The Circuiteer

SEC
YOUR CIRCUIT.
YOUR VOICE.

News from the South Eastern Circuit

Issue 39 | Autumn 2014

> **The most outstanding course... is the week-long advanced advocacy course held every year at Keble College, Oxford...**
>
> **Lord Walker**
> House of Lords, 10 July 2014

Haddon-Cave J, Timothy Dutton QC, HHJ Bartle QC & HHJ Goose QC

INSIDE THE CIRCUITEER...

A NOTE FROM THE EDITOR

BY ALI NASEEM BAJWA QC

In his final *Note from the Editor* before passing over the reins to me in 2008, David Wurtzel said this: *"My successor… is, I can say, keen (essential) and has a track record of producing a publication which is more than I had."* The truth is that I'm not especially good at saying *"no."* In my defence, a master of persuasion, David Spens, was doing the asking.

David handed over a publication in the best of health, including a superb editorial team of Fiona Jackson, Tanya Robinson, Tetteh Turkson and Emily Verity. On his last cover, there was a photograph of Sheilagh Davis with HM The Queen and another of Jeremy Dein about to hit someone with a frying pan. I could never match that.

It did however confirm one thing: *The Circuiteer* is nothing without its photographs. Our readership wanted photographs and photographs they should have. My main changes were to shorten the publication somewhat, add more photographs and go to full colour throughout. The hope was that this would encourage people to glance at it, then to dip into it and, before they knew it, read it in full.

So it was that, with Lord Bingham gracing its cover, I published my first issue of the new-look *Circuiteer* in summer 2009. It was not the best of starts; it was meant to be the spring issue… A snazzy new-look SEC website followed shortly thereafter, accompanied by Fiona Jackson's brilliant slogan, *"Your Circuit, Your Voice."*

It has been a privilege to work with the three Leaders I have served under. Photographs lay at the heart of my relationship with them, which I used variously to tease them. A certain non-Scottish tartan dominated a number of the early issues. Nick Hilliard encouraged me to don the 'green eyeshade' and sniff out a scoop. Most recently, The Forshaw Years brought a touch of Hollywood glamour to our pages.

On the subject of Hollywood, with our place in the market as a legal *Hello!* magazine confirmed, I was disappointed not to be granted a media pass to the recent wedding of one of our Circuiteers to a certain American actor. No matter. Now that a British barrister is a must-have accessory for A-list celebrities, I have no doubt that we'll soon snap up exclusive image rights to a similar event.

Having been Editor for 6 years now, it occurred to me that I had served the sort of sentence usually reserved for an offence with a mid-level of seriousness which has caused a significant amount of harm. A year ago, the current Leader denied my application for parole. It is time for a new Editor, someone fresher and bubbling with ideas and energy.

I cannot leave my post without thanking all of those named above and acknowledging the enormous debt of gratitude to many other people.

The SEC Administrator, Natasha White-Foy, and her predecessor, Inge Bonner, gave me all the support I could possibly need. Treasurer Oscar del Fabbro ensured that I need never lose sleep over money. The designer and publisher, Sam Sullivan of Sparkloop, put up without a whisper of complaint with my unerringly late submissions coupled with demands to have it printed yesterday. And, of course, my thanks to all our contributors, without whom there would be nothing to print. Tetteh deserves a special mention for his regular, mouth watering, restaurant reviews.

The Circuiteer has now been continuously published for 20 years. I am proud to have made even a modest contribution to it and the SEC.

I wish my successor, *"keen"* or otherwise, every success.

Ali Naseem Bajwa QC

Ali Naseem Bajwa QC

… with our place in the market as a legal Hello! magazine confirmed, I was disappointed not to be granted a media pass to the recent wedding of one of our Circuiteers to a certain American actor.

Front cover of The Circuiteer in 2008

LEADER'S COLUMN

BY SARAH FORSHAW QC

In August I ventured up to Keble College, Oxford, to see for myself the Circuit's Advanced International Advocacy Course. Just a month earlier, in the House of Lords, when speaking about the Bar's work in advocacy training, Lord Walker had said the following: "The most outstanding course, of which at least my legal colleagues will be well aware, is the week-long advanced advocacy course held every year at Keble College, Oxford, which goes on to more advanced matters, including appellate advocacy, and the important topics of handling vulnerable witnesses and expert witnesses." Keble did not disappoint.

I watched the likes of HHJ Alistair McCreath and HHJ Deborah Taylor QC sitting in judgement – this time on the advocates. A jury was found from the streets of Oxford. The complainant materialized in the form of HHJ Patricia Lynch QC and the whole trial was video recorded, to be re-played in a one-to one session between experienced judge and trainee advocate, with excellent critique. I was there to observe but I would have found it an invaluable lesson after 27 years at the Bar. I was told that the civil exercises were equally impressive.

The Keble Course was the brainchild of Tim Dutton QC, past Leader. He should be feted for it – as should those who give up their free time to teach and the splendid HHJ Phillip Bartle QC, who hands over the running reins this year to HHJ Julian Goose QC.

This year my own Chambers paid for a junior tenant to attend. The quality of the future Bar is worth investing in.

I dedicate so much of this, my last column as Leader, to Keble because it seems to me that it captures the essence of the Bar. A sense of pride in the quality of the Bar's advocacy; a willingness to sacrifice time and to work without payment in order to hone it; access to the very best in training and education and a sense of camaraderie that sits easily hand in hand with the fierce competition between self-employed practitioners.

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YOUR CIRCUIT. YOUR VOICE.

THE GLOOM

My Keble visit was marred by one conversation I had with a junior member of the Bar. He told me that, of the young hopefuls who had just completed the BPTC with him, the four brightest with the highest marks had all decided that, although they would have wished to practise in crime, their own modest backgrounds dictated that they simply could not afford to in the light of successive fee cuts to publicly funded work.

If that is right, the future of the criminal bar can be predicted now: Only the less talented and/or the well-heeled will be prosecuting and defending in our criminal courts. Standards will drop. Miscarriages of justice, appeals and re-trials will cost dear in every way. The judiciary will be drawn from that same pool of moneyed or less able practitioners. The international reputation of our country's justice system, previously so well regarded, will suffer, with all the consequences for commercial litigation and arbitration (and the country's economy) that have been predicted in a letter to the Lord Chancellor by commercial colleagues facing fierce competition from abroad. The strides that have been made towards true diversity within the legal profession will be reversed.

So it is that I believe we should not simply be pressing now for the removal of the cuts to publicly funded crime that had been suspended for at least a year until the summer of 2015; we should be looking to persuade the Ministry of Justice that, unless there is an increase in fees, however modest in the short term, the damage will be irreversible.

Sarah Forshaw QC

A RAY OF HOPE

I was pleased to see that the LCCSA and the CLSA combined forces and challenged by way of judicial review the MOJ's proposals for contracting in criminal litigation. The Law Society had previously chosen to work with the MOJ to 'achieve the least bad result' and had become party to the development of the new Duty Provider Work contracts. That was unpopular. Some might say it demonstrated a level of pessimism, labelled 'pragmatism', that failed to protect its members or the criminal justice system generally. The Lord Chancellor had failed to disclose two independent expert reports for comment during the consultation process at the end of which he announced that under new arrangements there would be just 525 contracts available for duty solicitor work. There are currently about 1,600 firms undertaking that work. Burnett J held that the failure to disclose the reports was *"so unfair as to result in illegality"*. It was, in my view, deeply regrettable that the MOJ chose to summarise the decision on social media thus: *"JR not wholly successful… Judgment raises some technical issues on consultation*

The opening of the legal year by High Sheriff of Buckinghamshire at Aylesbury.

process which we're considering." It is absolutely essential that the Ministry respects and demonstrates its respect for the judicial system. A further short consultation process is now under way.

I welcome the fact that the expert economist engaged by the Bar Council, Professor Martin Chalkley, has finally been allowed access to the data held by the MOJ and the process of unpicking the real havoc wrought by successive cuts to publicly funded crime has begun in a spirit of co-operation. We have always said that earlier cuts, including those (13.5%) over the three year period between April 2010 and 2013 have yet to bed in fully and that, once they do, the MOJ would discover that the savings they seek are substantially accounted for. This is our opportunity to demonstrate that forecasts by the Ministry have under-estimated the savings already made and the debilitating impact upon the Bar – a Bar that the Lord Chancellor has recently commented must be preserved so that it has a good future. In the new spirit of constructive engagement that I sense emanates from those who may not have previously appreciated the nuances of our finely balanced system, we have something to feel cautiously optimistic about.

New figures released in July revealed that the Legal Aid Agency has indeed underspent on its budget for legal aid for 2013/2014. The underspend amounted to £31m in criminal legal aid as compared with the business plan for the year; £86m in civil legal aid. (Although the LAA overspent on its administrative budget, spending £106.2m, £20m more than it budgeted for.)

You will know that the MOJ have agreed to re-introduce cracked trial fees for elected either way offences where the prosecution offer no evidence. It does not go far enough and it does no more than partially correct an unfairness that was obvious to all. But it is a small advance in the right direction.

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The pause we sought must be put to good use if we are to have real influence on the future of the criminal justice system. We cannot allow the situation to drift into the summer of next year. I shall be pushing for a timetable for the conclusion of negotiations in respect of both AGFS and VHCC work.

The important work of The Rivlin Group continues. I hope that large numbers of you responded to the survey that closed on 28th September. Those who work within the CJS are best placed to proffer ideas to render it more efficient and cost-effective without further blunt and unsustainable fee cuts. A collection of ideas is not insignificant 'tinkering' – it is cumulative blue sky thinking. I have long wondered why, for example, court interpreters are required to attend court. With proper technology, they could surely translate remotely?

If you missed the opportunity to respond to the survey, let me have your ideas and I will do my best to ensure they are considered.

CIVIL LEGAL AID

The removal of legal aid in a number of areas of civil law has had a huge detrimental impact on access to justice. The Bar Council has recently published its report, *LASPO: One Year On*. It is well worth reading. Litigants in Person are placing huge strain on the courts and the judiciary and increasing delay and cost.

Recently, there have been a number of court decisions which have featured adverse findings or comments against the MoJ's legal aid changes. Mr Justice Collins recently found that the guidance for exceptional case funding was defective. Sir James Munby, President of the Family Division, recently commented that in family cases – especially those where one party has been accused of violence – the court may have to step in and pay for an advocate where that party is unrepresented. Lord Justice Moses has held that the residence test is unlawful. It is to be hoped that the Ministry is listening to the fall-out. I hear whispers that there may be some changes in some areas for the better. I hope so.

EDUCATION AND TRAINING

I am proud of this Circuit's reputation for education and training. With the Director of E & T abroad for a lengthy period over the last year, special thanks are due to Bo-Eun Jung, who has organised some excellent lectures, the last of which (the *Civil Procedure Rules*, which I introduced from a position of complete ignorance and left better informed and highly entertained) was as well attended as ever.

Back in the Spring, I set up a committee, chaired by Iain Morley QC, to look into the feasibility of an advocacy 'kitemark' for those barristers conducting cases involving sexual complaints and vulnerable witnesses. It did seem to me that, in the current climate where advocates of any variety are let loose on vulnerable witnesses in sensitive cases, the Bar (and particular individuals at the Bar) should be able to market themselves as having a special skill-set that is appropriate to the task. The CPS have a 'Rape Panel' to ensure that those with relevant experience undertake that prosecution work. Was it not about time that the Bar as the specialist advocates devise a scheme that builds on that model, hones it and ensures that defence work is undertaken by those properly qualified? HHJ Rivlin QC met with the SEC kitemark committee and we shall be feeding ideas in to his group and the Working Party that I learned is already up and running, led by HHJ Rooke QC. The MOJ announcement only a week ago that all publicly-funded barristers working with sexual offence victims will be required to have specialist training by March 2015 is perhaps surprising only in that it assumes the Bar exclusively conducts such cases now and makes no mention of how that training is to be funded.

The single event that will long stand out in my memory is this year's Circuit dinner. I sensed a lifting of spirits, a renewed determination, a reinforced unity on this, the largest Circuit, that bodes well for the fight ahead.

TO LIGHTER TOPICS

My time as Leader is drawing to a close. It has been a baptism of fire into the world of politics and officials, number-crunching, publicity, liaison with all parts of the legal system and listening to the plight of individual circuiteers. All of these so much more important than my focus pre-election: my own practice. I would do it all again. It has been a privilege to represent this Circuit.

The single event that will long stand out in my memory is this year's Circuit dinner. I sensed a lifting of spirits, a renewed determination, a reinforced unity on this, the largest Circuit, that bodes well for the fight ahead. I was proud that no less than Sir Sydney Kentridge QC and Lord Judge, flanking me on either side, saw it too.

Sir Sydney, aged 91, spoke for 25 minutes without a single note, with a self-deprecating lightness of touch, a quiet authority and an eloquence that demonstrated the very point that he was making: the quality of the independent Bar must be preserved at all costs. Or the adversarial system fails.

Sir Sydney Kentridge QC & Sarah Forshaw QC

EVENTS AND DIARY

Meantime, the former Attorney General, Dominic Grieve, has left office. He attended every Saturday morning Bar Council meeting and was well respected by all the Bar Leaders who worked with him. The Circuit Leaders wrote to him to say as much. We have extended an invitation to the new Attorney General and Solicitor General to meet informally with the Circuit Leaders. We await a gap in their diaries but hope that we can strike up a similarly good working relationship.

There has been a lot going on in my diary. There is insufficient room here to set it all out. It has not all been hard slog. My own 'pre-hen hen party' (thank you Circuit girls for your thoughtfulness and for dressing me in a tiara before unleashing me in some weird nightclub and taking photographs that will remain under wraps… for ever) takes pride of place.

I sat in and watched some of the application for judicial review of QASA, observing the superb Dinah Rose QC in full flow. The Circuits have agreed to indemnify the CBA for a significant proportion of the Protected Costs Order. Judgment is awaited.

In December, I have been asked by Professor Hoyle to speak at the Oxford Centre for Criminology Seminar at All Saints College before academics and policy-makers about the threat to criminal legal aid. I regard it as an honour but also a real opportunity to explain what is happening. Just because I stand down, don't assume I will bow out.

Timing for the future is all. Let us see where the new spirit of co-operation gets us by the early part of the New Year. If nowhere, we have shown the noise we can make. We should make it even louder – and long before May. There is, after all, an election coming up. Politicians may feel inclined to be more receptive than they sometimes are. It would be a mistake to under-estimate the Bar when it finds itself forced to defend the justice system in the face of political spin.

Sarah Forshaw QC

YOUR CIRCUIT. YOUR VOICE.

FLORIDA CIVIL 2014
A TUTOR'S PERSPECTIVE

BY STUART BROWN QC

As a proud former Leader of the North Eastern Circuit I confess to something of an identity crisis when I was selected to represent the South Eastern Circuit at the annual civil trial programme at the University of Florida in Gainesville but I had paid my subscriptions....

I should begin by thanking those who organised the venture at this end, Natasha White-Foy and particularly Giles Powell whose enthusiasm, culled from his own experience, shone through. I was accompanied by four (genuine) South Easterners who had been selected from a considerably larger number of applicants keen not only to improve their own advocacy skills but also to experience a different jurisdiction. They were not to be disappointed.

Upon arrival in Tampa airport I was greeted by smiling Customs officers (not always the US experience) whose smiles continued even when I confessed to being "yet another lawyer". I was greeted by my Tampa host and whisked off first to his modest residence (pictured) with an attached guesthouse – off camera – and thence to a Major League baseball game.

The first few days were spent touring a variety of Federal and State courts and meeting local judges and lawyers. Some of the week's themes swiftly emerged, many all too familiar to the English Bar – an oversupply of recruits from the law colleges (all burdened with crippling levels of debt), fewer cases going to trial with little opportunity to hone advocacy skills and an all consuming preoccupation with costs and funding.

The programme has been running for more than 20 years using the same case exercise (an accident at a company picnic to an aspiring golf professional whose injuries were compounded by alleged clinical negligence and a failed orthopaedic fixing device).

There were certain "oddities" in Florida law, most obviously the *"Fabre doctrine"* whereby there could be a finding adverse to a non – party (the product manufacturer with whom the Claimant had already settled) thereby reducing the potential liability of the other defendants and impacting upon the size of any award received.

The teaching methods used were recognisable to anyone trained in the *Hampel* method but the approach was much less strict and more discursive. The use of video reviews occupied a much more important role. Just over 50 participants (ranging from the relatively inexperienced to very senior practitioners who "needed the points") were matched by nearly 40 judges and experienced trial advocates many of whom were "serial attenders". The atmosphere was entirely that encountered at any Inn or Circuit training weekend save perhaps that the bar emptied earlier than expected no doubt because each morning's session began at 8.00!

A number of these early sessions focussed upon ethical issues and it was very apparent that the local Bar was very troubled by poor standards both in advocacy but also (and more disturbingly) of professional conduct. Advertising was one constant topic but rudeness (at the Bar and to the Bench) was clearly rife. Lawyers would fail to agree even over the simplest of issues so much so that a local Judge had made the (now widely copied) *"stone, paper, scissors order"* requiring the two lawyers to meet in a public place and resolve their differences by playing the game!

Standards of advocacy were indeed mixed. Many of the failings were common to both sides of the Atlantic, use of "fillers", over-long questions, failure to listen to the answers but, of course, this particular trainer had to remember that US lawyers prowl the courtroom and most of all, objections apart, only ever address juries.

The last two days were dominated by jury issues. Most civil trials are determined (both liability and quantum) by juries. Fourteen prospective jurors were recruited from the local employment exchange and subjected to a foreshortened jury selection exercise with wide questioning permitted as to their own previous experiences and prejudices – a task that might often occupy one day of a three or four day trial. Thereafter the selected six (with one alternate) were put into one room and the remainder (those challenged off) in another to watch pre-recorded opening and closing statements and consider limited sections of the evidence. Their deliberations were then videoed and edited for us to watch on the final morning. One panel returned a verdict for over $3million with the other awarding just over $1million with very different apportionment findings as between the four "parties".

What struck me most forcefully was how the advocates had failed, through their selection questioning, to identify prospective leaders/followers and how a number of jurors had failed to grasp basic principles of negligence with one voice repeatedly being heard to say *"it happened on the firm's premises...they'll be insured...they must be liable"*.

I was also struck by the limited role played by the judge; apart from ruling as to objections, the summing up amounted to no more than a recital of the questions they must address on the verdict form with no guidance being given not even as to how to calculate future losses.

The overall impression was that trial really did offer the good advocate an opportunity to make a real difference whereas for the civil advocate here too often the result seems pre-determined by the judge's pre-reading.

The experience was an invaluable one and I would urge others, of whatever seniority, to consider attending this or similar events in the future. I am grateful to the second-best Circuit for giving me the opportunity.

Stuart Brown QC is a barrister at Parklane Plowden Chambers

FLORIDA CIVIL
A PARTICIPANT'S PERSPECTIVE

BY KEVIN SHANNON

Last May I was lucky enough to be chosen, along with three other juniors, to attend the Florida Civil Advocacy Course courtesy of a Circuit scholarship. I felt very privileged to be part of the trip, not only because of the quality of the course but equally important, because of the extra-curricular things associated with it.

The advocacy course ran from the 13th – 17th May but for most of us the trip started earlier. The eminent (and thoroughly lovely) Judge Claudia Isom and Woody Isom (a top Tampa lawyer) invited us all to stay with them for a couple of days before the course started. Their hospitality was enormous. Not only did they give us unprecedented access to the Tampa courts but they also arranged a number of social events to allow us to intermingle with some of the top legal professionals in Tampa. As a junior of only four years call the opportunity to sit and chat with a roomful of leading attorneys and elected judges over a beer was invaluable and certainly nothing I will experience in the UK anytime soon.

The advocacy course itself was very intense. Most days had activities scheduled from 9 am to 9 pm and even lunch and dinner involved multi-tasking and listening to talks or seminars. However, the rewards from the course were excellent. The course was based around an actual case involving a severe neck injury suffered by teenager at a company picnic. It concerned questions as to the liability of the company, the treating doctor and the teenager himself. Representing one of the three parties, we were required to conduct opening and closing speeches and examination and cross-examination of both lay and expert witnesses. This was done in front of a panel of three to five judges who would give feedback followed by a video review by a separate judge.

The knowledge that the case was an actual case and the documents, photographs and issues with which we were grappling were the same issues that the Floridian court had grappled with really enhanced the experience. This reality was greatly enhanced by the examination and cross-examination of experts who were not hired actors but true experts in the field (including some of the experts who had given expert evidence in the original trial!).

The civil jury system present in Florida did require a certain change in tone and content when giving opening and closing speeches with the emphasis on simplicity and an appeal to emotions as well as legal argument. The heavy use of props (including, on occasion, PowerPoint) as well as the style of moving about the courtroom while speaking proved challenging for all of us at first but once we got going it became more natural and its persuasive value became more obvious. While I do not intend to now start making submissions in the county courts on circuit while wandering the courtroom there are certainly some American techniques which I will be using over the coming months.

The feedback on the advocacy from the judges was extremely helpful and I have a long list of points which I am going to try and tighten up on in the future. However, it was not just from the judges we learned. The course is called the Advanced Civil Advocacy Course for a reason. The experience and expertise of some of our American co-participants was immense and the opportunity to watch and learn from them in such a close environment was invaluable (without a doubt the best closing speeches I have ever seen came from an American participant in my group).

The other aspects of the course also added greatly to its value. The ethics session was illuminating and the jury selection process and the watching of the jury deliberations (the course engaged two juries made up of members of the public to decide the case) was truly fascinating.

Despite the course's long hours we did find time to have the occasional drink and mingle with some of the locals and try some American bar games as well as doing a tour of the University of Florida campus and its lake of 6-foot alligators. Once the course finished Woody and Claudia took us to do some more sightseeing including visiting sinkholes, museums, restaurants and, of course, an Irish pub!

It was with a heavy heart that we left Florida to return to the UK but we were returning as much better advocates and, perhaps just as important, after having a really enjoyable time.

The final words must be of thanks. First and foremost to the Circuit for giving us this wonderful opportunity – we hope we did you proud. Second, to our leader Stuart Brown QC for looking after us. Third, to my lovely compatriots (and now good friends), Karen, Anthony and Kira. Fourth, to all our fellow course mates who made us all feel so welcome and taught us so much. And finally to Alex, Claudia and Woody for their incredible generosity in time and energy in making it such a wonderful trip.

Kevin Shannon is a barrister at 10 Old Square

THE SOUTH EASTERN CIRCUIT

‘The Charter of Fundamental Rights and Freedoms: An underused source of rights’ Lecture

Hugh Southey QC

Wednesday 26 November 2014 at 6pm

The Sherrard Room, Middle Temple

1 Hour CPD applied for

To secure your place at this event, you must pre-register by email to: Natasha White-Foy: nfoy@southeastcircuit.org.uk

There is no fee for this event but you must be a member of the South Eastern Circuit to attend.
(Application for membership may be made at the same time).

www.southeastcircuit.org.uk

THE FIRST THING WE DO, LET'S KILL ALL THE LAWYERS

BY ALISON PADFIELD

I am a commercial barrister at a civil set of Chambers. I do no crime or family; in fact, no publicly funded work at all. And yet I took part in the protest outside Parliament and the Ministry of Justice in March against cuts to criminal legal aid and have recently joined the South Eastern Circuit. Why?

Lawyers doing legal aid work are an easy target for government spin. No-one likes lawyers – until they need one. The Ministry of Justice's head-on attack on funding for judicial review is not the act of a democracy which values – or even respects – the rule of law. But this is only part of the assault on justice. We have a Ministry of Justice prepared to paraphrase a criminal legal aid consultation process held by a High Court judge to have 'go[ne] wrong' so badly that the 'failure was so unfair as to result in illegality' as merely 'rais[ing] some technical issues on consultation process which we're considering'. So there we have it, in black and white: as far as the Ministry of Justice is concerned, illegality is nothing more than a 'technical' issue. So much, it seems, for the rule of law.

The rule of law requires access to justice; and access to justice requires a legal aid system which allows lawyers to make a living. It is hard to regard the Lord Chancellor's proposed cuts as anything other than an ideological attack on the rule of law by undermining the people who are necessary for its survival: lawyers.

What of the Law Officers? At a Bar Council meeting earlier this year, the then Attorney-General, Dominic Grieve – walking as ever, the tightrope between his role as the leader of the Bar and as a member of the government – acknowledged that the Ministry of Justice did not understand what in practice is required for barristers. Dominic Grieve has now been replaced; and, tellingly I fear, neither the new Attorney-General, Jeremy Wright, nor the new Solicitor-General, Robert Buckland, attended the Bar Council Annual General Meeting in September. So much, it seems, for the Attorney-General's role as the leader of the Bar; or, indeed, as a channel of communication between the Bar and government.

So there we have it, in black and white: as far as the MOJ is concerned, illegality is nothing more than a 'technical' issue. So much, it seems, for the rule of law.

Barristers practising in the Rolls Building – in the Commercial, Chancery and Technology and Construction Courts – may think that they are insulated from this fight, that it will not affect them. I disagree – as did the chairman of their Specialist Bar Associations in a letter they wrote to the Lord Chancellor last December. The international reputation of the Bar, on which much of the work of the Commercial Court is based, is garnered from the reputation of 'British' justice. It is not the fine judges of the Commercial Court whom our overseas clients have in mind when they conjure up an image of British justice, but our colleagues in wig and gown, cross-examining and making speeches to a jury. Once stories start to emerge of miscarriages of justice becoming commonplace, of people left without legal representation, and of people acquitted but having spent their life savings on legal representation, the impact on our international reputation will be felt. It may take some time – probably many years – but a reputation forged over centuries, once lost, cannot easily be regained. The same is true of the skill and experience of criminal barristers: if we lose a generation, we lose those skills forever.

As a member of the Bar Council I have seen at first hand the vital work done by the South Eastern Circuit in uniting the Specialist Bar Associations, so that the Ministry of Justice knows that civil barristers of all stripes stand together with the criminal Bar in the fight against cuts to criminal legal aid. Please encourage your colleagues who do privately funded civil work to join the Circuit. This is a fight we can win, but we must act together, and we must act now.

Alison Padfield is a barrister at Devereux Chambers

ANNUAL DINNER

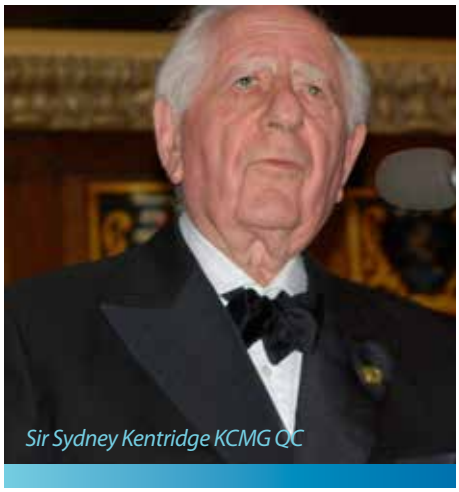
BY HEATHER OLIVER

On 27 June 2014, the South Eastern Circuit welcomed over 200 guests to its annual dinner. Hosted in Middle Temple Hall, with the warm weather allowing us to enjoy drinks in the garden first, the evening was full of fun and high spirits. This was no doubt aided by the wonderful food laid on for us by the Inn and the wine provided for by the cellars of the Circuit, including most notably a Sequillo White from Swartland, South Africa, chosen in honour of the evening's guest speaker, Sir Sydney Kentridge KCMG QC.

Members of the Circuit were delighted to enjoy the company of so many key figures of the Bar and judiciary, many of whom have worked and campaigned tirelessly in recent years for the good of the profession. A distinguished guest list saw past Leaders of the Circuit alongside the Leaders of the North Eastern and Western Circuits, the Recorder of London, the Chairman of the CBA, the Attorney General, the Director of Public Prosecutions, the Chairman of the Bar, many senior members of the judiciary and three recent appointees to the Bench.

The Leader of the Circuit, leading the evening's toasts, impressed us all with a tongue-twister of the various acronyms with which she has become familiar over her two years in office. She reminded us of how far the Bar has come, how much has been achieved, in the fight against cuts to the publicly funded justice system. She underlined the need for a collaborative approach to the battles that lie ahead and, on a lighter note, highlighted the Circuit's on-going excellence in providing training and education, particularly through the Keble advanced advocacy course.

The Circuit was honoured to welcome Sir Sydney Kentridge KCMG QC as guest speaker. Once described by Lord Phillips as "the most brilliant advocate of his generation or perhaps of his generations", it is no surprise that his speech was erudite, absorbing and entertaining, reminding us of how the Bar at its best can combine excellence with understatement, eminence with modesty. Drawing on the wealth of his many experiences (not least his representation of Nelson Mandela in the Treason Trial of the late



Sir Sydney Kentridge KCMG QC

1950s) he emphasised the twin importance of an independent legal profession and of the availability of public funding for legal representation in supporting and upholding the rule of law. Sir Sydney has done us the very great honour of accepting an honorary membership of the Circuit.

Oliver Doherty, the Junior of the Circuit, delivered the traditional response to our guest speaker. Most appropriately, given the example of Sir Sydney which preceded him, he emphasised the importance to the junior Bar of exposure, both formal and informal, to those at the top end of the profession, recognising the value of events such as this, which bring together so many people practising law in diverse contexts and at different levels. The significance of leadership has been particularly highlighted in recent times and there is cause for optimism in the sense that we can feel we have been "well led".

The Circuit extends its thanks for the hospitality of the Honourable Society of the Middle Temple and to all those who helped make the evening a success.

Heather Oliver is a barrister at 3 Raymond Buildings

SIMON FARRELL QC ON TAX FRAUD

BY SIMON WALTERS

Back in July members of the Circuit gathered to hear Simon Farrell QC deliver a lecture on issues concerning tax fraud and confiscation. From his extensive practice in these areas, Simon informed the audience about the significant overlap between criminal prosecutions of tax fraud and civil proceedings concerning these cases in the First Tier Tax Tribunal. There was a specific emphasis on MTIC or missing trader intra community fraud, in which the government makes a loss when it pays VAT to an exporter, having not received it from the importer in the first place.

The methodology of MTIC fraud has adapted over time, with more recent MTIC fraudsters using much more sophisticated means by which to cheat the Revenue. Early MTIC frauds generally consisted of small numbers of companies with monies moving in a circular fashion and companies disappearing after they had sold on goods and before they had paid any VAT to the government.

However, as seen more recently in the cases prosecuted as part of Operation Euripus, MTIC fraud is now often carried out by placing as many buffers as possible into the system, therefore distancing the tax loss from the exporter who makes the eventual claim for VAT. These larger circles of fraud are more complicated and detection of the fraud is subsequently more difficult. A practice called 'contra trading' has developed in which the tax loss is moved from one line of trading to another across a grid system of companies. Double or triple contra trading involved multiple moves, placing further distance between the importer and exporter.

It has also proved difficult for the government to take effective action against the perpetrators of this fraud. Simon provided the example of Javed Mohammed, a defendant from Operation Euripus who fled to Dubai. Mohammed was part of a gang using a great number of companies and traders to cheat the system, but as no tax is paid in Dubai duality of crime cannot be established and Mohammed could not be extradited.

In the summer of 2006 the government took action in light of losses in the region of £12-14bn and informed brokers that claims for repayment for certain goods being sold overseas would not be paid. This gave rise to a substantial number of claims in the tax tribunal, many of which are still being heard. The brokers were forced into making tax appeals and this resulted in tax appeals and criminal prosecutions existing side by side.

There followed a discussion around practice in the tax tribunal. Simon informed the audience that the proceedings are relaxed but pleadings are of great importance. The test to be applied is firstly whether the transaction related to a tax loss and if so, whether the trader knew or ought to have known that this was so. If he knew or ought to have known he loses his right to reclaim VAT. A central issue is whether a legitimate market exists for trading in the first place, with particular emphasis placed on expert evidence to establish the existence or lack of a legitimate market.

A practice called 'contra trading' has developed in which the tax loss is moved from one line of trading to another across a grid system of companies.

A separate but no less important issue surrounding MTIC fraud is the recovery of tax losses through confiscation proceedings. A body of case law has dealt with whether the defendant's benefit should be what he obtained as a result of or in connection with his criminal conduct. Should the courts focus on the amount of the tax loss or the amount of money going through the various company accounts. In one case the Crown Court ordered defendants involved in a £12m VAT fraud to each pay back a sum in excess of £90m. The total sum the court ordered to be repaid was £438m for a £12m fraud and this situation was rectified by the appeal courts with the Supreme Court introducing an enforcement cap to ensure proportionality (*Ahmad* [2012] 1 WLR 2335). There is no need for the amount to be split evenly between defendants, some may be more attractive targets for confiscation proceedings than another, but in £50m VAT fraud the state can no longer recover more than that sum.

With £1.64bn in unpaid confiscation orders at the time of the last report and with the cost of pursuing proceeds of crime almost as much as the sum that was confiscated, Simon turned to possible reforms of the Proceeds of Crime Act 2002. Current political rhetoric to increase default terms of imprisonment to fourteen years is unlikely to be effective, if the defendants do not have the money the order will never be paid. Greater judicial discretion would be of assistance to effective enforcement proceedings, especially given the reverse burdens placed on defendants to disprove that they are holding proceeds of crime. Simon predicted that should the government fail to address the issue of hidden assets its statistics regarding the success of confiscation proceedings are only likely to look worse with time.

There followed a lively question and answer session with several members of the audience relating their recent experiences of dealing with MTIC fraud. During the debate Simon urged the need for caution before the courts assign criminal benefit to multiple participants in a tax fraud. The overall scheme is often not for the good of all concerned and it is important to focus on the 'Mr Bigs'. Finally, someone suggested that the government ought to initiate greater cooperation within the international community to improve enforcement of confiscation orders. It was agreed that whilst this was undoubtedly desirable it would like prove very difficult with some jurisdictions. All in all, this was a very informative evening in which the relationship between the tax tribunal and criminal proceedings was keenly explored and explained for the benefit of those present.

Simon Walters is a barrister at One Paper Buildings and First Assistant Junior to the Circuit.

AN APPRECIATION OF KEBLE DIRECTOR, HHJ BARTLE QC

BY OSCAR DEL FABBRO


HHJ Bartle QC

After 4 years at the helm as Course Director His Honour Judge Bartle QC, in a discussion with Oscar Del Fabbro, reflects on the milestones and future prospects for this renowned flagship trial skills training course.

With characteristic modesty he readily recognises that when he took over from his predecessors in turn Philip Brook Smith QC, HHJ Toby Hooper QC and Tim Dutton QC, the courses influential founder and architect, he was standing on the shoulders of giants. And yet, in his own inimitable manner, Philip has been instrumental in ensuring some major achievements and novel improvements during his tenure which has invariable ensured that the course remains a model of its kind and much valued across the common law world where adversarial advocacy is practised. With his steady hand on the tiller Keble Advocacy has gained in reputation worldwide. A steady and regular presence of trainers and trainees from South Africa, Hong Kong, Malaysia, Pakistan, Australia and other parts of the Commonwealth is evidence of the course's prestige. It is much admired as a model which local Bar Associations and practitioners are keen to replicate.

One of the most notable achievement during his tenure was the increase in numbers of trainees from 60 to 80 and the extension of the training programme by an added day. Philip's careful nurturing of the core ethos of the course and close attention to retaining the ratio between faculty and trainees ensured that the strong collegiate atmosphere which is a feature of the week-long event was retained despite these structural changes. It is said that he attended the Lamb and Flag on more than one occasion to personally size up its capacity to handle the likely increase in patrons during midweek evenings.

The introduction of a bespoke and hitherto unique exercise in handling vulnerable witnesses has been much lauded. A succession of visitors and observers have seen Philip masterfully weave this exercise into the fabric of the training for both criminal and civil practitioners. With the novel presence of young actors playing the parts of witnesses the realism of vulnerable persons in the trial process is astoundingly brought to life. Philip's approach in co-ordinating and directing this important and indeed essential component in any advocate's training has led to the exercise becoming seamlessly interwoven into the existing intensive week. With the support of the ATC it is likely that this pioneering exercise, with its unique training methodologies developed under Philip's direction, will become a model which will be rolled out across all the Circuits for both civil and criminal practitioners.

A combination of enthusiasm, dedication and artful diplomacy – all tinged with a dose of very good humour – has ensured that Philip has persuaded a steady stream of extremely distinguished speakers over the 4 years to accept invitations to address the Keble participants. The talks have been memorable and inspirational for both trainees and members of faculty alike. Lord Clarke, Lord Walker, Lord Hughes, the Lord Chief Justice, Lord Justice Pitchford and Lord Justice Treacy amongst many other eminent and respected members of the profession have all been enthusiastic attenders. The mock trials held at the end of the long week have benefitted too as a result of Philip's charms and persuasion with a most notable array of very experienced High Court and Circuit Judges attending for the Saturday highlight of the course to hear and preside over the trials. The feedback on the exercise from the judges in attendance is invariably and unanimously an impressive response on the skills of the advocates before them and the organisation behind the event.

The introduction of a bespoke and hitherto unique exercise in handling vulnerable witnesses has been much lauded.

Using the same charms and well-honed powers of persuasion Philip has negotiated with each of the Inns to provide most generous scholarships for publically funded practitioners who would otherwise not have been able to attend. For Philip this represented a very important achievement. He readily acknowledges this as a magnificent contribution on the part of the profession in ensuring that standards of advocacy are sustained beyond the first few years of practice for all members of the Bar.

The extremely high standard of trainers on the faculty, year on year, is a prime feature of the course. Philip is too modest to accept any part or responsibility for securing the continuation of this phenomenon, preferring instead to heap praise on the commitment and selfless dedication of all those many senior judges and practitioners who give up a valuable week every summer to be in punctual attendance at the course. He genuinely appears full of admiration for the many trainers who volunteer, without being asked, to return annually. And as he observes, the trainers are all, without fail, in their own respective ways genuine leaders of the profession with many having gone on to take office as senior and circuit judges. It is a testament, according to Philip, to the calibre of the faculty at the Keble course which upholds the highest standards of the profession.

As the course was extended by an extra day, Philip has had to grapple with the complex logistics of directing operations with faculty rotations, group sessions and plenaries having to be coordinated in such a way as to ensure the smooth running of the event. It is a nerve-wrecking exercise as the essential discipline which underlies the success of the Keble is the near military precision of timing. Philip's calm demeanour perhaps belies the furious paddling below the waterline but during his tenure he has masterfully captained a team ranging from trainers and speakers to the course helpers and of course our administrative star Natasha White-Foy. For a course renowned for its intensity the extra day ensured that the core value of repeated advocacy over the entire week and culminating in a mock trial and has thus added huge value.

The retention of real expert witnesses on the course with the attendance of forensic accountants from Deloittes and a remarkable group of doctors has provided participants on the course an extraordinary experience and opportunity of handling expert witnesses in the safest of environments. With Philip's close attention in making them welcome their presence for many more Keble's in the years ahead has been assured.

Other highlights over the years have been the introduction of voice coaching for those wishing to engage with a coach on a one-to-one basis in order to improve their skills.

It is a nerve-wrecking exercise as the essential discipline which underlies the success of the Keble is the near military precision of timing.

On a more reflective note Philip believes that the most challenging aspect facing the course in the recent past has been the difficulty in securing the continued attendance on the course by publically funded practitioners and primarily those in crime. Philip expresses a strong desire that the current disparity in the split of 30 to 50 between criminal and civil attendees will readjust itself to a more evenly balanced mix as renewed efforts are made to encourage eligible members of the Bar to take up the generosity of the Inns in funding scholarships to fill those places.

The cost of running the event inevitably requires the on-going and considerable support of the Circuit. Its members, past and present, contribute hugely in underwriting the course annually. Its existence and pre-eminence as an international advocacy course is grounded on the continued financial and logistic support provided by the Circuit through its Foundation. Philip highlights this as a significant feature and important reflection on the true commitment of this Circuit in ensuring the highest standards of advocacy are maintained at all levels within the constituent membership and beyond with its open welcome invitation to members from all Circuits to attend the course. The ATC contribution too deserves note according to Philip. It has not only funded the attendance of actors and a voice coach but through its member's presence and support at the event itself, it has ensured that the course remains validated and its reputation intact.

Philip hands over the reins to the newly appointed course director HHJ Julian Goose QC, full of confidence in his predecessor's ability to ensure that Keble Advocacy will remain a benchmark event. Asked to identify some of the characteristics which underpins such confidence Philip is quick to point out in His Honour Judge Goose a director with a balanced blend of diplomacy, tact and insight and above all firmness in the face of potential pitfalls. All undoubtedly essential ingredients of course directors past and present. Indeed Philip foresees Keble becoming a veritable kitemark for all those who have experienced the benefits of the training and potentially being rolled out across the country.

The Circuit owes Philip a huge debt of gratitude. His incredible dedication, time and effort has brought the Circuit huge recognition in the jurisdiction and beyond. It has attracted considerable admiration for what the profession is seeking to achieve. Philip's insight in developing the course, instilling discipline where needed and coordinating the entire structure captured that very ethos. With his unique balance of essential tact, diplomacy and persuasion we can surely rely on him as a loyal friend for sound advice and guidance on many more courses in the future.

Oscar Del Fabbro is a barrister at 23 Essex Street

FLORIDA CRIME: FACING THE MUSIC

BY FALLON ALEXIS

In August 2014, Jeremy Benson QC (18 Red Lion) Fallon Alexis (QEB Hollis Whiteman), Tom Hoskins (9-12 Bell Yard), James Jackson (9-12 Bell Yard) and Greg Unwin (187 Fleet Street), were chosen by the South Eastern Circuit to represent the UK Bar at the annual Gerald T Bennett Prosecutor/Public Defender Trial Training Program. Founded in 1977, the course provides intensive training in the development of trial advocacy for around 80 practitioners, from all over the State of Florida. The Florida Bar Criminal Law Section in conjunction with the University of Florida Fredric G. Levin College of Law, based in Gainesville, Florida, runs the course.

One of the unique features of the annual course for the American attendees (as set out in the course material provided to participants in advance) is *"its emphasis on joint training of prosecuting and defending lawyers, a feature which plays homage to the British system of Barristers"*.

We arrived on a Sunday afternoon to meet our cohort. A mixture of approximately 80 State Attorneys and Public Defenders from across the State of Florida, all with differing levels of experience, from those who had just qualified to those who had been conducting their own trials for several years. We were all made to feel extremely welcome. Participants and tutors alike were keen to learn more about our criminal justice system. For example, they were fascinated to hear that we could be given the papers for a trial the night before and would turn up to court the following day fully prepared and ready to go.

Over the course of the week an experienced legal panel of Judges, senior practitioners and advocacy trainers critiqued each piece of trial advocacy, including an insightful *voir dire* on jury selection. During this process the Attorneys would examine potential jurors and ascertain any latent or concealed prejudices. Only those jurors who demonstrated beyond a reasonable doubt that they could be fair and impartial, would remain on the jury.

Our advocacy was also digitally recorded on a USB stick and practitioners were then provided with additional individualised feedback on each piece of advocacy in a separate video review session with another tutor.

The course provided participants an opportunity to practice real skills against real opponents and an opportunity to learn from experienced lawyers, Judges and professionals from around Florida, who provided helpful and constructive feedback on each piece of trial advocacy.

Each County across Florida was invited by the Florida Bar to send a representative(s) on the course. For most Floridians we learnt that it was the first time that they had received any post qualification advocacy training. In addition to the advocacy training, the course included a seminar on "professionalism and ethics" and a very interesting lecture on fingerprint evidence. During the seminar, it became apparent that a possible effect of having separate training for State Attorneys and Public Defenders has resulted in obvious differences in ethical views taken by State Attorneys on the one had and Public Defenders on the other when it came to issues such as disclosure, including, for example, differing views as to whether or not the State Attorney should inform the Public Defender at the start of a trial, when pleas are being negotiated, that their star witness has died.

We had lots of opportunities to learn about the US system. At a junior level, the average State Attorney has a typical caseload of several hundred cases at any given time. They usually conduct trials in the same courthouse in front of the same judge and against the same Public Defender, even prosecuting the same type of crime over and over again. In some parts of Florida they work in pairs, with both Attorneys at a similar level in terms of their experience (as opposed to a silk and a junior for example), which allows the pair to bounce ideas off one another prior to and during the trial and to then chose between themselves which pieces of advocacy they would each like to do within the trial process.

We were all fascinated by one junior State Attorney who was commended by our US tutors for her closing speech that commenced with her playing one of Al Green's songs with the headline, *"This case is about facing the music"*! Us Brits trying to physically move around the courtroom during a piece of advocacy was hard enough to have a go at, so we will not be asking for a stereo to be made available during our next jury trial closing speeches!

The Americans were taught that the focus is on the advocate. So for example, they were told to stand out of sight of the jury when examining a witness in chief, so as to ensure the jury focused on the answers given by the witnesses as opposed to the questions from counsel and to stand directly in front of the jury, when cross-examining, to ensure their questions were the focus of the jurors.

The Floridians were fantastic hosts. We left wishing we could spend longer with our newfound friends before we set off to commence our return journeys across the pond.

The course is run annually and junior members of the Bar who have completed pupillage are encouraged to apply in future years.

Fallon Alexis is a barrister at QEB Hollis Whiteman

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KEBLE 2014: A FACULTY MEMBER'S PERSPECTIVE

BY JOHN RYDER QC

As a natural occupant of the back row of the classroom, I was dubious about joining the faculty at Keble. First, there was the risk of an Emperor's Clothes exposure. Admittedly an every day anxiety, but at least a bad day in court can be explained as just that. Serial catastrophes during a week of demonstrations as an instructor would prove more difficult to excuse.

Second, what sort of people attend an intensive, advanced advocacy course in mid summer? Was there not a risk of, well, a certain disturbing intensity beneath the apparently amiable exteriors – a sort of institutional version of Gordon Brown's smile?

On the other hand, "the best way to learn is to teach", and so, with much to learn, I joined. The course was established by Tim Dutton 21 years ago. Then, as now, there was concern about the future of the Bar, at least as far as those areas specialising in advocacy were concerned. At that time necessary progress for the profession was constrained by resistance to reform from within. Now the future, at least of the Criminal Bar, is threatened by the imposition of change from without.

The factors that ensured useful progress a generation ago and will overcome the current crisis were clear at Keble. There is throughout our profession an enthusiasm about what we do and a continuing determination to reinvent and improve the way we do it. The participants were experienced practitioners in all areas of work, from throughout the world. They ranged from several years to decades in call. Their standards were universally high. Nonetheless, they were motivated to improve still further. The faculty included practitioners, current and former, of outstanding achievement: Court of Appeal, High Court and Crown Court Judges, four previous Chairmen of the Bar, eminent silks and juniors not only from the, still, United Kingdom but also from the Caribbean, Pakistan, Australia, Canada, Singapore and Hong Kong.

Ten doctors and 12 accountants attended entirely free of charge to ensure that exercises in the handling of expert witnesses were rigorously authentic. A group of actors brought difficult witnesses very convincingly, to life. In replication of practice, trainers and participants alike worked immensely hard, starting early and finishing late. The detailed thought and preparation that characterized Lord Justice Treacy's talk on appellate advocacy or HHJ Patricia Lynch's insights into the handling of vulnerable witnesses typified the effort by each of the other eminently distinguished speakers who successfully distilled the experience of decades into clear, succinct, invariably entertaining, advice.

Most significantly, everyone got on. There was no divide between faculty and participants, the essence of the course, as of the profession at its best, is empathy and affability. And so, however demanding the day, sufficient energy remained to stimulate lively, sometimes very lively, discourse nightly at the Lamb and Flag.

The progress made by all participants was genuinely staggering. Each day was devoted to a different aspect of trial advocacy, civil and criminal, and during the course of that short time skills were frequently transformed. At the end of the week the performance of many, particularly those who had originally lacked confidence, was unrecognisable.

From every perspective, it was an immensely enjoyable and rewarding week. It illustrated the extraordinary range of talent and enthusiasm among a group that remains motivated continually to improve. It is this concern for standards, in ethics as much as in law, and the determination to advance them that characterises the profession and so provides a matchless public service

The success of the week owed everything to the organization of this year's course director HHJ Philip Bartle QC and his successor HHJ Julian Goose QC. The power which ensured the seamless transmission of enthusiasm into achievement was the incomparable Natasha White-Foy. To each of them thanks are owed from far beyond those who attended.

John Ryder QC is a barrister at 6KBW College Hill

KEBLE 2014: A PARTICIPANT'S PERSPECTIVE

BY CLODAGHMUIRE CALLINAN

When faced with the prospect of writing this Article I couldn't quite pinpoint what stood out most on the six-day advocacy course at Keble. Initially, I thought it was the quality and breadth of trainers who unselfishly gave up their valuable time to teach us. The list read like a 'Who's Who?' of the judiciary, Bar and medical/forensic experts. A teacher/pupil ratio of essentially 130:70 is clear evidence of how much effort goes into ensuring every student that is fortunate enough to attend gets the maximum training possible. This is surely what sets it apart from any other advocacy course in the world, I thought.

The course is intense. The residential requirement means that it is an environment in which the students and teachers are completely immersed. We were cut off from the outside world with an early start and late finish to each day. As far as the training went, for the most part, we were divided into groups of around 6, with 3 to 4 trainers present during each session. Everything was recorded. We would undertake an exercise such as, for example, a closing speech, and get headline feedback on our efforts from the trainers. A trainer would demonstrate how we should have done it using the headline. We would then go into a private room with another trainer and they would replay the recording, taking us through it in its entirety whilst giving us feedback, suggesting approaches or mechanisms to address where we went wrong. The teaching methods are rigorous and I can attest to a terrific attention to detail.

Armed with all that we had been taught, as well as one or two sore heads from the formal dinner the night before, the course culminated with a mock trial in front of a jury. Real people pulled in from the streets of Oxford. At the conclusion of the trial, the jury deliberated on the verdict and also on the advocates. Although this was done in seclusion, it was all recorded and fed back to us. For the first time we saw ourselves from a juror's perspective. It wasn't a pretty sight at times!

Ultimately, I was sitting on a plane back from Dublin staring aimlessly out the window, when I realised what it was that made the course exceptional from my perspective. What is truly remarkable about Keble is that the Faculty have designed a course for 80 or more people from very different legal backgrounds and skill sets, and have managed to tailor the training for each and every one of them. It is training for the individual, in a group environment. Not one trainer on the course tried to mould anyone into a reflection of themselves or an ideal of what an advocate should be like. I went to Keble with the misconception that I would be told to conform and that would be my greatest struggle. It never happened. Every trainer, no matter how senior, focused on the participant's individuality, and while they may have been firm and identified weaknesses, they never broke our true spirit.

On the face of it Keble is certainly not cheap. In addition, you have to take 4 days out of court. However, as the saying goes "Never judge a book by its cover". Having completed the course, and had time to reflect, I can say without a doubt that it is the most worthwhile and cheapest investment than anyone could ever make in their career. Saying that, to my surprise I was fortunate enough to receive a scholarship for the fee from the Inns of Court. Don't be put off applying for it. Someone has to get it.

Clodaghmuire Callinan is a barrister at 15 New Bridge Street

PETER KNOX QC ON THE RETREAT FROM MITCHELL

BY OLIVER DOHERTY

We have all heard of 'Plebgate'. We are all aware that Rupert Murdoch's newspapers have dominated their own headlines in the past year. But many of us were not fully aware of the implications and importance of the *Mitchell* rules, which originate from *Mitchell v News Group Newspapers* [2014] 1 WLR 795.

On 25 September the SEC lecture series heard from Peter Knox QC on the *Mitchell* rules and the importance of compliance with rules, practice directions and orders. This interesting lecture in an area of civil law was listened to by civil and criminal practitioners alike. At a moment when the Criminal Bar has been thinking about how the criminal jurisdiction can improve efficiency the topic was though provoking for us all.

As of 1 April 2013 the changes to CPR Order 1 and 3.8 and 3.9 meant that the overriding objective included a requirement to conduct cases justly and at proportionate cost. 'Proportionate cost' includes (Rule 1.1(1)(2)(f)) *enforcing compliance with rules, practice directions and orders.* Sanctions for failure to comply with a rule, practice, direction or court order apply unless the defaulting party obtains relief (Rule 3.8).

The genesis of the changes goes back to Sir Rupert Jackson's Review of Civil Litigation Costs, but the first big appeal on the question was in *Mitchell*. The claimant (Andrew Mitchell MP of bicycle fame) had failed to file or exchange a costs budget in his claim against The Sun until the day before the hearing (6 days late). He was therefore treated as having filed a budget comprising only the court fees. The costs budget actually filed by his solicitors was in the sum of £506,425. Mitchell's application to the Master for relief from sanction failed, and the Court of Appeal considered the issue on appeal.

The Court of Appeal set out what became known as the "*Mitchell*" principles (paras 40-46 and 58 of the judgement):

1. Was the non-compliance trivial (*para 40*)?

2. If not, was there a good reason for it (for example, illness) (*paras 41 and 43*)?


Peter Knox QC

3. How promptly was the application for relief made?

4. If the non-compliance was not trivial, and there was no good reason for it, then the "expectation" was that the sanction would apply, and the factors specifically mentioned in rule 3.9(1)(a) and (b) were the considerations of "paramount importance" which should be given more weight than other circumstances, such that they would "usually trump other circumstances"

A reminder – the Rule 3.91(1)(a) and (b) factors are 'for litigation to be conducted efficiently and at proportionate cost' and 'to enforce compliance with rules, practice directions and orders'.

The important point is that proportionality is not normally engaged as an issue. The premise is that the sanction has been properly imposed by the relevant rule or order.

Mitchell was decided on 27 November 2013 and was considered in a number of cases in the following months. It was reported to the lecture that junior tenants during this period were regularly returning back to chambers after a day in court and reporting astonishing decisions made in the County Courts, relying on *Mitchell*. Peter Knox efficiently ran through the key cases which consider *Mitchell* (*Durrant, Adlington, Summit Navigation, Chartwell Estate, Hallam Estates*).

The evening concluded with *Denton v. TH White Limited and others* [2014] EWCA Civ 906. In *Denton* the Court of Appeal took the opportunity to reaffirm the guidance in paras 40 and 41 of *Mitchell* as *'substantially sound'* (i.e. about the need to show the breach was trivial or there was a good reason for it). The Court then went on to make three important clarifications.

1. The word 'trivial' had given rise to difficulties so focus should be on whether breach was 'serious or significant'.

2. If the breach was insignificant other breaches should not be considered at that stage. Other breaches would only come in when all the circumstances of the case are considered (i.e. breach not serious or significant, relief should usually be given).

3. Even if the breach was significant was significant and there was no good reason for it, relief can still be given.

To address the worrying growth in a tactical trend amongst solicitors who took the view that there was no point in agreeing to an extension of time, the Court warned in *Denton* (para 43) 'Heavy costs sanctions should, therefore, be imposed on parties who behave unreasonably in refusing to agree extensions of time or unreasonably oppose applications for relief from sanctions'.

As the membership of the SEC continues to attract civil practitioners we look forward to more such lectures as part of the varied year of Education and Training events. Our thanks go to Peter Knox QC for a thoroughly useful evening.

Oliver Doherty is the SEC Circuit Junior and a barrister at Furnival Chambers

SEC
YOUR CIRCUIT.
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THE SOUTH EASTERN CIRCUIT

‘Abuse of Process in Criminal Law: an Update’

David Young

Monday 8 December 2014 at 6pm

The Sherrard Room, Middle Temple

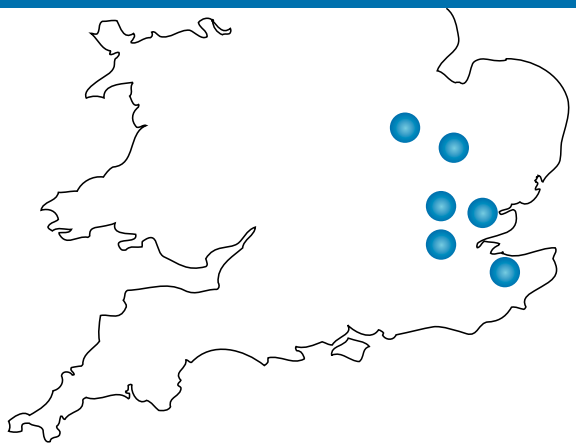
1 Hour CPD applied for

To secure your place at this event, you must pre-register by email to: Natasha White-Foy: nfoy@southeastcircuit.org.uk

There is no fee for this event but you must be a member of the South Eastern Circuit to attend.
(Application for membership may be made at the same time).

www.southeastcircuit.org.uk

BAR MESS REPORTS



CENTRAL LONDON

Since the last edition of *The Circuiteer*, HHJ Christopher Kinch QC has formally been sworn in as the Recorder of Greenwich. His appointment comes shortly before the 20 anniversary of the opening of Woolwich Crown Court. This is to be celebrated on Friday 3 October 2014 at a reception hosted by the Recorder of Greenwich at Woolwich Town Hall, Wellington Street, Woolwich between 6.30pm and 9pm. It will be attended by the Woolwich judges (past and present), members of the senior judiciary, the Mayor of the Royal Borough of Greenwich, representatives from the community and many others. Tickets are available from HHJ Dhir QC at Woolwich Crown Court, 2 Belmarsh Road, Thamesmead, London SE28 OEY.

Over the last few months we have seen the retirement of a number of judges. In July we held a valedictory for HHJ Karsten QC who retired from Blackfriars. We are grateful for his many years of service and wish him the very best in his retirement. Inner London has also seen the retirement of HHJ Grobel and HHJ Burn. We thank both of them for their long service at Inner London Crown Court and wish them a very happy retirement.

The Central London County Court has moved to new premises at the Royal Courts of Justice and the Thomas More building. HHJ Mark Dight is the new presiding judge and has made excellent and energetic start. Users report that the splendid new premises are, as yet, not quite matched with an equally efficient administration, which has apparently become less accessible and more cumbersome and inefficient. Judges and staff are aware of the problems and are working to improve matters, including an e-issue service for urgent applications, injunctions etc. Watch this space.

Central Lines

THAMES VALLEY

By the time this goes to press, the Mess will have held a dinner to mark the retirement of HHJ Corrie and HHJ Mowat. I am sure that all will agree with me that the area will be losing two exceptionally fine Judges. Both were renowned for their fairness, sound judgement and good humour.

Sadly the current resident at Oxford will also be retiring this autumn. Judge Risius has been a popular appointment. An appropriate event, in Oxford, is anticipated in the spring.

Elsewhere in Thames Valley, HHJ Sheridan is considering ways to make the Courts more efficient. Video-link hearings (for Counsel part-heard elsewhere to be linked up to Aylesbury) and 'mentions' done via the telephone. Whether these succeed or not, we have to endorse the laudable aim of trying to make the system more effective.

Kate Mallison

ESSEX

This time last year there was no knowing that we would still be around by now. We are. Nigel Lithman's colossal efforts are rightly applauded by most Circuiteers, nowhere more warmly than in his home Bar Mess in Essex.

As well as his high profile endeavours, Nigel put in hundreds of hours work beyond public view. Just one example was his appearance at a pupils' advocacy training weekend, in the middle of nowhere and many miles from his home, on a dirty Saturday night in darkest January. Arriving at the venue at the end of a physically and mentally draining week, Nigel was visibly exhausted. However, when Master Lithman (as he was styled in that forum) rose to address the next generation of young hopefuls it was as if a light had been switched on. He held his audience in the palm of his hand with a speech that was inspirational, risqué, thought-provoking and hilarious: typical Lithman.

Of course he remains active on our behalf on the CBA committee, supporting his successor Tony Cross QC, but we look forward to seeing Nigel back in counsel's row following his unstinting presidential year.

Following the chairmanships of Nigel and Max, Essex now supplies yet another officer through the accelerated promotion of Emma Nash to the position of CBA Secretary. Circumstances dictated that Emma had to take up the reins, just six days before March's day of action, without having the usual preparatory year as assistant. Despite also juggling pregnancy and a difficult house move, 'Nasher' is taking it all in her indomitable stride and will serve us admirably.

Our summer was darkened by the news of the death of His Honour Michael Brooke QC, following a shockingly short retirement. Uniquely, Michael was appointed to sit in crime at Basildon/Southend following a glittering international practice as a civil silk. He had quickly to widen his field of reference. Local counsel assisted with explanations of Essex customs including the wearing of white stilettoes and the giving of 'hickies': *"A form of petechial haemorrhage, Your Honour, caused by the moderate application of the giver's teeth to the receiver's skin, typically to the side of the neck".... "Really? How extraordinary."*

Michael quickly acclimatised and became something of an expert on Southend topics, particularly the range of ice cream available on the seafront. Appointed in 2004, HHJ Brooke QC served his entire judicial career in Essex and was extremely popular professionally and socially. He was a mess junior's dream: attending every function and being the quickest to pay. Michael was a charming, urbane, thoughtful and kind man. He was a notoriously light sentencer, always anxious thoroughly to explain his reasoning: the local joke (shared by him) was that his rare custodial sentences took almost as long to pass as they did to serve. He grew a beard in an attempt to appear more severe: it only achieved the seemingly impossible effect of making him look even wiser. Michael's loss is all the more sad because he had the greatest capacity to enjoy retirement, travelling extensively on land and water with his beautiful wife, Mireille, and enjoying to the full his love of France. In 2012 Michael was invested as a Knight of the French Legion of Honour in recognition of his founding the Paris Bar Exchange. The award is rarely given to foreign nationals: other non-French recipients have included Laurence Olivier, Claudio Abbado and Eva Péron. Michael's star will shine long in our memory.

Recent months have also seen the passing of three dear friends who, without being based in our county, visited often, brightening our day whenever they appeared.

Austrian-born Robert Flach was an extraordinary, legendary character whose clients had included Myra Hindley. He continued working almost into his nineties, seldom visiting a robing room without recounting (or generating) an hilarious anecdote. To Robert even the senior judiciary were 'vippersnappers' and to spend any time in his company was to hear exotic accounts of his international social life ("*…as I said to Prince Rainier…*" "*…ach, that Yehudi Menuhin – such a name dropper*"). Outside a Lawrence Durrell story few of us had ever encountered such a figure as Robert and we'll never see his like again.

Another distinctive international voice was that of George Papageorgis, who died on his saint's day. George will be remembered as a big man with a huge heart. He was unfailingly jolly and always made time to offer kind words and wise counsel to colleagues at all levels.

Richard Sones, who died in June, was an advocate of pure class, one of the silkiest juniors ever to grace our courts. We will fondly remember his joie de vivre, the waft of cigar smoke and the glorious rich voice that it engendered. The obvious comparison is with John Mortimer's character Horace Rumpole, but Richard had all of Rumpole's charisma with none of his causticity. He was the embodiment of style, integrity, kindness and humility.

These friends will be sorely missed.

Much brighter news comes with the elevation of Patricia Lynch QC to the Chelmsford bench, a move enthusiastically anticipated for some time. For so long Essex's senior court was a male bastion but, following the age of enlightenment initiated by the arrival of HHJ Karen Walden-Smith, the 'boys' were actively routing for this appointment.

Practitioners returned from summer vacation to learn of the abrupt closure of catering facilities at Chelmsford and Basildon, notices announcing, "there is no longer a restaurant at this court." In truth there never was. 'Restaurant' substantially overstates the demised facilities, but they were better than nothing. It was always amusing to address Basildon's supervisor as "chef", which he wasn't sure was sarcasm until one advocate, commenting on the broccoli soup, added "my compliments to the can". Home-prepared lunches (as retiring jurors are now directed to bring) will improve both our health and our finances, but the difficulty is finding the extra prep time – particularly given the recent policy of longer sitting hours. The default start time has become 10:00 and some matters are creeping in at 09:30. An extra hundred or so unpaid hours per year is bad enough, but the policy will (no doubt intentionally) increase the number of trials that don't reach a third day: many cases that historically would have attracted a brief fee plus two refreshers will now generate the base figure alone. It's almost as if someone is trying to starve us out of business.

Interestingly, on the catering front, the independent Court Café at Southend continues to thrive, but the authorities appear unable (or unwilling) to replicate that commercial success elsewhere.

At the time of writing, HHJ Owen Davies QC is convalescing after being taken seriously ill while on secondment at the Old Bailey. We send him our warmest wishes for a full and speedy recovery and look forward to welcoming him back to Basildon before long.

Talking of an old Bailey, Sasha's three-year term of office as our Junior is approaching its climax: time certainly flies when you're having fun. The best way to acknowledge Sasha's fabulous work is to send her an early cheque for this year's Bar Mess Dinner, to be held on 21 November at the Andaz Hotel near Liverpool Street. Maybe assist Sasha's finale by adding a note saying "I'm happy to be seated next to *anyone*" – we are friends, after all.

For further details and to reserve a place: sashabailey@187fleetstreet.com

Southend Pierre

EAST ANGLIA

East Anglian Chambers hosted a lovely evening on 5th. September at Kentwell Hall to mark the promotion of HHJ Roderick Newton to the High Court bench. All in Norfolk and Suffolk wish him well in his new post. His good humour will be missed locally. Further north, Katherine Moore has settled into her new role as a circuit judge in Norwich, distributing written directions to all and sundry, no matter how straightforward the case! Those of us who knew her as a colleague wish her well for the future. The local bar remains in reasonably good heart in these troubled times, very much helped by good relations between bar, solicitors, CPS and bench. Long may it continue.

Simon Spence QC

SUSSEX

I'm sure all of us who regularly practice in the Magistrates Court in Sussex would like to congratulate Judge Crabtree who has recently been appointed as Circuit Judge. District Judge Crabtree as he was, regularly sat in both the criminal and the family courts in sussex and his contribution to the running of the justice system is very much appreciated.

Judge Crabtree has been appointed to the Circuit Bench with immediate effect and we wish him well in his new surroundings in Hampshire.

Tim Bergin

CENTRAL CRIMINAL COURT

In a disturbing mirroring of the state of the British economy in recent years, the CCC Bar Mess has entered its own age of austerity. Due to a combination of factors the Mess has found itself in financial difficulties. Whilst the most notable factor was that a shameful few had not paid for their places at the Mess Dinner last November to mark the retirement of HHJ Peter Beaumont CB QC as Recorder of London, the largest reason has been a decline in the number of users of the Mess who are actually members and therefore contributors to its expenses. The immediate and visible consequence of this shortfall has been that the newspapers that have always been available for all advocates who appear at the Bailey have had to be cancelled.

Due to the tireless efforts of the committee, and especially our chairman, Richard Whittam QC, and our splendid treasurer, Alison Morgan, our finances are getting back on track, and we are very grateful to those sets of chambers who have made generous donations to Mess funds. As a result, a reduced newspaper service will resume in October. However, there remains an inequality between those who use the Mess and those who pay for it, which means that there are too many advocates taking advantage of the generosity of others. If you are among this shameful group of opportunists, or you have inadvertently allowed your membership to expire, please join without delay. Membership can be acquired by contacting Alison Morgan at 6KBW College Hill, or by picking up an application form from the Bar Mess.

Duncan Atkinson

NORTH LONDON

At Wood Green, our wonderful Resident Judge HHJ Lyons reports as follows: HHJ Simon Carr has now left Wood Green for a new life in Cornwall and is based in Truro. In his first full week there he conducted three trials, ten sentences and two full days of List work. It is said the local bar is lying down in darkened room.

Wood Green has moved back up to run a full 10 courts once more. Of course the provision of staff to man these extra courts lags far behind and matters are rather stretched at present. Happily after a gap of more than five months a new Operations Director (Court Manager in old and proper speak!) is due to arrive. Jonathon Gilbert will start work on 2 October having left the policy world of HQ for a stint on the field. There is no sign of any judicial reinforcements and the court now has seven and half fulltime judges and is increasingly reliant on its excellent corps of Recorders.

The catering debacle continues. Wood Green will be what is described as a vending site. Provision for jurors and the public will be via vending machines which will provide a constant but faceless service of a variety of cold options. A human face will man the counter during the busy time at lunch and will give the jurors the chance to access hot snacks.

The new digital booking scheme for PVL hearings of ancillary/preliminary matters is being trialled at Wood Green and the initial teething troubles appear to be ironing out. This system which is very efficient if and when it is properly run can also be extremely slow, irritating and disruptive to a busy court if the prisons don't play their part efficiently.

The Restorative Justice scheme has got off to the same slow start as it has every where else and a review of the criteria for inclusion maybe required.

At Harrow, a new limited catering service will start on the 6th of October 2014 with breakfast and lunch available, and including some hot food.

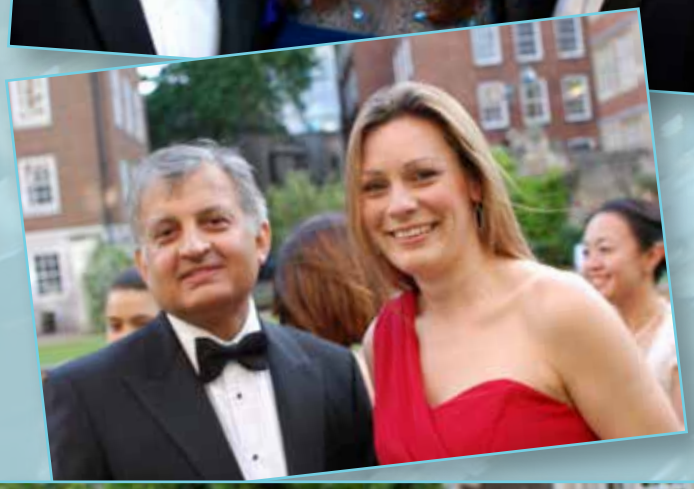
At Snaresbrook New caterers are now in place and are getting great feedback – much improved provision in the Bar mess throughout the morning (HHJ Radford wants to entice the Bar back to getting together in the Bar Mess with proper bacon sandwiches) and at lunch time – homemade soup with crusty roll, jacket potatoes and decent meal options both meat and veggie.

Also on a catering note – the public canteen will be closed in order to extend jury area – a new coffee pod will be set up on the main concourse.

Yes we are having a party – date to be confirmed shortly.

Morocco Mole

ANNUAL DINNER 2014



ANNUAL DINNER 2014