

The Circuiteer

Issue 27

News from the South Eastern Circuit

Autumn 2008

Life on the Circuit



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A Note from the Editor



The idea of 'Life on the Circuit' began with the cover. Once I had seen the photograph of Her Majesty The Queen with Sheilagh Davies, I knew I had to use it. Moving clockwise, Nicola Shannon enjoys her room with a view on the Lisbon trip, the distinguished members of high table enjoy the annual dinner, and Jeremy Dein, Q.C. goes native during cross-examination on the Florida course. The issue celebrates not only the Circuit's activities but also their value.

Foremost is the diversity event on October 28 at which we will put into practice the ideals to which the Bar subscribes. Adaku Oragwu who urges everyone to take part in Circuit life, first wrote here about her time at Keble. In due course, she will be the Junior. Melissa Coutinho similarly describes the importance of being active in the revitalised Association of Women Barristers. At a time of deep worry about the future of the criminal Bar, the CPS Inspectorate's thematic review gives advocates an opportunity to talk to those who will be compiling an important report. If you do encounter the team, please take advantage of this. I have met them and they are very serious about their task.

Uniquely, there is a five-page feature on Intermediaries for Defendants. Here I confess to special pleading. I have been involved in the training of Intermediaries since 2003 and in proselytizing for the scheme – and training barristers in how to use it – for over two years. It has been a salutary lesson in how well the Bar copes with something new and different, struggling to overcome the 'we already know how to do this'

reaction. The Maidstone cases show the judiciary at their best, the Intermediaries at their most helpful and Tanya Robinson – whose reports on the annual dinner have been even more entertaining than the actual event – shows a wisdom which itself justifies the independent Bar. Defence counsel please note and good luck with the funding.

The magazine has by now created a few traditions. One is the outstanding contributions of Professor David Ormerod telling us what every up-to-date criminal barrister needs to know. A proud moment came when I saw a young barrister carrying one of his articles around as the essential guide. Another is the contribution of the Family Law Bar Association. Here, Judith Rowe, Q.C. and Elena MacLeod explain the strange background to *Re H* – the curious habit of Family judges to ignore what the House of Lords says about the burden of proof. Their Lordships have now had another go at persuading lawyers and judiciary of who gets the last word in the common law.

What the Circuit itself does gets full coverage. The Junior, Alex Price-Marmion (our Dame Ann Ebsworth Lecture reporter), tells us about the second annual reception for circuit judges. Alex literally sang for her supper at the annual dinner as the Assistant Junior, Emily Radcliffe, relates. The Circuit trip took a happy group to Lisbon, a success which showed that Giles Colin could turn the trick twice. Katherine Hallett, a newcomer to these excursions, makes her debut in this magazine. So does Rachel Kapila, who provides our first report on a Jesus College course, and Georgina Gibbs who continues the Circuit Town series with a depiction of Peterborough and Huntingdon.

The Bar of course is about advocacy. The Circuit runs the fabulous Keble course, praised here again by survivors Emmaline Lambert, Perican Tahir and Sarah Love, and it sends groups to Florida, always a cultural and jurisprudential shock, as reported by Matthew Lavy and by Max Hardy, who earlier told readers about a New Orleans which it took Hurricane Katrina to reveal to the United States.

The Circuit is also about fun. Our restaurant critic and Northern Ireland aficionado, Tetteh Turkson, who has a palate that money cannot buy, demonstrates again that money also cannot always

buy a first class dinner. I have contributed my recollections of the service to commemorate the 400th anniversary of the Royal Charter for the Inner and Middle Temples. We are grateful to the (sadly diminishing) number of Bar Mess reporters.

This is my last issue as editor. Early in 2004, the then leader, Tim Dutton, Q. C., took a punt on me. Like being a barrister, one learns on the job. I look at this issue and compare it to my first. Although it is not yet a candidate for Silk, I trust that it shows the signs of a promising junior.

Much of the enjoyment has come from the thrill of the chase: persuading people to write, making sure that they do, and gritting my teeth when they let me down. The job calls for patience and good temper, which for someone who is not naturally indulgent of the faults of others has been a learning curve. Half the authors I have never met, but I formed a brief, intense e-mail relationship with them through their writing. They have been very good sports with an editor who does not always wield the blue pencil lightly.

I am immensely grateful to the two leaders I served – Tim Dutton, Q. C., and David Spens, Q. C., who not only let me get on with it but who trusted me to know when to ask for their help. Fiona Jackson, Tanya Robinson, Tetteh Turkson, Emily Radcliffe and Tom Little have written, proof-read, encouraged, advised, and together seemed to know everyone. My successor, Ali Bajwa, is, I can say, keen (essential) and has a track record of producing a publication which is more than I had. I am proud too of the democratic side of the magazine. We have had fine articles from judges and Q. C.'s but many contributions have come from young practitioners and pupils. I hope this has shown that you do not have to wait until you are important before you can be treated as someone with something to add.

I will always remember the thrill when I first sent the final proofs back, with the command, '*print it*'. I was reminded of the line from *Citizen Kane*: 'I think it would be fun to run a newspaper'. It has been great fun to edit *The Circuiteer*.

David Wurtzel
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Achieving Greatness Against the Odds

October 28 is one of the most important dates for the Circuit and the Bar this year, when we host our diversity event. Adaku Oragwu of 6 Pump Court, the Second Assistant Junior, explains its significance and the importance of everyone getting involved in Circuit work.



On 28th October 2008, the South Eastern Circuit will be holding an event in the Middle Temple Hall. The event is entitled: 'Against the Odds – A celebration of diversity'.

This year I was appointed Second Assistant Junior to the South Eastern Circuit. Next year I will become First Assistant Junior and in 2010 Junior to the Circuit. I have however, been involved in Circuit work firstly as a member of the general committee since 2004 and then for a short time in 2007/8 as a Kent Bar Mess Representative.

Change at the Bar

During this time I have also seen a great deal of change at the Bar. As a criminal practitioner I know that there are few who could disagree with the fact that we are expected to do more and more work for less and less remuneration. I am now seven years' Call and I have seen many of my contemporaries leave the Bar for more stable and financially secure jobs in the employed sector.

In these ever-changing times, the Circuit plays an important role; in turn, I believe it is crucial that all members of the Bar but particularly Black and Ethnic Minority members ('BMEs') feel that they have an important role to play within the Circuit. It is essential that BMEs, who have previously not been particularly well represented come to see the

Circuit as something from which they can benefit.

Something in it for everyone

There are no doubt those reading this article who may feel that getting involved in the Circuit is something that would only add to the pressures of the extra work they are already expected to do. There are those who may ask: 'What's in it for me?' I can say that I have gained a great deal from my own involvement. The reasons are many, but perhaps the most important is being at the forefront of the discussions on many of the latest developments. At the beginning, attending meetings was sometimes daunting, but simply by being present you are able to absorb what is being said and before long you develop the confidence to add to the discussions that are taking place. Put simply: you are kept in the loop.

As a member of the executive committee, I have assisted Mohammed Khamisa, Q.C. in organising the event which will take place inside the Middle Temple Hall on 28th October 2008.

To celebrate diversity

The main purpose of the event is to celebrate diversity at the Bar. The event will send a positive message to both the Circuit and to the Bar as a whole that, irrespective of background, we are one

Bar with one aim: to strive for and to achieve greatness. To that end, the event will boast a few [emphasis added] notable speakers, including The Rt. Hon. Baroness Scotland, Q.C. the Attorney General, who will give the keynote, Mr. Justice Adrian Fulford who is also one of the 18 judges elected to sit on the International Criminal Court and Rabinder Singh, Q. C., of Matrix Chambers. The event will be chaired by the Circuit leader, David Spens, Q. C. Special invitees will include presiding judges, heads of chambers, and heads of a number of specialist legal and non-governmental organisations.

There will be drinks and canapés throughout the evening which promises to be a real success. All are welcome. The event (which earns 1 CPD point) begins at 6 p.m., with speeches scheduled from 6.30-7.15. Thereafter those present will be invited to remain for drinks and canapés until 8.30 p.m.

In recent times, the pressures of life at the Bar have felt all the more acute. Notwithstanding that, the Bar continues to go from strength to strength. We all play a part in this continued success and we cordially invite you to join us in celebrating how we all can and do achieve greatness against the odds.

'AGAINST THE ODDS' - A CELEBRATION OF EQUALITY AND DIVERSITY EVENT

Tuesday 28th October 2008 at 5.45 pm Middle Temple Hall

Speakers:

Keynote address by The Attorney-General, Baroness Scotland Q.C.

Rabinder Singh, Q.C., *Matrix Chambers*

Mr Justice Adrian Fulford

David Spens Q.C. *Leader of the South Eastern Circuit*

Many members of the Bar, have had to overcome great difficulties in the face of discrimination in respect of ethnicity, gender or disability. We wish to acknowledge and support their contribution, and recognise that the Circuit exists to promote the interests of every member of the Bar in the South East. Leaders of the Bar, the judiciary and representatives of all interested Specialist Bar Associations within the Circuit will be attending to support the event and its aims.

A major aim of the Event is help to identify a pool of candidates, representing diversity in all its forms, from which we hope the ranks of Queen's Counsel, Recorders, Circuit Judges and High Court Judges will be appointed. It is also hoped that many will be encouraged to stand for the SEC committees and working groups.

The event is free and will be accredited with at least 1CPD. Entry to the event is by ticket only: please write to m.khamisa@charterchambers.co.uk

Leader's Column



The election of seven new members of the Committee, two of whom must be under 10 years' call, will take place by postal vote which closes at 6 pm on Friday, 14th November. Nominations and consents must be received by the Junior, Alex Price-Marmion, of 2 Pump Court (telephone 020 7353 5597) by 6 pm on Friday, 24th October. Please think of standing for election. Each new member will be eligible to vote in the election of new Officers, including the Leader, which will take place on the 2nd December at the Bar Council.

Equality and Diversity

On Tuesday 28th October the Circuit is holding an event to celebrate and promote the diversity of the Circuit – 'Against the Odds' – in the Middle Temple Hall at 5.45pm until 8.30pm.

Many members of the Bar, both independent and employed, and past members of the Bar who now hold judicial office, have had to overcome great difficulties in the face of discrimination in respect of ethnicity, gender or disability. We wish to acknowledge and support their contribution, and recognise that the Circuit exists to promote the interests of every member of the Bar in the South-East.

The Attorney General, Baroness Scotland Q.C., Mr. Justice Fulford and Rabinder Singh, Q.C., will address the event. Leaders of the Bar, the judiciary and representatives of all interested Special Bar Associations within the Circuit will be attending to support the event and its aims.

A major aim is to help to identify a pool of candidates, representing diversity in all its forms, from which I hope the ranks of Queen's Counsel, Recorders, circuit judges and High Court judges will be appointed. I also hope that many will be encouraged to stand in the forthcoming SEC Committee elections.

The event is free and will be accredited with at least 1 CPD hour. Entry to the event is by ticket only so if you wish to attend this event, please register by email

mohammed.khamisa@charterchambers.com. Champagne, soft drinks and canapés will be served. Demand is expected to be high so please register your interest as soon as possible.

Bar Conference

The Bar Conference will take place this year on Saturday 1st November at the Royal Lancaster Hotel. The theme for this year's Conference is Multinationalism and Multiculturalism – Tomorrow's World? The SEC is putting on a specialist session on 'English and Religious Law: Synergy or Conflict?' The panel will include speakers of each of the Christian, Jewish, Sikh and Muslim faiths. The discussion will be moderated by Lord Justice Moses.

The SEC have again decided to sponsor up to 20 applications to attend the 2008 Bar Conference. There will be a subvention of £100 for each applicant

Up to six CPD points are available. Applications will be treated strictly on a first come first served basis. All applications to giles.colin@1cor.com or oscardefabbro@23es.com. Applicants must be members of the South Eastern Circuit or have submitted an application form to join the Circuit. Forms are available on the SEC website. Applicants will need to present proof of payment and acceptance to the Conference when making the application for subvention. Cheques will be made payable to the applicant only.

Keble

The success of the course is reported elsewhere in this issue, but it is worth quoting here from a letter to the course director, Philip Brook-Smith, Q.C., from John Carrier, an observer from the Bar Standards Board.

I can now appreciate why the course has such a high reputation in the common law world and why it is considered to be a bench mark for advocacy courses both in the UK and internationally. The pro bono contribution on the senior members of the profession is to be applauded. Altruistic and highly valued, this was a sparkling example to young advocates of the importance attached to advocacy, the discipline of the law and the values of the profession in the face of ever increasing financial concerns.

I hope that next year more chambers will sponsor members to attend.

Family law fees

The FLBA's response to the LSC's Consultation 'Reforming the Legal Aid family Barristers Fee Scheme' is to be found on the FLBA website. It is an excellent paper which I recommend you read.

The SEC produced its own response dealing with five matters of particular concern:

i) the reduction of fees will make it impossible to attract new entrants of the calibre the

public has come to expect of the Bar if the anticipation is they will struggle to obtain an income of a reasonable standard, and on occasions, might be forced to operate at a loss having taken into account travelling expenses and chambers' overheads;

- ii) it will also inexorably lead to an erosion in the matter of independent practitioners on the Circuit, where the cost of living and working are the highest in the country;
- iii) the choice of advocate will be reduced, severely and possibly permanently damaging access to justice;
- iv) given the high level of female and BME barristers who practice in family law, the proposals will have a disproportionate effect in terms of diversity;
- v) the reputation of the English legal system will be tarnished immeasurably if the wider community of common law jurisdictions observe how cheaply the Government appears to value family law. What example does it set for countries with a developing understanding of human rights for the vulnerable in society, women, children, those with mental health problems or learning difficulties?

High cost cases

The Bar Council is determined that the current unsatisfactory scheme should be replaced by a new one which will both encourage and reward greater efficiency and do away with the need for contract managers. The Minister of Justice, Jack Straw MP, has stated that the negotiations over the new scheme, which have been delayed because of poor data sets, must be completed by 1st December 2008. The old scheme will be replaced by the new one on 1st July 2009 or soon thereafter.

Meanwhile, there are in the pipeline, an increasing number of cases for which solicitors have, since 14th January 2008, been unable to find suitable advocates. Advocates on the panel do not have the requisite experience and competence, and appropriately qualified advocates off the panel will not do them on an ad hoc basis.

At the time of writing, the LSC is about to offer the Bar an improved interim scheme of payment. I do not know what the offer will be nor whether individual members of the Bar will find it sufficiently attractive to overcome their avowed reluctance to do these cases at the current pitiful rates.

My impression is that the LSC's thinking is that members of the Bar, especially juniors, and sets of Chambers will soon no longer be able to resist the financial pressure not to sign contracts. I believe the LSC hopes members of the Bar in the near future will start to do these cases on an ad hoc basis for little more than the current rates and before serious problems begin to emerge at

Leader's Column

courts because of lack of representation at CTL extension hearings, PCMHs and trials.

However, I am in no doubt that such problems will increasingly arise between now and January if individual members of the Bar continue to refuse to sign contracts. If agreement on interim measures cannot be reached – and I would be the first to say I hope it can be – resolution of the current impasse may turn on who blinks first.

CPS Grading for external advocates

The CPS London have announced there will be a competition for those seeking admittance to grade 3 and 4 opening on the 1st November. I will let you have more details when they are available.

Meanwhile, the Joint Advocacy Selection Committee (JASC) is in the process of improving the volume and quality of work available for

advocates in Grade 2 for example, to include straight forward cases of robbery, possession with intent to supply, possibly s20s. It is also intended to make the range of work available to those of Grade 3 and 4 more exclusive.

At the same time I am participating in a Bar/CPS working party tasked with harmonising, so far as possible, grading between CPS internal and external advocates so there is no inequality of opportunity for the Bar.

The editor

Sadly, this is the last edition of the *Circuitteer* to be edited by David Wurtzel. He has been the Editor since 2004. It is a mark of his achievement that this magazine has gone from strength to strength and increased in popularity. It has been an enormous labour for him but, I suspect, a labour of love, for which we owe him a great debt of gratitude. Ali

Bajwa of 25 Bedford Row, who has assisted David with this edition, will be the new editor.

The website

Faisal Osman of Furnival Street Chambers has kindly offered to revamp the Circuit website.

If you have any suggestions for improving it please email him at 'faisalosman@mac.com',

Farewell

It has been a privilege and an honour to be the Leader of the South Eastern Circuit for these past two years. It has been an enjoyable experience, worthwhile and rewarding, not least because of the great support I have had from the Officers, the Executive, the Bar Mess Chairmen, the Committee, the Director of Education, Inge Bonner, the Circuit Administrator and all of you.

Whoever my successor is I am sure he or she fearlessly will continue to promote and safeguard your interests.

The Thematic Review

From 6 October 2008, court users in some courts in England and Wales will begin to notice inspectors with notebooks sitting in the public gallery, or behind the prosecuting advocate. This is because Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) is about to carry out a 'thematic inspection of the quality of prosecution advocacy and the overall presentation of cases in court'. John Sheehan of HMCPSI explains what it is all about.



As the title suggests, the main focus of the inspection will be the performance of advocates representing, and instructed by, the CPS. As such, it will cover some of the same ground as the inspectorate's 'Thematic Review of Advocacy and Case Presentation' which was published in February 2000.

More specifically, the new project will include an assessment of the quality and effectiveness of the advocates observed, with a view to building a picture of prosecution advocacy nationally. However, individuals will not be identified in the report. The main bench-mark will be the CPS National Standards of Advocacy, which were recently revised and published by the DPP. Other reference guides will include the latest Criminal Procedure Rules (CPR), as well as the professional conduct rules of the relevant bodies. In addition, inspectors will use their own skill, judgment, and significant experience as practitioners, to go beyond the basic standards to identify both good practice and problems.

To achieve this, they will need to speak to advocates and other court users, and to look at CPS files, to ensure that they have as much information

as possible on the facts and background of the case. Care has been taken to develop a methodology which should ensure that inspectors take a consistent approach to assessment.

All 12 members of the court observation team have been professional advocates in the criminal courts, with three (including myself) having significant experience of defence work. The team will be led by Diane Hurlley (HM Inspector - ex Furnival Chambers). It will include four HMCPSI inspectors, four retired circuit judges, and four CPS crown advocate/advocacy trainers. In addition, Stephen Wooler CB (HM Chief Inspector) and Jerry Hyde (HM Deputy Chief Inspector), will be involved in court observation from time to time.

The inspection fieldwork will be carried out in both the magistrates' courts and the Crown Court. Observations will be focussed on the courts in eight criminal justice areas, namely, Hampshire and the Isle of Wight, West Yorkshire, Humberside, Greater Manchester, London, Avon and Somerset, Hertfordshire and South Wales. Inspectors also hope to be able to spend some time observing advocates outside these areas.

The overall intention is to assess the quality of

prosecution advocacy across the board, so all types of advocate will be assessed. This includes Crown Advocates (formerly HCAs), CPS lawyers without higher rights of audience, Associate Prosecutors (formerly Designated Caseworkers), as well as solicitor advocates and counsel. Inspectors will need to know who they are assessing, so advocates may be asked for their name and chambers—again, data will not identify individuals because the purpose is to assess national performance.

Inspectors will from time to time want to talk to advocates, to obtain background information, and to discuss issues in the case. They will be grateful for all assistance, on the basis that any comments made will be held unattributably. Inspectors have all been issued with photo identity cards signed by HM Chief Inspector, explaining their role. Advocates should feel free to request this documentation if approached by an inspector. The leaders of the relevant circuits, resident judges, and chief crown prosecutors, have all been notified of the inspection.

The assistance and patience of all members of the South Eastern Circuit will be greatly appreciated during this important piece of work.

Intermediaries for Defendants

The statutory scheme for assisting vulnerable witnesses to give their best evidence in court has only allowed for prosecution and defence witnesses. That was Parliament's intention, but those who practice in the criminal justice system know that defendants may also suffer from the same learning difficulties and communication problems which affect those who give evidence for the Crown. In this second series about Intermediaries, two judges, two Intermediaries and a practitioner explain how the scheme can also help the defence and ensure a fair trial.

The editor, who has been involved in the Intermediary scheme since 2003, gives the background.

Intermediaries fall into the special measures regime of the Youth Justice and Criminal Evidence Act 1999. This of course excludes defendants, who are the subject matter of these articles. Their exclusion has puzzled Intermediaries, most of whom are speech and language therapists and quite aware of the proportion of serving prisoners with learning difficulties. The Intermediaries' training was however designed to equip them to work within the statutory scheme, that is, to assist in communication between prosecution (and defence) witnesses and those in the criminal justice system who might need to question them – police officers, advocates and judges. In practice, few if any defence solicitors have taken advantage of this for their vulnerable witnesses, and so the Intermediaries have primarily learned to deal with witnesses for the Crown, and the various people who help these witnesses – the police, social workers, CPS, family and witness supporters

How it has worked

How that works is now clear. It is normally an officer, a CPS lawyer or the Witness Service who become aware of the witness's communication needs. They contact the Office for Criminal Justice Reform, which maintains the register of Intermediaries (this is known as a 'referral'). The aim is to match the witness's needs with the Intermediary's particular skills and geographic proximity. The Intermediary meets and assesses the witness and, using their professional experience, decides whether the witness needs their help. If this is at an early stage, they take part in the ABE interview. Even if the interview has already happened, they can still assist at court. Crucially, they write a report which sets out the witness's needs and gives positive suggestions as to how counsel can most fairly and effectively question the witness. Those who have used the scheme correctly have been grateful for the assistance it gives.

Different for defence

What happens to defendants who are vulnerable, say, because they have learning difficulties? Being outside the statutory scheme, they depend on the judge exercising his inherent jurisdiction to ensure a fair trial by allowing an Intermediary to be used. At Maidstone it was the judge himself who took the initiative; in other cases the impetus has been with solicitor or counsel. The main difference between acting for the defence and their usual job with a prosecution witness, is, of course that the Intermediary may need to help the defendant throughout the trial and not just when he is giving evidence. There is also the 'disclosure twist': Intermediaries who act for the prosecution are trained that they must tell the officer everything which comes to their knowledge which might undermine the Crown's case so that the defence can be told. Those who act for the defence need to understand that nothing will be disclosed to the other side.

A vague Act

I have been involved in the Intermediary scheme virtually since its inception, and have helped to devise and deliver all the legal training for them. Section 29 of the Youth Justice and Criminal Evidence Act 1999 had deliberately been worded vaguely. Although a form of Intermediary had been used in other jurisdictions (e. g., youth courts in South Africa) the Home Office did not exactly know how it would work out here. Very soon it became obvious that their role would be to 'assist communication' – they were not interpreters or witness supporters; they were not there to improve the witness's evidence or to attract sympathy for them--and this from witnesses who had previously been entirely discounted from the criminal justice system. Alan Hendy is not the first Intermediary to tell me that they had spent part of their career helping people who, when they unfortunately became a victim of crime, were not heard by the courts.

Perhaps the most difficult aspect of the job for barristers has been the Intermediary's task of asking counsel to re-phrase a question – or to challenge the use of certain words which the witness might not understand. One is used to judges pulling up counsel on the manner of questioning – it is, after all, part of the judge's prerogative. Never before, as far as I am aware, had a barrister – indeed a barrister perhaps at the height of their career--had to take heed of what a layman had to say – a layman who indeed stood between a barrister and a witness they were trying to get on the ropes.

The need

I have spoken and written many times about the scheme. What I encountered was not so much a lack of courtesy between barrister and Intermediary in court but a lack of understanding of why an Intermediary was needed at all. 'All you need is a good barrister and a robust judge' was one comment, or as one judge in Chester recently put it, 'we all have children!'

Similar problems arose in the 'classroom' situation of three training sessions sponsored by the Office for Criminal Justice Reform and organised by the Criminal Bar Association in 2007. The vulnerable witness was played by an actor who was well able to simulate the communication difficulties of a child and who afterwards made it clear that when she was asked questions the child could deal with she answered them; when she wasn't, she relapsed into 'don't know'. A real Intermediary acted as the Intermediary. A number of criminal practitioners cross examined the witness on the basis of a case study. Most discovered that it was more difficult than they had imagined. A similar session was run for the Kent Bar Mess in February in which the judges and practitioner who have kindly contributed to this issue attended.

The register of Intermediaries is maintained by the Office for Criminal Justice Reform. Telephone Lucienne Edge at 020 7035 8461

Intermediaries for Defendants

HH Judge Michael Lawson, Q.C., former Leader of the Circuit, and who appears – as the presiding judge – in ‘Mary Birch’s Story’, the Office for Criminal Justice. Reform’ training DVD on the Intermediary scheme, explains the challenges facing the bench in approaching these cases.

The introduction of the ‘Intermediary’ provisions of section 29 of the Youth Justice and Criminal Evidence Act 1999 came into effect in pilot schemes around the country in 2004. Their effectiveness was endorsed by a report by Lexicon Limited (authors Joyce Plotnikoff and Richard Woolfson; Joyce observed every Intermediary trial during her research and spoke to and received feedback from counsel and judges). It was brought into force nationwide in the autumn of 2007. As with all special measures, the Act restricted their availability to any prosecution or defence witnesses, but not to a defendant giving evidence on his own account. Whatever the reasoning behind that limitation, it is now possible legitimately to circumvent that restriction. We have done so at Maidstone, as yet without complaint.



Ensuring a fair trial

The starting point is *R v S.H. [2003] EWCA Crim 1208 (paras 21ff)* where the Court of Appeal, having dealt with a point relating to Preparatory Hearings, went on to emphasise the inherent power in the court to bring about a fair trial and identified a number of ways in which a defendant could be helped, including having someone in the ‘role equivalent to an interpreter...to make clear by putting into language that he will understand the nature of the question that he is being asked.’ The Police and Justice Act 2006, section 47, inserts a new Chapter 1A into the 1999 Act. That permits a ‘live link direction’ to be made where it is in the interests of justice for a defendant, whose ability to participate as a witness is ‘compromised by his level of intellectual ability or social

functioning.’ (provisions set out at Archbold 8-55ta).

Some of the European judgements on Article 6 have identified ‘effective participation’ as an essential element of a fair trial (*CF SC v UK 60958/00 2004*). Whilst that case related to a youngster with learning difficulties, the principle must be of universal application.

The problem of funding

In two cases that I have dealt with, the need for an Intermediary arose in the context of reports prepared to assist as to the defendant’s fitness to plead. Each was deemed unfit, although with help it was felt that they would be able to follow the trial and participate. Immediately I suggested an assessment by an Intermediary, the question of funding raised its ugly head. In one case, where substantial delays had already occurred and the fixed date of the trial was close, I ordered the costs to be met out of central funds. In the other a short judgement setting out the necessity for an Intermediary in the interests of a fair trial, and the alternative of a defendant being deemed ‘unfit’, happily persuaded the LSC to grant funding. That must be the better, and from the court’s point of view, preferable course.

Once communication between counsel and the defendant had been facilitated, one entered a guilty plea. The other continued to trial, the Intermediary remaining throughout to assist the defendant to follow the proceedings and in giving his evidence. Judge Carey in this issue deals with a case over which he presided and where the defendant was only assisted while giving his evidence.

A job well done

I have been very impressed by the expertise and quality of those Intermediaries that I have met or seen. Whilst being required to support a defendant was only mentioned in their MOJ training, all have been absolutely clear as to their role in relation to those whom they are assisting. Fears that they might be used by the defendant or that a defendant might be seen to gain some advantage have so far proved groundless. Where questioning has been appropriate or they are satisfied that a defendant has understood, they have not intervened. Assisting a defendant through his evidence places a similar burden on the Intermediary as does assisting any other witness.

Assisting throughout a trial requires constant attention and can, in severe cases of learning difficulty, be hugely tiring. Judges must ensure that that is recognised and take breaks.

The use of reports

I have now read a number of reports prepared by Intermediaries, both for witnesses and defendants. Each has identified clearly the type of vocabulary used by the witness and the areas in which they have difficulties – sequences/ time scales, abstract concepts and expressing how he/she felt are recurring themes that should enable advocates to develop effective questioning techniques appropriate to the majority of such cases. Interventions during questioning are an invaluable reminder of the unseen limitations of the witness.

What the reports cannot identify, but is obvious from the judicial perch during cross-examination, is the sheer volume of padding and ‘introductory’ material that precedes, and obscures, most simple questions. Oh, that we could borrow Intermediaries for advocacy training!!

Alan Hendy was the Intermediary in the trial presided over by HH Judge Michael Lawson, Q.C. He explains how he saw the case

My decision to become a Registered Intermediary was motivated by my experience of teaching disabled students who, when they became victims of crime, were thought unable to give evidence in court.



Working for the defence initially created a moral dilemma. Should defendants have an Intermediary? Would defence counsel use me as a way of eliciting sympathy? These were overridden by two thoughts. First, the defendant here clearly had learning difficulties, and second, it was the judge who had asked for an Intermediary. I felt that the latter would raise the profile of the service. In addition, previous experiences I had had in teaching in a prison made me realise that defendants also need our assistance.

An unusual place to assess

It was with a little trepidation that I travelled, on a Monday morning, to Maidstone Crown Court. I spent some time looking for the defence team. I had only had contact with them by telephone at

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their office. I eventually found that the defendant was being held in custody. My assessment therefore took place in the custody suite of the court. While not an ideal place, I was able to complete the assessment of the defendant and to write up my report.

The report was presented to court the next morning. It allowed all parties to familiarise themselves with the defendant's communication problems. It would have helped everyone to read the report over night, but timing precluded this.

On entering court, it became apparent that the officer in charge of the case thought that my job was to help to defend the defendant. He was unable to conceal his unhappiness with me. This changed as the case progressed, and the officer became better informed as to my role.

Understanding roles

The judge and the barristers agreed the Intermediary's role quite quickly. A brief explanation was given to the jury. While adequate, I am not sure that the jury did fully understand it.

The trial proceeded and I spent considerable time explaining and simplifying to the defendant what people had said, and what the process was. After checking what I was doing, Judge Lawson allowed this to happen throughout.

The defendant seemed to think that I was his friend/ally, which was slightly disconcerting. He seemed to want me to give him support and to confirm that he was behaving in the right way. This was not too much of a conflict, until he gave evidence.

Evidence with a view

When a vulnerable witness is giving evidence, it is important that the Intermediary watches them for any signs that they have not understood any part of the question. The defendant, when questioned, would initially look at me, as if for a hint on how to answer, which is not my role. I got round it by looking away from him but maintaining a peripheral view. He was thus unable to look for clues from me, but I was able to maintain a proper watch for any communication issues.

Questioning people with communication problems has proved challenging for some people in the past, and it is part of our role to pick up any deviation from the methods outlined in our report. Usually, one barrister has more difficulty in adapting their questioning to fit in with this report. In this case it was the prosecutor. This is not a criticism of her but a reflection of the fact that she had to get the defendant to change what he had said

in response to the questions from defence counsel.

Usually I have to ask the judge to remind the barrister about my recommendations but Judge Lawson took on board my report and was able himself to pick up the deviations from the recommended way of questioning almost as quickly as I did.

Some lessons

There were several lessons which came out from this trial, which were of relevance to all involved but especially to Intermediaries who might find themselves assisting a defendant.

- The amount of concentration through the whole length of the trial. Usually we only deal with one witness, and only during their evidence. This meant that it was more tiring than I had expected
- The actual length of commitment required from the Intermediary could be a problem: we normally only take part for the day when the witness is being questioned; to assist a defendant means being there for a trial which could last for several days. I understand that counsel is used to cases lasting longer (or shorter) than expected but many Intermediaries combine court work with their 'day job' and professional appointments and our timetables are not always flexible
- Because there are only 170 Intermediaries spread across the country, they may, as I did, find it impossible to commute daily to court. Although our expenses for hotel, subsistence and fares are repaid in due course, it makes for a relatively large initial outlay for us

Tanya Robinson, who acted on behalf of the prosecution, gives her perspective.

When I realised that the late return I had accepted involved the recent instruction of an Intermediary for the defendant, the thought crossed my mind that I had been on the receiving end of a rather deftly disposed of 'HP' (thanks PF). Were it not for the training session that I had attended at Maidstone Crown Court in February, organised by our very own David Wurtzel, Eleanor Laws and HHJ Michael Lawson, Q.C., I'm sure I would have been completely at sea. I set



about finding my copy of the handout.

The allegation

The case involved an allegation that the defendant (aged 18) whilst staying over at the house of his 17-year old girlfriend, raped her 14-year old sister. The defence was consent. There was some evidence that the younger sister had 'fancied' the defendant. In the alternative, the Crown alleged sexual activity with a child without reasonable belief that she was 16 or over. The Crown's witnesses suggested that the defendant had been told her age on at least three separate (and enumerated) occasions; one witness said that that the defendant had admitting knowing that she was 14. The defendant denied that and claimed that she looked 16 and had told him that she was 16.

Foreboding unjustified

And so it was that on a not-very-spring-like day in March, I made my way to Maidstone Crown Court with more than just the usual Monday morning sense of foreboding in my heart. I was clutching my copy of the training session handout. Unfortunately, neither side was able to see the intermediary's report until the morning of the trial which meant that there was little time to consider it before the discussion about ground rules. My concern that the judge would be looking to me for assistance on the topic of Intermediaries (something akin to the blind leading the blind) vanished when I realised that the judge 'hottest' on Intermediary issues, HHJ Lawson, Q.C. was to preside. In fact it was he who had ordered the Intermediary report after receiving a psychiatric report suggesting that the defendant's learning difficulties were such that he would be unfit to stand his trial without the assistance of an Intermediary, and who, because of the shortness of time, had made an order for the costs to come from central funds.

Some might say there was an irony in the fact that my opponent, whose lay client was using the Intermediary, had spoken out at the training session against their use. As set out here, no matter who the Intermediary is to assist, any advocate is likely to have some concerns about attempts to 'hide' behind the Intermediary or to use him or her to gain sympathy. In fact it was noticeable that the defence didn't seek to play on any sympathy that may have been engendered, although the defendant's case did rest in part on his learning difficulties.

What to tell the jury

After a brief discussion about the ground rules, the jury were brought in. They were told in a few

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sentences about Mr Hendy's role in the trial before I opened the case. Working out how much to tell the jury is a difficult balancing exercise. It is important that they should not be suspicious about the Intermediary's role or purpose in the trial. One has to find the balance between telling them enough so that they understand why there is an Intermediary, and not telling them too much (for example about embarrassing problems that may not in the event materialise). In due course, admissions about the defendant's limited intellectual abilities went before the jury. On reflection, I wonder if it would have been more helpful to the jury if they had heard some of this detail at the start.

Before retiring to consider their verdicts, the jury were invited to take into account the defendant's learning difficulties, in particular when considering whether the defendant held a reasonable belief in consent or a reasonable belief that the complainant was 16. On this topic, one of the things that I found difficult to reconcile was the findings of the psychiatrist as to the defendant's ability and the evidence of the Crown's witnesses about how he behaved on a day to day basis. Perhaps all that this demonstrates is how well people can develop coping mechanisms to avoid exposing their difficulties to others. According to the Crown's witnesses, the defendant got by in daily life just fine: chatting up girls, meeting the parents, sending MSN and text messages, playing computer games and doing the other usual things that teenagers do. Despite Defence attempts to elicit from the two sisters in cross-examination that the defendant was 'really, really thick' or even just noticeably stupid, it seemed neither of them had noticed that there was anything different about him. They had realised from MSN messaging that his spelling was poor, but I suppose that in a world where "txt spk" has become the norm, spelling difficulties no longer have the significance that they once had. It was obviously news to them that he had any sort of learning disability.

The difficulty in questioning

So what was it like cross-examining a defendant who was being assisted by an Intermediary? It was difficult. Anyone who attended the training session and found themselves 'volunteering' to do the cross-examination exercise (AKA those who failed to make themselves sufficiently invisible when the cry for volunteers went up) will probably agree with this. I am used to cross-examining children, but I found this harder. Maybe it's just that there is something rather off-putting about the defendant looking to someone else in the witness box before

answering the question. It feels as if he's allowed to confer over his answers. It gives him extra time to think of an answer or (in some instances) enables him to avoid answering the question altogether. Of course, the simpler the questions, the less opportunity the defendant has to look for help. I also got the impression that Mr Hendy, very helpfully and professionally, was discouraging the defendant from depending unnecessarily on him. He intervened sparingly.

Yes it works

Am I in favour of the use of intermediaries for defendants? Yes, where they are genuinely necessary to aid communication and understanding. It goes without saying that it is important that a defendant understands the proceedings and is able to give a good account of himself. The consensus of experienced medical professionals in this case was that without such assistance, the defendant was not fit to be tried. One of the medical reports spoke of the defendant's previous crown court trial for robbery in which he played little part and understood very little of what was going on. That surely serves no-one's interests.

Whether the defendant 'preferred' the use of the Intermediary, I cannot say. He certainly could not complain in our case that his role and participation in the trial were overlooked. The outcome, rather predictably, was a conviction for sexual activity with a child. The jury were hung on the rape count and the Crown offered no evidence on it after consultation with the complainant. The defendant was sentenced to three and a half years.

His Honour Judge Jeremy Carey describes his experience in presiding over a trial where an Intermediary helped the defendant during his evidence

The trial was of a 20 year old defendant charged with two counts of attempted murder. He had driven his car onto the pavement and it was alleged that he had done so intentionally on two separate occasions on the same night in order to kill the pedestrians. There were a number of lesser alternative counts.

About a month before the case was due to come to trial David Wurtzel and others had given

the Kent Bar Mess a demonstration and explanation of the Intermediary procedure. I had attended this event and was persuaded that in an appropriate case an Intermediary could fulfil an important function in the interests of justice.

Some explanation needed

On the first morning of trial I asked leading counsel whether consideration had been given to obtaining a report on the defendant from an Intermediary. Unfortunately, he had not been able to attend the demonstration and so some explanation was needed. The defendant had experienced considerable learning difficulties and there was a diagnosis of autistic spectrum disorder. My proposal was that the defendant might be assessed as in need of Intermediary assistance when giving his evidence and, if assessed as in need, there was probably a period of 10 days still available for the appointment of an Intermediary before the defendant went into the witness box. I did not think that it was necessary for the defendant to have an Intermediary available prior to that; in due course, the Intermediary agreed with the decision. I should say at this point that it would be preferable, as a matter of generality, to make the decision as to need and appointment well before trial.

A smooth run

In the event the process of obtaining a potential Intermediary was a protracted one because of the very short notice available. The court was extremely fortunate to secure a very experienced and competent Intermediary at a very late stage. An assessment was made and a report produced within hours. Such was its clarity and the skill of the Intermediary in assessing the particular needs of the defendant that the process ran smoothly from start to finish. I had prepared myself for a difficult case management exercise, with the Intermediary taking a potentially leading part in the giving of the defendant's evidence but this was not to be so. By judicious nod and shake of the head and the very occasional monosyllabic intervention the Intermediary was able to assist in a totally unobtrusive way. Counsel were quick on the uptake and rephrased questions where necessary.

Interestingly, where I would have said 'Let us have a short break' following apparent distress on the part of the defendant in the witness box, the Intermediary explained that it was important for the defendant to be allowed to continue. His experience enabled him to read the situation in a way which none of us could have done. The correctness of this assessment was shown by the rapid recovery of composure by the defendant once the topic was concluded.

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How to make it work

This reinforced my initial view which was that the success of the scheme depends so much on the accuracy of the identification of the difficulties which a witness has and the ability of the Intermediary, acting and reacting with very little lead time, to assist in an appropriate way. A good Intermediary will assist the court and enable the evidence-taking process to proceed smoothly. He or she will gain the confidence of both counsel as well as the judge by demonstrating that there is no intention to assist the witness in a partisan way but merely a determination to ensure that the best evidence is given so as fairly to reflect what it is that the witness intends to say.

In the attempted murder case I have no doubt that this was achieved and the interests of justice were well served.

Intermediary Gary Kirkley assisted the defendant in Judge Carey's trial

Request for an intermediary

I was asked to help a 20 year old young man, who was the defendant in an attempted murder case. I was told that he experienced learning difficulties and was possibly on the spectrum



of autistic disorder, and that he had been in custody since arrest. I was given little information about the case itself before I met him.

My own background is that I have worked with children and adults with special education needs and learning difficulties in teaching and training settings since 1975. I have a degree in education, certificates in teaching and learning, post graduate diplomas in counselling and a Master's in the management and organisation of special education. I was a head teacher in a special needs residential school and a senior manager in a college for learning support, and assessed thousands of learners' needs, interests, aspirations, levels of capacity and barriers to learning and communication. I am in addition an OFSTED inspector, specialising in evaluating the quality and standards in special needs and specialists colleges. I am also a magistrate. I have met with over 50 witnesses since I trained as an Intermediary in 2006.

Initial meeting and assessment

I met 'Jacob' on a Monday morning of the second week of his trial. I assessed him in the cells, with his solicitor present; this was so any further disclosure given by the defendant would not make me an additional witness. He seemed particularly distant and isolated. To begin a rapport I had put plasters on both my index fingers. I knew that 'Jacob' had noticed these: I asked him if he saw anything different about me. He immediately mentioned the plasters and asked why they were on both index fingers. I responded by getting him to give the reason. He was unable to challenge or to give an explanation. When I removed the plasters to show that there was no cut, he was perplexed and confused. This meant that he was now engaging, although on a limited level.

I tested 'Jacob' for suggestibility, imagination and creative thought, short and long term memory, ability to collude, level of cognition, literacy, numeracy and ability to speak, understand, process, retrieve and communicate feelings, ideas and information, including non-verbal and facial expressions; additionally, his ability to make decisions based on all information available.

Conclusions about speech and communication levels

Using a variety of tests and conversation, I made the following conclusions: that 'Jacob' could give evidence in court, with support; that his lack of formal schooling meant he lacked social skills, had under-developed decision making skills, with little ability to read body language or facial expressions; he did not experience creative or imaginative thoughts, rarely laughing or enjoying happiness; that he lacked fine motor skills and was virtually illiterate, with a limited vocabulary; he lived in a concrete world, where concepts were limited; he had circumscribed communication skills and was unable to fully to describe his feelings. However, 'Jacob' was able to put events in a sequence and had reasonable memory and retrieval. He had demonstrated that he understood the idea of truth and lies. His learning difficulties related directly to his autistic spectrum disorder.

Meeting with judge and counsel

I typed up a report of my main findings, with tips for questioning 'Jacob', as well as a summary of his difficulties. For example, he needed time to process questions and to retrieve an answer and would become confused and stressed if rushed;

when questioned, the advocate should focus him by saying 'Jacob' and explain the purpose of the question; the questioner should use short sentences and avoid metaphors; if questioning is sustained, there should be frequent breaks. I also prepared a list of words whose usage he had demonstrated.

This report was handed to the defence, the CPS and the judge. The judge requested a meeting in chambers regarding the use and role of the Intermediary, with all counsel involved. At this we discussed the ground rules, the level of speech and communication required, the taking of an oath, and how intervention of the Intermediary should be noted in court. This meeting was particularly effective, as the judge had been able to establish protocols within the court, so that court users saw the judicial process as fair and open.

Working with the defendant in court.

The defence counsel outlined a version of the events that had led to 'Jacob' being tried for attempted murder. 'Jacob' then gave evidence in the witness box. I stood next to him. The judge explained what an oath was and told 'Jacob' to promise to tell the truth. He also explained to him and to the jury that the Intermediary's function was to facilitate communication of the defendant and to assist the court where required. The defence counsel then asked a few clarifying questions relating to 'Jacob's statement. 'Jacob' gave limited responses, though he had clearly understood the nature of the questions. 'Jacob' was barely capable of explaining why he had done what he had done.

The prosecuting counsel then went through 'Jacob's version of events in a systematic and coherent way. Both counsel used appropriate language – 'Jacob' was able to understand that and the questions. I only intervened when complex and conceptually-based questions were asked, for example, if he was 'angry' at the time of the events, which he denied. I pointed out that 'Jacob' didn't understand the word 'angry', but that 'cross' should be used. The judge and I offered counsel alternative words and phrases, e. g., the suggestion that 'Jacob' should be called a liar, from which the jury could then decide whether they believed him or not. At this stage 'Jacob' became emotional, clearly showing his distress at reliving the events.

Overall, the effectiveness of the trial was enhanced because both counsel used the report and reached 'Jacob' on his level of communication and language, and because the judge ensured that this would happen.

Coming of Age

Next February, the Association of Women Barristers will be 18 years old. Their new year, which runs from July, has already set the pace in helping members. The Chair, Melissa Coutinho, reports on what has been happening and what is in the offing.



Melissa Coutinho, Michelle Wallington and Tony Bellringer

July marks the start of the New Year for the Association of Women Barristers, now under the Chairmanship of Melissa Coutinho. The Vice Chairs are Kim Hollis, Q.C. and Fiona Jackson. The theme for 2008-9 is Retention & Recognition. This reflects the fact that although for some years women have made up about 50 percent of entrants to the profession, women still leave it early, and gender equality is not apparent in the figures for Silk and judicial appointments. We appreciate that we are not alone in our quest to reduce the disparities between those of different gender and we will continue to work with our stakeholders to discover the reasons for the differentials and at least to embark on ways to start reducing future discrepancies.

Being on the bench

The year began with the Annual General Meeting at which Lady Justice Mary Arden spoke about the insufficient number of women appointed as judges. She referenced the good, bad and different experiences a woman judge might have next to a male counterpart. These included finding genuine camaraderie, (good), finding fewer colleagues who share your gender, (not so good) and bringing different sensibilities and experiences to judgements, (good for the judiciary and for society but a change for all that). She also addressed the phenomenon of Diversity which is increasingly being considered as a topic, so that different strands and characteristics are dealt with simply as part of a whole. She questioned the judgement of this. While some minority issues have generic application, (such as frustration experienced), there may be very different reasons to explain for example, why those with disabilities are less apparent as a percentage of successful judges, than women.

Getting on the bench

The Judicial Appointments Commission jointly hosted a workshop with us. Lord Justice Toulson provided an overview of the application and appointment process, recounting some practical examples drawn from his own experience. He was joined by Michelle Wallington (a communication expert for the JAC) and by Tony Bellringer, a selection exercise manager, who was then working

on the Midland Circuit Recorders selection exercise and who could deal with the different selection processes and tests. The Deputy District Judge test requires black letter law to be demonstrated, while the Recordship competition seeks to test 'judge craft' which is the application of principles and competencies. There was some spirited debate on which would prove easier to pass, given that a number of people were intending to apply for both. There was also an indication that women did not do as well as men in these tests, though exactly why had not been analysed.

Louise Joyce, from the Judicial Office also attended to answer questions about Judicial Shadowing and explained that the process for taking part in this was much more streamlined.

Helped by glasses of Pimm's and lemonade, the speakers stayed to answer all possible queries and to pass on their details. The evening ended with a tangible feeling that a more diverse pool of lawyers would apply in forthcoming rounds.

Come and bid

The autumn event will be the Association's Annual Charity Dinner. This year, one of the main charities to be supported is Integrated Neurological Services (www.ins.org.uk), which helps provide long and short term rehabilitation and support for people who suffer from a range of neurological conditions. We have already spoken to barristers whose lives have been affected by Parkinson's, stroke and multiple sclerosis. Do support what promises to be a fun evening due to the generosity of companies donating goodies, and bid in the auction for luxury and entertaining prizes or for the 'money cannot buy' experiences. This is a chance to feel good about giving, while being reminded of the serious issues that some people face. Please save the date of Wednesday 22nd October, when we will be back again in the sumptuous Renaissance Chancery Court Hotel.

Coming of age

In February 2009, the Association will come of age, having existed for 18 years. To celebrate the occasion, there will be a special event, details of which will follow towards the end of the year. Supported as we are by the South Eastern Circuit and the Association of Women Judges, our President, Mrs Justice Cox, and other groups, we hope there will be scope to hold joint events. In addition to providing a forum for those with expert knowledge, we will place people in contact with others who may be in a position to help them. To date, we have dealt with pupillage application queries, professional conduct dilemma, Silk application feedback and clerking issues. We are also canvassing members' views on proposals raised by the Law Commission, and others, representing a female perspective or addressing

gender-related issues within the application of the law. Additionally we are currently trying to reconnect with lost members and to produce the type of work that is wanted.

Behind the scenes

There is much happening behind the scenes, with projects being scoped, the survey results of others' being analysed and conversations across a number of levels. We are focusing on the merits of Returning to Work after a career break courses, given that take up of these at the Bar is much less than that of solicitors. If it transpires that the reason lies in the fear of being further stigmatised, we will consider alternative, 'anonymous' routes to sharing helpful information, such as the Internet. We will also keep canvassing members regarding the issue of childcare, having received many comments about the Bar Nursery Association. The endeavour to have nurseries for pre-school children should be supported by other initiatives also, in order to make a significant difference.

At the Bar Conference

Look out for a workshop at the Bar Conference on Saturday 1st November 2008. We are working with the Employed Barristers Committee and the Equality & Diversity Committee and were successful in submitting a bid for a seminar on Avoiding Prejudice when Interviewing. This topic came up as a result of the prejudice created by stereotypes that so many of those in a minority position recognise. The issues relating to women will be one that may raise a smile, but will also strike a chord. Ably assisted by a professional drama company, Dramanon, and a consultancy that specialises in diversity training, Moloney, we will work to get across our identified message, namely that talent should take precedence over arbitrary characteristics in selecting able people. By using professionally resourced role plays to consider interviews and sifts in the legal arena, conscious and unconscious prejudices will be addressed. This is a workshop aimed at those who recognise the business case for diversity: that the best people may be missed if focus is placed on identifiers other than ability. It is also for those who want to avoid legal challenges and comply with their legal obligations. Some self-searching will be needed along with legal updates, but notwithstanding the serious issues, there will also be humour.

Get involved

Anyone interested in joining the committee, becoming a member or putting forward a view is invited to do so via our website: www.awb.org.uk, or contact me direct (mlc Coutinho@googlemail.com or through the AWB website).

While the Tram Goes Round: The Circuit Goes to Lisbon

The Circuit Trip, which is our window to other jurisdictions, is by now a fine old tradition. Even seasoned travellers though were once first-timers. Katherine Hallett of 13 Old Square Chambers, tells us about Lisbon and her debut trip.



The Bars meet

An intrepid group of South Eastern Circuiteers departed for Lisbon on the Friday evening preceding the late May Bank Holiday. As in every year, the group consisted of a mixture of judges, Queen's Counsel and juniors, together with a smattering of 'other halves' and guests. On this trip we were particularly pleased to be joined by two former Circuit leaders, Sir John Alliott and Mr. Justice Penry-Davey respectively together with their wives Patsy and Judy. Everyone threw themselves enthusiastically into a wonderful adventure led by the present leader, David Spens, Q.C.

After the transfer from the airport, where the arrivees had gathered under the banner, 'South Eastern Circuit Trip', we drove in a fleet of minibuses to a cobbled street in Lapa, in the western part of the city. A small plaque on a tall, rose-pink wall at the side of the street announced that we had arrived at the York House Hotel. The hotel was comfortable, peaceful, conveniently situated and, as the weekend bore out, very accommodating. Its earlier incarnation had been as the seventeenth century Convento dos Marianos before being converted to its present use in the last century by two Yorkshire women. .

A fine place for a glass

First we had to climb up a long series of cobbled steps. It was worth it. At the top, the pathway

opened out into an extremely charming courtyard dominated by a magnificent tree. The courtyard soon became our main site of congregation and principal watering hole, and we gathered soon after check-in for some liquid fortification thanks to the leader. Many a happy hour thereafter was spent in the courtyard, swapping stories of the day's adventures over a glass or two of Vinho Verde.

Saturday morning dawned, although not quite as early as some had rashly promised the previous night when they agreed to accompany Anesta Weekes Q.C.'s nephew, Paul Lynch, on a jog around Lisbon. Fortified by a hearty breakfast and some fizz, the circuiteers set off for the heart of the city. This took a little longer than expected, given the difficulties of buying tickets for the trams. Over the course of the weekend, the trams and the funiculars proved to be a great way of getting about. Without exception, we preferred the charming, old pre-1914 models, with their yellow and white livery and wooden floors and seats.

The gathering storm

After visiting the city centre and the beautiful Sé (the cathedral), circuiteers ventured out for a boat tour on the Tégus, bravely ignoring the gathering storm clouds. We were able to see though several of Lisbon's key sights, including the impressive Torre de Belem, built by Manuel I as a fortress in the middle of the Tégus between 1512 and 1521.

The spectacular view from the deck was considerably reduced once the heavens opened, just as we passed under the Ponte 25 de Abril, which is inspired by the Golden Gate Bridge in San Francisco. The group evacuated to the main body of the boat, apart from Mr. Justice Penry-Davey who presciently had with him a water proof jacket and trousers and alone remained on the top deck. The rest, woefully ill prepared for the change in weather in their shorts and T-shirts, sought shelter below. No circuiteer however let the side down by succumbing to sea-sickness.

Saturday evening saw several dinner groups set forth to sample Portuguese cuisine. One cohort dined at the somewhat dubiously named 'Bloody Nose', hoping that its name did not reflect on the establishment itself but that it merely lost something in the translation. Despite sounding like an old fashioned east end pub where patrons are grateful to finish an evening with both knee-caps intact, this was a delightful restaurant, serving excellent food and wine, and with friendly staff. Another group, led by Judge Geoffrey Breen, went to a busy restaurant specialising in live fado, Portugal's famous urban (melancholic) folk music.



The right kind of tram

'Fado' means 'fate'. It is music that expresses longing and sorrow; a longing for what has been lost and also for what has never been attained. One circuiteer present said it was 'really not that bad'.

The Circuit Goes to Lisbon

The tour goes on

On Sunday, less than half of the circuiters were sufficiently bright-eyed and bushy-tailed to participate in the bus tour of Lisbon which began at 8.15 a.m. Those who went were given the opportunity to visit some of the sites that we had seen from the boat the previous day. The wonderful two storey cloisters at Jerónimos Monastery were especially worthy of note, particularly against the backdrop of the church's children's choir which was taking part in Mass.

During the afternoon, three members of the group, Rose Burns, Nick Bleaney and Richard Devereux-Cooke revealed their obsession with the trams. When they discovered that the number 12 made a circular route around the Castelo area, and also that the windows opened sufficiently far to enable passengers to lean out and take action shots of passing Lisbon, these three did the whole circuit. And then, on the off chance that they had missed anything the first time, they went round again. Not content with this, they spent the rest of the weekend debating the respective merits of the various tram routes and attempting to convince the other circuiters that no weekend in Lisbon would be complete without multiple round trips on the number 12, 'not just any old tram' but old tourist trams dating from the early part of the twentieth century, which allegedly made it all OK. While the Penry-Daveys made it to Sintra, Judge Jeffrey Pegden, Q.C. led a small band who took the train to Estoril from where they walked to Cascais, an ancient fishing village and now the favoured homes of wealthy Lisboetas.

On Sunday evening, following a siesta, several circuiters ate at the restaurant located in the Castelo de Sao Jorge which overlooks Lisbon and the Tégus. Numerous delicious fish and seafood dishes appeared, including bacalhau, the famed salted cod fish and an octopus.

Monday was a free day and several of us were once more sighted at the Castelo, enjoying the excellent views of Lisbon's seven hills in daylight. Evidencing the old adage that one can take the barrister out of Lincoln's, but not Lincoln's out of the barrister, a couple of circuiters were heard speculating on whether there was a good claim in misrepresentation after discovering that the present Castelo is actually a (largely 1940s) recreation of the original structure, which was destroyed, in common with most of the city, by the earthquake of 1755.

And we got CPD points

In the evening – and, after all, the purpose of the trip – we participated in a comparative study between Portuguese and English law at Lisbon University. This gave us 2.25 hours of CPD.



David Spens, Q.C.

David Spens, Q.C., opened proceedings with a discussion of the qualifications required for entry into the profession in England. There then followed lectures and presentations by Carlos Correia and Carlos Marinho, on behalf of the Portuguese Bar. A fascinating perspective on crime was provided by Antonio Cluny and Mr. Justice Penry-Davey. It is clear that there is a gulf between our own adversarial process and the continental inquisitorial approach.

Fortunately our speaker on the Coroner's jurisdiction in England, was Nicholas Hilliard, Q.C., fresh from having been counsel in the Princess Diana/Dodi Al Fayed inquest. It was as interesting for the visiting British as it was for our hosts, to whom this type of court is totally alien.

Civil law was addressed via a fictional road traffic accident involving C. Ronaldo and W. Rooney. Oscar Del Fabbro, setting out the facts, noted that if the fictional parties' names were reminiscent of any real-life individuals, this could only be sheer coincidence, since the vehicles involved were a Seat and Ford respectively. Deputy District Judge Delia Coonan explained the application of the Civil Procedure Rules 1998 to the facts; Professor Mariana Gouveia set out how Portuguese law would be applied.

Two points are worthy of note. First, several criminal practitioners were later heard to express wonderment that they had learned so much about the CPR from a talk aimed at foreign lawyers. Second, it transpired that Portugal appeared to have no disclosure mechanism in their civil procedure. This latter revelation was hotly discussed at the subsequent dinner, with several Portuguese lawyers disagreeing with the analysis as put. In any event, the dinner was an enjoyable affair, providing the opportunity to mix informally with the Portuguese lawyers and to sample the venue's speciality, deep-fried broad beans. We were delighted to meet our Portuguese colleagues

and particularly grateful to the distinguished lawyers who took part in the comparative study.

The locals learn the English sense of humour

One intrepid Portuguese lawyer accompanied us back to the hotel (her aunt lived in the same street) and was game enough to take part in a number of hilarious rounds of charades, led by Anesta Weekes, Q.C. The following couple of hours produced, I am assured, several once-in-a-career sights: Judge Pegden QC 'miming' a film with extensive vocal accompaniments; Nicola Shannon successfully guessing every single film attempted, often based on only a single syllable 'sounds like'; and (the collective personal and most frustrating favourite) Richard Devereux-Cooke's determined attempt at 'Witness', which involved only two actions (including standing stock still with his right arm raised, for five minutes), neither of which got the circuiters anywhere near even a syllable until inspiration struck Nicola.

The final day saw a flurry of shopping and last minute sight-seeing. There was still time for one final glass of Vinho Verde in the courtyard of York House before setting off for the airport and our flight home.



*HHJ Jeffrey Pegden, Q.C. and
Mr. Justice Penry-Davey*

On to the next one

This was my first Circuit Trip. The truth is that I was a reluctant attendee, cajoled into it by my roommate in chambers. Everyone though was very friendly and welcoming. The trip itself was interesting, informative, and good fun. Thanks go to Giles Colin, who organised the trip, and to his wife, Polly Darling, for their efforts – and also in anticipation of next year's Circuit Trip.

Photographs courtesy of Rosemary Burns

Learning how to raise doubt: The Florida Criminal Course

The Florida course in criminal advocacy was attended by four young circuiteers and Jeremy Dein, Q.C. Max Hardy, of 9 Bedford Row, who will be familiar to readers for his analysis both of injustice and of social froth in New Orleans, 'Death Row and Debutantes', reports on how the British and the Americans found common ground



The criminal team

One of the real pleasures of witnessing first hand how other jurisdictions operate is the reassurance that comes from realising that lawyers the world over are grappling with the same problems: inadequate funding, bullying opponents, and impenetrable jury directions. The intriguing thing though is identifying the differences because then it is possible to analyse the strengths and weaknesses of our own way of doing things.

Young barristers have been beating a path to the University of Florida for a number of years now to participate in the Gerald T. Bennett Prosecutor/Public Defender Trial Training Program. It is an experience of inestimable value and an act of quite remarkable generosity on the part of our American colleagues to fund our participation, year after year.

The name of the course discloses what is the most conspicuous difference between the two systems. No English mock trial programme would specify in its title what would be assumed, namely, that it was for defenders and prosecutors. Time and time again I was met with incredulity when I explained that I might prosecute a robbery on Monday and defend in a dangerous driving case on Thursday.

Everyone for justice

Another remarkable fact is that the programme is the only one in America where both prosecutors and defenders participate in the same trial training. Florida's approach is to be commended as young Public Defenders and State's Attorneys have the opportunity over a week of learning together to see that their opponents are not the 'enemy' but are colleagues intent on ensuring the same thing: a just verdict.

Sadly this spirit of cooperation and professionalism is not replicated everywhere. It is

common for relations between the two sides to be chilly at best and downright hostile at worst. Often any hostility is a hallmark of inexperience and older hands are more adept at putting professional differences to one side but there is a real lesson for England and Wales here as to the dangers of a future where advocates only have one string to their bow and become blinkered by partiality.

Of course many barristers, such as our accompanying Silk, Jeremy Dein Q.C. of 25 Bedford Row, make a conscious decision to practice on only one side of the court but the great virtue of our jurisdiction is that is done by choice. Young United States attorneys fresh out of law school have to decide before they have ever stepped foot in a court room whether they are going to be prosecutors or defenders. Perhaps an often unacknowledged virtue of our system is that practitioners have had an opportunity to spend their formative years getting a perspective on operating from both ends of counsel's row.



Jeremy Dein, Q.C. demonstrates

Putting us through our paces

The program worked by running two mock trials in tandem with the participants being divided into large groups of about twenty with about eight trainers drawn from the ranks of the judiciary and the upper echelons of the Florida Bar. The trials were run from start to finish with the young attorneys being given five minutes of videoed and critiqued time at each stage of the trial process.

The four of us, the others being Shelley Brownlee, Victoria Oakes and Rhiannon Sadler, were given strict instructions while still in England not to do anything that we would not do at home. Accordingly there was a distinct lack of theatrical movement from the English delegation during examination of witnesses and submissions.



Max Hardy



Shelley Brownlee makes a point

Literary references

I, inevitably, failed to heed that advice during a defence opening speech to the imaginary jury when I suggested that no doubt they were all familiar with *To Kill a Mockingbird*. This elicited the deserved rebuke that there could be every doubt that a Florida jury would have read it. I compounded this mistake by using what I mistakenly thought was the idiomatic American expression of 'teaching grandma to suck eggs'. Amidst the bemused expressions, one of the judges enquired whether this was some kind of English deviancy hitherto unknown to Americans.

The first trial was an attempted murder in which a battered/vengeful wife (depending on your side) shot her husband six times during a heated argument in which both parties had used a frying pan to good effect.

Legal issues

In Florida the jury directions are printed in full so it was possible to read in advance of the trial the entire content of the judge's summing up. Over the course of the week I struggled to find anybody who could explain to me the difference between Second Degree Attempted Homicide and Attempted Manslaughter. Bearing in mind the Government's apparent desire to borrow from the American approach to the law on homicide it was interesting to observe that questions as to whether 'Battered Spouse Syndrome' amounts to a defence are just as vexed in the United States as they are here.

The second case also gave cause for reflection as to whether copying the American approach will necessarily serve our jurisdiction well. It was a drugs case in which a low level dealer in Class A drugs had the misfortune to be found in

Learning how to raise doubt: The Florida Criminal Course

possession of an uncharacteristically large quantity of cocaine. The arresting officer offered him the chance to walk free in return for arranging a bust leading to a conviction. The question for the jury was whether the defendant, who was being prosecuted for doing a deal with the informant, was an innocent housemate of a big time dealer or whether he was an accomplice to that dealer.

As anybody who has participated in an advocacy course will know it is incredibly hard work and can be harder than conducting a real trial. There is nothing like having a jury of one's peers and superiors to lend a frisson of apprehension to the preparation of cross-examination. Of course we were defending national honour to boot. Although

we 'students' had it easy by comparison with Jeremy Dein Q.C. who was called upon to conduct a demonstration cross-examination of the drugs snitch. This he accomplished with great skill even at one point brandishing at the startled witness the frying pan from the attempted murder.

Pimm's for Everyone

Of course it was not all hard work and we each of us enjoyed very generous hospitality at the hands of our American hosts, whether faculty or student body members. I am pleased to report that the now customary Pimm's party was a great success and the vast majority of attenders were enjoined actually to drink the stuff by the ingenious ruse of

supplying no real alternative. An abiding memory of the week will be that of a completely unexpected off-duty trip out of town to a crystalline spring water river wending its way through the swamp where we all floated downstream for hours in rubber rings past turtles and other exotic wildlife. A memento I shall treasure is a pen given to me by a splendidly named Private Attorney from Clearwater called Denis de Vlaming emblazoned with the slogan: 'You raise cash – I raise doubt'.

I cannot recommend the experience highly enough and encourage any eligible practitioners keen to experience what I have described above to apply next year.

Florida: The Civil Course

Matthew Lavy of 4 Pump Court reports on how five circuiters coped with a new jurisdiction and got quite used to saying 'Objection!'



The civil team

One afternoon in early May a group of four circuiters plus Richard Davies, Q.C., emerged bleary eyed from Orlando International Airport into the baking heat of the Florida afternoon sun. Shortly thereafter, we were heading up Interstate 75 bound for the Fredric G. Levin College of Law, Gainesville University. We were enrolled, along with tens of local trial lawyers, in a continuing professional development programme run by the Florida Trial Lawyers Association in conjunction with the University of Florida. We would spend our week learning how to do advocacy local-style. Richard was to be a member of the faculty and keynote speaker at the course banquet.

If any of us were anticipating days spent basking in the sunshine by the pool of the (extremely comfortable) University Hotel, we could not have been more wrong. Each day started at 8 am with an hour-long ethics lecture. The speaker one morning was an inspiring advocate who had returned to the Bar after successfully battling drug addiction. After that it was advocacy,

built around a case study about the legal fall-out from a serious personal injury: the unfortunate Plaintiff broke his neck on an obstacle course at a picnic organised by his father's company (Defendant 1); although surgery was initially successful, the orthopaedic surgeon treating him (Defendant 2) failed to notice that a metal plate holding his vertebrae together had severed, possibly owing to defective workmanship or design by its manufacturer (Defendant 3).

Every day another skill

Each day of the course was devoted to another skill: 'direct exam' (examination in chief), cross-examination of both lay and expert witnesses, and jury submissions. After watching accomplished demonstrations by leading Florida trial lawyers, we each had to do the exercises ourselves. Our performances were scrutinised by a superb (and very large) faculty consisting of Federal and State judges, leading practitioners and, of course, a Silk from the South Eastern Circuit. It was all recorded

on a DVD so that we could indulge in the painful (but undoubtedly useful) process of self-critique.

Aspects of Florida trial advocacy came as something of a culture shock. If it felt alien to use easels, whiteboards and props whilst cross-examining, or stalking back and forth past the jury box during submissions or punctuating opposing counsel's submissions with cries of 'objection' (that at least felt liberating), they were as nothing compared to the jury selection process. This, at least thanks in part to the vast body of relevant case law, we found utterly baffling.

One language divided by common ethics

Despite the difference between the two systems, more striking were the similarities. Nowhere was this more obvious than during the ethics sessions. The dilemmas recounted and problems posed were as valid and relevant to us in England as they are in Florida, as are the concerns about the public's perception of the Bar and the conduct of its members. As Richard told them, there is more that binds us than separates us.

We all left feeling that we had learned a great deal. Opportunities to shout 'objection' may be few and far between back home, but the core skills of advocacy transcend the procedural peculiarities of specific legal systems and even, to an extent, the nature of the tribunal. We were greatly impressed not only by the skill and consummate professionalism of the lawyers we met there but also by the warmth of the Florida Bar and the willingness with which a large number of judges and busy practitioners gave up a week of their time to guide their junior colleagues to becoming better and more ethical advocates. Long may the links between the Florida Trial Lawyers Association and the South Eastern Circuit continue.

The Annual Dinner

The annual dinner is the great occasion when the Circuit sits down together. This was an excellent opportunity to pose the question, 'What is the Circuit for?' The Assistant Junior, Emily Radcliffe of 9 Gough Square, reports on this question – and its answer – and of the pleasures of the evening



Mohammed Khamisa, Q.C. and Alex Price-Marmion

What on earth is the South Eastern Circuit for? So the crucial question was posed by the Junior, Alex Price-Marmion, at the annual dinner on Friday, June 27, at The Great Hall, Lincoln's Inn. Lots of little messes comprising one big mess, it seems. But joking aside, alongside chambers, the Circuit infrastructure of support that ensures both quality and camaraderie produce a healthy and happy profession. All credit to Alex, who in addition to her speech, which ended with an a cappella rendition of 'Miss Otis Regrets', organised the dinner for 250 members of the Bar and judiciary. Inge Bonner, the

administrative stalwart of the Circuit, Bar Council and specialist Bar associations, oiled that machine.

The dinner is also an occasion to honour the Circuit's guests. This year they included the Attorney-General, The Rt. Hon. Baroness Scotland

of Asthall, Q.C., the Senior Presiding Judge of England and Wales, The Rt. Hon. Lord Justice Leveson, the presiding judges of the Circuit (Messrs. Justices Gross, Bean and Cooke), past leaders, recent appointments and retirements of the judiciary, and a host of people by special invitation including judges and colleagues from other circuits and other parts of the justice system.

A fine dinner

What guests and members shared was a fine dinner and the usual array of excellent wines arranged by Stephen Solley, Q.C. We began with gravadlax before moving on to medallions of beef, tian of summer pudding, and Hereford Hop, a cheese apparently only revived from an archival recipe in 1988 by Charles Martell of Gloucester. Stephen stuck to Europe this year for his choices: Vermentino di Bolgeri 2006; Chateau Pichon-Longueville Baron 1997 (a second Grand Cru Pauillac); and Maury, Solera 1928.

The leader leads off

David Spens, Q.C., in his second of two years as leader of the Circuit, was first to address the



The Lord Chief Justice



Helen Brander, Mark Wonnacott, Gabrielle Higgins, Karen Dempsey

The Annual Dinner

throng. He offered a welcome to the distinguished guests, and thanks to those who have served the Circuit: Fiona Jackson and Rosina Cottage as Recorders in turn, Joanna Korner, Q.C., the Education chairman; Inge Bonner; Oscar del Fabbro our 'curmudgeonly' Treasurer; Giles Colin for arranging trips to Istanbul last year, and Lisbon this year (when honorary member Sir John Alliott allegedly never got to bed before 2am); David Wurtzel the tireless editor of this magazine who steps down this year for greater things; and, Robert Banks as an advocate for sole practitioners.

David pointed out that 'adversity brings out the best of us'. He lauded the courage and fortitude of those members who have refused to sign the new VHCC contract, which sent out a strong signal that the Bar is no longer prepared to put up with a flawed scheme which involves endless petty-minded bureaucracy, unacceptable rates, and the failure ultimately to attract the most talented members of the Bar to do the most difficult cases. Despite the improved situation for the junior Bar, the new fee scheme recommended by Lord Carter is deeply unsatisfactory. David thanked those who have laboured hard to represent the position of barristers. 'If no one is willing to stand up for quality, the Bar is,' he said before crediting the Chairman and Vice Chairman of the Bar for the Bar's cohesiveness.

An impromptu classic

The highlight of the evening, though, was the address from the guest speaker, The Right



Dee Connolly and Alex Rose

Honourable Lord Judge, then President of the Queen's Bench Division and Head of Criminal Justice, and who was named ten days later as the new Lord Chief Justice. He has been rightly lauded for his rare ability to craft judgments which are intellectually impeccable and at the same time of practical use to judges and to advocates, as a good friend to the Bar, and as the 'professional's professional'.

In introducing him, David said that he first encountered Lord Judge in 1973 when the latter was still junior counsel and David was marshalling for Mr. Justice Ashworth. As a judge 'he has put

down deep roots in the criminal justice system'. It might be traditional to mention now something of the speaker's past, but 'I have found no skeletons in his cupboard, not even a banana skin'.

In proposing the health of the Circuit, Lord Judge said 'we circuiteers must stand together' whether as judges or barristers. He began his speech with some jokes about bestiality. Having brought the house down, he described some of his early cases as a barrister dealing with the intimate detail of lives struck by tragedy. 'I shook the hand of a man of whose innocence I was convinced'. He would visit the homes of lay clients in personal injury cases; homes where he felt humbled. He would listen 'to what you're not being told', that is, the aspects of the story which are too painful

Most of those in the Hall did not realise that at this point his notes slipped off the lectern onto the floor. In what then turned out to be an impromptu classic, Lord Judge carried on regardless, touching those present with his empathetic and supportive words to the Bar. 'I am deeply concerned with the difficulty of recruiting people to do circuit work. We judges are dependent on the professionals who appear in front of us,' having earlier said that the Bar is an institution where 'you cannot doubt anyone's honesty': it is astonishingly competitive but 'friendships don't break'. Surely this example of combining excellence, mutual support and a deep understanding of human nature, is what the South Eastern Circuit is all about.

On a lighter vein, we carried on till the small hours to the rocking tunes of the Dodgy Briefs.



Leah Dillon, Tim Devlin and Lesley Bates

The Criminal Evidence (Witness Anonymity) Act 2008

In R v Davis the House of Lords threw down the gauntlet to Parliament on the question of witness anonymity. The government picked it up with alacrity, and produced a controversial if ostensibly short-lived Act.

David Ormerod, Professor of Criminal Justice at Queen Mary, University of London, editor of Blackstone's and the criminal Bar's favourite guru, explains the procedure that Act sets down



On 18th June the House of Lords handed down what for many was a surprising decision in *R v Davis* [2008] UKHL 36, holding that the procedure developed to receive anonymous witness evidence was contrary to common law and infringed the defendant's right to a fair trial under the ECHR, Article 6 where his conviction was based solely or decisively on such evidence. Within days multi-handed murder trials had collapsed (see *The Times* June 25th pp 6-7) there were reports that nearly 600 current trials were in jeopardy and the government swiftly announced new legislative proposals (Jack Straw practically announcing such in an interview on the Radio 4 Today programme). By 21st July the Criminal Evidence (Witness Anonymity) Act 2008 was passed, in force and the Attorney General had produced complementary guidelines on the use of anonymous witnesses: *The Prosecutor's Role in Applications for Witness Anonymity Orders*.¹

Despite dealing with issues of enormous gravity, the Bill received only one day of debate in the House of Commons. It had cross-party support in both Houses. Controversy still rages, not only over the inroads it makes into basic fair trial guarantees but as to the over-hasty manner of its enactment. One of its most important provisions may therefore be s.14, providing for its expiration on 31 December 2009. The government promises more carefully considered legislation in the Law Reform, Victims and Witnesses Bill in the forthcoming Parliamentary session.

The Act raises issues of fundamental significance about the nature of the adversarial process including matters such as the right to confront one's accusers, the need to combat witness intimidation, the effectiveness of disclosure, the desirability of independent counsel etc. Justice cannot be done to these complex and weighty matters in the space available here, but a number of practical concerns can be addressed

- How does the new legislation operate?
- Has Parliament created a broader opportunity for anonymity than at common law?
- Will the new legislation withstand challenge?
- What happens in ongoing and imminent trials?

These important matters have the potential to affect a sizeable number of future trials. The CPS revealed that when *Davis* was decided around 580 cases had anonymity orders operating (290 involved test purchases by undercover officers, 40 involved other police witnesses and 50 involved members of the public).² This included: cases charged and awaiting trial; currently being tried; convicted but not yet sentenced; and convicted and sentenced. The government suggests, without explanation, that it was 'inherently improbable that there would be an increase in numbers of orders under the new scheme.'

The Basics

The Criminal Evidence (Witness Anonymity) Act 2008 received Royal Assent on 21st July 2008 and came into force that day (s.13).³ Although based on the New Zealand Evidence Act 2006, ss 110-118, the Bill's hasty progress through Parliament provided no opportunity to consider the New Zealand judiciary's experience.

Commencement and Jurisdiction

By s. 9, the Act applies to any criminal proceedings in England and Wales and Northern Ireland (s.15), where the trial or hearing begins on or after 21 July 2008 or which are on going, but not concluded on that date. Section 10 makes transitional provision for cases which are on going and in which an anonymity order had been made at common law prior to 21st July.

The new scheme for anonymous witnesses

The Act abolishes the common-law rules by which a court could order the withholding of a witness' identity (s. 1(2)), but does not affect any common law rules relating to PII (s.1(3)), nor to the power to conduct hearings *in camera*. Section 1 introduces 'witness anonymity orders' – for which both prosecution and defence may apply (s.3). Orders are available in 'criminal proceedings' in the Crown Court, Court of Appeal Criminal Division and the Magistrates' Court, although order in the latter are expected to be very rare (the government retained their availability principally because of drug prosecutions involving test purchases tried there).

No specific offence is created for breach of an order, but such conduct would constitute a contempt of court.

What measures are available?

Section 2 empowers the judge to make 'witness anonymity orders'. By s 2(2) these include measures for securing the withholding of the witness's name and other identifying details from disclosure, permitting the use of a pseudonym; preventing questions that might lead to the witness' identification; screening and voice modulation. These are merely examples of the types of measures that may be taken, drawing on experience from the orders made under the common law pre-*Davis*. The court can make any order it considers 'appropriate' to ensure anonymity. Significantly, s.2(4) prevents an order being made which screens a witness from 'the judge or other members of the court (if any); the jury (if there is one); or any interpreter or other person appointed by the court to assist the witness. In addition, if voice modulation is used, the witness's natural voice must still be heard by these individuals. As at common law, the judge and jury see and hear the witness in his or her natural state maximising their opportunity to evaluate the witness' demeanour. The Act is silent as to what the legal representatives may see. Presumably the trial judge will allow this if the advocate chooses. In *Davis*, counsel had declined the opportunity to see the witness his client was forbidden from seeing.

Although there is no specific power of appeal against the making of an order, the powers under s.58 of the Criminal Justice Act 2003 for prosecution interlocutory appeals apply. However the defence will only have an interlocutory appeal in preparatory hearings. Under s.6, an order under s. 2 may be varied, further varied, or discharged where it appears 'appropriate' to the court that made it. This may be on the court's own motion or application by any party if a material change in circumstances has occurred since the order was made or varied.

The application procedure

Section 3, which regulates the application procedure, was one of the most controversial

The Criminal Evidence (Witness Anonymity) Act 2008

clauses in the Bill, despite government amendments inserted to provide a more detailed system.

On an application by the prosecutor, the identity of the witness may be withheld from any other party to the proceedings before and during the application, but must (unless the court directs otherwise) be revealed to the court: s. 3(2). There may be cases involving national security where even the court does not insist on knowing the identity of the witness, although the witness will be heard and seen by the judge in any event (see s. 2(4) above). In contrast, on application by a defendant, the identity of the witness must be revealed to the court *and the prosecutor*, but not to any other defendant if there is one: s. 3(3). In the process of making an application, the identity and information that might enable identification of the witness can be withheld in accordance with the scope of these obligations.

Concerns were raised by opposition parties that the inequality between the procedure for the defence and the Crown gave rise to unfairness and potential conflict with the ECHR. In particular, Article 6(3)(d) which provides that the defendant has the right to examine witnesses against him 'under the same conditions as witnesses' on his behalf. In practical terms, the difficulty is that unless D1 reveals to the Crown the identity of the witness he wishes to call but keep anonymous, the Crown cannot investigate that witness and fulfil its disclosure obligations to D2.

Numerous amendments were tabled (unsuccessfully) in attempts to insert a requirement that independent counsel would be instructed in all cases to assist the court and protect the defendant's interests as in New Zealand. Even in *Davis* itself independent counsel was appointed. Is the Act less protective than the common law? One powerful argument for independent counsel is that knowledge that such independent examination will occur may deter prosecution and investigative agencies from being too profligate in promising anonymity to potential witnesses. Such a provision would be welcome also for increasing likely compliance with the ECHR, and gained support from the Joint Parliamentary Committee on Human Rights. The Attorney General's Guidelines for prosecutors acknowledge that special counsel may be applied for in the exceptional circumstances identified by the House in *H and C*.⁴ The government has promised to revisit the issue in the Law Reform, Victims and Witnesses Bill.

The opportunity for *ex parte* procedures is governed by s 3(6) and (7). The Explanatory Notes to the Act describe these as reflecting 'existing practice' for *ex parte* prosecution applications 'with the defence able to make representations later at an *inter partes* hearing (with the prosecution present and possibly other defendants)'. In contrast, it is 'expected that

defence applications will be permitted *ex parte* other defendants but will always be made in the presence of the prosecution.'

Necessary conditions for an anonymity order

The heart of the new scheme lies in ss. 4 and 5. An order may only be made subject to the three conditions in s 4. The court must be 'satisfied' or each of these conditions in every case, but this is not a formal requirement that the matter be proved to the criminal standard, and presumably the judge may be satisfied by evidence which would be inadmissible at trial.

By subs (3), 'Condition A' is that the measures are necessary:

- (a) *in order to protect the safety of the witness or another person or to prevent any serious damage to property, or*
- (b) *in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise). ...*

Although the court must be 'satisfied' that the measures are 'necessary' to protect the witness, it can be argued that Condition A will be too readily met. Under s.4(3)(b), it is sufficient that the court is satisfied that real harm to the public interest even if no need for protection of a person or property from harm is shown. It seems to be enough that an undercover officer who claims simply that without anonymity he will not be able to work in that role again. Under s. 4(3)(a), the level of physical harm against which the witness or another is protected is not specified. Serious doubts might also be raised as to whether it can be 'necessary', as s.4(3)(a) contemplates, to grant anonymity merely to prevent serious damage to property (without serious injury). Subsection 6 provides further guidance requiring the court:

- 'to have regard (in particular) to any reasonable fear on the part of the witness –*
- (a) that the witness or another person would suffer death or injury; or*
- (b) that there would be serious damage to property,*
- if the witness were to be identified.*

That does not impose formal requirements that the witness fears death or serious injury before Condition A is satisfied. Many witnesses in a murder or major drug trial will experience fear of violent reprisals: will the judge accept them as 'reasonable' fears? Will the courts take a rigorous enough approach to Condition A to limit anonymity to exceptional cases?

By s. 4(4), 'Condition B' is that:

- 'having regard to all the circumstances, the taking of those measures would be consistent*

with the defendant receiving a fair trial.'

This is a provision designed to ensure ECHR compatibility. The government has in effect passed the buck to the trial judge to ensure Article 6 fairness by leaving it to his discretion on a case by case basis. The provision could have been drafted more strictly since the judge is obliged in every case to be 'satisfied' only that the measure would be 'consistent' with the defendant having a fair trial. Having regard to this provision, some might question why the House of Lords denounced the common law approach endorsed by the Court of Appeal. Would any of the trial judges who made orders pre-*Davis* really have done so if they were not sure the defendant could have a fair trial? Before defence advocates get too optimistic about the likely success of any ECHR arguments, it is worth noting that the Joint Parliamentary Committee on Human Rights reported that in its view

*'the Bill is broadly to be welcomed from a human rights perspective...[and agreed] with the analysis in the Bill's Explanatory Notes that the Bill is compatible with Article 6 ECHR, on the basis of the express protection for the right to a fair trial and the discretion left to the trial judge to determine that issue.'*⁵

By subsection (5), 'Condition C' is that

it is necessary to make the order in the interests of justice by reason of the fact that it appears to the court that –

- (a) it is important that the witness should testify; and*
- (b) the witness would not testify if the order were not made.*

The court must be satisfied of the explicit causal element – 'but for' these measures the witness would not (not 'might' not) testify. The fact that 'it is important that the witness should testify' is not strictly the same as the evidence the witness can provide being important, but it is likely to be treated as such by the courts.

In considering whether Conditions A-C are met, the court *must* have regard to the considerations set out in s.5, to any other matters which the court considers relevant and to whether alternatives to anonymity may be sufficient. Given their centrality to the scheme it is astonishing that they received no scrutiny in the Commons.

By s.5(2) the considerations are:

- (a) the general right of a defendant in criminal proceedings to know the identity of a witness in the proceedings;*
- (b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his or her evidence comes to be assessed;*
- (c) whether evidence given by the witness might be the sole or decisive evidence*

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implicating the defendant;

(d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without his or her identity being disclosed;

(e) whether there is any reason to believe that the witness –

(i) has a tendency to be dishonest, or

(ii) has any motive to be dishonest in the circumstances of the case,

having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant;

(f) whether it would be reasonably practicable to protect the witness's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

Section 5 is looser than the New Zealand legislation which requires the court to have regard to (i) the gravity of the offence and (ii) the principle that witness anonymity is an exceptional measure. Assessing the factors that are listed will be no easy task and necessarily involves speculation. The court must have 'regard to' (not be 'satisfied' of) this non-exhaustive list of factors. As emphasised in *Davis*, the significant impediment in not knowing the identity of the witness is that the party cannot challenge his or her credibility either generally or in relation to the matters in issue: as Lord Bingham put it, the defendant is taking 'blind shots at a hidden target'. The section seeks to underline the significance of credibility in paras. (b) and (e). Recognition of their heightened importance was demonstrated by the fact that amendments were tabled (albeit unsuccessfully) to elevate para (e) from a 'mere' factor to be considered in s. 5, to an essential condition under s. 4. Para (e) may well prove troublesome in practice. If D does not know who the witness is, it is difficult for him to provide

the court with material or even arguments as to why that witness does have a tendency to be dishonest etc. Once again, the defendant is at the mercy of the disclosure regime and the ability of the judge to anticipate from material disclosed any likely motives the witness may have.

The specific obligation in s.5(2)(c) to have regard to whether the witness' evidence is the sole or decisive evidence implicating D was introduced by the Government to meet the specific concerns raised by the House of Lords in *Davis* about ECHR compatibility. It does not go as far as some amendments tabled in Parliament which wanted a formal corroboration requirement. As Lord Mance pointed out in *Davis*, the European Court has yet to finalise its views on anonymous evidence generally: it is not proscribed in all circumstances, but his Lordship's view (and that of Lord Bingham) was that convictions based solely or to a decisive extent on anonymous statements are certainly incompatible with Article 6.⁶

Jury warnings

On a trial on indictment the judge must give an appropriate warning to prevent prejudice to the defendant from the anonymity order being followed. Presumably JSB specimens will be created.

Appeals and safety of convictions in pre-Act cases

As noted, although far from routine, witness anonymity had become more commonplace until *Davis*, and numerous convictions for serious offences, commonly murder, were founded on such evidence. The CPS estimated around 200 convictions within time to appeal when *Davis* was decided. Section 11 pre-empts automatic appeals in those cases. The fact that anonymous witness evidence was received at trial under the now discredited common law procedure cannot itself render a resulting conviction unsafe. Convictions must be quashed only if the appellant appears not

have had a fair trial. In addressing alleged unfairness owing to the reception of anonymous witness evidence at trial, the appeal court must consider whether an order could (not 'would') have been made under the Act.

Conclusion

In *Davis*, the House of Lords refused to develop the common law even in the face of the chronic problem of witness intimidation (which has doubled in a decade), openly inviting Parliament to respond. Practitioners must now grapple with that albeit temporary emergency response. Will it prove to be 'the most serious single assault on liberty in living memory... result[ing] in thousands of unfair trials'?⁷ The answer lies in the hands of the same judges from whom the House of Lords removed the powers in *Davis* and crucially with the prosecutors who must act with scrupulous fairness in their role as 'ministers of justice' in such cases.

Several parliamentarians quoted Lord Denning: 'in the very pursuit of justice our keenness may outrun our sureness and we may trip and fall'.⁸ Since the Act has such a short life expectancy, in this instance it may be a temporary slip. The Lord Chancellor gave assurances that the judiciary will be encouraged to monitor and record all witness anonymity orders so that lessons may be learned for the 2009 Bill.

¹ These are available from <http://www.attorneygeneral.gov.uk/attachments/>

² Jack Straw, Hansard 8th July col 1304.

³ It is available at <http://www.opsi.gov.uk/acts/acts2008>. Archives of useful background documents (debates etc) on the Act are at <http://www.justice.gov.uk/publications/witness-anonymity-bill.htm>.

⁴ [2004] UKHL 3.

⁵ Joint Committee on Human Rights *Twenty-Sixth Report* (2008) para 1.9.

⁶ cf the *AG Guidelines*, above, para A3.

⁷ Geoffrey Robertson QC, *The Guardian*, 8th July.

⁸ *Jones v National Coal Board* [1957] 2 QB 55 (at 64-65).

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Beginner Oysters and Perfect Jelly

Our restaurant critic, Tetteh Turkson of 23 Essex Street, is a hard man to please. If the new Hix Oyster and Chop House just failed to come up to his high standards, at least he didn't have to pay the prices fixed for a different era in the City



One of my better ideas was to move St Valentine's Day. Valentine's meals have in the past been disappointing as kitchens tend to produce standard fare at somewhat inflated prices. Combined with the fact of the 14th February falling in the middle of a host of personal milestones, a six-month delay was convenient. Moving it also has the happy coincidence of accommodating the opening of Hix Oyster and Chop House in Smithfield in the interim. Mark Hix, formerly Chef Director of The Caprice Group (which includes J Sheekey, The Ivy and Le Caprice amongst others) has struck out on his own in that paean to a chef's vanity - the eponymous restaurant. Naturally he is not actually head chef. That honour goes to Stuart Tattersall who previously worked at Milk and Honey, whilst Mr Hix expands his empire to Hix Oyster and Fish House in Dorset.

Getting to the meat

Mr. Hix is to be commended on telling us what to expect. The menu is dominated by slabs of meat, no doubt, like St John's before it, using proximity to Smithfield to good effect. This is matched by the look of the restaurant which is slightly reminiscent of a butcher's shop – lots of white surfaces and ceramics. The site used to be a sausage factory so perhaps it is fitting. I doubt however that many butcher's shops or sausage factories have works by Tracey Emin – including a piece which swears at you in bright neon, albeit in mirror writing.

We started with half a dozen oysters. A range was offered but being an Ulsterman it would have been perverse to look past those from Carlingford Lough. They did not disappoint. I would say they were perfect beginner oysters in that they were easier to swallow whole than some plumper oysters. Nor did they have the intensity of flavour of some. Having said that, they were neither small nor

tasteless. Rather, one had a gentle essence of the sea delivered in the shell.

Finding the pearl

One danger of the oyster and chop approach is that it may not demonstrate much in the way of the chef's expertise. In my choice of starter I managed to find a gem in the lamb sweetbreads. This is not because it was enormously complicated but because it showed confidence in ingredients which combined well. It was the best dish of the meal. The portion was large and came served in a small brass pot. Vast numbers of fresh plump peas were accompanied by a good amount of tender sweetbreads. I'm afraid having never had lamb sweetbreads before, I have nothing to compare them to, but if better lamb sweetbreads exist, it is a very fine ingredient indeed. The saltiness of the lardons of bacon cut into the sugar from the peas. My one criticism of the dish is that to my taste some more bacon would have given a better balance between salt and sweet.

JC's starter wasn't quite as interesting as my own, but her steamed River Exe cockles and wild mussels and marsh samphire was perfectly cooked. The molluscs remained firm rather than going over to mushy and textureless. JC felt that the black pepper came in lumps rather than being properly ground, but apart from that was well satisfied.

Going for the top

I couldn't resist the most expensive item on the menu for my main course although the grouse I chose had plenty of competition in terms of cost. This is one of the most expensive menus I have seen. JC's Dexter beef T-bone was £38. Neither dish came with vegetables, which strikes me as parsimonious in the extreme, given the prices. The

vegetable portions were £3.75, although it should be said that they were large portions. In fairness it should also be pointed out that there were cheaper dishes available – the cheapest was Whiting Specials with mushy peas, which came bottom at £10.75. One or two others were below £20.

Thankfully, unburdened as I was from the concern of actually paying for the meal, I could concentrate on the food. Due to the date the grouse had not been hung, with the result that it did not have the strong flavour of game one might expect. Nonetheless it was a succulent bird with a clean taste. The thin, crisp-like game chips were a welcome accompaniment and there certainly wasn't a shortage of those. Nor a shortage of the perfect bread sauce. As a nod to health there were some leaves with the grouse but it seemed an afterthought. The Dexter beef was good enough and I think suffered more from the choice of T-bone as the cut than from the cooking or quality of the meat. As I've found in the past the meat was not evenly rare with that closest to the bone being almost bleu and the outside pretty much medium.

Perfect – and it should be

I suspect JC chose Mr Hix's restaurant due to its stellar performance on the Great British Menu – a reality programme we've become slightly addicted to. We were both delighted therefore to be able to sample one of his winning dishes – perry jelly with elderflower ice cream. The jelly had summer fruits suspended in it and was delicious. You would expect a restaurant with these prices to be able to get a dish like this perfectly right and so they did. The jelly was the right consistency, the fruit was fresh, and the beautiful combination of the cream and floral in the ice cream complemented the slightly tart nature of the perry wonderfully. We couldn't manage any more food after that. I'd have been tempted by the cheeses if I did not already feel bloated.

Lacking

The problem with Hix is that it's ok and at those prices that is just not good enough. There was nothing wrong with the food at all but nor was it hugely exciting. The service was friendly and just about attentive enough without being brilliant. We were not given amuse-bouche or coffee and petit fours. None of this is objectionable, but for the cost. One can eat more cheaply there and maybe that's what it's for. JC described it as a bit no frills and it is, but at luxury prices. No expense has been spared on the ingredients which were all first rate but it lacked that little bit extra.

‘Dancing on the Head of a Pin’: The Standard of Proof in Family Law Cases

One would think that when the House of Lords spoke clearly about the standard of proof, judges and lawyers would listen. Not so, in the field of child protection. Judith Rowe, Q.C., and Elena MacLeod, both of 1 Garden Court, explain the effect of the latest (if not last) House of Lords judgment on the subject.



Where a fact must be proved, what is the relevant standard of proof? To us family lawyers, this has been easy for our criminal colleagues who find it obvious – ‘beyond reasonable doubt’. There may be different views about how it is described to a jury, but the concept itself is straightforward.

The question should, in civil proceedings, be capable of a similarly simple answer: a disputed fact must be established on the balance of probabilities. The question has, however, continued to cause difficulties in the field of child law, despite the 1996 House of Lords decision of *Re H and others (Minors) (Sexual Abuse: Standard of Proof)*¹ that the standard of proof was indeed the balance of probabilities. It is hoped that the post-*Re H* difficulties have finally been resolved by the House itself in *Re B (Children)*² on 11th June 2008.

Standard of Proof: Round One

In *Re H* the facts were ‘unusually simple’: the mother had four daughters, two by her husband and two by R, with whom she was now living. The eldest alleged that R had been sexually abusing her for some years. The local authority brought care proceedings in respect of the youngest children, relying on these allegations as proof of likelihood of harm to the other girls. The judge was not satisfied that the allegations were true but found a ‘real possibility’ that they were, and dismissed the applications.

The local authority’s appeal established three quite separate propositions. Firstly, the words ‘is likely to suffer significant harm’ (one of the two s31(2)(a) ‘limbs’ which they must establish before seeking a care or supervision order) did not mean that such harm had to be more likely than not to happen in the future: suffice that its occurrence was a ‘possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case’.³ Secondly, the standard of proof to be applied to disputed facts was the balance of probabilities. Thirdly, having characterised as ‘judicial doubts and suspicions’ the judge’s conclusion of a ‘real possibility’ that the child suffered abuse, a 3-2 majority of the House decided that conclusions as to future risk had to be based on facts. Unresolved doubts and suspicions ‘can no more form the basis of a conclusion that

the second threshold condition (‘likely to suffer’)...has been established than they can form the basis that the first (‘is suffering’) has been established’.⁴

The majority reasoned that unless disputed facts were established to the court’s satisfaction, the burden of proof would be reversed, so that once apparently credible evidence of misconduct had been given, the accused would have to disprove them.

Standard of Proof: Round Two

The question ‘what standard of proof?’ continued to pose difficulties, mainly because of the way in which it was expressed by Lord Nicholls in *Re H* itself:

‘When assessing the probabilities the court will have in mind as a factor...that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability... Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur... Ungood-Thomas J expressed this neatly in *Re Dellow’s Will Trusts*: ‘The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it. ...This approach also provides a means by which the balance of probability standard can accommodate one’s instinctive feeling that even in civil proceedings a court should be more sure before finding serious allegations proved than when deciding less serious or trivial matters.’⁵

The consequent perception crept into some family proceedings that a ‘heightened cogency’ test applied in serious cases or that serious abuse allegations raised the standard of proof from the

mere balance of probabilities to something closer to the criminal standard. In 2003, *ET (Serious Injuries: Standard of Proof)*⁶ Alison Ball, Q.C. submitted that in trying to distinguish this higher civil standard from the criminal standard the court is ‘dancing on the head of a pin’. Bodey J agreed and concluded that when deciding whether the facts alleged were made out, he would proceed ‘on the basis that, in this very serious case, the difference between the civil and criminal standards of proof is ‘largely illusory’.’ Once again, the ‘supposedly simple’ was apparently complicated.

In 2004 the Court of Appeal in *Re U (Serious Injury: Standard of Proof)*; *Re B*⁷ Butler-Sloss P said ‘this approach is mistaken. The standard of proof to be applied in Children Act cases is the balance of probabilities... There would appear to be no good reason to leap across a division...between crime and preventative measures taken to restrain defendants for the benefit of the community and...wholly different considerations of child protection and welfare... The strict rules of evidence applicable in a criminal trial which is adversarial in nature is to be contrasted with the partly inquisitorial approach of the court dealing with children cases in which the rules of evidence are considerably relaxed.’ Bodey J thus applied too high a standard of proof.⁸

Despite the fact that the Court of Appeal ‘restored the status quo’⁹ in *Re U*, the difficulty felt by family courts when fact-finding refused to go away. The matter was thus still an issue when the House of Lords finally revisited it this year.

Standard of proof: Round Three

By 2007, some Family Division judges were of the view that the House of Lords should reconsider the question ‘what standard of proof?’ not to confirm it as the balance of probabilities but instead to consider whether even applying the mere balance of probabilities sets the standard too high. In Ryder J’s lecture to the National Youth Advocacy Service (NYAS)¹⁰ he questioned whether the application of the civil standard left too many abused children unprotected. Also in 2007, Charles J expressed the same concern at first instance in *Re B*.

The facts were different in some ways to *Re H*, although in a crucial way they were similar. *Re B*

The Standard of Proof in Family Law Cases

concerned a teenage girl R and two younger children. R and her elder brother S were the mother's children by a previous relationship; the youngest were the children of the parents in these proceedings. The local authority based their case on a wide palette of concerns about the family, most of which were conceded by the parents or established to a degree that amply satisfied the 'threshold criteria'. Sexual abuse (of R) was not, as in *Re H* the sole issue, but it was raised in respect of the stepfather.

Despite a 'detailed and meticulous analysis of all the evidence' Charles J was unable to make a finding, on the balance of probabilities, either that R was sexually abused or that she was not. Having found neither her nor the father a truthful witness, his 'answer... would be a guess'. He concluded that 'on an approach founded on evidence and reasoning, and not on suspicion and/or concern, I am unable to conclude that there is no real possibility that Mr B sexually abused R as she asserts... and I have therefore concluded that there is a real possibility that he did'. Thus he reached the identical conclusion on the issue to that reached at first instance in *Re H*. Despite what the House of Lords had said, Charles J considered that the welfare decision should be made on the basis that because sexual abuse possibly happened in the past there was a risk that could not sensibly be ignored for the future.

Charles J's concerns, elaborated on in Schedule A of his judgment, were based on the view that if more cogent evidence is required to prove allegations in more serious cases then the result is perverse: the more at risk the child, the harder to prove and justify the provision of protection. He observed the further perversity of concluding, at fact-finding stage, that there was a 'real possibility' that sexual abuse had occurred, but at the second stage having to proceed on the basis that it had not, because it was not established on the balance of probabilities.

Charles J relied on a number of matters to support the proposition that the *Re H* principle could and should be reviewed. Firstly, he drew analogy with the line of 'uncertain perpetrator' cases¹¹ which established as a matter of legal principle that once the court finds to the civil standard that abuse occurred, it treats each of the child's main carers as potential perpetrators unless they can be excluded on the basis that there is 'no real possibility' they perpetrated the abuse. Why not extend that principle to the finding of a 'real possibility' that abuse occurred, and thereafter treat the alleged perpetrator as a future risk? The rationale was that this would protect as many children as possible from the risk of serious harm.

Second, he noted that in immigration cases, judges proceeded on the basis of a 'real possibility' that certain facts alleged about life in the home jurisdiction are true. Finally, he questioned

whether the requirement of proof of facts to the civil standard in fact complied with the alleged victims' human rights.

In her speech, Baroness Hale observed that the judge's findings 'were expressed in such a way as squarely to raise the issue of principle. Is it possible to be satisfied that a child is likely to suffer some particular harm in the future, when the basis for suggesting this is that there is a 'real possibility' that another child suffered the same kind of harm in the past?'.¹² The Court of Appeal granted permission to appeal to the House of Lords¹³ but expressed no view beyond observing that there was clearly an issue for the House to consider.

The House of Lords ruled on the specific point arising from the second limb, and considered, again, the general question 'what is the appropriate standard of proof'.

On the first issue the House 'unhesitatingly declined' the appellant's invitation to revisit the decision in *Re H*. As Baroness Hale said¹⁴,

'The reasons... for adopting the approach... in *Re H* remain thoroughly convincing. The threshold is there to protect both the children and their parents from unjustified intervention in their lives. It would provide no protection at all if it could be established on the basis of unsubstantiated suspicions: that is, where a judge cannot say that there is no real possibility that abuse took place, so concludes that there is a real possibility that it did. In other words the alleged perpetrator would have to prove that it did not... If Parliament had intended that mere suspicion that a child had suffered harm could form the basis for making a final order, it would have used the same terminology of 'reasonable grounds to suspect' or 'reasonable grounds to believe' as it used elsewhere in the Act. Instead... it speaks of when the child is suffering or is *likely* to suffer.'

Baroness Hale emphasised the separate roles of the courts and local authorities, whose statutory duty is to investigate where they have 'reasonable cause to suspect' that a child is suffering or likely to suffer significant harm¹⁵. 'It is the court's task when authorising permanent intervention in the legal relationship between parent and child to decide whether those suspicions are well founded'.¹⁶

Therefore to allow courts to make decisions on the basis of unsubstantiated allegations of abuse would both undermine the protection provided by the threshold criteria against state intervention, however well intentioned, and confuse the role of local authority and court in deciding where the truth lies.

There is no analogy with the 'uncertain perpetrator' cases, since the court may only proceed to consider the perpetrator's identity if first satisfied, on facts established to the civil standard (not doubts, concerns or suspicions),

that the child actually suffered significant harm. A fact established only as a 'real possibility' cannot form the basis of future risk.

Standard of proof: the final word

Why, given the clarity of the restatement in *Re U*, did the House come again to consider the question 'what standard of proof'? Quite simply, the perception of a higher standard had refused to disappear. In cases up and down the country, social workers, Guardians and the courts continued to show unease when assessing serious allegations of abuse. Courts declined to make findings where the findings should, on a simple balance of probabilities, have been made. Indeed, the perception of a need for something over and above the usual civil standard in serious cases may have caused or contributed to judicial concerns that the relevant law appeared to be hindering rather than furthering child protection. CAFCASS therefore intervened in the appeal once it reached the House, and, while supporting the original decision in *Re H*, invited the House to make explicit the applicable standard of proof.

Baroness Hale answered thus¹⁷: 'I announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, nothing more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent improbabilities are simply something to be taken into account, where relevant, in deciding where the truth lies.' Consequences are serious either way, and, as to the seriousness of the allegation, 'there is no logical or necessary connection between seriousness and probability'.¹⁸

So, the final word is that the question 'what is the relevant standard of proof' is as simple to answer in family cases as it ever was in criminal cases. Hopefully we have 'danced on the head of a pin' for the last time.

¹ [1996] 1 All ER 1

² [2008] UKHL 35

³ Lord Nicholls of Birkenhead at p15

⁴ *Ibid.* at p19

⁵ *Ibid.* at p16

⁶ [2003] 2 FLR 1205

⁷ [2004] 2 FLR 263

⁸ *Ibid.* at p269

⁹ Per Baroness Hale in *Re B* at para 68

¹⁰ [2008] Fam Law 29

¹¹ *Lancashire County Council v B* [2000] 2 AC 147; *In re O (Minors)* (Care: Preliminary Hearing); *In re B (A Minor)* [2004] 1 AC 523

¹² *In re B* at para 33

¹³ *Re B (Children) (Sexual Abuse)* [2008] All ER (D) 232 (Jan)

¹⁴ At para 54

¹⁵ CA 1989 s47(1)

¹⁶ At para 58

¹⁷ At para 70

¹⁸ At paras 71 and 72

What's 400 Years between neighbours?

2008 has been the 400th anniversary of the granting of the Charter of the lands of the Temple by King James I. Inner and Middle Temples, who otherwise do little together, have at last joined forces to produce a festival in celebration of the event. A highlight was the Service of Thanksgiving on June 24. The Editor who was there reports.



For those members of Lincoln's and Gray's who do not feel obliged to notice, 2008 is the quatercentenary of the Letters Patent whereby James I granted the freehold of the lands of the Temple in perpetuity to the two Inns on condition that they provide accommodation and education for those who study and practice law, and that they should jointly maintain the Temple Church as a place of worship and its Master. The king did not exactly do it out of the goodness of his heart. At a dinner he was presented with a gold cup full of gold coins. Legend has it that James spent the coins and his son, Charles I, had the cup pawned. It has never been seen again.

It is true that James liked spending money, once he had come to England and had some, and the Duke of Buckingham did not come cheap. Without rehearsing the causes of the Civil War, we all remember that Charles had similar difficulties in keeping the coffers full. He at least had the distinction of amassing the greatest collection of art of any British monarch. Perhaps, like any modern collector, he 'sold to buy'; silver and gold have been unsentimentally melted down and reshaped over the centuries. Sadly, an Inner/Middle Temple provenance carried little weight, so to speak, against that. It would be nice to point to some royal paintings purchased with the proceeds of the Inns' cup, but the Puritans dispersed most of it abroad with very little to show for their philistinism.

Keeping the bargain

The Inns, for their part, kept to the bargain. Legal education continued, of varying quality, until the Bar got its act together in the mid-nineteenth century and formed the initial Council of Legal Education.

Accommodation within the Inns is very much used and has turned out to be remarkably flexible, both in absorbing the enormous expansion of the Bar in the past 40 years and in allowing for technological updating. The Church (and, later, its music) thrives and the current, vigorous Master, himself the son of an Old Bailey judge, lives in one of the most enviable houses in central London. He receives a 21st century salary although the Letters Patent only oblige the Inns to pay him £17 6s 8d per year.

Part of the Festival

The granting of the Letters Patent is being celebrated all this year in the 2008 Temple Festival, which is meant to be an extended act of re-dedication of the purposes of the two Inns. It all began with the open weekend in January during which some 25,000 curious members of the public poured through the precincts, looked in chambers, and watched mock trials in the Royal Courts of Justice. There have been suitable discussions about law and religion, in the first of which the Archbishop of Canterbury put himself if not the Festival on the map with some comments about the use of Sharia law which were promptly and predictably taken out of context (NB Dorothea Gartland's article in the spring *Circuiteer*). Four months later, the retiring Lord Chief Justice returned to the subject to scant media attention, perhaps demonstrating that the pronouncements of clergymen make for better copy than that of judges.

The Festival has and will include lectures, concerts, operas and plays. They have been sponsored by various charities but also with great generosity by chambers and by individual barristers. It is refreshingly a joint effort. One

aspect of life in the Temple is that the Inns scarcely ever work together. There is apart from separate governance, separate security, separate gardeners, separate libraries and separate education – everyone complains of lack of facilities but no one shares rooms. What is delivered in terms of education – pursuant to King James's wishes – can be quite different and is not always coordinated in respect of dates.

Back again

On June 24, however, everyone literally sang from the same song sheet at the Service of Thanksgiving in Temple Church. Conveniently timed for mid-way during the year, it was of course long in the planning and involved the airing of several important questions. The Queen and the Duke of Edinburgh had agreed to come, with all that entailed. They are no strangers to the place: nearly 50 years ago, following the post-war rebuilding, they attended the re-dedication of the Round Church together with the Queen Mother (since 1944 a Bencher of Middle Temple) who had attended the rededication of the Chancel in 1954. The Royal couple returned in 1985 for the 800th anniversary of the consecration of the church itself.



The Archbishop of Canterbury would be at the Service on June 24 too, making his second appearance in the Festival, without, it should be noted here, a passing reference to the previous occasion.

Who would be allowed to attend? How many? The latter problem was solved by erecting a marquee outside the church for the overflow who could watch the proceedings on a large, plasma screen live link. The former question was stickier. Who would have to attend alone and who would be permitted to bring a spouse or partner? Who would be invited and who would have to take part in a ballot? Fortunately the press of numbers seems to have been less severe than anticipated. More interesting, as on all such occasions, was the seating plan.

Those of us who obtained a ticket were sent a comprehensive packet of instructions a fortnight

What's 400 Years between neighbours?

before the event. Because of security there was an exclusion zone which required the closure of the Inner Temple library and the shuttering of nearby chambers. Photo identification was required. Men were to wear a 'day suit' (what had happened to 'lounge suits?'); women were to wear a 'day suit/dress' and 'may [the permissive element intrigued me] wear hats and gloves'. In a sign of the times, etiquette had to be explained in full: 'Other than simple courtesy, there are no obligatory codes of behaviour when meeting The Queen or The Duke of Edinburgh; however many people wish to observe the traditional forms. For men this is a neck bow (from the head only) whilst women do a small curtsy. Some prefer to shake hands in the usual way'. Although given a choice there, the rules were absolute about photography: none in the Church or marquee before, during and after the service. Photos of 'members of the Royal Party from a distance' only; 'Posed pictures with members of the Royal Party are strictly forbidden'. In any event, those who were to be presented to the Royal Party were selected well in advance, given their time slot, and asked to wear name badges.

People Spotting

In order to ensure that everyone was seated at least 45 minutes before anything happened, we were given recommended times of arrival according to the colour of our tickets. Having complied with that, I soon found myself in the courtyard between the Church and Inner Temple Hall, in which cold drinks were served. The atmosphere could best be described as that of a party, complete with people-spotting and commenting on how everyone was dressed. Few women had taken advantage of their permission to wear hats but those who did had made the most of it. After some time, we were eventually cajoled into going inside. I noted the Director of Public Prosecutions standing to one side, intently reading the messages on his Blackberry.

Seating inside the church fell into three categories: the chancel (first class), the round (grouped to face the plasma screen but also situated so as to face the processional/recessional), and club class, namely, pairs of seats in the aisle of the round and facing east. The latter included at least two patrons of festival events, one with a partner. I sat amongst a mix of Benchers and students – as with the open day in January, the event appeared to be a greater draw for the very young, the very senior, and the Inns' loyal and enthusiastic staff, rather than to ordinary barristers. Having said that I found myself next to Neil Hamilton, the former M.P. who told me that he had more often used his legal skills representing himself in court. For the avoidance of misunderstandings, there was a name tag on the seat of every chair. With the person on my other side, I discussed the magnificent, celebratory new windows (on the south side) recently commissioned from Caroline Benyon. As another sign of the times, they incorporate both the Commonwealth design and the stars of the European Union. Although one of the purposes of

this year is to connect the Inns with the outside world, my companion insisted that the European stars were placed on the dark side of the globe.

Perhaps the most splendidly dressed people in church were the four trumpeters who wore gold tabards with the royal cipher. They played a fanfare newly composed for the occasion by John Rutter, an Honorary Bencher of Middle Temple

No Change

In a demonstration of how England absorbs change without entirely changing, a key to ceremony was the Lord Chancellor, aka the Secretary of State for Justice, accompanied by the Permanent Secretary at the Ministry who doubles as the Clerk of the Crown in Chancery. They arrived at 4.45, a good ten minutes before the Royal Party was received in Church Court by the Treasurers and Under/Sub Treasurers of the two Inns.



Apart from Lessons (the Treasurer of Inner Temple going before the Treasurer of Middle, but the latter reading the story of the Good Samaritan and the definition of 'neighbour'), Hymns and Anthems, the heart of the proceedings was the presentation of the new letters patent. For those afraid that traditional language is disappearing, may one quote what The Rt. Hon. Jack Straw, M. P. said: 'In accordance with Your Majesty's Command, I have caused Letters to be made Patent under the Great Seal of the Realm in my custody, to convey to the Honourable Societies of Inner Temple and of Middle Temple Your Majesty's Royal Will and Pleasure to confirm, in the manner specified by Your Majesty, the original purpose and effect of the Letters Patent of Your Majesty's Royal Predecessor.' The Treasurer of Inner Temple, Lord Justice May, thanked the Queen for the 'privilege that the Letters have given our Inns, for four hundred years, to serve through the rule of Law the happy estate of this realm'; the Treasurer of Middle

Temple, Michael Blair, Q.C., confirmed that Inns would continue to serve 'for the accommodation and education of those studying and following the profession of the laws. . . to the honour of the said profession and the adornment of Your Majesty's realm'. The new Letters Patent 'confirm Our Royal Will and Pleasure that the Honourable Society of the Inner Temple and the Honourable Society of the Middle Temple do continue to hold the land and other property granted to the said Masters of the Bench of the said Honourable Societies by the said letters Patent of Our Royal Predecessor in manner heretofore accustomed and subject to the same Command, Exception, Covenants and Undertakings'.

Trollope got it right

In his sermon the Archbishop of Canterbury began by quoting Trollope's *The Warden*: 'What a world within a world is the Temple! How quiet are its entangled walks . . . how gravely respectable its sober alleys, though removed but by a single step from the profanity of the Strand and the low iniquity of Fleet Street. . . Where can you be so sure of all the pleasures of society?' Although Trollope praised the monastic side of the law, the Archbishop said that it is in fact 'one of the clearest images of the active rather than the contemplative life'. Law though is more than the 'mere management of rules. It is this: law exists so that power shall not be everything in human society'. It is something which lives 'above and beyond power', and it is used for the 'wellbeing of all'. What law is about 'is simply the securing the people's dignity, 'not because they have earned it but because their humanity is valued by God. In this sense, all true justice is, to use a newly fashionable phrase, restorative justice.' He looked at the symbols of the two Inns: Pegasus, the winged horse which reminded him of Plato's theory that the self is like a chariot driven by two horses, one rebellious and one co-operative until the self is able to take wing; and the Lamb and Flag which remind one of sacrifice and that 'lawfulness may be vulnerable'.

Two verses of the National Anthem were sung, the first and the one which prays 'May she defend our laws'.

Afterwards there was a reception on the lawns of Inner Temple, which had removed gravel and replaced it by flagstone in order better to accommodate the red carpet. Champagne and canapés were served. In the marquee, the new Letters Patent were displayed. I observed the royal presentations from the far side of several concentric circles: in the innermost, the Queen was guided around the presentees; surrounding them were two circles of people watching; beyond them were circles of people holding their cameras aloft to take photos. It had a slight air of those occasions when spectators seem to be there to take a picture rather than to watch and witness.

The photographs of HM The Queen and on the cover are thanks to the kind permission of Miranda Parry MPP Image Creation

Keble 2008

Keble – the Criminal Perspective

Emmaline Lambert and Perican Tahir of 6 Pump Court took on the challenge of the Keble course this autumn and report on what they learned.



*Peter Birkett, Q.C., David Spens, Q.C.,
Sarah Whitehouse, Tim Dutton, Q.C.*

A worryingly large bundle of papers had been delivered to chambers with the advice that three days of preparation was necessary. So a fortnight prior to the course, both of us were filled with dread. The scene had been set for an intense week of work, even before we arrived at Keble.

No lack of drama

The course is divided into two disciplines depending on your field of work: criminal or civil. We chose the criminal papers which involved a charge of wounding with intent. The defendant was a knife-wielding jealous woman in a rage claiming self defence after stabbing her husband in the back. The victim was a drunken adulterer who had a previous conviction for ABH amongst other things. There was no lack of drama when playing the witnesses. We were required to prepare a written closing speech and a skeleton argument for a bad character application to be sent in advance. The exercise would culminate with a full trial before a jury on the last day of the course.

The week commenced with an introduction from Phillip Brook-Smith, Q.C., and a demonstration of an opening speech by Anesta Weekes, Q.C. We were then sent off to join our groups for the first time and, having just heard Anesta, to make our own opening speech - no pressure there then.

Relentless

Each day was packed with exercises, feedback, video review and more exercises. At times it felt relentless. We were warned that by Wednesday evening we would probably be at our lowest ebb. The exercises together with feedback from the faculty, which includes Silks and judges, provided constructive criticism. This includes the video

review which can be a little embarrassing ('is that what I really sound like?').

One of the most interesting exercises was the handling of expert witnesses. We chose to examine a medical expert in a case which involved a claimant who suffered brain damage following a hypoglycaemic attack. We were fortunate that so many doctors gave up their precious time to make this exercise so realistic. The evening before, the experts (a group of 12 consultants and doctors) formed a panel for a Q & A session on the intricacies of the case. This assisted us in forming an initial view as to how to conduct a conference with our own expert the next morning. The evening presentation evolved into a lively debate amongst the consultants themselves which provided much entertainment. After cross-examining a consultant neurologist on the Friday, it felt like the hard work and the teaching on the course were starting to pay dividends.

Exceptional standard

The standard of teaching was exceptional and we were privileged to receive advice, guidance and demonstrations from many eminent members of the profession both in this country and from abroad. It was particularly helpful to get an inside view as to what judges find useful and persuasive. Conversely it was eye-opening to hear what they found unhelpful and irritating.



Pondering the feedback

The ethics element was a great opportunity to address not only the case study that we were asked to prepare but also the practical problems we, as practitioners, regularly face on a day-to-day basis. We learned that there is not always a definitive right answer to many of the situations.

From around the world

Of course Keble was not all about early mornings and late evenings filled only with work. It is an international course with participants from different practice backgrounds and different jurisdictions and there was time to socialise. In our groups alone we met practitioners from the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY)



at The Hague, the British Virgin Islands, Florida, South Africa and Australia. On the Friday night, we were treated to a wonderful evening filled with beautiful music and a very witty speech from the Chairman of the Bar (and founder of the course), Timothy Dutton, Q. C.

Unfortunately one woke up on Saturday morning feeling rather bleary eyed. It was also the day of the trial. Local Oxford residents volunteered to be members of the jury to make the final exercise as realistic as possible. We not only got to put together all the feedback from the previous week, but had the extra value of hearing the reasoning of the jury which was, in many cases, surprising. Whatever the results of the trials, everyone felt a sense of relief and achievement for finishing the week.

The advanced advocacy course at Keble is extremely well run and well regarded. Senior members of our profession from home and abroad give up their time to help us and in turn benefit the future of the Bar. We both felt that our advocacy skills were taken to the next level in a way that is not possible unless you go through the pain of receiving detailed feedback and of watching yourself on video. We thoroughly recommend it to all new practitioners.

Keble – the Civil Perspective

Sarah Love of Brick Court Chambers discovered that the demands of the course were well worth the effort.

When a fellow barrister suggested that it would be a good idea for me to spend the last week of August – prime summer holiday time – on an advanced advocacy course in Oxford, I must



confess that my first reaction was one of scepticism. After nine months of BVC advocacy classes, followed by my Inn's compulsory advocacy training during pupillage, I felt I had reached a point of diminishing returns on the formal teaching front. Beyond that, real-life 'trial and error' was likely to be more useful than yet another videotaped exercise.



After a long day's advocacy

Useful and enjoyable

In fact, the Keble course turned out to be a very useful and enjoyable week. Like most of the other civil practitioners in my 'break-out group' of eight, I arrived with a reasonable number of short trials and applications under my belt but with limited experience of witness-handling (especially where expert witnesses were concerned) or of making substantial opening and closing speeches. The Keble course was an excellent way of addressing these gaps in our experience and, I think, equipped all of us with greater confidence. In particular, the day that we spent working with and cross-examining experienced accountants was an invaluable opportunity that would not ordinarily be available to barristers of a couple of years' Call.

The demonstrations by faculty members and daily rotation of trainers also gave us exposure to a wide range of advocacy styles and examples. Being very junior myself, watching more senior practitioners is generally helpful, but watching several judges, Q.C.'s and senior juniors, with decades of advocacy experience between them, tackle exactly the same task as the one that you have been set is an unusual and illuminating experience.

More productive

The resulting low student-to-staff ratio was an important reason why I found the Keble course more productive than my previous advocacy training. Each break-out group of eight was taught by three trainers, with two watching the exercises and giving feedback and the third in a separate

room doing one-to-one video reviews. This division of labour meant that there was an opportunity for detailed discussion and two sets of feedback in respect of each exercise.



Preparing for the next round

It was helpful too to watch other members of my group. We had relatively similar amounts of prior advocacy experience and it was interesting to see what they had made of the problems and issues that I had grappled with.

Immersion method

Most of what we did was based on a single case, the papers for which we had read and prepared in advance. It was the subject of case analysis sessions, interim applications and, on the last day, mock trials. This structure enabled participants to immerse themselves in the factual details of the case and to have a sense of getting to grips with the legal arguments and refining their case theories, which lent the exercise a degree of realism. It also gave a real sense of achievement at the end of the week to know that we had progressed in the space of about a fortnight from having opened the papers to being able to conduct a trial, before a High Court judge, in a factually and legally complicated dispute.

Finally, it was fun to meet advocates from a range of jurisdictions and to get to know better some of the people with whom you may well appear opposite at some point in your career. Although the course was very demanding in terms of stamina and preparation, there was plenty of time for laughter, chatting, eating and drinking. I came back to London

not only feeling more confident about future hearings but also knowing more of my contemporaries at the Bar – and, after listening to five days' worth of horror stories and amusing anecdotes from other new barristers, reassured that I was not alone in finding advocacy the most unpredictable and challenging part of my practice.

Keble – the Australian Perspective

Two of the delegates literally came from the other end of the world to attend the course. Philippa Ryan and Penny Thew felt that the effort was worth it.

The Keble course is internationally recognised as arguably the most intensive advocacy course in the world. So what did the Aussies think of it?

Philippa: *Notwithstanding just two weeks' notice and the tyranny of distance, I could not refuse a spot on this year's Keble course. It lived up to its reputation and exceeded my expectations. It was challenging and fun. I came away with a fresh approach to my practice, as an advocate and as a trainer on the NSW Bar Practice Course. The magnificent dining hall and outstanding company were highlights. Group 8, you know who you are and the invitations are open. Moot Camp 2008, those are my submissions!*



Sir Geoffrey Nice, Q.C. and Sappho Dias

Penny: *The offer to participate in the Keble course represented an invaluable and unique opportunity to work with and learn from silks, judges and expert witnesses with immeasurable experience from the Bars of the common law world. Both the participants and faculty were extremely welcoming and, importantly for future Australian participants, the skills and techniques imparted are readily transferable to the Australian jurisdictions. The opportunity to participate in the 'most demanding and intensive advocacy course in the world' at beautiful Keble College is simply too good to miss!*

Philippa and Penny extend their appreciation to the South Eastern Circuit for welcoming Australian participants to the course.



The delegates at work

A Circuit Town: Peterborough

Continuing our series of Circuit towns, Georgina Gibbs of 1 Paper Buildings, with some help from fellow Bar Mess members, explains how to get to and around Peterborough along with the new crown court centre at Huntingdon



Huntingdon Crown Court

The regular and direct if expensive way to get to Peterborough is by train, run by National Express. The journey only takes 50 minutes, and there are departures from King's Cross at 8.10, 8.30 and 8.40. There are return services every 20 minutes. Unfortunately, it is £80 for a standard open return and £111 for a first class return. The service is good and fast, when it works.

There is a cheaper option for Peterborough, which is also the only option for Huntingdon: First Capital Connect operates a stopping service from King's Cross. A standard open return costs only £40, but can take up to an hour and 40 minutes. Every service for Peterborough also stops at Huntingdon.

There are shops and cafés at Peterborough and Huntingdon stations which sell the usual sundries. Security at Peterborough is tight and you are expected to have your tickets ready for inspection both on entering and exiting the station.

In Peterborough, the crown/county combined Court Centre and Magistrates' Court are a good 12 minutes' walk from the station or seven minutes in a taxi. The latter involves doubling back on the one way system. Taxis queue directly outside the single exit to the station and you'll never have to wait, though the drivers get very grumpy when you inform them of your destination because they regard it as a small fare. It should cost you no more than about £3.50/£4.00 excluding tip.

If you decide to walk, then you can either go through the station car park, if it is open (check, as you can get all the way to the other side and find the gates are closed at certain times), and turn right when you emerge. Keep walking straight ahead until you get to the 'Multi York Furniture' shop on the corner, at which point you have arrived at the Magistrates' Court. Turn right at the corner, walk along the front of the Magistrates' Court and then turn left into the underpass, which will bring you outside the crown/county court. There is a route through the town, but you will need to ask directions or to follow the usual crowd.

By road

If you drive – thrash the M11 and onto the A14. For Peterborough, continue onto the A1 (M) and leave at Yaxley – follow the road into Peterborough and double back on yourself when you reach the Police Station roundabout. Pay & Display Parking is extensive immediately outside the court centre. Travel time depends on the pressure on your right foot, but beware as the traffic police love chatting to motorists when given an excuse.

For Huntingdon, leave the A14 at either of two junctions for Huntingdon (the A14 literally passes over Huntingdon) and follow the signs for the town centre. Huntingdon has a one-way ring-road and the combined Crown/County/Magistrates' Court is on the ring-road, approximately 100 yards further on

from the bus station. Unlike Peterborough there is no parking at the court, but there are sign-posted short- and long-stay pay & display car parks nearby (with red hot ticket inspectors!).

Helpful but cramped

Peterborough only has two courts doing criminal trials. His Honour Judge Coleman is the resident judge and His Honour Judge Enright sits in court number two. Recorders visit regularly. The robing room (ask for the door-code on arrival) is very friendly, and the CPS and police rooms are helpfully located next door. There are no real photocopying facilities, but if you are nice to the CPS caseworkers, they will often oblige.

There are also two civil and family courts, albeit court 4 is infrequently used, cramped and hidden away at the back of the building next to the robing room. His Honour Judge De Mille is the resident care judge although His Honour Judge Yelton spends a significant proportion of his time in Peterborough. There are two resident District Judges, Judges Wharton and Farquhar, and on occasions a third District Judge will be called upon to ease the caseload burden. As with many courts buildings, there are insufficient conference rooms to accommodate the family practitioners alone, let alone everyone else. The former tend to monopolise the canteen for conferences with opponents and sometimes their clients. The very helpful ushers, clerks and staff in the court office can usually be prevailed upon to assist with photocopying.

Don't ask about the food

Food in the cafeteria amounts to chips, pasties, or chips and pasties and can only be described as dire. The canteen does however do a reasonable bacon sandwich in the mornings and the staff are very friendly.

In Huntingdon the court the food and drink facilities are limited to vending machines coffee/tea and sweets/crisps/soft drinks.

Getting on in Huntingdon

There are five courtrooms on three floors, with the crown court occupying courts 4 and 5 on the second floor. His Honour Judge Maloney QC usually sits in court 4, and a succession of Recorders tend to occupy court 5.

The robing room, on the first floor is accessible with a white plastic card which you obtain from the (very friendly) security staff at the entrance. There are no photocopying facilities. The CPS and Probation are on separate floors and accessible via intercom.

Other than in the cells, there are lots of conference rooms, although the walls are very thin (there is even a room labeled 'for quiet contemplation'). The cells have only one,

extremely small conference room, with just about enough room to swing a cat in.

Lunching elsewhere

In Peterborough, the nearest reasonable place to eat is in the Key Theatre Restaurant which shares its car park with the Crown, directly outside the court. The service can be a little slow so you must inform them that you need to be back at court by 2. Alternatively, there is a good Italian restaurant called Fratellis (which also runs the Arts Centre Restaurant) in the small shopping centre opposite the Magistrates' Court (which is just under the underpass from the crown court). If you go all the way through this small shopping centre, you will find an Asda where you can buy sandwiches.

The city has all the usual shops which you would expect, including John Lewis at the end of the Queensgate Shopping Centre, nearest to the station, and Marks and Spencer next to the Magistrates' Court.

Huntingdon Town Centre is a very short walk from the court and has most of the usual high street chain stores, including Starbucks, Costa and Pizza Express, as well as numerous sandwich bars.

If you must stay

If you must stay the night in Peterborough (something has obviously gone horribly wrong), The Great Northern Hotel is opposite the Railway Station and The Bull is in the city. Both are reasonably priced. For something smarter, The Marriot Hotel (with swimming pool) is located on the Peterborough Business Park, six kilometres from the centre. Orton Hall is situated somewhat closer in, on the same road, but prepare your wallet for both.

In Huntingdon there are three hotels: The George, opposite the court building; The Bridge, adjacent to the ring-road, approximately 300 yards from the bus station, in the opposite direction to the court building; and a Marriott, adjacent to one of the junctions on the A14.

What else there is to do

Peterborough is a small, provincial, East Midlands city (technically Cambridgeshire is part of East Anglia, but Peterborough used to be in Northamptonshire) which expanded considerably, as a postwar New Town. It is home to medium sized industry (Hotpoint washing machines and Perkins diesel engines) and the service sector, particularly insurance and travel companies. The highlight of any visit to Peterborough is a visit to its grand cathedral, the resting place of Katharine of Aragon. Entrance is free and it is well worth a few moments of your time. Alternatively, the Fitzwilliam Museum on Priestgate, whilst being small, has some

A Circuit Town: Peterborough

interesting exhibitions. If evening entertainment is required, Peterborough has all the usual chain bars and pubs, mainly situated on Broadway, although the Brewery Tap on Westgate and Charters Bar on the barge on the river are the pick of the bunch if you are after a decent real ale pint in pleasant surroundings.

There is a surprising dearth of restaurants in the city centre, unless you want Chinese, Italian or Indian food, but East Oriental restaurant situated above Charters serves good quality Thai, Chinese and oriental food. The better restaurants tend to be located in the villages and suburbs. The city has



Peterborough Crown Court

three theatres, the Key Theatre opposite the court, the Broadway Theatre on Broadway which also occasionally shows films and the Cressett located

in Bretton which has a mixture of concerts and shows. The Showcase cinema is located on an industrial park a short taxi drive away from the city centre.

Huntingdon is steeped in history. It was home to Samuel Pepys and to Oliver Cromwell, as well as being the former Parliamentary constituency of the late Lord Renton, Q.C., and of Sir John Major. There is a small Cromwell Museum on the High Street. It has some industry (including Myers beds and Lola racing cars) but is primarily a London commuter town.

Photographs by Lawrence Bruce

Reception for Resident Judges

The Circuit Junior, Alex Price-Marmion, of 2 Pump Court, reports on what is now an important annual event in which the Circuit meets with the resident judges and appreciate that they face the same problems.

On May 21, the Old Courtroom at Lincoln's Inn was an elegant venue for the second annual reception held by the leader of the Circuit, David Spens, Q. C., and the committee's Bar mess representatives for all the resident judges in the South East.

Initiated last year, the event opens a direct line of communication from the Bar to the bench and vice-versa for matters of mutual concern. So successful was it in 2007 that it was instantly adopted as a permanent fixture.

Much appreciated

Since last year, the Circuit has welcomed over 50 new judicial members.

Her Honour Judge Zoe Smith, resident judge at Reading Crown Court, approves of the new fixture entirely. *'Both I, and Judge Risus, who attended this year on my behalf, very much appreciated the opportunity to hear from the Circuit representatives of the problems facing the Bar. The meetings were very generously hosted and provided a very pleasant atmosphere in which to discuss matters of mutual interest between the bench and Bar.'*

His Honour Judge Byers, resident judge at Woolwich Crown Court, agrees. *'It was an extremely pleasant evening and an ideal opportunity for the bench and Bar to meet for mutual and frank discussion. I thoroughly enjoyed it and found it most useful. It was good to see so many practitioners and colleagues there.'*

David Spens, Q. C. adopts a very direct approach to these receptions, recognising the value of such a podium. He was pleased by the way in which it was received last year, which was demonstrated by its good attendance again. He spoke on four topics, all of which are currently at the heart of the Bar's concerns.

Four concerns

First, he asked the judiciary to assist the Bar in

minimising the number of mentions needed for case management. Many of the judiciary are now happy for administrative matters to be dealt with between counsel's clerks and the list office and on email between counsel and the trial judge.

Next, at PCMH there is an opportunity for the judge to ask who trial counsel will be if he/she is different from the PCMH advocate. Indeed, there is a box specifically for this on the forms. David asked the judges to be sure that this question gets answered, thus reminding the CPS of the Framework of Principles to which the DPP agreed (copies of which were sent to those present) and in particular the principle of case ownership. It would also help to prevent the late return of trials and the practice of waiting until after the PCMH to see whether or not a case will plead.

Thirdly, so far as certificates for two counsel were concerned, these, like certificates for a Silk, were to be encouraged. What was not to be encouraged, however, was the use of straw juniors, whether for the prosecution or the defence, and whether in-house or not. The bench were in the strongest position to deter this by openly reminding counsel when these applications are granted that should leading counsel be unavailable the junior must be prepared to continue with the case.

Finally, David asked the judges to be aware that certificates for litigation would soon change. Counsel would no longer be clerked in court. This could slow cases greatly during trial and although the trial judge would not be in a position to compel attendance of a solicitor's clerk they could indicate that it would greatly assist. Failing that, where necessary, they could either grant a noting brief, order a transcript or in appropriate cases grant a certificate for two counsel. Most importantly, they could complain to the Legal Services Commission about the effect this is having on the smooth

running of trials and on best representation of defendants.

David Spens, Q.C. has since asked the eleven Bar Mess Chairmen to visit each of their resident judges before the end of the year to ensure that matters which are of concern to the Bar and/or bench continue to be discussed on a regular basis.

Keeping aware

Tim Dutton, Q. C., Chairman of the Bar and a former Circuit leader, outlined the current state of Legal Aid – OCOF or FOCF for family practitioners – and what these could mean to the courts. He spoke of the likelihood of Best Value Tendering in the crown court, how soon it would happen and with what effect. So far as defence HCAs were concerned his committee were approaching the Law Society about the problems they had been hearing about. The Bar Council was still in discussion with the CPS about the graduated fee scheme. He asked that the resident judges keep the leader of the Circuit informed about any problems with the employed or the self-employed Bar. The Advocacy Liaison Group met regularly, he said, and he reminded them of the Bar Quality Advisory Panel. Finally, he spoke of the agenda for the rest of the year, about his aim for greater cohesion across the Bar's institutions and for breaking the 'glass ceiling'.

Lord Justice Leveson, the Senior Presiding Judge for England and Wales, made it clear he had a balancing act to perform but was glad to be made aware of these concerns. He assured us that, so long as there was no conflict with his overriding duty to ensure cases were run efficiently and cost-effectively, he would try to assist.

Now you see why we needed the champagne and canapés.

The committee is hugely grateful to Antonella Santos and the staff at Lincoln's Inn for helping us to hold such a successful event.



The Jesus College Advanced Advocacy Course

This year, the Circuit on its own staged the annual conference at Jesus College, Cambridge, where delegates got to know the law, and each other, a great deal better. Rachel Kapila of 3 Raymond Buildings was there and provides the round-up of what happened.



This is the year that the Circuit went it alone, without the Criminal Bar Association, and put together a stimulating series of lectures on subjects ranging from Intermediaries to confiscation, all delivered in the august surroundings of Jesus College, Cambridge. The sessions were conducted in the college chapel and the weather fortunately remained fine, enabling discussions started during the question and answer sessions at the end of each lecture to continue over coffee in the equally picturesque college gardens.

Introducing Intermediaries

The programme started on the Saturday afternoon with a session on the Intermediary scheme conducted by Penny Cooper, of the City Law School and assisted by two experienced, registered Intermediaries. The scheme, readers will be aware, has its roots in section 29 of the Youth Justice and Criminal Evidence Act 1999 and is designed to help vulnerable witnesses communicate more complete, accurate and coherent evidence in court. At the outset of the session it emerged that, although the scheme was piloted from 2004 to 2007 and was rolled out nationally earlier this year, very few delegates had had any direct experience of it and most admitted that they knew very little about it. The session was therefore a very welcome introduction.

Part of the session was interactive, aimed at giving delegates an insight into the methods and techniques used by Intermediaries to assess a witness' needs. This included a variety of games, stories and exercises targeted at identifying the particular areas in which a witness might be in need of assistance. The exercises were entertaining and informative, and also a little nerve-wracking at times, as a number of delegates found themselves placed on the spot. The writer was particularly pleased with herself for being able to name the colours of three crayons removed from a box (although the significance of this achievement she confesses she cannot now recall). Using case studies, delegates were then taken through each stage of the process, from the moment at which a witness is identified as potentially needing the assistance of an Intermediary to the role played by the Intermediary during the trial itself. [see page 6 of this issue for more about the scheme]

The presentations prompted a lively discussion regarding both the advantages of the scheme, in enabling cases to be brought to court

and vulnerable witnesses to give evidence in circumstances where this may not otherwise be possible, and also its potential pitfalls, particularly its perceived ability to place constraints on the way in which this evidence is tested.

Rules and updates

The remaining sessions, although less controversial, were of no less practical utility. In the second lecture of the day, delegates were taken through the main provisions of the Criminal Procedure Rules by David Fisher, Q.C., a member of the Criminal Procedure Rule Committee. This was followed by an exploration of how the rules are operating in practice and discussion on how they might be better utilised so as to facilitate effective management of cases throughout the trial process.

This was followed by a comprehensive update on developments in criminal law and evidence delivered by Professor David Ormerod, of Queen Mary, University of London. Topics covered included recent cases in the fields of joint enterprise liability, duress, anonymous witnesses and bad character evidence. An overview was also provided of the central provisions of the Criminal Justice and Immigration Act 2008. The session was crammed with useful information and it is probably fair to say that the entire conference was worth attending for Professor Ormerod's invaluable 64-page handout alone.

Getting the balance right

Dinner on Saturday evening took place in the impressive college hall, and proved to be the ideal setting for delegates to get to know each other a little better and to continue the discussions started earlier in the day. Speaking after dinner was a former leader of the Circuit, Mr. Justice Penry-Davey. Particular gratitude was owed to him for fulfilling the role, as he had suspended his family holiday in order to do so. The speech struck precisely the right balance between the humorous and the serious and ended with an eloquent and thought-provoking reminder of the central role played by members of the Bar in upholding and defending the rule of law.

The evening continued in slightly less elevated style with drinks and energetic games of table-football in the college bar, followed by a taste of Cambridge's finest nightlife. Delegates somehow managed however to be up bright and early the following morning (some, I am told, even made it to breakfast), ready for the second round of lectures.

Organised crime

The sessions on Sunday morning were arranged around the theme of organised crime. The topic was introduced by Sir Stephen Lander, Chairman of SOCA, who began by defining the range of activities falling under the umbrella of 'organised crime' (principally trafficking of Class A drugs, organised immigration crime and fraud), before attempting to give an indication of the scale on which organised criminals operate within the UK and the economic and social impact of their activities. This was followed by an outline of the legal framework within which SOCA operates and the nature of the work the agency undertakes.

Following on neatly from this session was a lecture delivered by Alison Saunders, Director of the Organised Crime Division of the CPS, regarding the CPS response to this threat. There was a particular focus on powers provided to the CPS by the Serious Organised Crime and Police Act 2005 and the Serious Crime Act 2007 to obtain measures such as Financial Reporting Orders, Disclosure Notices and Serious Crime Prevention Orders, and it was illuminating to gain some insight into the way in which these powers have so far been deployed. The lecture continued with a discussion of the House of Lords' decision in *R v. Davis* [2008] UKHL 36 and the resulting Criminal Evidence (Witness Anonymity) Act 2008, and concluded with the expressed hope that it will remain possible successfully to prosecute cases involving anonymous witnesses, within the constraints of a fair trial.

Smurfing

The final lecture, delivered by Simon Farrell, Q.C., was on the topic of seizing the proceeds of organised crime. The session centred on important recent cases in the fields of confiscation and money laundering, but also managed along the way to acquaint delegates with such key concepts as 'smurfing' (the making of numerous small cash payments of criminal money into a number of bank accounts all controlled by the same criminal); not to be confused with its more sophisticated variant, 'cuckoo smurfing' and 'pod-slurping' (the theft of computer information by an illegal download onto an iPod). Delegates therefore left the conference on Sunday afternoon having had a generally interesting and informative weekend, having gained a few CPD points and having expanded their vocabularies to boot. Value for money indeed.

From Around the Circuit

Cambridge & Peterborough Bar Mess

A very short report I'm afraid! No gossip or slanderous material to report. Don't even have the energy to attack the latest criminal justice initiatives. Probably just as well given the fact that if you hold controversial views you may find yourself at the sharp end of terrorism legislation. For the avoidance of doubt I believe that Gordon Brown is God and is the most sensible man alive. Jack Straw, what a man!

If you wanted to be entertained then you should have made your way into Cambridgeshire on the 3rd October for good food and event better wine. The mess celebrated the appointment of three circuit judges. Their names appeared in the last mess report. One of them is a hit with the ladies but I say no more. Come and work it out! As it happens no one has been brave enough to ask HHJ Bate what it is like to have your arm up the backside of a cow. *[See last Circuiteer]*.

Finally, thanks to our editor David Wurtzel who has always allowed these reports to appear without censorship.

CROMWELL

Central Criminal Court Bar Mess

The last report from the Old Bailey was mainly concerned with the dinner organised by the Mess to celebrate the centenary of the current building. It was held in Middle Temple on Thursday, 15th November 2007. As a foot note to that event, an appeal was launched to mark the bicentenary of the Sheriffs' and Recorder's Fund, which works towards the rehabilitation of former prisoners and for the support of the families of those serving sentences. By adding a small amount to the cost of the dinner ticket, the Mess was able to donate £1000 to this worthy cause. Anyone who would like more details of the Fund and its work can find these on the website, www.srfund.org.uk

Since then the Bailey has said farewell to Her Honour Judge Ann Goddard, Q.C., the only woman amongst the permanent judges. Tribute was paid to her distinguished time at the Bailey by Mark Ellison, Q.C., on behalf of the Mess, and by the Recorder of London, on behalf of the Court. In reply, Judge Goddard observed that her first brief there had been to act as a noting junior for Michael Worsley, Q.C., who, at 82, shows no signs of entering his retirement. His Honour Judge Pontius has recently joined the permanent judicial team.

In the Mess, dramatic physical changes have been afoot. The size and the layout of the robing rooms reflect a time when the vast majority of advocates were male. As a result, the female robing room, which has to accommodate both Silks and juniors, has long been too small for the numbers who now use it. A temporary solution to this overcrowding, through the use of screens at one end of the room used by the men, has now been replaced by a permanent enlargement of the female robing

room. We hope that this major step forward in equal opportunities will prove to be a success.

Duncan Atkinson

Kent Bar Mess

The summer in Kent has passed in a deluge of rain, and with a persistent gloom that has matched perfectly the mood of the local Bar. Our two crown courts have seen a significant increase in the number of CPS and defence HCA's undertaking their own advocacy, and talk of deep cuts in the budget for family work has ensured that the gloom has settled over us all. We are all frequently told that the 'excellence of the Bar' will see us through these difficult times, but such words offer scant comfort when it's clear that the overriding objective has become that cases be dealt with cheaply rather than justly.

Still, even if the ship is sinking it's important that the deck-chairs remain well-arranged, so it's 'business as usual' on the social front. The annual cricket match against the local solicitors was played (in the rain, of course) in August and, despite the opposition having more ringers than a campanologists' convention, the day was won by the Bar. Despite (or perhaps because of) the weather, the match was played in the best possible spirit and showed yet again the Bar's phenomenal capacity for ingratiating itself with its clients without quite losing its dignity. Let's hope our fight to retain their instructions brings a similar result.

The annual dinner remains the highlight of the Mess' social calendar, and this year it will be held on Friday, 21st November in the Old Hall at Lincoln's Inn. At the time of writing the guest speaker has yet to be confirmed (or even asked), but the evening is always great fun, and all members of the Mess are encouraged to come along. Further information and tickets can be obtained from the Mess Junior, Edmund Burge (c/o 5 St. Andrew's Hill, London, EC4 5BZ, DX 417 LDE).

N. Victor

Sussex Bar Mess

Mostly judicial news from Sussex.

HHJ Joseph retired from full time sitting in June and a packed court in Lewes said their formal farewells. Judge Joseph was the Resident Judge at Croydon before moving his home and sitting duties to Sussex. He continues to sit part-time. A farewell dinner is being organised in the New Year, which may be in conjunction with the Surrey and South London Mess.

HHJ Richard Brown DL, our long-serving resident judge has now become The Honorary Recorder of Brighton and Hove. The ceremony was held at Hove Crown Court. The re-worked recital of 'The night before Christmas' was perhaps influenced by the brightness of the new red robes. Those forgetting to address him as 'My Lord' need have no fears. A more relaxed view is taken by Judge Brown than what others are rumoured to

take elsewhere.

Chichester will be without its well-known figure of HHJ Thorpe after September. Sadly ill-health has hastened his retirement. There was a farewell on the foredeck on September 30. Judge Thorpe, a strong supporter of traditional representation by counsel and often Queen's Counsel, provided champagne for members of the self-employed Bar. There will be a Mess dinner in Chichester on November 14th. Contact the Junior, Marcus Fletcher, for details.

Her Honour Judge Janet Waddicor was welcomed back to Sussex by many members of the legal profession and judiciary at the Family Court Centre in Brighton. She will now be sitting permanently in Sussex.

In July the annual Mess Garden Party was kindly hosted by Judge Charles Kemp and his wife Fenella. It was a fun family day with over a hundred members of the Mess, local judiciary and their families. As well as good food and drink there were bouncy castles, swimming, cricket and croquet – the latter allowing one local barrister to show that his banditry is not restricted to golf. The attendance of a clown for the first time was also very popular. The Mess Junior is to be congratulated.

Jeremy Wainwright

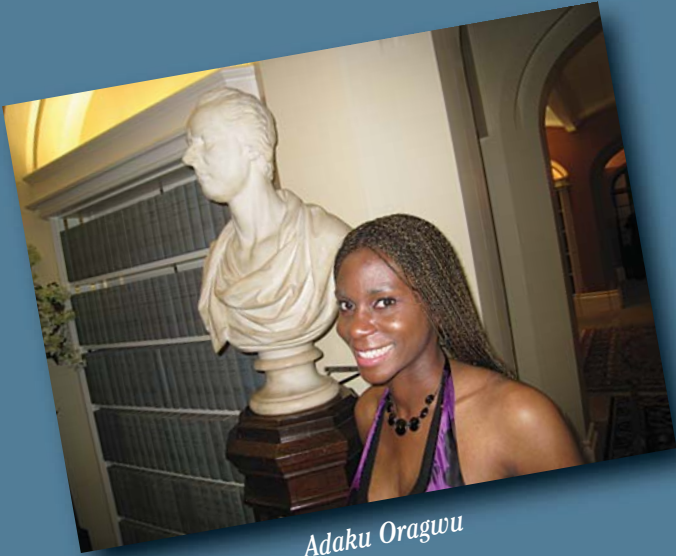
Thames Valley Bar Mess

The Thames Valley Bar Mess, rejuvenated under the leadership of Chairman Brendan Finucane Q.C., held its inaugural lecture and dinner on 1 May 2008. The event was attended by over 60 members, including many of the local judges and Recorders, the resident judges of Reading and Aylesbury, and David Spens, Q.C., Leader of Circuit. It began with a very informative and interesting lecture at Reading Crown Court given by Professor Colin Tapper on 'Character and Co-Defendants'. The evening continued with a champagne reception followed by a very enjoyable three-course dinner next door at Cerise restaurant in the Forbury Hotel. This concluded with some very entertaining and apposite speeches from Brendan Finucane Q.C. and from David Spens, Q.C.

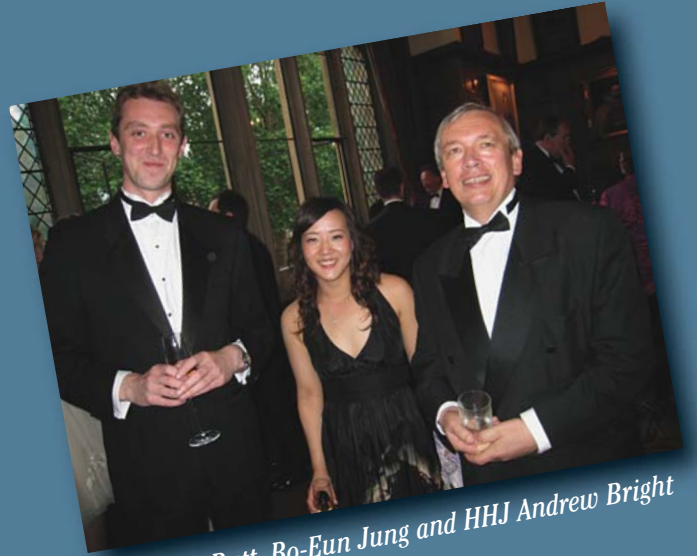
Nicholas Syfret, Q.C. formally took over the Chairmanship on the evening. Our thanks are extended again to Brendan for all his efforts in resurrecting such an important forum on the Thames Valley. Over the summer, the new Committee has met to discuss new ways in which the TVBM can actively support its members at an increasingly important time. In the meantime, the TVBM is working to provide an important conduit, professionally, educationally and socially, between its members, the bench, Circuit and all court users. We look forward to a more active Mess in the future. Any suggestions or comments are always gratefully received by the Mess Junior at jbrady@13kbw.co.uk

Jane Brady

The Annual Dinner



Adaku Oragwu



Matthew Butt, Bo-Eun Jung and HHJ Andrew Bright



John Cooper and Desmond Browne, Q.C.



Pam Oon, Stephen Moses and Richard Sutton, Q.C.



Emily Radcliffe, David Radcliffe and Gerard Renouf



Inge Bonner