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News from the South Eastern Circuit

THE CIRCUITEER

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EDITOR'S COLUMN

It's been too long since the last edition of your favourite magazine hit the stands. Sadly, a series of sequential family crises struck members of your publishing team and we were unable to steer through the choppy waters as smoothly as hoped. It does however reveal that we each respected important personal matters and reinforced our own commitment to the Wellness at the Bar campaign. Long may this continue.

This edition sees the changing of the guard in Leadership of our Circuit – we say a very fond farewell to Kerim Fuad QC, who has campaigned and agitated on our behalves in so many different places; if his speech at the recent dinner in his honour is a guide to the future, somehow I don't think that he will remain quiet for long! Simultaneously we welcome Mark Fenhalls QC who will surely bring his own stamp of calm authority and CBA history to the endless 'discussions' with the MoJ over fees for publicly funded work whilst continuing the wish to increase and diversify the membership of the S.E Circuit Committee to include practitioners from all areas of the Bar.

There are many pleasant surprises in this edition – I have a particular fondness for the Valedictory address by HHJ Hawkesworth who practiced his craft in my local court – although much time has passed since those gathered in the Cambridge Crown Court were treated to this personal reflection on his time as a Circuit Judge, so many of the sentiments remain true. It reminds us that many Judges see clearly the crumbling edifice of criminal justice for the political football that it has become and share our plight as we all try to make the best of an increasingly bad situation. No doubt we can all be certain that post-Brexit there will be so much more money available to flood the justice system with much needed funds … grateful letters to Boris Johnson and Michael Gove are surely being written already?

Brexit – the unmentionable elephant in every room – it's only a few days away, or is it? It has become the increasingly tarnished reminder that we are presently 'served' by the most significant vacuum in UK politics for generations. How the Leaders of the Bar will obtain any political attention for their representations is a mystery – we wish them well because it seems increasingly likely that the border officials' 'work to rule' will be matched by the Bar's stance on working for McDonald's rates of pay – following the recent publicity, one of my sons sent me a job application form and hoped that I would be able to trade in my wig and start with at least 2 stars on my cap as he knows that I can already crank up a pretty fine BBQ. If only it was funny. Perhaps we will share the last-minute respite that is so beloved of loyal Man Utd fans?

And so to the summer ahead – there are many Bar events to enjoy, both at home and abroad: so don't be shy – do join in.

My thanks as always to the indefatigable Aaron Dolan; Sam Sullivan for brightening up the edition; and Adam Morgan for his editing skills.

Karim Khalil QC

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LEADER'S REPORT

by Kerim Fuad QC, FORMER LEADER OF THE SOUTH EASTERN CIRCUIT


Kerim Fuad QC

Goodbye from me

As I come to the end of my term as Leader of this superbly diverse Circuit, I can honestly say that I have had an amazing time.

There have been several deep frustrations of course, but mostly I have been astonished by the positivity and energy of the vast majority of people with whom I have worked. There are many talented barristers who keep giving up their valuable free time, for no payment, to help this Circuit remain so inclusive. I am so grateful to them for supporting me over the past two years. In this, I include my former and current Recorders (Val Charbit and Nicola Shannon respectively), the Officers and Committee of the Circuit, as well as many other people, including a large number of Judges, who have taken the time to pass on their positive feedback and thoughts to me.

I have also felt sadness as we have noted the passing of several eminent barristers and judges over the time of my Leadership, most notably Lord Roger Toulson, HHJ Price QC, HHJ Plumstead, Sir Desmond de Silva QC and Ramiz Gursoy – all will be sadly missed.

The Wellbeing of the Bar

One of the main aims of my Leadership was to ensure that the wellbeing of all at the Bar was actively promoted, energised, discussed more openly and taken more seriously. And I am happy to say that I think real progress has been made here. We are currently waiting to hear whether the Circuit has been granted a Certificate of Recognition by the Bar Council for our commitment to wellbeing.

Incredibly there is a handful of judges who just do not get it. Regrettably I receive regular reports about the same ones who scoff at wellbeing and reasonable sitting hours – by frowning on counsel actually having lunch and not working through their lunch, or who expect us to work (unpaid) late into the night and the early hours, having worked a full and increasingly long day. I feel sad for them as it can only be a reflection of their life.

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We are not assets to be sweated, at the sacrifice of our health and relationships.

This culture must change for all. It is not healthy. Wellbeing and reasonable sitting hours benefit the judiciary as much as the Bar.

Those who know me well are aware that I feel strongly that you should prioritise your own health (both physical and mental) whenever possible. Family, friends and fresh air are all vitally important and I have written two articles on this subject during my time as Leader, with practical advice on how to stay well – "5 Ways to Wellbeing" and an article in the July 2018 issue of the Circuiteer.

Health is more important than everything else we do. Remember this as you miss, yet again, reading your kids their bedtime story to do another free skeleton argument, or think of doing your hearsay reply at 11pm and emailing a judge at 2am. You have one life, so live it well.

My recent LinkedIn post set out my auto reply to my CJSM emails:

"Thank you for your email. As part of the Bar's drive to promoting Wellbeing, having important downtime and time to think, please do not expect a reply past 7pm and before 7am. Please try it yourself, it will improve your quality of life. Thank you."

Over 7,400 people (at the time of going to press) have seen, liked and commended it. One person has even adopted it for his company.

There is now a regular schedule of SEC wellbeing events at which members of the judiciary, as well as other professional speakers, discuss the importance of wellbeing to us all, often based on their personal experiences. They have been moving evenings and will, I am sure, prove to be useful in the fight for the (literal) health of the profession. Both the Senior Presiding Judge, LJ Macur and the Presiding Judge of the Circuit have commented on this excellent initiative.

To date, we have had Circuit Judges from Isleworth Crown Court (Feb 2018), Wood Green Crown Court (April 2018) and Luton and St Albans Crown Courts (July 2018), together with professional speakers on vicarious trauma and the British "stiff upper lip".

The event, at Gray's Inn, 15th November, had judges from Woolwich and Southwark Crown Courts and a psychiatrist speaking about compassion and kindness in the workplace.

The audience for these sessions has increased dramatically as word has spread of the generous words of wisdom and advice which have been dispensed and the open discussions which have ensued (all under Chatham House rules, to encourage people to speak freely).

My gratitude goes to Valerie Charbit who initiated these important events as the former Recorder and continues to push forward now, in her new role as Wellbeing Officer at the Criminal Bar Association – for which we wish her all the very best. I also thank everyone who has played a part in organising these events and, of course, all those who have given up their evenings to attend and take part.

Other practical changes to your daily life help you indirectly to maintain your wellbeing (eg. ID cards, canteens, sitting hours) and they are mentioned later.

Respect for the Bar

One of the areas where I think we are starting to get traction is in our relationship with the HMCTS. Susan Acland-Hood and I have had several meetings, starting with the one where I presented her with my ideas on "The Way to make the Crown Court work" (issue 43 of The Circuiteer) with which every practitioner I have spoken to agrees. I really do believe that she understands most of our concerns and hope that my successor will be able to keep working down that list to achieve more of our aims. Her presence on the panel at the recent SEC event on Proposed Court Reforms on 3rd October shows how much she wants to work with us to improve things. As I have said before, I do not think she knew just how appalling the state of our courts were.

I am very pleased that she has introduced my vision of ID Cards to allow us to enter buildings without the discourtesy or worse of invasive searches (whilst police officers and court staff breeze through unchecked, with hot coffee in hand) – hopefully, feedback on the pilot scheme will show where there were teething problems which can be removed.

The episodes like the one where a senior female member of the Bar had her son's small toy car and a marker pen confiscated from her handbag by imperious court security ("Well miss, you could use that toy as a weapon and choose to graffiti the loo" – a true story: I still have a copy of the property sheet) must surely be banished for all time.

It appears that canteens, more and more Mention hearings by phone (sorry all dear clerks, it's never "just a quick mention"), and even occasional sensible (and sensitive) listing decisions are starting to make a come-back too.

There are so many areas where small changes could make a difference to how

barristers feel if they were treated with respect – we must keep pushing forward on this. *Respect and courtesy matter more when we are disrespected by the fees we receive.*

Sitting Hours Protocol

Another example of this is the Sitting Hours' Protocol (https://www.barcouncil.org.uk/media/571291/sitting_hours_protocol_-_final.pdf) which was carefully perfected and agreed by the Bar Council from an SEC initiative which I worked hard on, together with Valerie, Rachel Spearing, Fiona Jackson and Helena Duong, to whom I am grateful. While it has not yet been "officially" adopted, it has been agreed with senior judiciary and should be accepted as the standard towards which everyone works. We must succeed in persuading the senior judiciary to adopt it. It is the key to wellbeing and better barristers and Judges. A tired barrister or Judge is never a good or effective one. We are not robots – we need time to switch off from work and have downtime and valuable *thinking* time.

Inflexible Operating hours

The proposed "Flexible" Operating Hours pilot at Blackfriars Crown Court is now of course almost (I can only hope) just a bad memory, but I am hopeful that the HMCTS has learned something from that experience, not least the importance of consulting with stakeholders.

I spent a great deal of time working to explain why the scheme was doomed, but there are obviously good ways of improving efficiency (more phone hearings, being able to actually speak/communicate with list officers, having more conference rooms, more use of TV links to juggle and oil other cases during trials...).

Sadly, the lesson was not learned in time to prevent the incomprehensible decision to shut and sell off Blackfriars, the only London court with proper access and facilities. (It's not about selling court estate for easy cash. Promise.) The SEC response to that consultation can be seen here http://www.southeastcircuit.org.uk/images/uploads/SEC_Response_to_HMCTS_consultation_-_proposed_closure_of_Wandsworth_and_Blackfriars.pdf.

Decent remuneration for the Bar

This is clearly the area over which I feel the most frustration. In my first statement back on 1 January 2017, I said that I hoped to see the new scheme implemented by that summer, so it is distressing that we are in the position we are now, still protesting to the MoJ about the levels of payment and their timing.

It should be recognised however that we have achieved much in this regard in very difficult negotiations in this time of austerity (although the PM recently suggested austerity was over), eg:

- we worked with the CBA and Bar Council in the early stages to prevent more cuts and ensure cost neutrality, and then after the action in summer 2018, to agree an increased amount;
- we secured payment for Day 2 of trials, mentions and sentences, without allowing the brief fee to be eaten into;
- we agreed better proper stand out fees.

I am so grateful to Noel Casey and his team who have now written the SEC response to ***two*** AGFS consultations during my term, one of which can be seen here southeastcircuit.org.uk/images/uploads/SEC_Response_to_Ministry_of_Justice_Consultation_%28AGFS%29_.pdf.

And also to the Circuit as a whole which has shown unity and determination in its spirited attempt to protect the livelihoods of all, from first six pupils to old timers.

I stand by my view that ***"this government must invest properly in the criminal justice system as it's becoming increasingly embarrassing and depressing watching it die in front of us.".***

Where we are now

The Bar "suspended" action on the promise of £15 million and that it would be in the system by October 2018. It is not in fact £15 million and it is not in the system by October. As I write we do not have a guaranteed date for that money. As each day passes the government save more money.

Payment data is being collected that confirms what we have said all along, that the AGFS needs significant investment, in particular to address certain cases seriously affected by the rejigging of already inadequate funding.

We must be precise and set out what works and what does not, under the scheme and calculate the sum of money WE consider sufficient to address those AGFS injustices (be it £35/40 million).

In the short term the scheme needs an urgent fix.

There should be provisions for brief enhancement if conditions (such as large volume of evidence) are met. The fees for guilty pleas 50% and cracked trials 85% are inadequate. If we can achieve a minimum of £400 per day for the Bar that has to be a step in the right direction.

The CBA must be the ones to undertake this considerable task and through whom the process flows so there is a central conduit. Once we calculate that sum we ask the government for that figure. Thus it will be a principled hook to hang our hat on. If we do not receive that figure a range of the usual options is available to the Bar; return to "no returns" etc.

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We should set out a timetable for action so all at the Bar know what we are doing and what we are working towards.

The government are all too aware of the powerful weapons in our arsenal which, if deployed, will cost them much more than the relatively modest sum we require to remedy some of the fees' injustices, especially in relation to paper heavy cases.

We should also take this opportunity to ensure:

(A) more efficient and just payments of all LAA claims (which frankly are currently being dismally processed), and

(B) prompt payment of properly submitted wasted and special preparation claims, which are routinely wholly refused or the hours claimed decimated for no good reason.

I reiterate that *"the AGFS needs significant investment to reflect the crucial role the Bar plays in ensuring the criminal justice system operates well, or at all. To ensure that all victims and complainants' voices are heard and are properly represented (yes, it could be YOU) and that those wrongly accused (yes, it could be YOU) are robustly and properly defended. It is after all "the overriding objective" is it not.".*

People can be wildly unrealistic and underestimate the huge amount of effort invested by so many into getting us this far. However, I am still confident that progress can be achieved in my last few weeks as Leader.

Harmonious relations with the Bar

Judiciary

I feel very positive about the improving relations between the Bar and the Bench – the implementation of regular visits to Resident Judges has been a huge success. I feel we have made great strides in increasing harmony between the Bench and the Bar.

Not surprisingly, judges are often happy to help when they become aware of an issue, but need to be given the feedback. It is so much easier for me to talk to a Resident Judge when we have a good working relationship already and I hope that the new Leader will continue to encourage Committee members to meet with Judges as and when appropriate. And this warm relationship is of course aided by the highly enjoyable annual SEC Reception for Resident Judges, a wonderful event at which many interesting discussions and laughter can be heard and which is very much appreciated by our friends in the judiciary. We still have some work to do to persuade all of them that we cannot be at their beck and call 24/7, but the message is definitely starting to get through.

I want to expressly thank all the Resident Judges on the SEC for the courtesy you have ALL afforded to me, but in particular:

- The Recorder and Common Serjeant of London
- HHJ Pete Lodder QC (Kingston)
- HHJ Martin Edmunds QC (Isleworth)
- HHJ Deborah Taylor (Southwark)
- HHJ Chris Kinch QC (Woolwich)
- HHJ Andrew Bright QC (former RJ at St Albans)
- HHJ Martyn Zeidman QC (Snaresbrook)
- HHJ Hillen (Blackfriars- whilst it's still open)
- HHJ Warwick McKinnon QC (former RJ at Croydon)
- HHJ Usha Karu (Inner London)
- HHJ Jo Cutts QC (now Mrs Justice Cutts, Reading) and
- HHJ Noel Lucas QC (Wood Green).

You have all actively supported me and at times laughed/despaired with me. Thank you.

I am sorry to say time simply has not allowed me to visit all the courts on the Circuit and I feel disappointed not to have reached some of the more far-flung courts so my apologies to those. If time allows this month I will try.

Senior Presiding Judge

I have had regular meetings, and have built up an excellent relationship, with Lady Justice Julia Macur, the Senior Presiding Judge, who is very keen to support the Bar whenever possible. She recently asked me for feedback on judges, which I happily handed over – as ever, if you don't tell people about a problem, it won't get solved. She is incredibly approachable, down to earth and believes strongly in the independent Bar. We can't go far wrong with Judges of her humanity and calibre in these pivotal positions.

CPS

Newly-introduced regular meetings with the London branch of the CPS have also paid dividends in terms of a better working relationship which enables issues to be discussed in a more positive environment. As a result, the CPS has set up a Bar Liaison Group so that feedback is more structured. Many members of the Committee (and others) have contributed to a comprehensive document outlining issues which prosecutors would like to see addressed.

DPP

I am more than hopeful that we will have good relations with the new DPP, Max Hill QC (former Leader of this Circuit), and I am submitting to him a comprehensive paper before I leave office of the most substantive issues which prosecutors face – including fees (obviously) and grading panels. Max has already been warned by me that it would be one of the first documents on his desk!

My thanks to Paul Cavin QC, Mark Seymour and others for helping me produce detailed papers for Max to consider and address these issues.

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Feedback – good and bad

In all these situations, it is important to remember that praise should also be included in feedback, so please do keep telling your Bar Mess Chairs, my successor, Aaron (aaron.dolan@southeastcircuit.org.uk) or Harriet about good experiences as well as bad.

Cyprus

I am also delighted that I was able to help bring together the criminal justice communities from the Turkish Cypriot and Greek Cypriot communities when I (together with Pavlos Panayi QC and HHJ Tony Bate) attended an event at the British High Commission in Nicosia in March 2018 to share our best practices in advocacy and case management as well as mentoring some younger judges.

We have been asked to attend next year to carry on this positive initiative.

It is deeply ironic and increasingly sad that whenever one talks of our legal system abroad it is viewed with much more respect in those jurisdictions than the respective governments in this country seem to pay it. That respect is fast fading worldwide as the gradual decimation of fees for the publicly-funded Bar and lack of significant investment in the justice system continue.

JASC/CALC

I have enjoyed sitting on this committee (with Paul Cavin QC) which determines action and sanctions on prosecution counsel who have allegedly misbehaved. I have witnessed some quite extraordinary episodes of behaviour.

The CPS really do want to have the right calibre of people represent them and work hard to keep the standards up. Of course, the next stage is for their counsel to be properly remunerated which is a matter for the new DPP.

Bar Chairs and fellow Circuit Leaders

I want to thank Andrew Langdon QC, Andrew Walker QC and my fellow CLs who have endured my frequent (and at times bossy) emails and attempts at humour. (There was much laughter at the Bar Conference last year when my name was shown on the Bar Council App as "Mr Keen Fuad QC"!)

QC Secretariat

I met with the Chief Executive of the QC Secretariat and have tried to improve the system for recruiting QCs as a small handful of recent appointments have raised the eyebrows of both the Bar and the Bench. I am told there are no target quotas which, I am saddened to say, I struggle to accept.

We must have the best barristers being appointed to the rank of silk. It is one of the few remaining hallmarks of excellence recognised around the world.

The Recorder Competition

The competition was initially a shambles for the reasons I have already spelt out. Lessons must be learned. There are plenty of potentially excellent candidates out there. Many got through this time, thank goodness.

Having suitable IT platforms to host the examinations is essential. I had 414 emails in the space of 2 hours when the system crashed. But then I hear you say, when did the government ever properly invest in a sound, rather than a cheap, IT system?

Continuing development at the Bar

VWAT

Keeping standards high at the Bar has to be an integral part of what we do and the Circuit has been a significant provider of training for the new Vulnerable Witness Advocacy requirement. We had the ominous and momentous task of rolling out the training across the South East. We must remain quality advocates. This scheme (where we were expected to train over 2000 barristers on the Circuit for free and in our own time) has been very demanding indeed. Those who have undertaken training to become a Facilitator or Lead Facilitator (152 of you) and then trained 538 delegates in their Chambers are to be highly commended. I'm sure many more of you will go through the process over the next few months.

It's the last time I will say this to you all, but PLEASE remember to ***complete the Stage 3 process*** of your VWAT, otherwise your training will not be accredited – current figures show that nearly 100 of the delegates who have done face-to-face training have not registered with the Bar Council. Please email Harriet if you need help with this.

Florida Civil and Crime Courses

The international advocacy courses held in Florida (which, I understand, are "awesome"!) are further examples of the excellence of the training of the barristers on this Circuit. Well done to all those who participated.

Dame Ebsworth

I have hosted two lectures in honour of the amazing Dame Ann Ebsworth, where our guest speakers were LJ Colman Treacy (speaking about sentencing) and Tracy Ayling QC and Jessica Walker (talking about projecting your skills in written form). Both

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events were useful to their audience and also a good way to showcase the strengths of the Circuit.

Keble – the Gold Standard

The wonderful Keble Advocacy course continues to flourish with its impressive levels of teaching and learning. Although it is a big commitment it is a most worthwhile experience as either faculty or participant.

Fun at the Bar


Angela Rafferty QC, now HHJ Rafferty QC sitting at the Old Bailey, with Kerim Fuad QC, Former Leader of the SEC

Another change made under my Leadership was to make our Summer event a more inclusive party rather than a formal sit-down dinner – more mingling, more dancing and more fun for your money (thanks to the SEC subsidy).

Francis FitzGibbon QC (then Chair of the CBA) and I decided to have a joint celebration with quality buffet, food, drinks and dancing, to encourage the junior bar to return to these events and not be stuck next to someone (like me) for hours on end at a stuffy dinner with speeches telling us all how it's all ok. The SEC/CBA event has been sold out both years.

Many thanks to Aaron for organising such great parties. He is legend.

Bar Messes

The Bar Messes continue to ensure that fun is had at a local level too, organising drinks events and dinners throughout the year to commiserate (and sadly occasionally to celebrate) the departure of a judge or just the arrival of summer – well done to those who are prepared to spend their free time and energy to alleviate some of the feelings of doom and gloom and give people the opportunity to chat in a relaxed environment.

I thank:

- Karim Khalil QC and the Cambridge & Peterborough Bar Mess
- Mark Heywood QC and the Central Criminal Court Bar Mess
- Rosina Cottage QC and the Central London Bar Mess
- Simon Spence QC and the East Anglia Bar Mess
- Gerard Pounder (now HHJ Pounder), Christine Agnew QC and the Essex Bar Mess
- Kevin Molloy and the Herts and Beds Bar Mess
- William Hughes QC and the Kent Bar Mess
- Philip Misner and the North London Bar Mess
- Pippa McAtasney QC and the Surrey and South London Bar Mess
- Alan Kent QC and the Sussex Bar Mess and
- Adrian Amer and the Thames Valley Bar Mess.

Pride in the Bar

I feel even prouder now of the Bar than I did two years ago. I have seen countless barristers and judges giving up precious time and energy to support each other and work to benefit their Circuit and their profession: running VWAT sessions in their Chambers, sitting on Advocate Panels, organising events, taking on roles on committees, attending the amazing week of advocacy training at Keble in August as faculty or participants or in many other ways.

And I strongly believe that doing these things helps the volunteer as well as the recipient of their effort and experience. When all feels doom-laden, and I accept that current conditions are far from perfect and at times grim, it is a much better idea to get out and do something about it, than just to complain. By acting, you start to change the situation and your input makes a difference.

I am told the SEC is financially in the best health it has ever been. I am grateful to our Treasurer Paul Cavin QC and our former Treasurer HHJ Oscar del Fabbro, for their wisdom, prudence and hard work.

I finish by thanking my long-suffering wife, and Aaron Dolan and Harriet Devey without whom the Circuit could not function – and nor would its Leader. We have worked damn hard, cajoled, laughed and at times cried together.

I have replied to and actioned every single email sent to me, even some of the bizarre ones.

I leave as I promised, not to become a Red Judge, or do anything other than carrying on being a proud head of Church Court Chambers and another jobbing barrister. Sure, I won't miss all of the seemingly never-ending meetings (particularly the ones on Saturday mornings!), but I really will miss the people.

I hope that my successor will find leading this wonderful Circuit to be as fulfilling and rewarding as I have.

Kerim Fuad QC

Church Court Chambers
Former Leader of the SEC

VALEDICTORY SPEECH

Well Mr Brown, thank you very much indeed for those very kind words. In fact I'm doubly grateful to you, not only for the words themselves but (please sit down) also when it became known that you were to deliver them, our Resident Judge felt wholly unable to direct a 9.30 start this morning as this would have been entirely futile, anticipating as we did, your normal arrival time.

I've been thinking about this day for a long time and about what I want to say, and not just what I ought to say.

Every day when I drive home from Court up Victoria Road, I pass an off-licence, outside of which is a sign which reads "I would rather a bottle in front of me, than a frontal lobotomy". Until recently this was a view with which I was entirely prepared to concur. Recent events, and not so recent events, within the Criminal Justice System have made it a far more difficult choice to make, if a frontal lobotomy would achieve a lessening of anxiety and perhaps a loss of inhibition.

It would be churlish, I think, to launch into a tirade about what is happening at this moment; it would be like bringing coals to Newcastle. You're all aware of it especially those who have seized your copy of "The Secret Barrister" which is rushing up the bestseller lists. That event does offer some hope as we shall see, but I do want to say one or two things about the origins of the difficulties we all face.

I firmly believe that all professionals involved in the Criminal Justice System, whether they be Judges, advocates, the CPS, the probation service, prison officers, witness care, they all do their utmost to do the best they can and work very long and arduous hours to achieve it. As do all those involved in the administration of these courts. Of course, there will be the odd bad apple but 99% of us are not malign or lazy, we do the very best we can.

Somewhere along the line politicians and those directing policy and advising upon it stopped trusting professionals and gradually and insidiously removed our discretion to act in the way that we thought appropriate.

I'm not talking about just those involved in the Criminal Justice System either – all professionals. This was motivated in part, I think, by a kind of jealousy emanating from politicians who we know are profoundly unprofessional.

A small sign of things to come was when they introduced standard fees for Legal Aid work and wouldn't pay advocates for conferences because effectively they had no control over how long a conference would take. As if any advocate would spend a minute longer than was necessary to effect some sort of rapport with his client and obtain the necessary instructions.

Another motivation of course is the desire to save money. All of us are acutely conscious of the increasingly urgent claims from different agencies for an increase in their budgets. Some are bound to rightly claim priority, in a civilised society – the NHS and Education. But in relation to the Criminal Justice System our problems are compounded by two factors.

In the first place there has never been a vote in it for any politician to be positive or radical about any aspect of the criminal justice system. They wilfully turn a blind eye to the approaching chaos by arranging "consultations" (in inverted commas) which lead to nothing, and lend (in inverted commas) "sympathetic ears" with their hearing aids turned off. And all this is stoked by a largely hostile media who realise there are no new customers for them in advocating support and sensible change for a rapidly disintegrating system. Over the years the media has consistently misreported what we do, misrepresented what we earn, and generally has subscribed to the longstanding myth that lawyers are just in it for themselves and the money. What neither the politicians or the media are prepared to articulate loudly and clearly is that an effective and efficient Criminal Justice System is essential to the proper working of a democratic system, about which we were recently extremely proud, but which the rise of the right has now begun to jeopardise.

Do they ever wonder why defendants charged with serious crime turn up to court on time, who are courteous, cooperative and allow the system to function? It's because those punters believe that they are going to get a fair crack of the whip. And even if they knew in their hearts that they were guilty, they are prepared to cooperate with a system which they can believe will deliver justice. And once that trust goes, like it or not, the politicians will have to encounter a total collapse of the system.

And don't think that the next target will not be the jury system. There will be

a great deal of political motivation to believe that twelve good men and true will be unable or unwilling to deliver efficiently and with appropriate verdicts. I can honestly say that I can count on the fingers of one hand trials where I feel the jury have delivered perverse verdicts.

Many of the internal reforms we've effected within the system have, I fear, been misguided and at times a craven attempt to please our masters so that by saving money we will be in a better position later to ask for more. Going with the flow has never worked when competing with a desire for votes.

The PTPH system is a bit of a disaster. With underfunded and under resourced agencies, papers are never disclosed on time, if ever, for defence advocates to have meaningful conferences before trial except in the most serious and complex cases, so that trials of less serious matters inexorably and invariably crack causing enormous difficulties for list officers trying manfully to deal with ever increasing backlogs and looming custody time limits, while our sitting days are being restricted and hacked back. This is not saving money.

The almost default position of doing everything by link makes things worse. No advocate can ever have a meaningful discussion with their client over a link. Juries find it harder and harder to assess witnesses who appear on a television screen instead of in person. Virtual courts will be the last straw. Our system is being slowly but surely depersonalised and the court is losing its dignity and effectiveness.

The sentencing guidelines were a good idea to effect consistency and perhaps to reduce unfair criticism in the Press about our sentencing, whether deliberately or otherwise, such reporting failing to report the most important facts which guided us into passing the sentences we did. But they haven't reduced press criticism and it is increasingly uncomfortable for us, the Judges, to send people into custody when we know that our under resourced prison service can do absolutely nothing to rehabilitate these people, indeed they are sadly likely to emerge from custody in a worse state than that in which they entered it. We are not here simply to punish people, justice must always be tempered with mercy.

So what to do? The answer I'm afraid is to confront the body politic and the media in a way which addresses the misconceptions about the role of the Criminal Justice System in a civilised society. And to proclaim loudly and clearly that it cannot be subverted. In order to preserve the independence of the Judiciary, we the Judges, have always been forbidden to enter into the political arena. However, it seems to me that the line between what is political and what is a sad reality which puts our whole system under threat is becoming more and more blurred and I think the time has come when we all have to put our toes into the water. As the esteemed leader of the Criminal Bar Association just said "the Criminal Justice System is on its knees". I know you criminal advocates will fight but perhaps it is time for us Judges to do so as well.

Enough doom and gloom...

First of all I want thank and to pay tribute to all the staff at this court who have done their utmost to keep the show on the road in increasingly difficult circumstances. In my view, under resourced and under paid. They have been kind, generous and good-hearted to a fault and I know for a fact, that their reputation on this circuit is second to none. Not only have they been supportive in the job I do but have gone out of their way to help with what I might call 'extra-curricular activities'. What would I have done without your help, Gary, in struggling with the mysteries of the digital system or your help Lyndsey in learning how to make cider and remove dents from my own car and that of other members of staff?

Secondly, I want to thank all you advocates who have appeared in front of me. It may not seem so on a bad day but I greatly appreciate what you do and how you do it. You have all been courteous and helpful day in, day out and if there are any difficulties it is through lack of experience which is not your fault, not through ill-will. You are really battling against the odds and doing so to the best of your abilities.

Thirdly, I want to thank my fellow Judges and David for his kind words, not only for their kind words today but for their congenial presence and support as we mull over the difficulties of the day.

Finally, I want to thank and pay tribute to my wife Barbara. Being the wife of a criminal advocate and then a Judge is not an easy thing. When the kids were small and on a visit to Los Angeles (Barbara's home town) I was asked to take the kids and their cousin to a water park which rejoiced in the name "Raging Waters". On our arrival we were greeted in the normally effusive manner of the Californian with "Have a raging day, Sir". Well, I needn't have worried, I did.

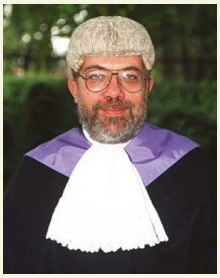
First of all I was slightly anxious about speeding through a plastic pipe and being regurgitated into some kind of pond. My increasing girth made me wonder what might happen if I got stuck in the u-bend.

Secondly, I ignored a sign advising me to remove my spectacles whilst descending a replica of the Matterhorn in a rubber ring. Sure enough they flew off and had to be retrieved by rubber-suited frogmen after many hours wait. As we left I noticed a box by the gate filled with scratched spectacles which endorsed my view that we had been in some sort of concentration camp.

So whenever I return from court after a raging day, Barbara is there to apply a cold compress to my brow and cook me a wonderful supper. She brings me back to earth.

People ask me what I'm going to do in my retirement. Well I'm not sure yet, but I will stave off the frontal lobotomy and keep that bottle in front of me which I hope some of you will continue to share with me. And please stay in touch, all my contact details are downstairs in the office. I don't want to not ever see you again, I want to see you again and I want to see you at unexplained, unannounced visits to my home, when as I say we shall share a bottle of wine together.

Thank you.



HHJ (Walter) Gareth Hawkesworth

Cambridge Crown Court

Photo: David Iliff

ADVANCED ADVOCACY COURSE AT KEBLE COLLEGE, OXFORD

I had been encouraged to attend the Advanced Advocacy course at Keble College, Oxford for a few years and this year, I decided to bite the bullet. There was a consensus amongst those who had done it that it was hard work but more than worthwhile.

In truth, the prospect of spending the last week of the summer holidays being critiqued by senior members of the Bar and the judiciary filled me with a sense of dread as the week approached. We had already been sent the course papers some weeks before which we were told amounted to a week's worth of preparation. It transpired that was not an overestimate.

The course

There were over 100 practitioners on the course from different disciplines, at varying levels of practice and from a range of jurisdictions. The course included a number of talks and demonstrations on some core topics: closing speeches, submissions advocacy, and expert evidence. However, most of the week we spent in our smaller groups of 6 to 8 practitioners for our advocacy exercises with our lead trainer who was joined by another guest trainer in each session. The small groups became a safe and supportive space for us to make our (or at least my) inevitable mistakes.

A key feature of the Keble advocacy course is the video review. It was the feature that I dreaded the most, but ultimately found the most helpful. Each of our performances was video recorded. After each performance, we would receive feedback in the room from a trainer. Immediately after that, we would go to video review where another trainer would ask us to watch through our performance and give further feedback. We could watch on screen exactly what we did wrong. Before we could dwell too long on what we didn't like about watching ourselves, we were moving onto the next exercise. We found ourselves working harder than we might during a week in court.

For the criminal practitioners, we had prepared a Crown Court case for trial either as the prosecution or defence. For most of the week, the teaching and advocacy exercises revolved around the same case we had prepared in advance. It is no coincidence that we were asked to begin the week with closing speeches. We were reminded that this was the way to prepare our cases. We then worked our way through case analysis sessions, witness handling and submissions based on the same exercise. The benefit was that we became familiar enough with the facts of the case so that we could focus on our advocacy.

Expert evidence

The most challenging part of the week was probably the day dealing with expert evidence. All participants had opted to do a case involving a medical expert or a financial expert. This time, I thought I would opt for the money. The financial case study had been prepared by forensic accountants from Deloitte and involved a contractual dispute following the sale of a manufacturing company: so far so foreign.


Photo: Davecliff

Thankfully, we were not left to fend for ourselves for the first time in the course of our witness handling sessions. The evening before, a number of forensic accountants who had given up their time, gave a much needed Noddy's guide to accountancy terms and gave insight into the issues that mattered in the case.

The next day we were broken into our small groups to conduct conferences with our expert, then examine-in-chief and cross-examine the experts themselves. It was a rocky start, but the improvement of all participants by the end was evident.

The Faculty

The Keble course is well known for its intensity and more importantly for the quality of the trainers. In one memorable session, I was provided feedback by Senior Treasury Counsel, a Court of Appeal judge and then another senior practitioner. Further, the ratio of student to trainers meant that there was ample opportunity to talk through our feedback and areas that we struggled with on a one-to-one basis.

The mock trial

It was only on Saturday morning before the full day mock trial that I appreciated the feedback I dreaded most was not from any silk or judge, but from members of the public who had volunteered to sit as our jurors. On the last day of the course, with our heads a little heavy from the night before, we attempted to put what we learnt into effect. In small groups, we presented a trial from beginning to end in front of real-life jurors and a real judge. Keble being Keble, the entirety of the trial was also recorded. That included the jury deliberation which we will at some stage have the pleasure of watching.

At the end of the trial, our performances were critiqued by our judge while we waited for the jury to deliberate. When we returned to receive verdicts, there was also an opportunity to ask the jurors questions about the case and about our performance. Many of us who conduct jury trials will have wanted to be a fly on the wall of the jury room. I am both grateful for the experience and relieved I will never have to ask a juror what they made of my performance again.

Photo: Jorge Royan

For me, one of the unexpected privileges of attending the week was the opportunity to meet barristers from all around the world. It is not often we get to meet others from the USA, Hong Kong and the Caribbean who practice in the same field as us. Despite the hard work we were expected to put in throughout the week, there was still time catch up with old colleagues and meet new ones, as well as enjoy some of the sunshine.

For those of us who practice in crime especially, it is no easy thing to take a week off from earning in order to do this course. There is a financial pressure even if you are fortunate to get a scholarship for the course itself. But I could not recommend it enough. Having spoken to others after the course, I know that I am not alone in finding it a helpful course to iron out bad habits, to hone some skills and to build confidence.

Helena Duong

23 Essex Street Chambers

“do the Keble course”

I attended the SEC Advanced Advocacy Course at Keble College in August 2018. I practice at the Bar of Northern Ireland and had been recommended the course by colleagues. I recall asking a senior counsel for general advice on means of improving my advocacy and his response was simply *“do the Keble course”*.

Having looked at what was involved on the course I was initially reluctant to take time off from professional and family commitments to attend a five day course but I am now very glad that I did. I found the whole experience, both in and outside the classroom, to be a rewarding one; both professionally and personally. The exercises are carefully prepared and delivered, the quality of the faculty is consistently exceptional and the course participants offered support and guidance and made the whole experience an enjoyable one.

The course faculty is made up of junior and senior members of the Bar as well as members of the judiciary. The depth of experience and expertise represented in the faculty is genuinely remarkable. The benefit of this instruction is also amplified by the low teacher/student ratio; usually 2 or 3 to 1. I am not aware of any other advocacy course where participants get daily access to such an expert teaching staff. It is also encouraging that senior practitioners and judges are willing to give up such a considerable amount of time to assist the career progression and skills development of more junior colleagues.

One point stands out in terms of the benefit of the course. It is a rare opportunity at the Bar to have the opportunity to receive comprehensive, detailed and specific advocacy feedback. I found this access to formal and informal feedback to be one of the most rewarding and important aspects of the course. Both in terms of identification of problems but just as importantly the solutions to the problems. Such feedback can act as confirmation that one is doing the right thing but also shines a light on what the next steps are to progress to the next level. It can be hard to know where one is in one’s career trajectory and what skills are satisfactory and what areas need improvement and further work. The SEC Keble course allows participants to get clarity on this and provides a specific and practical road map to improvement. The feedback and commentary will address most of the key advocacy skills.

Course participants will also get specialist guidance on matters including appellate advocacy, cross examining experts, vulnerable witnesses, body language and voice control and written advocacy. Almost all of the exercises are filmed and recorded allowing participants to have a ‘judge’s view’ of their performance, practices and habits. I found the process of reviewing myself on screen to be a painful and embarrassing


Photo: Jorge Royan

one but of huge assistance in drawing my attention to technical points and habits that I had little awareness of (but points I really needed to address).

The faculty and student body is drawn from a wide range of countries including England, Ireland, Australia, South Africa, Hong Kong and the United States. This provided a diversity of viewpoint as to practice and technique as well as the opportunity to network with experienced professionals in a collegiate atmosphere. It also underlines the quality of the course that busy practitioners would travel thousands of miles to attend it. It really is a coming together of advocates from all over the world and ultimately the course is fun and enjoyable.

The workload on the course is considerable, it is demanding and intensive, but this does not preclude the ability to socialise and to enjoy the experience. The course setting is conducive to the whole experience being an enjoyable one.

The time taken to properly prepare in advance and then attend the course is considerable but the personal and professional rewards are substantial and fully justify the time taken. I would recommend the SEC course to any practitioner at the Bar wishing to improve his or her advocacy.

Kevin Morgan BL

Bar of Northern Ireland

Go to Keble, they said

Go to Keble, they said. It will improve your advocacy skills, they said. It will be a lot of work, they said. Well finally, for once, the proverbial "they" was right. Trying to put the SEC Advanced International Advocacy course into words is almost like trying to sum up the reason why the sky exudes multiple shades and hues during a picturesque sunset. It just does and it is awesome to behold.

I had not heard of the SEC course prior to receiving the email from the Florida Bar's Trial Lawyers Section. Yet, when I saw the email, my only thought was who would not want to learn trial advocacy skills in the place where our trial system originated? Sign me up! I applied for the scholarship that the Florida Bar provides for attorneys to attend the course and was one of four lucky recipients for the Civil course. My hopes were that the course would not only make me a better advocate but also a better teacher of advocacy. I went to Oxford that last week of August with high hopes, and the program did not disappoint.

The Preparation

I received the news that I would be attending the program one week before leaving for Europe on a two-week vacation. My first thought, "don't panic, you can do this." Then, I saw the sentence in the Participants' Letter that provided cautionary encouragement to set aside four days for proper preparation. My new thought, "okay, now you can panic." The letter also told us about our expert case materials that were going to be distributed during my vacation. I did not know how I was going to get this all done and still manage to enjoy my vacation, but I knew that going in unprepared was never an option. I came up with a plan to break up the suggested four days around my vacation. The week before leaving, I printed the packet and decided that, instead of movies, it would be my "light reading" for the flight. When I got back from vacation, I would write the skeleton argument that was required of us and I would go through the expert materials the week between my vacation and the program. This felt like a solid plan and my panic started to subside.

The case materials, or "bundle" as I would later learn, was a hefty 81 pages. Luckily, it was in the areas of employment law and breach of contract, so I felt as if I were relatively familiar with the subject matter even though I was wholly unfamiliar with the applicable law. The case materials are well written and thorough. Each page has relevant information, and any voids in the fact pattern are purposefully done. The expert case materials vary depending on the issue to which each participant is assigned. My expert packet weighed in at 82 pages and involved the one thing I just knew I avoided by going to law school...accounting. Of course, this wasn't just any packet. It was a packet written by accountants from one of the most prestigious accounting firms in the world. Now, I was back to panicking, but I stuck to the plan.

When I came back from vacation, I had the task of writing a skeleton argument. Skeleton arguments are something I had never heard of prior to the program. We do not use skeleton arguments in our trial system. The program provided a short introduction on skeleton arguments which was helpful because it had various tips on the framework of a skeleton argument. I still turned to Professor Google to find a sample skeleton for formatting purposes. I prepared the skeleton argument and my closing speech prior to leaving for Keble. I read through the case materials, highlighted and flagged my packet and thought that my plan actually went better than anticipated. Then came Day One of the program and the "best laid plans of mice and men often go awry."

The Program

The program began mid-morning on the Tuesday of that week. The days were approximately nine-hour days, but that time included lunch and afternoon tea. The overall structure of the program involved a lecture on a particular skill, practice or demonstrations of that skill and a "replay" of that skill. Demonstrations were performed during our smaller breakout sessions. Each small group had either six or seven participants and three faculty members. One faculty member remained with the group for the entire week, while the other two faculty members changed groups each day. This rotation of the faculty members allowed us to have two things: (1) at least one person who could comment on our growth from the beginning of the week through the end of the week and (2) different perspectives on how to better our advocacy. Demonstrations employed the following order:

1. A participant stated a particular task he or she wished to achieve and then performed an advocacy skill (i.e. closing speeches, examination-in-chief, etc.) while being videotaped;
2. Once the performance time was up, the participant was asked whether he or she believed the stated task was achieved (the answer was almost always not by a long shot);
3. The faculty member who sat as the judge critiqued the performance by giving the person a particular point or "headnote" that could be improved;
4. Another faculty member would then demonstrate a better way to achieve the task (and make it look effortless might I add);
5. The participant would then make a second attempt at the stated task;
6. After the demonstration was complete, the participant then went to video review where another faculty member would review the video of the performance and offer his or her own tips for improving that advocacy skill;
7. Later that day, or on the following day, each person in the group would "replay" the advocacy skill incorporating the tips and headnotes received during the original demonstration.

That Tuesday, we began with closing speeches as well as the complete derailment of my best laid plan. After the lecture on closing speeches, we went to our smaller breakout group sessions. It was in this small group setting that I would find out exactly how awry my plan had gone. I prepared a closing argument based on my training and experience, but it was not the proper format for the program. It turns out that closing speeches in the British system are nothing like closing arguments in the American system. The only problem is I did not realize that until right before our first breakout session. I don't think I even had the time to give myself the "don't panic" pep talk because in T-minus four people and counting I had to give a closing speech regardless of what I had written down. The four participants who went before me were a blur because I was so focused on trying to fix what I had. My turn came and then something magical happened. I presented a closing speech to the best of my ability and received such supportive feedback that my nervousness about being totally wrong in my preparation completely dissipated. The faculty members were understanding of the differences between the two systems and gave feedback that I could use during the program and when I returned home. This experience put me at ease for the rest of the program. I would learn that there were many differences between the two systems, but the nurturing environment of the program made making mistakes not feel so earth shattering. That afternoon, the group was separated based on who we represented—claimant or defendant. We worked through our case analysis with the assistance of faculty. It was a brainstorming session where we were able to flesh out the good, the bad and the ugly of our client's case. Being able to strategize this early in the program was beneficial because it helped me to prepare more pointed questions for the remaining sessions. Our remaining sessions addressed one advocacy skill at a time in the above specified order. We practiced examination-in-chief, witness handling, and written and appellate advocacy skills.

The program literally addressed every skill you could possibly use as an advocate. On Thursday, we had our expert witness lecture in the afternoon and our expert evidence session later that evening. This made Thursday our longest day. The lecture addressed general tips on how to handle examining an expert, such as ways to make the testimony more effective and things to avoid when cross examining an expert. The expert evidence session was a brainstorming session with an accountant. We were able to work through certain nuances in the fact pattern and get ideas on how to approach our demonstrations the following morning. We also met our "expert" for the demonstration session.

On Friday, we had a banquet instead of our customary dinner. It was nice to feel as if we stepped away from trial advocacy for an evening even though many of us were still thinking about our trials the following morning. To see everyone dressed up and having a good time was a welcome break in the schedule. Everyone, experts, faculty and participants, dined together Friday night. On Saturday, we participated in a mock trial. Our trial pairings were done by Paul Stanley, the director of the program. Each trial pair was free to divide up the individual advocacy tasks between them. My partner and I agreed that the best division of labor would be based on likelihood of using the skill. We both knew that closing speeches were not as relevant for me as they were for him based on the differences between the two systems and cross examination was more relevant for me than it was for him. That afternoon, we conducted our trial before a

Continued on the next page

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new faculty member who was a sitting judge in London. That was an amazing experience. To get feedback from someone who presides over cases regularly was a perspective that is not often available in an advocacy course. At the end of the day, Paul thanked everyone for their participation and we were all now off to find our way home.

The Takeaway

The SEC Advanced International Advocacy course takes advocacy training to another level. Each component is elevated above anything I have ever experienced. Even something as simple as networking occurs on a level above the norm. As lawyers, networking is a constant venture. When we attend conferences, we network. When we attend bar association functions, we network. When we attend skills courses, we still network. However, this program didn't feel like a networking event. Because the program is held at Keble college, lodging and meals are included which makes things much easier, especially with the course load. More importantly, the communal meals give participants and faculty the opportunity to interact outside the classroom. Meals gave me the opportunity to meet people outside my small group and even outside the civil section of the course. I believe this provided opportunities to make lasting connections rather than simply "network."

The feedback from the faculty was also at a level above anything I had ever experienced. To find that many faculty members who were not only qualified but exceptional at what they do is no easy feat. After my experience with closing speeches, I quietly worried whether the program was going to be as useful to me as I had hoped. I worried if the differences between our two systems would making putting the tips into practice an impossibility. There are some things that are not translatable as performed, but every tip I received that week has been used in some way to make me a better advocate after returning home. For example, before I went to Keble, I knew that my mind and mouth did not always operate at the same speed. I think faster than I speak. That resulted in sometimes skipping steps during a presentation or examination. After doing my cross examination of my expert, I received the tip that I need to remember that my judge does not know where I am going, and I need to take it step-by-step during questioning to make sure that I do not lose my fact finder. I have used that tip to teach students advocacy here at home, to draft motions for court and even to write this article. I would encourage anyone, and everyone, who wants to improve their advocacy skills to attend this course. It is going to be a lot of hard work, but the reward of that hard work is immediately realized.

Tania Williams

Florida Bar

BAR MESS

Warmest congratulations to Gerard Pounder on his elevation, after 11 years as a Recorder, to the Circuit Bench. His recent service as our Bar Mess Leader was obviously (as with others before him) a superb grounding for such high office. We would have preferred Gerard to be sitting on home soil, but Snaresbrook is close to the Essex border and he will be a most welcome, civilising addition to that vast court centre. Gerard's gentle, cultured qualities will be consistent with the delightful forest setting rather than with the metropolitan hurly-burly generally attendant upon the venue. As occasional visitors, we will only have a 1 in 20 chance of being listed in his court, but that will have to suffice until the authorities one day (as we hope) see the wisdom of relocating GP out East.

Another pleasing 'local boy' appointment is that of Max Hill QC as Director of Public Prosecutions. Members well recall Max's heartfelt observations when striving tirelessly on the profession's behalf over many years. Addressing a predecessor, Keir Starmer QC, in 2012 about the imposed CPS GFS Scheme C (still operative today, of course) Max said: "It is our view that, if these fee rates are implemented, there is a substantial risk of significant harm to the public interest in that the pool of independent advocates of sufficient experience and ability willing to prosecute, at these rates of remuneration, is likely to diminish significantly." A different role may bring a different perspective, but Max is far too decent a man to be deflected from the principles he has long held dear. We can surely look forward to substantial improvements on his watch.

Our new Leader and Junior, Christine Agnew QC and Nick Bonehill, presided over a sparkling annual dinner on 23 November in the upstairs suite at The Mercer in Threadneedle Street. With splendid food, copious wine and convenient proximity to Essex rail lines, this very pleasant restaurant appears to have become our regular London home. The facilities were outshone only by the delightful company. An exceptionally good turnout of ninety included guests across the seniority range from The Honourable Mrs Justice ("call me Maura") McGowan to ten pupils. The judiciary were fully represented, including current and former local Resident Judges. Christine spoke movingly and Nick hilariously either side of the guest of honour, HHJ Emma Peters who shared amusing comparisons between our Mess and those of the army. References to John Caudle seemed to feature disproportionately in the speeches, until one reflects just how long JC has been around (although he was not in fact, as suggested, Edward Marshall Hall's pupil). Having said that, John is a mere kid compared to another attendee, Charlie Conway, who next year celebrates 50 years call: we'll certainly have to raise a glass to that.

On a darker note, not only has Southend Crown Court been cruelly under-utilised, but the building's renowned café is sadly no more, its operating family finding it no longer financially viable. With the parallel demise of Basildon town centre's M&S, local lunches are proving harder to obtain than a certificate for two counsel.

SOUTHEND PIERRE

Essex Bar Mess