate in Cambridge is affability personified (How did that happen? Was he not at the Bar in Norfolk?) and in Peterborough, HHJ Enright's cosy chats for junior members of the Bar are, we are informed, universally enjoyed.

The new court at Huntingdon continues to provide a welcome for escapees from Milton Keynes. Rumours of rain within the courtrooms are greatly exaggerated and the snug and bijou Robing Roomettes ensure a cosy atmosphere.

We look forward to the dinner for Saunders J fixed for 24 March. This dinner will start on time.

'Drained Fen'

ESSEX

The daffodils are being a little slow in brightening up the approach to Basildon Crown Court, but it can only be a matter of time before spring is sprung throughout Essex. A mixture of tidings: disappointment that some of our finest advocates did not get their due rewards in the latest Silk round; maybe next year. Although with the way this once proud and remarkable profession is going, under the pressures of CPS in-house advocates on one side of the Court and HCAs on the other, perhaps its best to stay in the senior junior rank until the dust settles.

On a happier note, we welcome a new face at Chelmsford, Her Honour Judge Walden-Smith. She has entered a male bastion; the first permanent female judge at Chelmsford since records began. We wish her well, and she is by all accounts a delightful addition to the team. Her arrival confirms that we have lost HHJ Peter Fenn to Ipswich. We will miss him in Essex but wish him well up in Suffolk. And we are still missing HHJ Rupert Overbury – on the mend we hope after a ghastly spell of illness; Basildon needs its barista back soon!

Congratulations we believe are due to one Holborn: wedding bells are rumoured! And the Mess owes a huge thank you to the formidable Jackie Carey, our outgoing (!) junior who will crown a glorious three-year reign by organising a dinner, on 9 July we hope, to mark the retirement of two much loved Essex Judges, HHJ Brooke, who sets sail from Basildon before the Summer tides, and HHJ Peter Dedman, master of the County Court and the most senior Judge in the county, who is looking forward to his new career as lead trombone player in a jazz combo. We will miss them both. Come to the dinner. Tickets are available from Jackie at 2 Bedford Row.

'Billericay Dickie'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