Issue 21

The Circuiteer

News from the South Eastern Circuit

Autumn 2005

The Circuit and its Judges

A Note from the Editor

This edition appears at a difficult time for the criminal Bar. For the past months, individual barristers have considered what if anything they can do publicly to show their anger and to make the Lord Chancellor change his mind. I attended the meeting at the Central Criminal Court on July 13, where a succession of individuals including Treasury counsel stood up and 'took the pledge' not to accept any publicly funded work after September 5. Each was met by loud applause. It was fine theatre though lacking in any discussion of strategy. One is reminded of Maréchal Bosquet's comment on the Charge of the Light Brigade, *C'est magnifique mais ce ne'est pas la guerre. La guerre,* as it turns out, will be fought rather differently from what was declared in July.

With due respect to the matter of fees, this edition is dedicated to another, often maligned institution: the judiciary, and, in particular, to four friends of the Circuit. Barristers may not realise what it feels like from the bench, coping with the flood of legislation, regulations and rules, not to mention sentencing guidelines. Then there is the occasional media attack (sometimes from barristers interviewed on television) for sentencing too lightly (or too heavily) or for undermining the war on terrorism by supporting a Human Rights Act which the Government no longer brags about putting on the statute books. Perhaps by coincidence, two of the judges featured here have retired early. We celebrate HH's Fabyan Evans and Jeremy Connor, and welcome Mr. Justice Gross, our new presider, and HHJ Michael Lawson, Q. C., former Leader of the Circuit—whose memories of the burdens on the Bar are still painfully fresh.

Whatever challenges are thrown down by Parliament and the courts, the practitioner rises to them. Tim Akkouh, and Anthony Kirk, Q. C., keep us up to date with developments. Although writing from the points of view of civil and family work, what they say is useful to everyone. The Circuit has always taken the lead in training its own, and the reports on Keble 2005 and on the Florida advocacy course demonstrate why their participants are so much better off when they return to their practices. As for the future of the profession, Andrew Mitchell, Q. C. gives us his own views on a way forward. In order better to understand with whom we are dealing in the present, I have profiled the new Ministers at the DCA and Lord Carter of Coles.

The Circuit also knows how to enjoy itself. The reports of the annual dinner and of the trip to Berlin in July make that clear, and the pictures speak for themselves. Our wine correspondent, Tom Sharpe, Q. C. suggests some tempting wines from the Loire. Tetteh Turkson, whose palate is also well trained, gives a fair assessment of dinner at JAAN, for those whose long awaited cheques have arrived. The continuing series of Circuit towns takes us to Canterbury, where Paul Tapsell provides hope beyond the court canteen.

One of the striking things about the meeting at the Old Bailey was that all the speakers were men. But the Bar is thankfully not just a 'guy thing', and not as long as the Association of Women Barristers have anything to say about it. Their AGM was fascinating, and the Women Lawyer's Forum, like the Bar Sole Practitioners' meeting, show that traditional Bar institutions are not the only ones who are looking after the interests of their members. And as usual the Bar Mess reports tell us how people are getting on regardless.

As always I welcome feedback and future contributions.

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Leader's Column – A Critical Time

I am writing at a critical time for the referral Bar. It has also been a difficult and challenging time for me as Leader of the Circuit. I have been heavily committed on your behalf on a number of fronts: Legal Aid, the Carter Review, the Long and Complex Case Inquiry, relations with the CPS and other prosecuting agencies, educational and training initiatives, the Q.C. system, the Circuit Messes, Bar Council work (particularly on Clementi), judicial appointments, and last but not least (and certainly needed) Circuit hospitality.

The South East is the largest Circuit and your representatives on the Committee have worked hard. Tom Little has produced some absolutely vital work on the Carter review, as has former Junior Fiona Jackson, Simon Barker, and Rosina Cottage. On the training side, Philip Bartle, Q.C., helped by the Keble team, oversees increasing levels of Circuit work of which we can be immensely proud. I have only mentioned a few but I could not discharge my work without the committed support of a large number of people.

Standing up to make a speech of complaint (if it is a good one) is effective but only for as long as the speech lasts. Making an indelible impression upon the Government, judges, or the profession as a whole requires hard graft on papers which persuade, and which can and do become the statutes, regulations, and policies which govern our futures. I am very grateful to all of those who have helped me this year and whom I have not named, particularly my family and the families of those who do the work—they pay the real price for the time given up to the profession.

I have called on criminal barristers to wait until Carter has reported before considering whether to refuse more work. Some regard that as a sign of weakness. It is in fact the opposite: we must move as a profession in a united way, deploying weapons of warfare only when diplomacy has run out. Diplomacy will not run out before Carter reports. Accepting work before then will not make any difference.

Legal Aid Cuts and Lord Carter's Review.

I have been a member of the Bar's Carter team ably led by Geoffrey Vos, Q.C. The Circuit is widely represented on this Group. I have met Lord Carter and I believe that he fully understands the crucial role which the independent referral Bar plays in our criminal justice system. The current process involves regular, confidential discussions with all the interested parties. We have been working throughout the summer and autumn, to put together a plan which is radical and sensible. Our submissions extend at present to over 200 pages. The focus is on the Junior Bar, which has been my personal focus since I took office. The main ingredients are:

- No block contracting for legal services, and in particular advocacy.
- The Bar in charge from the point of referral of long (and we want most other) cases (called the "Lead advocate scheme").
- A totally revised payment scheme ("GGFO6"),
- A totally revised scheme for long cases.
- Significant increases in rates of pay for the junior Bar.
- Savings in the system by revised listing, technology etc.
- Durability – a ten year plan with RPI and regular reviews
- Quality: the Bar as the experts and attracting quality into criminal work.

I have reason to be cautiously optimistic. If the Review does not cause an increase in total spending on legal aid, then it can be implemented quickly, and Lord Falconer has publicly said so. I do not believe Lord Carter will permit his report to lie on a Whitehall shelf.

The Long and Complex Case Inquiry

There is a public scandal which lies beneath the conduct of long and complex cases. Hundreds of millions of pounds have been wasted on them. This has been obvious to the Bar for a long time, and we have wrongly kept quiet about it.

I co-chaired an inquiry, the report of which has been delivered to the Chairman of the Bar and in suitably protected form to Lord Carter. We have made far-reaching proposals to improve the conduct of these cases by all parties. I have no doubt that better conduct of long cases will free up millions, which can be re-invested in the graduated fee scheme.

Relations with the CPS

We have regular meetings with the CPS. Members should also know about the work of the JASC which meet regularly to ensure that people are not unfairly removed from prosecution lists and are treated fairly while on them.

The CPS has finally agreed to institute a grading system, such as operates in the rest of the country. Although this has long been Circuit policy, I will not recommend it unless the system is fair, rewards merit, and ensures diversity.

Keble

The Keble course, with 72 participants, was again successful. The Circuit can be very proud of this: it is a world leader and attracts people from as far away as Australia, South Africa and the USA. Toby Hooper, Q.C. worked tirelessly, assisted by Sarah Clarke and Richard Coleman together with a wider team including Sarah Montgomery. I would like to thank all the organisers and faculty. We received a glowing report from the Advocacy Training Council, and have taken on board their suggestions for improvements.

The Circuit Messes

I am grateful to all Mess Chairmen who have canvassed the view of their members sometimes at speed as developments have taken place. This has not been an easy time for them, and they have shown leadership in their individual areas. When I toured many of the Messes in September, I found the Bar to be in loud voice and concerned for the future.

This year marks the retirement of Harry de Silva, Q.C., Anthony Leonard, Q.C. and Christopher Kinch, Q.C., as chairmen and Committee representative. I do not consider them to have retired from anything but I do think we should record our thanks for helping to keep the Bar's collegiate spirit going with good humour in troubled times.

Duties, pleasures and retirements

The Circuit's Bar Council representatives, Maura McGowan, Q.C. and Andrew Mitchell, Q.C. have made sure that the Circuit's voice is heard, and we try to speak with unanimity on all relevant topics. I attend GMC meetings every week, and I also meet with other Circuit leaders, at 8.30 every Thursday morning. If you have a point to raise, please do so before Wednesday evening, any week. Similarly, I am consulted on Circuit appointments and I will take up any issues for members.

Our annual dinner was memorable, and Sir Sydney Kentridge, Q.C.'s speech was masterful. The trip to Berlin in July was a pleasure. Kim Hollis, Q.C. and Kaly Kaul kindly stepped in when Oscar Del Fabbro, who organised it so well, was unable to attend.

Max Hill is to retire, after giving six solid years of service, as is our Treasurer, Simon Barker, after ten years on our finances, and Will Hughes as Recorder. I am grateful to all of those who have given up their time to work for the SEC.

The Future

- To complete the work on the Carter review and to fight for a fair deal for the junior criminal Bar.
- To work on the cohesion of the Circuit: Mess and other areas of involvement.
- To keep our training and quality initiatives up around the Circuit so that the Bar continues to attract the best candidates and work of good quality.
- To undertake some modest reforms of the SEC Constitution, so that my successor will have a better structure to work with.

Timothy Dutton, Q.C.

The Annual Dinner – 24 June 2005

The Immediate Past Junior, Tanya Robinson, gives us her take on the Annual Dinner, one year on…….

Don't ask me why, but I had a feeling that this year's Circuit Dinner was going to be just a little different for me from last year. No anxious anticipation of the 'big' day, no endless telephone calls from attendees resulting in frantic last minute changes to the seating plan. And no need to stay sober until after the speeches! The sun may not have been shining on this year's Annual Dinner, but it was an enormously enjoyable evening.

Sir Sydney Kentridge, Q.C., Roy Amlot, Q.C., Stephen Irwin, Q.C. and Tanya Robinson

We were back in Lincoln's Inn Hall, new and improved since the recent refurbishment. This year, we were treated to live music from the Richie Howard Quartet. The meal itself was preceded once again by the beautifully sung "The Judge's Grace" performed by Alice Gibbin, William Towers, Rupert Pardoe and Michel Kallipetis, Q.C.

A feast

The menu was chosen by amongst others Madam Junior, Laura McQuitty, and myself. It consisted of pan-fried escalope of smoked salmon on a caper potato rosti with lemon and parsley crème fraiche, roast supreme of duck with a shallot and kumquat relish, parisienne potatoes and French beans, and for dessert, glazed lemon tart with raspberry sorbet. It was followed, for the first time in my recollection, by cheese, an indulgence I have to confess that I suggested because the opportunity to accompany the cheese with some of Stephen Solley, Q.C.'s wonderfully selected port or dessert wine was too good to miss. As always the wine was fantastic. Never one to pander to 'fashionable' wine and food combos--whatever you do, don't suggest a chocolate pudding with red wine--Stephen delighted us with the excellent Italian Vermentino 2003 and South African Kanonkop Pinotage 1995 to accompany the starter and main courses, followed by the gorgeous pudding wine, a Maury Solera 1928 from Roussillon.

Talented people

With cheese, coffee and petit fours on the table, and a short comfort break permitted, we were ready for the speeches. Tim Dutton, Q.C., Leader of the Circuit, proposed the health of 'that breed of talented people' the Guests of the Circuit, which included the Lord Chancellor, the presiding judges, past Leaders, members of the High Court and new and retiring Circuit judges amongst others. Singled out were Mrs. Justice Dobbs, Mr Justice Penry-Davey and those Silks and juniors who had 'worked like Trojans' on behalf of the Circuit, including David Spens, Q.C., Duncan Matthews, Q.C., Andrew Bright, Q.C., and Kaly Kaul.

Everyone's Concern

Then the Leader turned to the subject on everyone's mind: fees. I must say, as a humble criminal practitioner, that it has been heartening to see the determination with which our Leader (a man who—let us not forget--has made his career in civil and commercial litigation) has tackled head on the difficult issues relating to criminal fees and fought our corner all the way in recent negotiations with the Government. The topic of fees had, it seems, put him, like so many others, in a sombre mood.

He spoke with frustration about the Government's 'failure to implement the promised May review of the GFS scheme'. The increased and increasing preparation time required of practitioners, without payment, in respect of defence statements, PCMH forms, skeleton arguments, bad character applications and responses was 'trading off the basic decency of good hearted practitioners as volunteers'. It was, he said, 'insulting'. To spend a weekend preparing a trial only to be paid £46.50 because the case is stood out due to a prosecution witness not showing up on the Monday, was 'quite simply an outrage'. 'No self-respecting profession should have to put up with it' he said. The structural failings of the system would inevitably lead to a situation where the Bar would no longer 'attract and retain the most talented into publicly funded criminal work'. They would 'also in time be lost as potential recruits to the judiciary'. Whether any of this had an effect on Lord Falconer remains to be seen.

The distinguished Sir Sydney

On a happier note, the Leader introduced our distinguished guests, Sir Sydney Kentridge, Q.C., and Lady Kentridge. Sir Sydney's 'awareness of the iniquity of apartheid' was described as 'legendary'. 'His voice against it, personally, through his calling to the profession' had been 'loud, principled and clear'. As a young barrister, he had acted for those

Tim Dutton, Q.C. and Tom Little

who became victims of the apartheid regime, famously as junior counsel in the Nelson Mandela trials and as counsel for the family in the Inquest into Steven Biko's death in custody. He had 'always been a fighter'. We were reminded that Sir Sydney rose to be appointed as a judge of the Constitutional Court of South Africa in 1995. The Leader also paid tribute to Felicia Kentridge's role in the struggle against apartheid with her idea of creating what became the Legal Resources Centre, 'a charitable organisation with lawyers acting as volunteers to secure the rights of the victims of apartheid'.

I was delighted then to discover that the Pinotage that I had been so eagerly quaffing with the duck had a particular significance. It was bought by Stephen Solley, Q.C., in yet another astute purchase, after democracy finally came to South Africa in 1994. Stephen had decided to buy in several cases of the 1995 Kanonkop Pinotage from Stellenbosch, 'bud burst, flowering, ripening and picking having all happened under a democratic South African sky'. It was a wonderfully fitting gesture to our most welcome guest of honour.

The guest replies

Replying on behalf of the guests and proposing the health of the Circuit, Sir Sydney spoke of how surprised and delighted he was not only to be the guest of honour, but also to find himself seated between Mmes. Justices Hallett and Rafferty. The possible demise of the criminal Bar was a topic close to Sir Sydney's heart. He spoke of the real guardian of our liberty, 'the defender of the rule of law' being, not so much the judiciary, but the criminal Bar, 'every time a barrister steps into court as a defender or a prosecutor'. 'If that vital section of the profession was to be squeezed out of existence, what was the point?' he asked, directing his question to Lord Falconer who was sitting just metres away on the top table. He spoke of the so-called 'Tesco-Law' idea of banks and financial institutions being allowed to invest in law firms. To his mind it was 'our commitment and loyalty that had enabled us to survive' this far. 'Fine supermarket as it is', he said, 'you can't buy loyalty at Tesco'.

David Green, Q.C. and HH Judge Bathurst-Norman

Tom steps into the breach

After warm applause we then moved to the final speech of the evening, that of the Junior. Madam Junior having escaped to the other side of the world (why didn't I think of that last year, I ask myself?), we were treated to a well received speech by the Assistant Junior, Tom Little. Lest it should be said, unfairly, that Madam Junior had shirked her responsibilities in order to see a few games of rugby in New Zealand, I should say that she made every effort (I was there and I saw her) to move the dinner forward by a week before the Hall had even been booked, to no avail. What a shame after going all that way and missing out on this splendid evening that the Lions should suffer such an appalling three nil defeat. Well there's always next year to look forward to Laura.

This was, Tom Little said, not quite 'Hamlet without the Princess' as he read out Laura's telegram from (apparently not-so-sunny) New Zealand. After the customary thanks to the Assistant Juniors 'I do that with great pleasure as that means thanking myself', Tom sought to correct any rumours that may have been flying around that Laura had flown to the other side of the world to follow Johnny Wilkinson. Apparently he had it on good authority that 'it is Graham Rowntree and Steve Thompson who she has a crush on' not our Johnny. He went on to refer to that day's Daily Mail headlines 'Tim whipped by Russian' and 'Tim's career nears an end'. To his disappointment (no salacious gossip for speech) and of course relief, he explained that he had soon realised that the headlines were about Tim Henman, not our esteemed Circuit Leader.

He rounded up his speech with news about a Race Day to publicise the Circuit in the light of this year's recruitment drive. It was, he said, a sponsored Race at the end of the National Hunt season in which some of the assembled dinner guests had taken part. He had obtained the transcript of the race commentary and wished to share it with us. There were "Dashing Dandy" ridden by David Spens, Q.C., "Perhaps next year" ridden by Laura McQuitty, "Pocket Rocket" ridden by Stephen Hockman, Q.C. (the past Leader), Tim Dutton, Q.C. on "Silver Fox" and HHJ Adele Williams on "Welsh Whippet" amongst others. This was greeted with raucous laughter from all quarters. The speeches came to an end with the Junior asking all (with an apology to Peter Collier, Q.C. Leader of the North East Circuit and Robin Spencer, Q.C. Leader of the Wales and Chester Circuit) to toast the finest Circuit in the country.

Mr. Justice Gross, Kim Hollis, Q.C., The Lord Chancellor

If there was dancing to the band after the speeches, I regret to say that I did not notice it. As to when we all left--if I'm not mistaken, and if I'm absolutely frank I could easily be, the 'die hards' were still there well after midnight (after my chariot had of course taken me home – or that's how I remember it).

It was an enormously enjoyable evening, I hope, for everyone. Fine food, fine wine, fine speeches and best of all fine company. Another night that the Circuit can be proud of.

Photographs by Andrew Ayres

Dropping the Pilot

On 30 June 2005, His Honour Judge Fabyan Evans, the presiding judge at Middlesex Guildhall, retired from the Bench. Amongst many others, Timothy Dutton, Q. C., Leader of the Circuit, was there, and congratulated and thanked him, on behalf of the Circuit, for his years of service. The following is an extract from his speech.

I have managed to give this speech a label: "Firm Hand on the Tiller": for I know you love sailing, but I think the helmsman analogy completely apt for you. Your skippering of this court as resident judge since 1995 has been one of a firm, but fair hand on the tiller, steering the court through occasional choppy waters, accommodating shifts in wind and weather and, perhaps most important of all, keeping your crew. Fellow judges (full and part time), court staff, probation service, prison service, and the Bar to mention but some, have been happy as Larry throughout it all.

This court is a landmark, not just architecturally but also in the part it plays at the heart of the criminal justice system of this capital. It is essential in this, as in every court, that the Resident judge is able to instil in his colleagues, and in the users a sense of the part which they play in the Law's greater majesty. He must also be able, personally, through his own decision making to impart to a wider and increasingly sceptical world the fundamental common sense of judicial decision making. You have achieved these in grand measure.

Judicial qualities

You have been the Resident judge here for ten years. You have been a judge since the 11th April 1988, when many in this court had barely begun their careers.

Throughout it all you have combined your judicial qualities with civility and welcome for those who come here.

You do not regard the function of a judge as being simply to make rulings on law and to pass sentence but to ensure that you play a full part in bettering the lives of those who have the misfortune, bad luck or bad grace, to come into contact with the criminal courts – whether as victims or defendants. Unless you use your influence to achieve this, you know that the spiral for them can be an ever downward one.

Wise appointments

Your desire to see an integrated criminal justice system has been reflected in your work as Chairman of the London and Surrey Criminal Justice Liaison Committee and then, when the Lord Chancellor wisely appointed you, as Chairman of the London area Criminal Justice Strategy Committee – a London wide brief for three years from 2000 to 2003. It was in that capacity that you drew attention to the scandal of unpaid fines, which undermined confidence in the system.

Your knowledge and good judgment were further deservedly recognised by the Lord Chancellor when he elevated you as one of that small but distinguished band of Circuit judges, to sit in the Criminal Court of Appeal: a skipper's hand firmly on the tiller again in a somewhat larger sea. From my reading of the cases, you have had the good judgment to follow at least one of your own decisions as a judge in the Court of Appeal.

Through the storms

The diet of court work here has been as varied as that sampled by officers and crew on board any Nelsonian ship. Some of it is distressing as comes with the pressures of life in a large capital city. Undertaking such cases has required a weather eye for looming storms. Throughout it all you have maintained that essential calm, judicial balance so necessary in unpredictable weather.

You leave with not just the Bar's warmest wishes but with the warmest wishes of your judicial colleagues and all who have worked here. We wish you God Speed on life's next voyage.

Judge Fabyan Evans replies

It is ten years to the day since I was sitting in this room listening to farewell addresses to my predecessor, Judge Norwood. I never expected to be still here today. I felt greatly honoured to be asked to continue in the post but I did not feel it wise to continue for another four years. A Resident judge needs to take an active interest in affairs outside his own court. But after you have seen the same proposals resurface after a year or two and be heralded as a triumph of imagination by someone who you know was not the original author, life can become a little tedious.

It would therefore be wrong for anyone to think that my decision to retire was sparked off by the proposals for this building. If anything, they have caused me to consider whether I should delay taking the course that I am. I believe that I may still have something to offer elsewhere and I do not want the moment to pass after which it may be too late for opportunities to remain.

This building

I have nevertheless made no secret of my opposition to the proposals to convert this building and I have tried to make my voice heard in other places. I continue to believe that there are strong arguments for the retention here of a Crown Court on strategic grounds and for the preservation of its grade 2 * architectural status. It is particularly sad that a building that has served the locality in which it stands for so long, should cease to do so. The heart and soul of many a city in England and Wales consists of its ecclesiastical buildings, its administrative offices and its courthouses, all in the centre. The City of Westminster will be the poorer for the loss of this courthouse. I suppose that in the end we should all be proud to have worked in what is now likely to become the senior judicial building in the United Kingdom.

I have heard references to the future of this

court in terms of 'sinking ships'. The tragedy is that we are not a sinking ship. We are a fighting ship. The ship will continue at sea for many months and it would be a great sadness to me if the quality of the work was to suffer simply because we know that it is due to be called back to port.

With thanks

I first came here as a pupil in 1968 and I spent a lot of time here as a young barrister. I first sat here in 1989 and have done so permanently since January 1992. It is therefore very special to me. [Judge Fabyan Evans thanked, by name, his many colleagues at the court: security, ushers, court clerks, jury bailiffs, shorthand writers, staff in the cells, probation service, witness service, caterers, cleaners, engineers, and those at the front desk, in the listing and the general offices and the Court Manager]

I count myself as extremely fortunate to have had such an experienced, approachable and friendly team of judges around me. In my capacity as Resident judge, I have frequently sought and received advice from them without which I could not have made confident decisions.

The future

I do not know what it is going to be like next week. I would not be going if I did not feel confident that it was the right thing to do but I shall miss you all. My wife will no doubt suffer because she may see rather more of me than she has for some years. As many of you will know, she has not only been the greatest support to me during my time here and during my career at the Bar but she has taken a profound interest in this building and the artefacts within it. I commend to you the article that she wrote in 'The Circuiteer' if you have not had an opportunity to read it.

My Lord, may we adjourn?

Stepping Down – A view from the wings

HH Jeremy Connor, who retired in 2004, explains that there is indeed life after the Bench

Retirement is a voyage into the unknown. The first great discovery is lunch. Lunch is clearly one of the best-kept secrets by those with the time both to enjoy it and to appreciate the relaxed surroundings of restaurant or club. Sharing the secret is a singular pleasure for those now quite untroubled by the latest criminal justice statistics or by sophisticated changes to procedure.

The rolled out kind

All this is a reminder of the otherwise fading memories of steering groups, pilot projects—particularly the rolled out kind—with their accompanying committees and conferences. Memories nonetheless survive, albeit now seen with some amusement and a sense of relief, despite the horrors of the actual occasions at the time. There are recollections of Judicial Studies Board conferences, occasionally providing a paralysing experience—perhaps a speaker failed to appear at the last moment and there was the terrifying and very personal need to impart both to the previous speaker, and to the audience, that one would be 'only too delighted' if he would continue with 'such a compelling theme'—for another hour and a half. I cannot pass nowadays a designated room at a country house hotel, with its green baize table, the bottles of water and the sharpened pencils, without a sigh of empathetic relief, as well as a kind thought for those chairing even Probation Committees, assuming they have not yet been abolished.

On the other hand, the years of quiet listening to distinguished academics and other members of the Lord Chancellor's Advisory Committee on Education now prove to be of real value, and the content of those Mondays are frequently drawn upon in a new context.

Guilty breakfasts

Breakfast is the one meal where a tinge of guilt remains. The attack on a kipper is no longer still to be shared with a final glance at the parole file of a prisoner serving a life sentence in the high security establishment, which is only a taxi ride from the hotel. Those were happy and satisfying years, however little contribution one made oneself. I hope they are now proving equally enjoyable for my successors on the Board.

By way of complete contrast, the example of predecessors is well taken. Retirement should not be spent exclusively in the restaurant, in the sunshine on a pavement café, at the opera or in the theatre, welcome as is the time afforded now for all three.

Three new skills

Opening the fine print of books recommended for a Master's degree has been a good experience. In addition, I have acquired at least three new skills. First, buying and learning how to use a lap top computer with a voice recognition system. This does provide an audience. True, it is only an audience of one rather than of twelve. It still asks questions but mercifully it really does know how to spell. Second, remembering to knock on a door when anything more familiar might be greeted by a tutor as quite untoward. Third, learning that even in academic circles there is a precise equivalent of 'with great respect'. This is expressed as, 'oh really! Do you find that definition helpful?'

There is nothing quite like the professors' corridor for removing the last vestige of vanity, and, at the same time, engendering genuine respect for some truly great academic minds. These are not only to be found amongst the teaching staff of the university, but also, markedly, in the company of fellow students. Two pupils illustrate the point. The first is a 78-year old Chancery Silk, who is learning Greek, and who is regularly to be found poring over texts at nine o'clock in the morning. He is preparing for his summer examinations while still editing a principal textbook on Trusts. Second, there is the woman who announced herself on the first day as a 'nurse' but who modestly received a D.B.E. in the New Year's Honours List.

Fellow feeling

It comes therefore as an additional pleasure now to be able to share the Middle Temple students' examination fears and hopes with a fresh understanding, and their Call night with a new excitement. For my part, the hope presently is that scraping through the Master's degree course might just come before the rigours associated with the Mastership of a Livery Company in a couple of years' time.

Meantime, I remain very much an apprentice in both spheres. My chambers, to whom I owe everything, remains my family, and the friendships and courtesy of advocates in court are never forgotten. But then, what else can be considered worthwhile other than life-long learning at the conclusion of the happiest years at the Bar and on the Bench?

A Question of Security?

What is life like for those still on the Bench? Former Leader of the Circuit, now His Honour Judge Michael Lawson, Q. C., far from developing 'judge-itis', keenly remembers the problems at the Bar and offers some important suggestions for practitioners

It is odd, the things that upset one's equilibrium.

I do not know why this small blackboard on the car-park wall had such an effect on me on my first day at Maidstone. I had decided to have a glass of the fizzy stuff with the Bar Mess and to make a suitably wobbly start to my judicial career in the afternoon. Arriving at 12.30, His Honour was ushered to the far corner of the underground car park. I noticed the board only after my eyes had got used to the gloom. I must have stared at it for several minutes. It wasn't a question of security. That didn't even occur to me until some weeks later, when I wondered whether it was wise to identify the ownership of the various cars. On second thoughts, if someone has a grudge against, for example, our Resident judge, I think I would prefer it if they didn't take it out on me by mistake.

A space of one's own

No, the real shock was that, having been a member of a reviled profession for so long, having been marginalised as a barrister by all our 'CJA partners' for so many years, and having had to beg on bended knee to be allowed to park within the hallowed court precincts, well below ushers, victim support and catering staff in the pecking order, here I was being ushered into, not only a place to park, but my very own allocated space until retirement. I wonder whether there is a bidding system for a 'better' parking space when others retire. I was appalled[1] that a space should be allocated just to me, or to anyone else – is it really a good idea to encourage such possessiveness and routine in Her Majesty's judges?

I suppose it represented, for me, the clearest sign that I had entered a different world – a world of regular hours, free weekends and evenings, holidays without the worry of the papers in a case starting the day after you return; the certainty of a job broadly well regarded and the security of a job and pension which will keep pace with the cost of living.

Meanwhile, at the Bar . . .

How different from the position that the publicly funded Bar faces, and has for at least 15 years. The last couple of years have been several degrees more offensive: broken undertakings, delayed reviews, refusals to negotiate in any real sense and a persistent misuse of gross earnings of the few to represent the net earnings of the many. In which other area of the Government's dealings with those who carry out 'government' business would they dare run the argument that what was fair and reasonable in 1995, reduced by 5% in some areas of criminal work, is not fair and reasonable in 2005, but in fact fat and unreasonable? And you don't hear them talking much about the increased demands that recent legislation has placed on practitioners.

Government departments do pay 'fair and reasonable' fees, possibly even generous fees, to barristers they instruct in civil and Treasury work , so there can be no objection in principle to such a concept. They match the Bar's fees where there is a private market.

They have successfully abolished that in criminal work by the clever expedient of a universal grant of legal aid to all defendants, under the guise of wanting to be 'human rights' compliant.

The true cost

But all is not lost! Back in 2001, they set up a 'Public Defender Service' pilot project in eight cities. The purpose was to establish an 'independent, high quality and value for money' service. And "fair justice at a fair price" (Don't you wish you could think up such inane phrases? – I bet you would be better paid for it) A review of the work has been published and can be found on the Legal Services Commission's website.[2] It says much of the quality of the work and something of its independence. It did not go into the question of value for money – now there is a surprise. For an insight into the real cost of cases defended by the Service, the Bar's leaders are going to have to be very persistent in their demands for information. My hunch is that it might prove worthwhile.

The aim of successive governments has been to gain absolute control of the cost of the criminal justice system and to fix that amount at the beginning of each year. That is a legitimate, although unachievable objective. The Bar's commitment to Graduated Fees is our willing contribution to that objective. The Government's response verges on the dishonourable.

The Bar's own failure

There is, however, one area where the Bar has failed to take sufficiently seriously the repeated warnings in relation to the continued use of juries in the longer cases. The Bar, including those who practice in the criminal courts, whilst insisting on the preservation of juries in all crown court trials, have singularly failed to reduce the length of any class of trial to a significant degree. We are justified in arguing that pre-trial preparation should be properly remunerated but not in arguing that lengthy trial procedures are the only way to reduce the risk of wrongful convictions.

I don't believe that it is the impatience of a retired advocate that makes me say that, but those who have had the misfortune to appear before me may disagree. Whatever the cause, my view has been reinforced by my experiences over the years at the South Eastern Circuit's Keble Advocacy Course. One 'case' is used through the week and various exercises – final speeches, examinations and cross examinations - are repeated. Each is reviewed/critiqued. It is surprising how often the discussion leads from issues of pure technique to the purpose of the exercise – what is necessary, what is needed. This year a competent opening address of more than 10 minutes on Tuesday had become one of under five on Saturday – but devastatingly compelling and compulsive listening.

Being better

My experience of the last nine months is that the advocacy techniques of the young Bar are much higher than they were. I very seldom feel the need to throw my toys out of the pram. Now we need to use the tools provided by the Criminal Procedure Rules to sharpen the focus of our efforts so that juries are given only what matters, within a reasonable time scale. I find the prospect of working with members of the Bar to that common goal an exciting one. But it will only work when the value of rigorous pre-trial work is recognised - and properly paid.

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[1] After 8 months in the saddle, I would probably say I" regretted" the fact – a combination of more judicial language and, perhaps, the beginnings of a feeling that it is in fact absolutely necessary to have an allocated space?

[2] www.legalservices.gov.uk/criminal/pds

First Thoughts

The 'new boy' amongst the Circuit's presiders, Mr. Justice Gross, tells us what the job entails and why he is enjoying it.

Last year, I accepted the privilege and the challenge of succeeding Richard Aikens as a Presiding Judge of the South Eastern Circuit; some act to follow! I comforted myself with the thought that Richard too had come from a Commercial/Admiralty rather than a Circuit background and braced myself for the learning curve. Work in the Commercial and Admiralty Courts had of course made me aware of how much business was derived from those who choose London as a centre for the resolution of disputes. They do so because of the esteem in which English law and the English legal system are held internationally. In turn, our system depends on its structures, one of which is an independent Bar of complete integrity – and one essential pillar of the Bar is the Circuit system. We should never be complacent but we should also never doubt, undermine or lose confidence in the strengths of our system, both domestically and in the international context.

Fascinated to learn

I therefore began as a Presider, fascinated to learn more of the workings of the Circuit, with its unique combination of London and the southeast – a combination we must be sure to retain. Difficult though it is to accept, nearly a year has flashed by – with (almost) never a dull moment. In that time, I have come to value still more the assistance, fairness and courtesy of the Bar, in courts across a good part of the Circuit. This is as good a time as any to say thank you.

No job description

As has been said before, there is no "job description" for a Presider. Our task is the management of judicial business on the Circuit. On the SE Circuit, the volume of that business requires three Presiders, rather than two, as on other Circuits. A challenge is to maintain a sufficient level of judicial sitting while feeding into the timetable the business of Presiding. The newcomer benefits from the support and guidance of the two "veterans" – in my case furnished unstintingly and in the most delightful collegiate spirit by Rodger Bell and Anne Rafferty. There is no formal rigidity but for practical purposes, we divide primary responsibility into London crime, non-London crime and Circuit civil. My own area has this year been non-London crime.

Our functions (within these areas of responsibility) involve administration, personnel and education. So, for example, with the assistance of Resident judges and list officers, we must ensure that cases are matched with suitably ticketed judges and tried as expeditiously as possible; listing is of course a judicial function. Questions of appointment, promotion and selection arise, on which we are consulted; sometimes, sadly, issues of sickness or discipline require attention. Working with the assistance of the JSB, circuit judges and Recorders, we are responsible for the Saturday judicial seminars. We seek to ensure that these are as beneficial as possible, taking very much into account the commitment involved in their weekend timing. In the year to come, we shall be addressing the challenges posed by the new 2003 legislation.

Making policy

These are, however, the bare bones, important as they undoubtedly are. Presiding is far more than the sum of the parts. Presiding inescapably involves contact with issues of policy going to the heart of our legal system. Even day-to-day matters have policy ramifications. Take a decision as to whether a murder case is to be released to a suitably ticketed circuit judge or retained for a High Court judge. By itself, it will likely impact only on the individuals concerned. But taken cumulatively, such decisions shape the extent to which High Court judges do go out and remain on Circuit – with knock-on consequences for lodgings (upon whose health much Circuit life depends), judicial resources, deployment and the like. It is not to be forgotten that for High Court judges to sit in the CACD, it is essential that they should enjoy first-hand experience of trying criminal cases.

Individually, we each find ourselves called upon to assist in discrete projects. For my own part, this year has required concentration on a strategy for civil courts in London and on judicial resources. Together, Presiders are and will be directly concerned with the working out of the "Concordat", where we are constantly now entering new territory. Amongst other things, with our judicial colleagues, the Presiders will face the challenge of shaping the new procedures for competition and appointment, so as to safeguard the maintenance of a fearless, independent judiciary of the foremost international standing. Furthermore, the Presiders (with the judiciary as a whole) must of needs navigate in the troubled waters created by the events of 9/11 and 7/7.

Local issues

On Circuit, a Presider's task is not confined to the trials he/she is conducting. A Presider is there to assist the local judiciary and legal profession; questions such as the need for more judges, a shortage of tickets for certain categories of cases and other particular local issues may demand the Presider's attention. For such reasons, a Presiding Judge is likely to stay on Circuit once there and – in my view to the benefit of all – will simply conduct the next appropriate trial if the designated trial goes short. There is indeed much for a Presider to do on Circuit, working within the legal profession, with others involved in the criminal justice system and the wider public.

In all this we work closely with officials of HMCS, many of whose knowledge and skill is such that along with Resident Judges they are and ought to be the first port of call of a Presider seeking advice.

Looking forward

For my part, I look forward to the remaining years as a Presider – if this one is anything to go by, they are likely to pass all too quickly. I look forward especially to meeting practitioners and judges, as my travels take me across the Circuit.

The Circuit Trip to Berlin – 29 to 31 July 2005

The Circuit trip to Berlin was a rousing success. For those unlucky enough not to go, Kim Hollis, Q.C., of 25 Bedford Row, explains why it was so enjoyable—and why you shouldn't miss the next one.

A quick, cursory glance at the photos, will I hope reinforce the message that I have been trying to spread for many years: if you don't want a fun filled, exhausting weekend with a hint of legalese for a short time on the Saturday morning to justify it all, please, please don't join us, with your partner, on the annual South Eastern Circuit trip.

The Circuit as Tourists

The send off

Friday evening found us ensconced with glasses of champagne in the priority lounge at Heathrow Terminal 1 awaiting our flight and bemoaning the fact, which was oft repeated over the weekend, the stalwart of all team leaders was missing, our beloved Oscar. How would we know where to go? Who to speak to? More important, where to eat and drink, without his expert guidance? We were not left entirely to our own devices however. Kaly heroically stepped into the breach at short notice in true Girl Guide mode. A short flight later, and we landed in Berlin and seamlessly were transferred to our Radisson hotel, which was modern and functional. Being attached to the sea life centre by glass walkways in the atrium, it had a spectacular circular fish tank spanning its entire height. It contained a central living coral reef around which circled sharks, manta rays, angel fish and the occasional scuba diving aquarium keeper, dressed, of course, in black rubber.

A quick bite in an American Diner before retiring to our rooms with a parting warning from head girl that we needed to be on parade at 9.30am for a meeting with representatives of the Rechtsanwaltskammer (Regulatory body to us mere mortals) of the Berlin Bar.

Kim Hollis Q.C. and Philip Bartle Q.C.

Fees the world over

The following morning thus saw us taking a short walk to meet our charming hosts, and in particular bearing in mind current events in London in relation to criminal fees, an instructive comparative discussion on the provision/ payment of criminal/ civil legal aid services in Germany, which has recently substantially increased – no, that is not a misprint – its fee scales for the equivalent legal aid. There has thus been recent recognition to the important contribution to their human rights record made by those who practise in those fields.

The discussions having promptly concluded we then moved on to important matters such as where to shop, to have lunch, to have fun that night, and oh yes what we ought to see? Our hosts were quick to recommend the appropriate all-night hot spots of Berlin to us including the Hackesche Markt which happened to be by pure chance just a short walk from our hotel.

We all went in different directions armed with maps and guide books. Some of us made our way to the river for a sightseeing cruise for the following hour or so, helped along with the odd beer in brilliant sunshine. It was, we decided, the only way to scratch the surface of this fascinating and still architecturally emerging city as it is an impossible task to decide on which attractions to visit in the city. There are so many, spanning from classical architecture on Unter den Linden to spectacular new buildings such as the Jewish Museum and the Federal Chancery in the new government quarter, the Reichstag building including the Norman Foster-designed 800 ton steel and glass cupola on its roof, all nestled close to the contrasting breathtaking classical architecture of the Bode and Pergamon Museums on Museum Island.

The Cathedral

Berlin is Grand

Berlin is grand, fascinating and steeped in history, tinged with sadness in relation to the years of the wall. Happily none of it remains, save for a small part for tourists, that none of us bothered / wished to see. There are many other wonderful sights not least of all the Berlin Cathedral, the largest Protestant church in Germany, the Court church of the Hohenzollerns and a must for all church lovers. The richly decorated building of Silesian granite, with the dome cross, once stood 114 meters high. I was first persuaded, then cajoled and finally pushed to the top of this spectacular monument by Bartle, who pushed me up (many of the 500 hundred plus stone steps) with the immortal words "Don't worry I am right behind you if you fall/ die of exhaustion, not much further and the views will be outstanding over the city, I promise," at 4.30 pm on Sunday.

John Black and Fiona Jackson

They were, and he was vindicated, and we have the photos to prove it.

Saturday evening saw us , dressed in our best and supping in the oldest pub in Berlin. As the wine flowed the evening became musical with HHJ Roger Sanders treating us all to a wonderful programme of cockney music hall tunes. The evening continued, via The Neptune Fountain, back at the hotel in the bar until the early hours. *(Silence often speaks volumes !!)*

A bridge too far

Sunday more sightseeing, some on the official coach trip of Berlin. Others hired a chauffeur to take us to the summer palace of Frederick the Great at Sanssoucci, in Potsdam. Fiona Jackson and John Black insisted we stop en route at the Glienicke Bridge, where the exchange of spies used to take place during the Cold War between east and west. As I walked onto the iron bridge, I tried very hard to find someone with whom to exchange me.

Sansoucci again needed a whole weekend to properly appreciate it. As well as being grand and awe-inspiring, it thrilled us with its wit and charm. "Sans-Souci" – without worries – built between 1745-1747 was created by Frederick the Great, as a summer palace dedicated to its motto of light-heartedness. There were light-hearted twists hidden everywhere which were a joy to find; in particular we loved the drunken cherubs lying under the tables in the main drawing room, trying

Jonathan Akinsanya, Gerard Poundner, Kaly Kaul

to find the monkey painted with Voltaire's face in the Chinese tea house, the painted monkey on the ceiling pelting the tea-drinkers below with apples from a golden basket, the parrots and all the other exotic and mythological creatures including dragons consistent with the contemporary views of the mysterious east . It was in short a gold plated work of resplendent rococo which found yours

HHJ Pawlak, Mrs. Pawlak, Evis Akinsanya

truly charming the vigilant keeper into allowing photos to be taken by our group in areas that were roped off to other mere mortals. We left bereft that we had not had spent nearly enough time to appreciate its marvels , making plans and vowing to return very soon, romantically musing about an image of this fairy-tale palace and its vineyard terraces covered in a light dusting of snow.

Last minute shopping

Back into central Berlin for a wonderful lunch before a quick march to Checkpoint Charlie by the remaining stalwarts for another photo session and the purchasing of T-shirts for all teenage sons bearing the words, 'You are leaving the American sector', in English and Russian, just to prove that we can be trendy when we try. We wandered back towards the hotel via the cathedral exhausted, unable to believe that we had seen and done so much in a mere 48 hours, before climbing back into the coach for the airport.

The Circuit Trip is informative, exhilarating, fun, and exhausting, not least of all due to its energetic and generous leader, and a wonderful chance to meet, make and renew friendships both within the Bar in the southeast and internationally. Unless you have those objectives in mind as I stated at the outset of this article, please do not come, you won't be welcome and won't enjoy it at all!

Two Bars discussing fees

Loire for Everyone

Our wine correspondent, Thomas Sharpe, Q.C. of 1 Essex Court takes us through the Loire region, and, amidst the vast array of choices, recommends fine wines we can all enjoy--and afford

Tom Sharpe

There is a very decent restaurant just south of the Thames and within easy walking distance of the Temple that, until recently, saved its patrons a lot of bother with the wine list. The list consisted only of wines from the Loire.

This is no mean region: it stretches from east to west, from the Ardèche gorges on the edge of the Rhône valley to Nantes and the sea. There are more than 70 wine appellations en route, producing reds, rosé, white wines – both dry and sweet – and some superb sparkling wines. By and large it is all hopelessly neglected and eclipsed by the New World marketing machines. Yet, with very modest effort, there are wines of great variety, quality and value to be tracked down and enjoyed.

Four regions

The region can be divided crudely into four parts: downstream from the source, north of Nevers, we encounter classic Sauvignon Blanc-the familiar Sancerre, Menetou-Salon and Pouilly-Fumé, and slightly further west, south of Vierzon, there is Reuilly and Quincy. These have the distinctive gooseberry, flinty flavours. Passing through Blois and Amboise to Tours we are in the heart of Touraine. Here, Sauvignon gives way to Chenin, producing the white wines of Vouvray and Montlouis. Following the river further west in Touraine, the best reds emerge at Chinon and Bourgeuil, made from Cabernet Franc. This ripens earlier than Cabernet Sauvignon, which is rare in Touraine. At about Saumur, where the soils are chalkier than further to the west, sparkling wine of consistently good quality is made from the Chenin Blanc grape, known here as Pineau de Loire. To the south, the great rosés of Anjou are produced but, following the Layon tributary, this is also the valley of the great Loire sweet wines, the Coteaux du Layon and Coteaux de l'Aubance. Where the Layon rejoins the Loire, the very dry Savennières are found. The last leg is the low-lying land around Nantes. Chenin Blanc gives way to simple light Muscadet, known locally as Melon de Bourgogne, the best wines of which are bottled on the lees.

Spoiled for choice

So, there is no shortage of choice. Travelling back, traditionally, the Muscadet, is drunk either by itself or with fruits de mer, especially oysters, drawn from the nearby coast. Muscadet began to be grown in the Nantais from 1639, largely as a result of demand from Holland. It is a very hardy grape and well suited to the climate. Some refer to its "saline" nose but all recognise a piercing citric zest. The vinification takes place on the lees, that is, on the yeast debris following fermentation. This gives the wine greater body and it is bottled in the following spring. A very good example is made by Vincent & Sebastian Chereau, Domaine de la Mortaine and can be bought from Yapp Brothers (who have always specialised in Loire wines) for £6.75. Oddbins offer a Muscadet Sèvre et Main Les Rochettes 2003 at £4.39.

Outside of Sauternes, the Loire Valley is the greatest world producer of non-fortified sweet wine. The wine is very distinctive because Chenin Blanc has quite high acidity and is picked late for the botrytis, the "noble rot" which dries the grapes on the vine. The winemaker can achieve a fine balance of sweetness and acidity which also makes the wine very long-lasting indeed, though it can be drunk pretty well from bottling. Yields are strictly controlled and there must be a minimum alcohol content of 12 degrees. These are wines which can go with foie gras or fruit desserts or alone as an aperitif. Needless to say, the best are not cheap but hardly register on the Sauternes scale: a simple but very good Coteaux du Layon will retail at well under £20. A good example, again from Yapp Brothers, is the Château la Tomaze: Cuvée des Lys 1995 at £10.50. All the wines have a luxuriant golden colour, honey, balanced minerals and great charm.

Adding sparkle

The sparkling wines of Saumur are quite well known. The process starts with premium grape, fermented to create a still wine. This is then vinified using the *méthode traditionnelle,* which is what we must now call *méthode Champenois,* a term which can now only lawfully be used to describe wines from Champagne. A mixture of yeasts and sugar known as the *liqueur de triage* is added to the still wine in the bottle to start some secondary fermentation. This gives off carbon dioxide, the "sparkle". After some *remouage,* the tilting and turning of the bottles (now done mechanically), the deposits of the spent yeasts are collected on the bottle closure. The bottles are topped up and sealed with a proper flared cork. And so the process has continued since the Romans: the first recorded import into England was in 1194. Today, you should not have to pay more than £8.50 practically anywhere.

The reds

On to the reds. Chinon, Saumur Champigny and Bourgeuil deserve attention. These are mainly made of the Cabernet Franc grape, with occasionally some Cabernet Sauvignon, and are fruity and slightly exuberant wines, full of cassis and redcurrant, and delicate tannins. These are wines which can be drunk young and do not benefit much with age. In summer they can be served mildly chilled. Domaine Filliatreau 2003 is a good example from a wine maker who has modernized wine making in the Saumur Champigny appellation. The vines are now mature and the wine is highly recommended: £8.50 from Yapp Brothers. Look out also for Bourgeuil Grand Mont 1998 by Druet or his more expensive Vaumoreau 2000, probably the best wine in the region.

The Vouvrays and Montlouis further east were once sold under the same Vouvray name but in 1938 with the Appellation Contrôlée system the Montlouis growers were granted their own appellation status. The full range of white wines is produced from the Chenin Blanc grown here, from very dry, sweet and sparkling. *The vendange tardives* – "late harvest" – is taken from extremely ripe grapes, left on the vine so as to maximize the sugar, and picked by hand by *triage,* that is, repeatedly taking only the most ripe grapes. This produces an excellent dessert wine. Montlouis also produces some accomplished and very affordable dry white wines.

The greats

But for most people, the Loire means the great Sauvignon Blancs of Pouilly Fumé. As the name implies ("Pauliaca Villa") wine has been made here since Roman times. These are richer and fuller and altogether better wines than Sancerre, across the river. The classic taste is a sharp gooseberry, flint, plenty of fruit but balanced. This is wine for impossible dishes, such as asparagus and dressed salads, as well as white fish. It is not necessary to pay a lot for the best, about £10 or less in Yapp Brothers or Oddbins.

I could have written of Quincy, so often overshadowed unfairly by Sancerre. This started with the monks of Cîteaux in the 14th century and is the second official AOC (after Chateauneuf du Pape). Or of Menetou and of the simpler and older Sauvignon. Wine on the Loire reflects so much of French history and commerce, from the Romans onwards, and also the power of the monasteries, especially the Benedictines. It is worth getting to know better.

Photograph by courtesy of Messrs. Berry Bros. and Rudd, Ltd.

Being in Canterbury

In the second of our series of articles on Circuit towns, Paul Tapsell of Becket Chambers describes the pleasures of Canterbury and of Kent, and of eating away from the Bar mess.

Before I take you on this whistle-stop tour of Canterbury, I must pass on a warning to the casual visitor to Kent: When you step into the Robing Room, also known libellously, if you ask me, as the "Barristers (sic) Lounge", or strangely as the "Robing Kiosk" to the Exhibit computer (to which you must report without fail on arrival if you are involved in a criminal matter), you will notice that many of us appear well-fed and full-bodied. This should not be taken as an endorsement of the on-site dining facilities. Aside from the very modest but most acceptable "full"(!) breakfast, and after several years of failing to learn by my own mistakes, I can confirm that there is no earthly reason to run the gauntlet of assorted defendants, witnesses and solicitors trudging in the slow-moving queue, save to the extent of getting enough caffeine to see you through the day. The staff are, without a doubt, the nicest in Kent, but I am afraid to say the food falls short.

It would be impossible to provide a comprehensive listing of all the places to eat and to stay in the Canterbury area. A city which has attracted travellers for two thousand years knows a thing or two about keeping visitors happy. I am afraid that I am simply going to provide the results of my own extensive research into local restaurants and pass on the details of a few hotels which others have recommended.

A quick lunch

If your court commitments or the vagaries of listing mean that you have a bare hour for lunch then frankly the best I could suggest is that you try a canteen baguette (they taste somewhat better than they look) or simply go hungry. I have heard tales of barristers who claim to be able to drive to the Goods Shed by Canterbury West Railway Station, collect one of their excellent sandwiches (almost certainly the best in Canterbury), return and consume their purchase within the hour, but I suspect it's an urban myth.

With a little more time

However, if you have a little more time available (perhaps as a result of taking a view on whether Criminal Graduated Fees represent reasonable remuneration) and/or feel you deserve a treat, there are a number of excellent alternatives located just out of reach of the poor souls with only an hour to spare for lunch, and can also be recommended for an excellent evening meal. My personal favourite is the Shed Cantina (01227 450288) in Dover Street, just behind the Cinema, a "Californian Restaurant and Grill" serving a range of Seafood and Mexican meals, with a special light two course lunch menu for about £12. Alternatively, Augustine's (01227 453063) in Longport, opposite St Augustine's Abbey, serves wonderfully prepared, locally sourced produce with a fixed price two course lunch menu at less than £14. If you hanker after something Oriental, then Café de China, St George's Place (01227 781523) does a freshly cooked "All you can eat for £12.95" affair or ask for "The Noodle Menu" for a lighter and cheaper meal. All three venues are about a ten minute walk from the court. The Granville Inn in Street End (01227 700402) has also received several excellent reports and is well worth the twenty minute drive (follow the signs for Hythe from the New Dover Road).

Even more choice

In addition I have heard lots of very good things about the restaurant at The Goods Shed (01227 459153) by Canterbury West Station, which is an extension of a recently established farmers' market serving locally produced food with main courses ranging from £6 to £17, and Café des Amis (01227 464390) by the Westgate has always been popular with a variety of Mexican meals and a friendly, relaxed atmosphere.

If you fancy a good quality pub meal the recommendations are The Old Gate on the New Dover Road, by the Park and Ride (they also offer accommodation at £55 per night, although I haven't heard any reports, good or bad, as to the facilities) or either The George and Dragon or The Fordwich Arms in Fordwich, any of which are a ten to fifteen minute drive from the court (follow the signs for Margate then turn right at the "Welsh Harp").

The best hotel

As far as accommodation is concerned the clear favourite is the Hotel Continental (01227 280280) in Whitstable some six miles to the north of Canterbury. Rooms start at £55 per night (Sunday to Thursday) or they also have a number of Fisherman's Huts from £100 per night (ditto). Prices go up substantially at the weekends and early booking is strongly advised: at writing, they are full for the next four weekends. There are a number of restaurants and bars near the hotel and it seems that you won't go far wrong with any of them. The sunsets over the Thames Estuary inspired Turner and are still pretty impressive.

Staying in town

If you prefer to stay in Canterbury the best options are one of: The Chaucer Hotel, Ivy Lane (01227 464427) a ten minute walk from the court, with rooms from £65 for bed and breakfast, or £80 for dinner, bed and breakfast; the County Hotel, in the middle of the High Street (01227 766266) rooms from £55 per night; or the Ebury Hotel (01227 768433) in the New Dover Road with rooms from £75 per night.

The sights

If you have time on your hands in Canterbury I would of course suggest a visit to the Cathedral. Fourteen hundred years of visitors can't be wrong. Or take a stroll around St Augustine's Abbey. If you appreciate the finer things in life and have timed your visit well you may try to get to the St Lawrence Ground in the Old Dover Road to watch a little first class cricket; full fixture details are available at www.kentcountycricket.co.uk. Alternatively, there's a lot to be said for exploring the surrounding countryside and checking out the range of local hostels.

Many of the establishments (both restaurants and hotels) mentioned above have assured me that if people mention this article when booking they will allow a modest discount (at least we are appreciated in some quarters) so feel free to chance your arm. There are links to the most of the restaurants and hotels on the Becket Chambers website at becket-chambers.co.uk and I would be grateful for any feedback about places I have (or indeed, haven't) mentioned.

Should Experts Fear to Tread?

The role of experts in criminal or civil matters is a difficult one; when it comes to family cases, the consequences of their evidence can be devastating for parents and children alike. Anthony Kirk QC, of 1, King's Bench Walk, Vice Chairman of the Family Law Bar Association, discusses the problem of expert evidence in cases of sudden death in infancy—and the wider consequences.

The death of a child in infancy, or at any age for that matter, is beyond the contemplation of most parents unless, of course, they are prepared for the event. The sudden unexplained collapse of a child at home has enormous consequences for the family, particularly where there are siblings. If the latter are thought to be at risk of significant harm the local authority and the Family Proceedings Court must act to protect them. This may involve placement with responsible members of the extended family or with foster carers. Parental contact is likely to be restricted in terms of frequency and duration; invariably there will be some element of supervision or monitoring.

The worst nightmare

Elsewhere, the Coroner will have opened and adjourned an Inquest and the police will have begun their enquiries and interviews. Criminal proceedings may follow. From the perspective of a parent against whom the finger of suspicion is pointing, but who, in reality, has done nothing wrong, this is the worst nightmare possible. It is truly beyond contemplation.

Nor is the scenario that I have sketched confined to cases of collapse, fatal or non-fatal.

Many will recall or, as family practitioners will have read, the Report of the Inquiry into Child Abuse in Cleveland 1987 (HMSO Cmnd 412) chaired by Butler-Sloss J, as she then was. So, too, the so-called Rochdale Satanic Abuse Cases (Rochdale Borough Council v A and others [1991] 2 FLR 192) where large numbers of children were removed from their families in the mistaken belief that they had suffered ritual abuse. Other examples spring to mind.

Parents should protect

Whatever the nature of the abuse, as a society we look to parents to protect their children, not to harm them. Just as we expect the guilty to receive condign punishment so, too, we abhor those miscarriages of justice that have seen innocent parents wrongfully convicted of serious crimes. In this emotionally charged area we look for certainty in terms of diagnosis from the medical professionals. Without it, we run the risk of abusive parents being given the freedom to abuse again, or innocent parents being locked up for a long while. It is in this particular category, regrettably, that we have seen rather too many cases for comfort in recent years.

The year 2003 began with the quashing of Sally Clark's convictions for the murder of her two sons by smothering and suffocation. In June of that year Trupti Patel was acquitted of the murder of her three children by suffocation. Finally, in December, the convictions of Angela Cannings for the murder of her two sons were quashed by the Court of Appeal.

The flood that didn't happen

Immediately after the Cannings appeal, the Government Law Officers announced in Parliament their intention to identify, review and act upon perceived injustices in the system where parents might have been wrongfully convicted of causing harm to their children and where they were still serving a sentence of imprisonment. The ambit of this inquiry was extended on 23 February 2004 by the Minister of State for Children, the Rt. Hon. Margaret Hodge, M.P., when she made a statement in the House of Commons calling upon local authorities to review pending and concluded care cases where the outcome might be affected by the Attorney-General's review.

In readiness for a contemplated deluge of appellate work, the family and criminal courts stood by to await the opening of the expected flood-gates. The then President of the Family Division, Dame Elizabeth Butler-Sloss GBE, had already issued urgent administrative directions to the senior family judiciary on 28 January 2004 as to how these cases should proceed.

Yet, the surprising reality is that there has been little further work for either division. Reported cases are few and far between and I do not believe, from the point of view of the family courts, that there can be much, if any, work remaining in the pipeline. It has not been ascertained to what extent this is due to parents not pressing for a review (thereby raising expectations which might be cruelly dashed), local authorities not acting as asked, or a silent recognition that the court did, indeed, make correct findings of fact the first time around.

Cases to note

Two such reported "review cases", however, require some mention. They are Re U (Serious Injury: Standard of Proof); Re B [2004] EWCA Civ 567 and R v Harris and Others [2005] EWCA Crim 1980. Both involved a careful re-consideration of whether medical evidence heard at first instance could still be regarded as reliable in the light of fresh material, or recent developments in the field of medical knowledge.

Standard of proof

The first conjoined case raised and dealt with the important issue of whether the standard of proof to be applied in civil cases involving allegations of child abuse was, in practice, any different from that applied in criminal cases. Was the distinction purely "illusory" or not? The Court of Appeal (Butler-Sloss P, Thorpe and Mantell LJJ) had little difficulty answering that question. They reaffirmed the decision of the House of Lords in Re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563, which said that the civil standard applies, with this caveat; the more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.

Of the impact of the judgment in R v Cannings [2004] EWCA 1 the court said this:-

[23] *In the brief summary of the submissions set out above there is a broad measure of agreement as to some of the considerations emphasised by the judgment in* R v Cannings *that are of direct application in care proceedings. We adopt the following:*

(i) The cause of an injury or an episode that cannot be explained scientifically remains equivocal.

(ii) Recurrence is not in itself probative.

(iii) Particular caution is necessary in any case where the medical experts disagree, one opinion declining to exclude a reasonable possibility of natural cause.

(iv) The court must always be on the guard against the over-dogmatic expert, the expert whose reputation or amour propre is at stake, or the expert who has developed scientific prejudice.

(v) The judge in care proceedings must never forget that today's medical certainty may be discarded by the next generation of experts or that scientific research will throw light into corners that are at present dark.

[24] *There may have been a tendency in some quarters to over-estimate the impact of the judgment in R v Cannings in family proceedings. The function of the court in R v Cannings was to evaluate significant fresh evidence. The court then had to ask the question: might that fresh evidence, if available to the jury at the trial, have resulted in a different verdict? If yes, the court was bound to declare the conviction unsafe and to set it aside.*

[25] *Contrast the role of the judge conducting the trial of a preliminary issue in care proceedings. The trial is necessary not to establish guilt, nor to provide an adult with the opportunity to clear his name. The trial of a preliminary issue is the first, but essential, stage in a complex process of child protection through the medium of judicial proceedings. The state, in the form of the local authority, in order to establish a foundation for intervention in the life of the family, must satisfy the court:*

"(a) That the child concerned is suffering, or is likely to suffer, significant harm; and

(b) That the harm, or likelihood of harm, is attributable to the care given to the child or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him;"

see s. 31 of the Children Act 1989.

Self-evident

The second case called upon the three judges in the Court of Appeal (Gage LJ, Gross and McFarlane JJ) to exercise enormous intellectual rigour in determining whether or not four children had been shaken to the point of death, or serious injury, or whether post mortem findings were consistent with accidental explanations. In other words, could these convictions still be regarded as "safe" in the light of a plethora of additional expert opinion received by the court? Central to the determination of the appeals was an assessment of the degree of force required to bring about serious injuries to the brain. Having noted the considerable divergence of expert opinion on the issue, the court limited its observations to the following four propositions, all of which are largely self-evident (see paras. [76] to [80] inclusive) :-

(i) as a matter of common sense, the more severe the injuries the more probable they will have been caused by greater force than mere "rough handling";

(ii) if rough handling of an infant, or something less than rough handling, commonly caused the sort of injuries which resulted in death, the hospitals would be full of such cases. Cases of serious injuries caused by very minor force such as might occur in normal handling or rough handling of an infant, are likely to be rare or even extremely rare;

(iii) there will be cases where a small degree of force or a minor fall will cause very severe injuries but cases where this occurs are likely to be very rare; and

(iv) although the younger the infant or child, the more vulnerable it is likely to be, it is not possible to conclude that age is necessarily a factor in deciding whether injuries are caused by strong force or a minimal degree of force or impact.

Obligation of experts

Beyond that the court would not be drawn, and rightly so.

On the "over-dogmatic expert" identified by Butler-Sloss P in Re U; Re B (above) the court delivered a useful reminder of the obligations upon expert witnesses identified some time ago by Cresswell J in the Ikerian Reefer [1993] 2 Lloyds Rep. 68 at p 81. As the judge succinctly put it:-

"An expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise ... an expert witness in the High Court should never assume the role of an advocate".

Much of his guidance has found its way into the "Protocol for the Instruction of Experts to give Evidence in Civil Claims", drawn up by the Civil Justice Council in September 2005. It also appears in Appendix C, the Code of Guidance for Expert Witnesses in Family Proceedings, being part of the "Protocol for Judicial Case Management in Public Law Children Act Cases" which came into force in November 2003.

The duties of experts set out in both Protocol documents include:-

- an overriding duty to help the court on matters within their expertise. This duty overrides any obligation to the person instructing or paying them.
- confining evidence to matters of opinion, and not seeking to trespass on the function of the court in resolving issues of fact.
- providing opinions which are independent, regardless of the pressures of litigation. In blunt terms, the expert should express the same opinion regardless of the source of the instructions.
- confining themselves to matters which are material to the issues in dispute and providing opinions only in relation to matters which lie within their expertise. If a question is put which falls outside that expertise, the expert must say so.
- taking into account all material facts, setting out those matters upon which they rely in forming opinions, and clearly stating whether the opinion is provisional or qualified. If they are not satisfied that an opinion can be expressed finally and without qualification, they should at least seek to identify what further information is required to give an opinion without qualification.
- informing those instructing them without delay of any change in their opinion on any material matter and the reason for the change.

A failure to comply with the Civil Procedure Rules, or court orders, can result in a party being penalised in costs or debarred from relying upon the expert's evidence. The expert himself can be the subject of a costs order if he or she is "in flagrant and reckless disregard of their duties to the Court."

The need for experts

An investigation into the circumstances in which a child collapses at home, with or without fatal consequences, remains an exceedingly difficult area, and I am not at all sure that either of the "review cases" I have mentioned have added a great deal to existing knowledge on the subject; both, of course, were highly fact-specific.

We know that the court (be it criminal or family) relies heavily on the findings and opinions of expert medical witnesses. As the judges in R v Harris and Others (above) made clear, whilst developments in scientific thinking should not be kept from the court simply because they remain at the stage of the hypothetical, so, too, scrupulous objectivity in presenting and advancing theories must be exercised at all times. Without that, judges and juries are quite likely to come to the wrong conclusions with unpalatable consequences.

None of us want to witness a repeat of 2003, the events leading up to it or the painful aftermath.

The Director's View

What happens, both behind the scenes and 'on stage' at the South Eastern Circuit's Keble course? Toby Hooper, Q. C., this year's Course Director, explains why it was so good.

The objective of the Circuit's annual "Keble" Course is the teaching and learning of advanced advocacy skills suited to the demands and opportunities of contemporary civil and criminal litigation.

Among contemporary demands are the increasing concentration on case management and progress which civil and now criminal procedure each prescribe, and which the Bar fully supports. Our Course's coverage of case analysis and preparation, written advocacy, and applications advocacy, in addition to the core advocacy skills of witness handling and speeches, teaches the opportunities available to meet these demands. Importantly, at this time of Lord Carter's review of the procurement of publicly funded legal advice and representation, the Course similarly teaches how the advocate's skills can be refined and deployed efficiently and cost-effectively.

In the context of the Bar's commitment, as the independent profession of advocacy, to meeting these contemporary demands, we were particularly pleased to welcome a number of special observers at this year's Course. Edwin Glasgow, Q.C. is Chairman of the Bar's Advocacy Training Council (ATC), which is tasked with evolving the regulation of advocacy training along lines proposed by Tim Dutton's working party's two reports on this subject. Peter Stockwell is a member of the ATC and a partner in the law firm Payne Hicks Beach. Professor Joan Higgins, Professor Emerita of Health Policy at the University of Manchester, is a lay member of the Queen's Counsel Selection Panel.

The original idea for the Keble Course was conceived by a group, led by Tim Dutton, who had been involved in the early days of advocacy training for the Bar. From the firm but flexible foundations which this group laid in 1993 the Course has been able to adapt and expand, so that this year we welcomed 72 participants to be trained by up to 40 trainers (Faculty) at any one time.

The international element

This year the other jurisdictions represented were Australia, Florida, India, Pakistan, and South Africa. This international dimension is one of the elements which adds strength to the Course. Each jurisdiction reveals fresh approaches to the shared teaching and learning objective. Thus, recent thinking in Australia has prompted the revised Course programme – similar exercises, different sequencing – which Anthony Leonard, Q.C. has devised. Also this year we ran a new criminal case adapted from Florida.

The role of experts

Another element adding strength to the Course is the involvement of the medical and accountancy expert witnesses with whom we work on conferencing and witness handling skills. This year, Dr Jake Powrie of Guy's Hospital, and Dr Colette Griffin of Charing Cross Hospital, revised the medical case study to accommodate advances in the specialism on which it is based. Deloitte returned with their equally challenging accountancy study.

The participants' work is delivered in the breakout group sessions for witness handling, applications and speeches, and for case analysis and ethics. While rotation of Faculty is necessary to maintain freshness, this year, we introduced, as continuity, a Group Tutor system whereby one trainer remained with each group throughout the week in order to monitor and encourage progress and to provide support when appropriate.

Further variety, and essential teaching and learning, is provided by the plenary sessions. For greatest impact we structure these so as to combine Presentation and Demonstration. This year's Faculty who contributed to the value of the plenary sessions not only by the sheer hard work of the necessary preparation but also by their willingness to be held to account by a real judge and by the audience ("Why did you say…?") were:

- Applications Advocacy and Skeleton Arguments: Presentation – Michael Lerego, Q.C.; Demonstration – Richard Coleman.

2005

- Opening Speeches: Presentation – Geraldine Andrews, Q.C. Demonstration – Philip Brook-Smith, Q.C.

- Cross-examination and Re-examination on Previous Inconsistent Statements (Combined Presentation and Demonstration): Joanna Korner, Q.C. (Cross-examination); Stephanie Farrimond (Re-examination).

- Closing Speeches: Presentation – Anesta Weekes, Q.C.; Demonstration – Jeffrey Pegden, Q.C.

In addition, professional ethics was addressed by David Etherington, Q.C., a recent past Chairman of the Bar Council's Professional Conduct and Complaints Committee. Expert witness conferencing and examination was dealt with by Charles Haddon-Cave, Q.C.

Meticulous organisation is essential to the preparation and delivery of this complex enterprise. Sarah Montgomery works in the Circuit Admin Office as the organisation anchor, and on site throughout the week of the Course. Sarah Clarke and Richard Coleman, assisted this year by Siobhan Grey, work with me to co-ordinate planning and delivery. Nine Helpers, some who have previously attended the Course as participants, attend throughout the week to manage teaching rooms and to provide logistical support.

This is truly an advanced, international advocacy course. Above all it is the South Eastern Circuit's course. The Circuit can be proud of having devised and maintained it. This year's participants can be proud of having proved themselves in advanced advocacy skills, and of the very hard work which the course demanded of them.

The Participants' View

How was it to be on the receiving end? Harriet Bathurst Norman and Laura Thomas, two of this year's participants, appreciated the experience and coped with the hard work.

Laura Thomas

The Advocacy Course at Keble College this year was exhausting, at times demoralising but invaluable. We cannot recommend it more highly for junior members of the Bar.

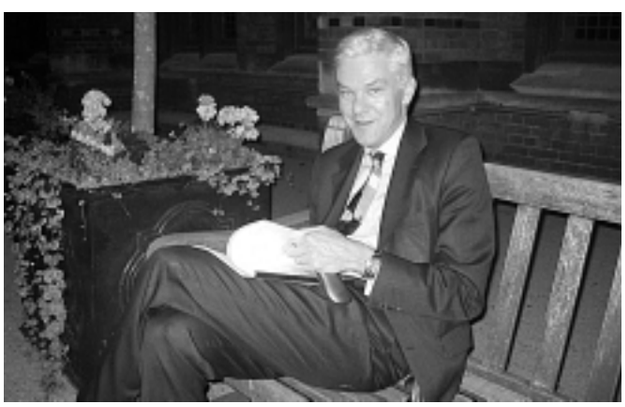
Perhaps the most alarming thing for someone who has been practising for a few years is the mistakes that we did not even realise we were making. The start of the course was certainly somewhat demoralising, but the improvements by the end of the week were quite remarkable. This was primarily due to the highly experienced and talented members of the Bar and judiciary who gave up their rather limited free time to point us in the right direction. They were fantastic. We were taught everything from style to content, speeches to cross-examination.

Towards the end of the week we were let loose on medical and accounting experts. We were tasked with leading evidence from experts in endocrinology and neurology and then cross-examining the opposing expert. Learning the skills required to deal with such expert evidence was by far the most difficult but rewarding exercise as it is not something that we had much experience of before the course.

At the end of the week we put what we had learned to the test in a mock jury trial.

The course was certainly hard work, and there was a large amount of preparation involved, but we have not spoken to anyone who did not feel that they got enormous benefit from it.

The course was also very sociable, to the delight of the landlord of the Lamb and Flag. It was an excellent opportunity to meet other members of the Bar and the judiciary in an informal environment, and the motto "work hard, play hard" was certainly adopted by many.



Photographs by Stephanie Farrimond

Similar fact evidence in civil cases:
O'Brien v Chief Constable of South Wales Police

[2005] UKHL 26; [2005] 2 W.L.R. 1038

The problems of similar fact evidence are not just for criminal lawyers. Tim Akkouh, of New Square Chambers, who specialises in commercial and Chancery work with a particular emphasis on insolvency, trusts, commercial and company matters, welcomes a recent House of Lords decision. It resolves the matter for civil practitioners—or does it?

Michael O'Brien was convicted of the murder of Philip Saunders in 1988 and served 11 years in prison before having his conviction quashed by the Court of Appeal. In overturning his conviction, the Court of Appeal seriously called into question the propriety of the two police officers, DI Lewis and his immediate superior, DCI Carsley, who were in charge of investigating Mr Saunders' death. As Mr O'Brien was dissatisfied with the statutory compensation of approximately £670,000 that he would receive in relation to his period of improper incarceration,[1] he decided to bring an action against the South Wales Police for malicious prosecution and misfeasance in public office. If successful, such claims would potentially enable Mr O'Brien to obtain both aggravated and exemplary damages.

The initial ruling

At an interlocutory hearing, Judge Graham Jones ruled in favour of the admissibility of evidence that suggested that DI Lewis and DCI Carsley had acted improperly when investigating other crimes. In particular, Mr O'Brien sought to rely on DI Lewis' and DCI Carsley's behaviour when investigating (i) four individuals' involvement in explosions that occurred in Cardiff and elsewhere in July 1982, and (ii) Idris Ali's involvement in the death of Karen Price in 1990. The conduct of these investigations could legitimately be called in question as the individuals investigated in relation to the Cardiff explosions were acquitted at trial (in *R v Griffiths*), and Mr Ali had his conviction for murder quashed on appeal (in *R v Ali*).

The Chief Constable appealed against Judge Jones' ruling on the basis that similar fact evidence could only be admitted in civil cases if it was reasonably conclusive of a primary issue or, alternatively, if it was of enhanced probative value. Both the Court of Appeal and the House of Lords disagreed, holding that the prima facie rule in relation to civil proceedings is that all potentially probative evidence is admissible.

The issues

I want to deal, first, with an assessment of the prima facie rule of admissibility propounded by the House of Lords, and the reasons for it, and, second, with examining the 'controlling factors' that can, in appropriate cases, be used to justify a departure from it. Finally, I will consider the sorts of situations in which similar fact evidence may be particularly helpful in civil cases and the limits of the similar fact principle.

Stage 1: Is the evidence relevant?

The speech of Lord Bingham contains a valuable explanation of why similar fact evidence can be important. For his Lordship, "*evidence of what happened on an earlier occasion may make the occurrence of what happened on the occasion in question more or less possible . . . . If an accident investigator, an insurance assessor, a doctor or a consulting engineer were called in to ascertain the cause of a disputed recent event, any of them would, as a matter of course, inquire into the background history so far as it appeared to be relevant. And if those engaged in the recent event had in the past been involved in events of an apparently similar character, attention would be paid to those earlier events as perhaps throwing light on and helping to explain the event which is the subject of the current inquiry. To regard evidence of such earlier events as potentially probative is a process of thought which is an entirely rational, objective and fair-minded person might, depending on the facts, follow. . . .*" (at para 4). The other members of the House were unanimous in their agreement with these common-sense propositions.

Lord Phillips' speech contains the most comprehensive analysis of the similar fact principle. He began by considering the tests applied by the criminal law in assessing the admissibility of similar fact evidence, which require such evidence to have an "*enhanced relevance or substantial probative value because, if the evidence is not cogent, the prejudice that it will cause to the defendant may render the proceedings unfair. . .*". Lord Phillips then disavowed the relevance of such strict tests to civil cases, arguing that "*I can see no warrant for the automatic application of either of these [criminal law] tests as a rule of law in a civil suit. To do so would build into our civil procedure an inflexibility which is inappropriate and undesirable. I would simply apply the test of relevance as the test of admissibility of similar fact evidence in a civil suit. Such evidence is admissible if it is potentially probative of an issue in the action*" (at paras 52-53). The other members of the House agreed. Thus the first hurdle that a party wishing to adduce similar fact evidence must surmount is in proving that the evidence that he wishes to call is logically probative or disprobative of some matter that requires proof: see further *R v Kilbourne* [1973] AC 729, at 756 *per* Lord Simon.

Stage 2: Two exceptions

Lord Phillips referred to two specific exceptions to the general rule of admissibility. The first arises where the risk of prejudice outweighs the probative value of the similar fact evidence sought to be adduced. Lord Bingham concurred, arguing that "*it will be necessary to weigh the potential probative value of the evidence against its potential for causing unfair prejudice; unless the former is judged to outweigh the latter by some considerable margin, the evidence is likely to be excluded*" (at para 6). This risk is especially acute

[1] Pursuant to s. 133 of the Criminal Justice Act 1988.

where the trial is by jury, a not unknown phenomenon in certain civil suits (for example, claimants can opt for a trial by jury in cases involving deceit, libel, slander, malicious prosecution and false imprisonment: see s. 69 of the Supreme Court Act 1981). Lord Carswell even considered that the admissibility of similar fact evidence in a civil case may turn on whether a claimant opted for a jury trial or for a trial by judge alone (at para 77). Perhaps this was a reason behind Mr O'Brien's decision not to seek a jury trial, despite this option being available to him (see para 61).

The second exception noted by Lord Phillips applies where the admission of similar fact evidence would be contrary to the overriding objective, and, in particular, the objectives of proportionality and expedition (see CPR rule 1.1(2)). In determining whether similar fact evidence is proportionate, the trial judge should, *inter alia,* "*consider whether the evidence is likely to be relatively uncontroversial, or whether its admission is likely to create side issues which will make it harder to see the wood from the trees*" (per Lord Phillips at para 56). Lord Bingham echoed this sentiment, holding that the admission of similar fact evidence may focus "*attention on issues collateral to be decided*" and create 'real' problems by "*lengthening … the trial, with the increased cost and stress inevitably involved; the potential prejudice to witnesses called upon to recall matters long closed, or thought to be closed; the loss of documentation; [and] the fading of recollections*" (at para 6).

Applying the principles

Applying these principles, the House held that the trial judge had been correct to conclude that evidence of the conduct of both DI Lewis and DCI Carsley in *R v Griffiths* and *R v Ali* should be admitted. Although the evidence was hotly contested and would substantially lengthen proceedings, the House held that Judge Jones had not erred in concluding that the evidence was critical to Mr O'Brien's action against the police, and that Mr O'Brien's action was important both to him as an individual and to the public at large.

A welcome decision

The House of Lords' decision in *O'Brien* is to be welcomed for clarifying the different rules of admissibility of similar fact evidence that apply to civil and criminal cases. Their decision confirms the more relaxed approach of the courts to civil evidence generally, a trend also seen in the civil courts' everyday admission of hearsay evidence under the Civil Evidence Act 1995.

One can see that similar fact evidence may be helpful in a number of different situations. For example, posit a tort case defended on the basis that the risk of injury to a claimant was very low, so that the defendant was not negligent in failing to take precautions to guard against it. Here, evidence that others have been injured in a similar way to the claimant may prove extremely useful in helping to establish the claimant's cause of action. Or, to turn things around, posit a personal injury case in which a defendant suspects that the claimant is 'faking' his injuries. Here, evidence that the claimant has overstated his loss in previous proceedings may turn the tide in favour of the defendant. Similar fact evidence will also be useful in other sorts of proceedings. Take a case in which a claimant seeks to prove impropriety against a professional. Such allegations have often been described by judges as 'inherently unlikely', not least because of the higher burden of proof required to be overcome where serious allegations are made: see *Hornal v Neuberger* [1957] 1 Q.B. 247 (CA). Here too, then, it may also be especially helpful to point to other instances of impropriety to bolster an otherwise difficult claim.

Subsequent events only?

The discussion contained in their Lordships' speeches concerns similar fact evidence being adduced to help to prove the existence of a subsequent event. Recall Lord Bingham's reference to similar fact evidence of "*… what happened on an earlier occasion …* " in paragraph 4 (cited above). Evidence of what has already happened will, of course, be the paradigm case in which similar fact evidence will be used. However, restricting similar fact evidence to events that happened prior to the event the existence of which a party is attempting to prove would, it is submitted, unjustifiably restrict the full application of the similar fact principle.

Take the following scenario: there are three events that are all similar in nature that occur in January, June and December of 2004. To make things interesting, let's assume that the event which the claimant is trying to prove is misfeasance in public office by the Mayor of London. If a claimant is trying to prove the event that occurred in December and has evidence of similar events in January and June, it is uncontroversial that the January and June events are potentially probative of the December event and are therefore *prima facie* admissible.

Now turn the timing around. Assume that the event the existence of which our claimant wishes to prove is alleged to have occurred in January, and the claimant also has evidence of similar events that took place in June and December. Is this type of similar fact evidence, which I shall call 'subsequent similar fact evidence', relevant? One can certainly say that the evidence of subsequent events is less relevant than evidence of prior conduct; this is because evidence of prior events is evidence that a person has *already* developed a propensity to act in a particular way, whereas evidence of subsequent events is merely evidence that a person may have developed a propensity to act in a certain way prior to the event the existence of which a party is trying to prove. Thus in our example of subsequent similar fact evidence, we know that our defendant has developed a propensity to commit misfeasance by June 2004, but we don't know when this propensity began. It could have been immediately prior to the June misfeasance, or it could, for instance, have been at some point several years previously. But this reasoning does not mean that our subsequent similar fact evidence is irrelevant, as the fact that a person has acted in a particular way on two subsequent occasions rather suggests that he is more likely to have acted in an identical manner on a prior occasion. It is certainly a factor that an "*… entirely rational, objective and fair-minded person …* " might attach importance to.

Not dealt with

It is all the more curious that the House of Lords did not consider this particular matter of subsequent similar fact evidence as it directly arose in the *O'Brien* case. This is because the misfeasance and malicious prosecution alleged by Mr O'Brien occurred in 1987 and 1988. The first piece of similar fact evidence on which he sought to rely was an investigation conducted by DI Lewis and DCI Carsley in 1982 (see para 20). But the second piece of similar fact evidence that Mr O'Brien sought to adduce involved an investigation that took place in February 1990, some eighteen months after Mr O'Brien's conviction. Although this point is disappointingly not directly addressed by their Lordships, it can, at least, be said that the House of Lords have implicitly endorsed the approach recommended above.

The way forward

The House of Lords' relaxation of the civil similar fact evidence rule is both principled and potentially useful to parties to an action. Although not explicitly dealt with by their Lordships, it is submitted that 'subsequent similar fact evidence' should also come within the similar fact principle.

Dinner at JAAN

Can the tastes of France and of Southeast Asia be successfully fused within a stone's throw of the Temple? At JAAN, Tetteh Turkson of 23 Essex Street worked his way through the grandest menu and decided that it had the taste of a curate's egg.

The venue

For those based in the Temple, JAAN restaurant is but a stone's throw away, in Swissôtel The Howard in Temple Place. It has been open just over a year, since the refurbishment of the hotel. Perhaps due to its novelty, I was able to book a table on the very Wednesday I wanted to dine.

My companion and I were pleased to find that they had not made the mistake of cramming in as many covers as possible. Tables were set discreetly apart and did not seem to have more chairs than they could bear.

The fusion

The aim of the restaurant is to make modern French food with a Southeast Asian twist. Indeed the chef originally hails from Vietnam. One can see the influence both in the ingredients used and in the presentation. There is plenty of choice and it is not priced out of the reach of most. It does not have a minimum order price, but is not an every day venue. There are two taster menus competitively priced at £41 for the five courses and £48 for seven. My own personal gripe is that if you want a taster selection, JAAN compels both diners to have it. I can't say I understand the logic of that. As a result I have only seven dishes to review for you.

Taste and the palate

As for how it tastes, it is not at all bad. The tragedy is that it could have been so much better. I have two main criticisms. The first is that too many of the dishes were just too fussy, with too many elements put together. The second criticism, which stems from the first, is that it is a matter of luck to get the right blend of food in a mouthful. There were just so many things on the plate, usually with really strong flavours, that it was a delicate operation to try to combine them as you ate. If one got it wrong then the dish just wasn't very nice. I rather think that it is the chef's job to create the dish rather than leave you to discover through trial and error a satisfactory combination. The chef did not even help by supplying them in the correct proportions. When I did get it right there was joy at the tastes and the sense of accomplishment that was almost entirely removed by realising I could not repeat it.

A good start and finish

Examples of where it could have been so much better book-ended the meal. The first course was a chilled pea soup. The soup was creamy, full and tasted, as it should, of green peas. It was served with a pan fried tiger prawn that was perfectly cooked. Each element on its own was delightful. Together they were greater than the sum. Excellent.

At the other end was "Carpaccio of Asian Pineapple". Some of the thin slices of pineapple had been crisped and they were served with a basil sorbet. Even the realisation that the sorbet reminded me of pesto did not stop the dish being a lovely end to the meal.

The second dish, "Poached Scottish Lobster, tomato and Laksa confit" did not hit the heights of the first. It fell short because the combination of tomato crisp and Bloody Mary sorbet almost overwhelmed the lobster, but it was a nice dish – an example of how the chef succeeded when he just used strong ingredients in a simple way.

Third was "Emphasis on asparagus". This turned out to be a delightfully weightless mousse flavoured more with truffle than asparagus, served with a side salad of truffle and asparagus spears. Again this showed what the chef was capable of – an unusual dish that you could simply eat rather than try to work out. The truffle flavour permeated the rest of the dish without strangling it.

Problems in the middle

"Scallop and duck two ways" looked like a piece of art. An upside down martini glass housed some shredded duck and a seared scallop. On top of the base of the glass was scallop sashimi with flying fish roe and these were presented with a duck consommé. We were advised to eat the sashimi first, then the consommé and finally eat the confit of duck. The problem with this was that by the time you got to the final part, the duck had been sweating under the glass. It overwhelmed the scallop, not least because both my partner and I found it to be over-salted. The consommé and sashimi in contrast were just perfect. The consommé managed to combine the distinct flavour of duck skin and flesh. The roe leavened the sweetness of the dressing to the wonderfully executed sashimi, so that in this part the scallop was allowed to melt in the mouth with its flavour coming to the fore.

The confit of duck was sadly a sign of what was to come. The next 2 dishes – "Duo and foie gras" and "Roast rack of lamb on aubergine caviar" – are the causes of my two complaints. Writing this review has reminded me just how good much of the meal was, yet my abiding memory is one of disappointment. The "duo" of foie gras was a port cured foie gras and a generous slab of seared foie gras. It was the accompaniments that let the dish down. The port cured terrine of foie gras tasted unusually sweet. It was therefore surprising to find it combined with crisp of gingerbread. It was only by smothering it in the ginger sorbet that it became suitable for anything other than dessert. The seared foie gras was served with a raisin puree every bit as sweet. Used very sparingly it was a decent dish, but there were occasional nasty surprises of big lumps of rock salt atop the foie gras. All in all, for a foie gras fan such as myself a grave disappointment. It wasn't helped by having had a terrine of foie gras at Rules the previous night that was simple but divine.

I suppose my real problem with the roast rack of lamb was that I just didn't really like the aubergine caviar – a pureed blob that just was not very nice, even though my partner and I couldn't agree on why.

We were about to despair when the pineapple arrived and there was a little redemption. The meal was, to be fair to it, really quite good, but it didn't feel that way when we left. It felt disappointing. It felt as though we had struggled through it. Sadly no amount of pleasant and attentive service will alleviate that. So perhaps you should go, but be prepared to leave things on the plate.

JAAN is open for lunch, from 12-2.30 (fixed price business lunch at £19 for two courses and £22 for three, service not included), and for dinner from 5.45 to 10.30

Blue Sky Thinking or Death by a Thousand Cuts

Is there an alternative future for the Bar? Andrew Mitchell, Q.C., head of Furnival Chambers, gives us his personal views on how things could change

As we prepare for a new legal year I have spent a good deal of the summer wondering how many years we have left, for those of us at the self-employed Bar in private practice.

We have spent years reacting to Government initiatives on fees and other structural changes to the way we work. We appear never to have taken the initiative and made proactive proposals that would secure the future of the Bar rather than its continued diminution and ultimate death.

Why should we be the recipients of blame for overspend in the DCA, which itself has spent millions on developing administration and on computers that are not used and on court listing systems that were devised it would appear without any discussion with the end-users?

Having considered that the future is dull and no longer bright for a strong and independent criminal Bar I have turned to consider whether our current structure is suited to the modern era.

Words by ministers and officials expressing a desire for the continuation of the independent Bar as a referral profession do not appear to be reflected in the policy initiatives on fees. The Government does not (some may say understandably) wish to pay twice for lawyers to represent the interests of defendants. If it no longer wishes to pay twice then it is not possible to have a referral profession, for by definition to receive instructions there needs to be an instructor and the instructor needs to know (it is to be assumed) what it is that he is giving instructions about.

I have come to the conclusion that the only way that the criminal Bar can survive is to give up the so-called referral status that we hold dear to our traditions.

For many years we have not had any support at the magistrates' court. We see clients on their first appearance at court, take instructions and assist the client in dealing with the issues that they face. Thereafter the client may find himself in the crown court represented by counsel with no representative from the solicitors' present, unless the crown court certifies it as necessary. In the interim there would be a conference at the prison or in chambers with the client and someone from the firm who is not a lawyer, necessitating a written advice to the solicitor on what happened in the conference, and what needs to be done. In the Court of Appeal we are instructed by the registrar. The barrister prepares and photocopies bundles for the Court (as we may well have done in the crown court) for which no disbursements are payable.

Why not have one stop advocacy services, carried out by the Bar? Let us take on cases and let us use clerks to take instructions. Let young practitioners start their careers in chambers. Where they have no work of their own they could go to conferences with clients in other cases. This will lead to a reform of the clerking system (perhaps long overdue anyway), permit the Government to pay one fee for a case and allow us to have a cradle to grave career structure for the Bar. The Government would be able to fix fees for cases and pay for them based simply on a ratio of seriousness and size of papers (rather like the current graduated fee scheme).

In serious cases the senior practitioners would have to take responsibility for the preparation of the case and negotiate a budget for that with the LSC officials. This would be done with control of the tasks to be executed in the case being under the guidance of the person ultimately responsible, that is, the leading or principal advocate, rather than being managed by the solicitor.

The prosecution side

The DPP has made it clear that he wishes to have a career structure for lawyers in the CPS which will include employed lawyers presenting cases in the Crown Court. This is but one government department, albeit, according to the DPP, the largest legal firm in the country. Others have not expressed an intention to go down that route.

It is said by the CPS that this development will be in conjunction with the self-employed Bar still undertaking cases for the CPS, perhaps the more serious ones where a specialist can be brought in to lead the prosecution team. I have no problem with these commendable ideals of the DPP as there should be a career structure within the CPS for employed lawyers. My only concern is that this ideal might become a (small p) political ideal upon which the high standards of prosecution independence are sacrificed.

Announcements

ANNUAL DINNER

Association of Women Barristers
Thursday, 17 November 2005
The Grange Holborn Hotel, 7.15 for 8 p.m., Cost £65
Keynote Speaker: The Rt. Hon. Sir Mark Potter
President of the Family Division

Contact: luciewibberley@yahoo.co.uk,
Tel. 07904 207 682

CHARITY DIWALI AND EID DINNER AND DANCE

In Aid of Motor Neurone Disease
Association of Asian Women Lawyers
Saturday, 19 November 2005, from 6.30 p.m., Cost £60
Crown Plaza St. James's Hotel

Contact: suki.johal@virgin.net
Tel. 020 7583 0695

DAME ANN EBSWORTH MEMORIAL LECTURE

Justice Michael Kirby of the Australian High Court
26 January 2006
Details are on the Circuit website

The Woman Lawyer Forum Conference

Balancing a Legal Career

Equality of Opportunity for the Legal Profession – 5th March 2005

Kandiah Bancroft-Binns, Chair of the Association of Women Barristers, reports on the conference which provided food for thought and a powerful network for all women lawyers.

'We must engineer pathways, so that the fine words of today become a reality.' These words, spoken at the Woman Lawyer Forum's London conference on 5th March by Sir Colin Campbell, the First Commissioner for Judicial Appointments, framed the conference's foundation. A principal concern of the Woman Lawyer Forum (WLF) is that the number of women, minority ethnic and disabled judges remains low. The Secretary of State for Constitutional Affairs and Lord Chancellor, Lord Falconer of Thoroton, Q. C., stated that the Government, the judiciary and the legal profession all had a shared commitment to diversity in the judiciary—of course merit has to be the primary assessment criterion; diversity in the range of appointments only comes after that stage is reached.

Diversity in the Judiciary—Judicial Appointments was chaired by Frances Burton, Vice President of the Association of Women Barristers. This was an opportunity to direct questions at Britain's legal elite. Speakers included the Lord Chief Justice, Lord Woolf, who recognised the need for change. It was unanimously agreed that merit and diversity were complementary and not opposites.

Flexible working

During *Flexible working—the Individual, the Employer and You* Janet Gaymer, C.B.E., senior partner at Simmons and Simmons, presented a highly insightful approach. The employer may see flexible working in terms of increased costs, increased management load, incompatibility with international travel and health and safety risks. The concerns of the flexible worker were assessed as missing the partnership window, lower quality of work, lost status, increased guilt and less involvement with career-advancing activities. Gaymer urged us to think of what worked in practice. Dr. Richard Collier, Professor of Law at Newcastle University, spoke about flexible working for male lawyers. Jenny Eady, of Old Square Chambers, who specialises in employment and discrimination law, maintained that there should be written policies on career breaks and on working flexible hours. Flexible working should reduce the disproportionately high numbers of women who leave the Bar, including those who leave after having children.

Career options

Margaret Heffernan, businesswoman and author of *The Naked Truth: A Working Woman's Manifesto about Business and What Really Matters* stated that the traditional shape of careers was breaking down. Heffernan spoke of the 'toxic bosses' who measure work in hours, not quality, and the 'one size fits all careers'. Karen Aldred, former chair of the Association of Women Solicitors, spoke about portfolio careers. Not enough lawyers think of non-executive directorships or public appointments. The benefits of a portfolio career are flexible working hours, variety and being your own boss, but people skills are essential. Aldred herself holds two Board posts and is Legal Chairman of the Adjudication Panel. She has also served on the Lord Chancellor's Working Party on Equal Opportunities for Judicial Appointments and Silk. Linda Okeke, Pro Bono and Community Affairs Officer for Allen and Overy LLP spoke of the compelling business case for City lawyers undertaking pro bono work.

Communication

In *Culture and Communication—the Unseen Enemy* Molly McCormick of McCormick Management and Organisational Development provided useful strategies in communication when managing politics. Meetings form a big part of our lives. She stressed that men and women deal with uncertainty in different ways. Based on Professor Judi Marshall's 'Women Managers: Travellers in a Male World' the conference examined the 'communion' and 'agency' approaches. 'Women are conditioned to form bonds and make personal adaptations, essentially to embrace the change circumstances', while 'men are conditioned to stand apart and be independent, essentially to conquer the change circumstances.' Professor Alex Haslam and Dr. Michelle Ryan, from the University of Exeter, presented their theory of the Glass Cliff. What happens after women break the glass ceiling? Are they given disproportionate numbers of positions when companies are under performing? Professor Haslam provided a possible explanation: women take riskier positions because they have fewer opportunities.

The conference provided a powerful network amongst members of the legal profession, with representatives from the Association of Women Solicitors, the Association of Women Barristers and the Association of Women Judges. The discussions between delegates and those in the most senior positions makes me confident that the fine words of the day will become a reality. For more details of the Forum, contact Vanessa Williams, Chair, at vanessa.williams@bevanbrittan.com.

'And One Brave Man':

the AGM of the Association of Women Barristers

On 4 July 2005 (writes David Wurtzel) I had the privilege of attending the annual general meeting of the Association of Women Barristers. I was, as the Chairwoman put it, 'the one brave man'. I could not have been made more welcome.

The meeting marked several changes. Jane Hoyal handed over the Chairwomanship to Kandiah Bancroft-Binns, Kaly Kaul is the new Vice Chairwoman, and Mrs. Justice Cox succeeds Baroness Hale of Richmond as President. It was astonishing to discover that the Bar Council does not include the AWB on its normal list of consultees. Indeed, there was no representative from the Bar Council.

The need for the AWB

It was therefore very apt that Baroness Hale spoke on the importance of associations like this. One by one, she demolished the four myths: (i) being a woman is irrelevant to being a lawyer or a judge; (ii) 'I've never encountered obstacles', (iii) 'we don't want special treatment' and (iv) how would we feel if the men set up an Association of Male Barristers [the answer to the latter was: they have one already]?

Speaking as a woman, an academic, a

specialist in 'poor folk law' and as the only State school pupil amongst the Law Lords, she insisted that gender matters. It affects the public's confidence in the legal system that there are women in responsible positions. Courts are supposed to be about fair play and women bring a 'different perspective', 'we think things differently'. Although individual women may not have been discriminated against, as a group they have suffered disadvantages. Only 11 percent of the judges are women ('isn't that staggering?' she asked). Good women are not visible enough, they go and do other things, and they find it hard to succeed at the Bar – look at the attrition rate.

Diversity vs. merit

Baroness Hale in particular queried the Constitutional Reform Act provisions regarding diversity. Under the Act, selection must be solely on merit but the Appointments Commission 'must have regard to the need to encourage diversity in the range of persons available for selection for appointments'. 'Why is merit defined the way it is?' she asked, 'Why do we think diversity will dilute it?' She attacked the deep rooted assumptions about how we all know who the good people are ('how do they know?'). Following the speech, Vera Baird, Q. C., M. P. insisted that the words were inserted at a late stage in the Act's passage in order in fact to broaden the pool.

A long way to go

The new President, Mrs. Justice Cox, acknowledged that 'there is commitment from the top' (e. g., the Bar Equality Code), better maternity leave and less tolerance for sexual harassment. But there is 'still a long way to go', especially in terms of part time and flexible working, access to promotion, in chambers permitting a woman to develop a practice of her own, in ageism, in funding of education, and in the fear of what 'diversity' is.

During questions and answers, a young woman suggested that surely her male contemporaries, educated in our more enlightened times, would have a truly open attitude to women at the Bar. She was gently but firmly informed that once a young man gets a tenancy, he will inevitably become one of the boys.

The meeting was followed by a reception.

The Florida Advocacy Course – August 2005

Last summer, four young Circuiteers continued the tradition of English barristers participating in the advocacy course held in Florida. Catharine Flood of 187 Fleet Street is the latest to discover that the United States and Great Britain are one country divided by a common language—and that is just the lawyers.

We have all seen the highly dramatic American courtroom scenes, played out in various films and television programmes, but is that what really happens? I wanted the truth. Would I be able to handle the truth? Along with Samuel Magee, Martha Walsh and Anthony Wyatt, plus Nigel Lithman, Q. C., as a tutor, I went to Florida to find out.

Each year an exchange programme takes place between the Florida Bar Association and the South Eastern Circuit. The American course is held at the University of Florida Law Faculty in Gainesville, and is run as an advocacy training programme for junior level attorneys, both State Attorneys and Public Defenders.

Eight days in Florida always sounds good no matter how you phrase it, but sitting on the plane on the way over, it was impossible to avoid the feeling that apart from the weather and the accents, it would not be radically different from similar courses back home. In essence, the programme is structured in much the same way as the Inns' advocacy training: two case studies form the basis for various exercises involving examination in chief, cross examination and opening and closing speeches. The only truly novel exercise was jury selection.

Jury advocates

On first reading the papers, I admit I was a little perplexed by the exercise involving holding a voir dire to select a jury. Although I had heard rumours of such strange things, I was unsure as to what was actually involved. Just how much do advocates know about the individual jury members they are addressing, and how do they find it out? The selection process takes places on a voir dire. Potential jurors are questioned regarding their general background and their opinions on just about anything remotely relevant to the case. A considerable amount is revealed about them as individuals. This information then may be used to make targeted points to individual jurors, within the context of the points made to the jury as a whole. It would seem that the aims of the advocate in the jury selection process are two fold. The first is to ascertain what the views of any given potential juror are on the central issues, and whether it is likely that they would be for or against the State's case. That type of advocacy is relatively familiar. The second, more subtle aim, is to deliver a preliminary opening speech by way of the questions asked, introducing the themes and case theory to the jury. That is an art form in itself. In the United States, there is a thriving business for attorneys who specialise purely in the jury selection process.

I love your accent

The most striking difference between our styles of advocacy in general, was the relatively informal manner seemingly commonly adopted over there. The American advocates tended to use slang, particularly in their speeches, rather than more formal language. They also tended to rely on visual aids and gestures to place emphasis on particular points. The real shock was seeing attorneys walking around the courtroom and leaning on the jury box during speeches in order to create an intimate atmosphere--although it was quite fun to be able to try this. In contrast the much greater reliance on the use of tone of voice by the British barristers was highlighted as being a valuable product of the greater formality required in our courts. The English accent really seemed to help too.

Put your case

There are some things which are so much part of the English legal system that one assumed they would also apply in the United States. However, that was not always the case. I was stopped half way through cross examination and asked why I was putting certain points to the witness in cross examination, in particular regarding how my client had shot her husband. Feeling puzzled, I replied that I was putting our case to the State's witness. The response came back as another question: why do that? Equally, there were situations where the reverse seemed to be true. I was part way through explaining the inferences which may be drawn from a defendant's silence in the English courts, when I looked around me and saw a row of faces all showing expressions somewhere between shock and outrage. It has to be admitted that I was standing with attorneys from the Public Defenders' Office at the time, but the right to silence is so ingrained in the American process that such inferences seem near incomprehensible to them.

Party on

Over the years, there are certain standards which have come to be expected of the foreign visitors. The level of our advocacy skills is just one aspect of this. The British have developed a reputation for working hard and playing harder. This year was no exception. The course may involve the usual amount of preparation for the teaching hours, but the Bar contingent could also be found every night showing the Americans why our reputation is fully justified.

A success

All in all, the programme was a valuable opportunity to exchange ideas and experiences, and brought an appreciation of the strengths and weakness in each system. Our thanks must go to our American hosts from the Florida Bar Association, for their generous hospitality and all the time and hard work put in by the teaching staff, which go to make the course the success it is.

Bar Sole Practitioners' Group Conference – 7th May 2005

1 Carlton House Terrace, London SW1

The fifth annual conference of the Bar Sole Practitioners' Group attracted more than 100 delegates from all over England and one from the Isle of Man. Mary MacPherson reports:

Robert Banks

The Group was formed in 2000 by Robert Banks with a nucleus of seven members. Thanks largely to his efforts, practising from home has come to be regarded as a realistic alternative to belonging to a traditional set of Chambers.

The extent to which the Group is recognised by the professional bodies was demonstrated by the presence of Guy Mansfield, Q.C., Chairman of the Bar, and Tim Dutton, Q.C., Leader of the South Eastern Circuit, both of whom addressed the delegates. Stephen Hockman, Q.C., Vice Chairman of the Bar and Simon Barker, Treasurer of the South Eastern Circuit, were also there.

The four main conference topics consisted of money laundering, the Freedom of Information Act, securing a public appointment and advice on available technology for improving home working.

Money laundering and practitioners

Rudi Fortson, of 25 Bedford Row and a leading author and practitioner on drug offences and money laundering, spoke on the derivation and the practical effects of the money laundering provisions in the Proceeds of Crime Act, the Serious Organised Crime and Police Act 2005 and related regulations.

He explained how criminal practitioners are in a vulnerable and ambiguous position and how all barristers must be extremely cautious about advising a client to keep quiet about suspect sources of income.

An important precaution against prosecution or complaint is to copy key documents at the close of every case, and to retain them for at least five years, and preferably for seven.

The taping of advice given in conference, was recommended by Michael Powers, Q.C. He gave a lively account of how belonging to internet chambers, combined with a sophisticated array of the most modern electronic gadgetry, can cushion most of the practical difficulties faced by the practitioner from home. Introducing him, Robert Banks explained that Clerksroom.com, the internet chambers based in Taunton, to which Powers belongs, has proved so popular that it is now probably more difficult to obtain a tenancy there than in a conventional set.

Criminal Legal Aid

The theme of Tim Dutton's address, delivered soon after the General Election, was a renewed attack on the Government's approach to criminal legal aid .

He said that maintaining public confidence in the criminal justice system required an appropriate level of remuneration for the Bar.

'If the Prime Minister was genuine in his speech when he heard his own election result, (more sanguine in tone than anything we heard during the recent election campaign), when he promised to listen and to learn, whilst at the same

time promising to do more for "law and order", to rid our towns and cities of the scourge of anti-social behaviour and to do more to support families, he should by his very words be looking to support those who work in the front line.

'That is those who prosecute and defend in criminal cases, and those who advise and advocate for families, children, mothers and fathers whose lives have been blighted by family break down and who need skilled advice and representation. The Prime Minister's fine words need to be matched by action for the profession."

Appointments

For those whose thoughts strayed towards life on the Bench, Mrs Justice Dobbs, and Alistair Shaw of the Legal Services Commission, gave advice on how to become a Recorder, a district judge, a circuit judge or a chairman of a Tribunal. Would-be candidates should ask to shadow a sitting judge.

"It is a good idea to shadow in different jurisdictions to find out which one you like. Start early, perhaps five years after Call. Read the notes to ensure that you know exactly what the interviewers are looking for, otherwise out you go in the preliminary sift. And remember - interviewers can spot the busker!"
said Mrs Justice Dobbs.

An important key to the process was the choice of referees. "The idea that the grander the judge the more likely you are to succeed is not strictly correct," said Mr Shaw. "It is best to go to people who have seen you in court recently."

The conference attracted four CPD points.

Principal sponsors of the event were the South Eastern Circuit and Lawtel. Other sponsors were BarristerWeb, Disc to Print and twenty20 consulting. The Group is extremely grateful for all the support it has received and sincerely thanks all those who contributed to the success of the conference

New Ministers at the DCA

The reshuffle after the General Election brought two new ministers to the Department for Constitutional Affairs. David Wurtzel introduces them and looks back on their predecessors.

Following the General Election in May, Lord Falconer has found himself as the only Secretary of State with an all-woman ministerial team. Of his three junior ministers, Baroness Ashton of Upholland is the sole survivor of the reshuffle.

The Rt. Hon. Harriet Harman, Q.C., 55, formerly Solicitor General, has been given the post of Minister of State for Constitutional Affairs. Her predecessor, Christopher Leslie, had been Under-secretary of State. The elevation in title more reflects Ms. Harman's previous ministerial career than it does any change in the functions of the job. Mrs. Bridget Prentice takes over from David Lammy.

Rt. Hon. Harriet Harman, Q.C., MP

All change

Christopher Leslie had been the youngest M.P. in 1997, and ably steered the Constitutional Reform Act through the House of Commons. He lost his seat to the Tories by 422 votes, as a result of a swing to the Liberal Democrats. David Lammy was re-elected but has been moved to the Department of Culture, Media and Sport at the same level, and is now Minister of Culture. 'Culture' is not an area in which the Party leaders have evinced much interest but one of Mr. Lammy's first tasks is to consider not the national heritage as such but who is conserving it. Launching a scheme to encourage more diversity in museum employees, he noted that only 4.4% of museum staff are minority ethnic. Sad to say, that compares favourably with the judiciary.

An unusual career

Ms. Harman's Ministerial career has been somewhat unusual. She became Secretary of State for Social Security after the 1997 election, but returned to the back benches after a year. Her removal from the Cabinet in the absence of any obvious doctrinal dispute with the Prime Minister left the impression that the problem was one of competence. She was made Solicitor General and a Q. C. in 2001 after three years on the back benches. She is in fact a solicitor, and was Legal Officer to the NCCL from 1978 until she was elected to the House in 1983. At the DCA, she has been given a populist brief, namely the proposal to introduce 'victims' advocates' (a lawyer, relative or lay advocate) in murder cases. She has said that it is not about increasing sentencing, which she adds is an inquisitorial, and not an adversarial, procedure.

A bad day

Ms. Harman has had difficult moments in the Chamber. In March 2004, her sister, a practising solicitor, was involved in a High Court case where a child was taken into care in part because the mother was allegedly suffering from Munchausen's by proxy. She sent Ms. Harman a copy of the judgement, which Ms. Harman as Solicitor General passed on to the Minster for Children. She took the advice of a civil servant who apparently got it wrong when he told her that it was all right to do so because the names had been crossed out and there was no order preventing it being disclosed. (In due course in the debate, Vera Baird, Q.C., M.P. warmly congratulated Ms. Harman for not relying on her legal judgement alone). Mr. Justice Munby took the opposite view and found the sister to be in contempt. As Ms. Harman put it, 'I was told by a solicitor who happened to be my sister that she was considering what action to take in respect of a client of hers who was seeking to challenge an order of the High Court taking the child into care'.

In the ensuing debate, Ms. Harman prayed in aid the fact that the Court of Appeal subsequently took up the case and invited the Minister for Children to intervene. She recalled her own statement to the House the previous January, after the Angela Cannings appeal. 'I announced that we had set up a review to establish whether there were any other cases where the expert evidence had been central to the conviction.' She further recalled that on February 23, the Minister for Children had issued guidance to local authorities about proceeding to review cases where the basis of the evidence was expert testimony that the mother was suffering from Munchausen's by proxy. In fact what she and the Minister said at the time was that they would pay regard to the Court of Appeal decision that in relation to unexplained infant deaths, when the outcome of the trial depended exclusively or almost exclusively on serious disagreement between 'distinguished and reputable experts, it would often be unsafe to proceed'. Members then moved on and asked if they could lawfully listen to their constituents complain about court decisions involving their children. Ms. Harman said she wanted to find a way 'for the opportunity for the House to be a safety valve for our constituents who feel they have suffered an injustice.'

A teaching career

Bridget Prentice, who inherits the legal aid and 'Clementi' briefs, has said "I don't see why consumers should not be able to get legal services as easily as they can buy a tin of beans". Educated in Glasgow (both at school and at university) she

Bridget Prentice, MP

taught at the London Oratory School for 12 years and became Head of Careers. She entered Parliament in 1992 on the same day as her then husband, Gordon Prentice. She was appointed a Whip in 1997, and was later PPS to the Minister of Trade and to the Lord Chancellor. After two years on the back benches, including being a member of the Home Affairs Select Committee, she became a Whip again.

Mrs. Prentice's personal website sets out at length her activities, often in constituency matters (e. g., under 'Litter': 'A big thank you to our local street sweeper'). It lists announcements including one that World War II veterans over the age of 75 would be given ten-year passports for free. Her special interests in government include legal reform, human rights and constitutional reform. She says, 'I live in Hither Green with my pet cat'.

LORD CARTER OF COLES

Lord Carter

Another person to come to the fore is Lord Carter of Coles, whose review of publicly funded work was announced this summer. Lord Carter, 59, who has been described as a 'Whitehall trouble shooter', was ennobled in June 2004. He has not been involved in legal services but he is a member of the Government's Public Services Productivity Panel. He spent 24 years with Westminster Healthcare, a private healthcare company. Since 1999 has been involved in public affairs. He is Chair of Sport UK, of the Criminal Records Bureau and of the Review of Offender Services, and is a non-executive member of the Home Office General Board. He was due to report this summer on the effectiveness of public diplomacy for the Foreign Office. His inquiry for the DCA will be sharing his in-tray with chairing a review of NHS pathology services to identify the scope for further modernisation and improvement, and heading a review of Revenue and Customs online services. Those wondering how he is likely to express himself can consult recommendation 4B in his Review of National Sport Effort and Resources: 'Create a single access point and national brand to promote Government endeavours in sport, reinforced by a sport 'portal' with both web and telephone customer support'.

From Around the Circuit

The Central Criminal Court Bar Mess

The last report of the CCC Bar Mess had something of a sombre note, due to the recent loss of two of the court's judges. Despite the sadness of the departure since then of Judge Boal, Q.C., this report can be somewhat more upbeat. The court has now gained not only a new Recorder, His Honour Judge Peter Beaumont, Q.C., but a new Common Serjeant in His Honour Judge Brian Barker, Q.C., and three new permanent judges, their Honours Kramer, Hone and Rook.

The Mess is at present engaged in a consultation exercise with its membership on two vexed questions. The first is how smoking should be regulated in the Bar Mess itself, if at all. On the one hand there are those who would prefer not to have to eat amidst clouds of smoke, but equally on the other there are those who do not fancy standing outside the building for a quick smoke and a long wait at security. The second is the robing room arrangements, and the task of finding more room for the female members of the Mess without doing structural damage to the building.

This activity, and the continued refurbishment of much of the furniture in the Mess, is only possible because of the financial support of the members of the Mess. Any freeloading court users with an attack of conscience can, as ever, obtain a membership application form from Duncan Atkinson at 6, King's Bench Walk.

Duncan Atkinson

Kent Bar Mess

On 17th June 2005 having come from far and wide, a congregation of around 300 people gathered at All Saints church in Maidstone to celebrate the life of HH Judge Griffiths. David had been president of everything from the Old Dunstonians, the Kent Law Society, various Rotary clubs and his beloved Gwalia choir. Representatives of all these organisations attended, together with many members of David's family, the Bench and the Bar. We learned from different speakers what a varied and successful life he had led and how much he gave to all who were privileged to know him. It was a lovely service in a beautiful setting.

The Kent judges, a number of London judges who used to practise in Kent, the Kent Law Society and the Kent Bar Mess all made generous financial contributions to the wake, which was held at Maidstone Crown Court.

Hymn singing in common with advocacy, is of course thirsty work, particularly when, as on this occasion, the sun was splitting the trees. With characteristic foresight and generosity, Ian Foinette provided several barrels of the amber nectar. Even with a lot of enthusiastic help from many others, the Gwalia choir proved unable to empty them all. I am happy to report that members of the Bar Mess proved equal to the task, thus upholding one of its oldest and finest traditions.

The Bar invited the Bench to lunch in the Mess on 22nd July 2005. We then were delighted to welcome HH Judge Statman to Maidstone Crown Court. My spies tell me that the staff at Woolwich (from whence he came) will miss him greatly. It is said that he has a bit of "form" for insisting on "bottoms on seats" on the dot of 10.30, despite the fact that the villains may arrive at 10.15. Suggestions on a postcard please, as to how this worrying condition may be treated.

We regret the retirements of HH Judge Simpson and HH Judge Neligan. We wish both of them a long and happy retirement. No doubt they will wish to be as far removed from the provisions of the Criminal Justice Act 2003 as is humanly possible.

The Annual Dinner of the Mess will be held on Friday 2nd December 2005 in the Middle Temple Hall. HH Judge Carey has accepted an invitation to be our guest speaker.

At the risk of failing to observe that great legal fiction, namely that barristers never talk about money, could I gently remind members of the Mess (especially those whose standing orders are in the sum of 15 shillings per annum) that, decimalisation having recently occurred, the Mess would welcome standing orders in the sum of £30.

Fiona Moore-Graham

Herts. & Beds. Bar Mess

There can have been few more successful Mess Dinners than the one held for His Honour Judge Moss at St. Michael's Manor, St. Albans on 28th July 2005. It was a mark of Judge Moss's popularity during his four years as Resident judge at Luton Crown Court that the event was a complete sell-out. We were pleased to welcome as our guests no less than nineteen High Court and Circuit judges and the D.P.P. who were treated to two exceptionally witty and amusing after-dinner speeches from John Coffey, Q.C., and, in reply, from Judge Moss.

His Honour Judge John Bevan, Q.C. took over as Luton's Resident Judge on 1st August 2005 and we are confident that his long and distinguished career at the Bar before going on the Bench will give him a good understanding of the many problems currently faced by those members of the Criminal Bar who appear before him. Judge Bevan proposes to extend an open invitation to counsel appearing at Luton Crown Court to lunch with the judges on appointed days. This ought to present those who take advantage of the invitation an excellent opportunity to raise any matters of interest or concern to them.

The Mess Committee is a predominantly young and active one and is keen to raise the profile and promote the interests of those who regularly appear at Luton and St. Albans Crown Courts. Anyone wishing to bring a matter of concern to the attention of the Mess Committee should contact the Chairman, Andrew Bright, Q.C. at a.j.bright@talk21.com or the Junior, Alisdair Smith, at alisdair.smith@ntlworld.com .

Surrey and South London Bar Mess

The Mess held its annual garden party on July 20, in Middle Temple Garden. Despite looking gloomy earlier in the day, the weather turned out to be bright and sunny. The champagne flowed. The event was well attended, with many Circuit judges present and the evening was generally voted a great success.

These are difficult times and the Mess was delighted that Tim Dutton, Q.C. came to address us on September 21 on the cuts in legal aid fees. It is clear that he has done a tremendous amount of work and really has the welfare of the criminal Bar and in particular the young Bar in mind. We are all very grateful to him.

A note for your diary: the annual Spring Dinner will be held as usual at the Crypt on Thursday, 2nd March 2006. This event remains very popular and is always a sell-out, so please remember to apply in good time. The Chairman, the whole committee and I look forward to see you there then.

Sheilagh Davies

Cambridge and Peterborough Bar Mess

Activity on this particular front very quiet. No riotous or debauched behaviour has been brought to my attention. Best that I can do is to report that the Mess is now the proud owner of a 'fridge. It's not as challenging or as artistic as the statue "Pregnant Disabled Woman" but it's doing its best to soften the modernist air conditioning pipes that are the focal point of the Cambridge Crown Court robing room. The next challenge is to fill it with wine and beer.

Until last week I thought O2 was a mobile telephone service provider and U2 my favourite group. Then I came across one of the latest documents to be produced by the Court Service: Key Reasons Ineffective Trial. O2 is of course Prosecution advocate failed to turn up. Silly me. U2? Defence advocate failed to turn up. What to call it if neither turn up? A court of the future, perhaps.

Same document, but cracked trial [whatever that may be. Only joking: I've just had a run of 5

cracks. Each corresponding with an Ashes Test]. Key reason G. Unable to proceed with trial because defendant incapable through alcohol or drugs. That covers about 90 percent of the people I represent. If the 'fridge (see above) is filled as suggested the Court Service can add G [IN] Counsel unfit through alcohol or drugs.

Congratulations to Michael Vaughan and Co. for winning the Ashes. Ironic therefore that the happiest man was an Australian by the name of Rupert Murdoch. Second happiest man? His best friend Tony Blair. I'll leave you to work that one out.

This report ends on a note of sadness. Robert Ferguson, a kind and generous friend to all members of the Bar in this area, died in June. He made visits to Kings Lynn Crown Court a pleasure. HH Judge Mellor has also died. He was a Norfolk judge but well known to many members of this Mess. It has been a privilege to have known such decent men.

Cromwell

Essex Bar Mess

We remembered him on a fine late Summer's evening at the Judge's Lodgings in Chelmsford. Many of his friends were able to gather there to raise a glass and enjoy good food and company in memory of John Butcher. A magical evening and a wonderful way to remember one of nature's gentlemen and one of the real characters of the Essex Mess. Thanks must go to Alan Compton, our junior, for arranging the event. Tina, our former Junior, managed to commission three extremely handsome lecterns in John's memory which are to be found in the Crown Court at Chelmsford.

Congratulations are due to an honorary Essex boy – Peter Rook Q.C. on his appointment to the Bailey. His successor at Red Lion Court is a real Essex boy – the remarkable David Etherington Q.C. who cut his teeth in the Greenwood days and survived those turbulent times, honing his impersonation of the great PG—and that is meant as a compliment to both. David he was a compassionate and dedicated chairman of the Professional Complaints Committee before taking over from Peter. The team at RLC are lucky to have him at the helm.

A word about food; your scribe has been sent all over the place in recent months, and has had the chance to wonder at the awfulness of much of the fare and at incredible cost (to wallet and sometimes to stomach) around the Circuit. A nadir was reached recently when your scribe baulked at the price of a bottle of still water at Maidstone. Upon asking the (charming) kitchen staff for a glass of tap, he was told 'Oh no, we can't do that, we don't have a drinking water tap in the kitchen".

Having grumbled, it is only fair to mention in despatches some of the stalwarts – Maureen at Wood Green who manages to serve both Bench and Bar with good humour and understanding, and has done so for many years. Cathy at Southwark who does the same there, and has done so since the court opened. I suspect there are others around the Circuit who struggle on – we have the brilliant team who run the café at Southend who one day we hope the DCA will allow to take over the whole Circuit.

One last food reference; out at St Albans HHJ Baker and his colleagues have done something rather brave and radical; they have extended an open invitation to the Bar to join them for lunch every Wednesday – what a wonderful idea, made possible again by the support of the kitchen staff there, led by the jolly Michael.

We bid a fond farewell to our Chairman Nigel who reaches the end of his term this autumn. Thank you Nigel, on behalf of the Mess for all that you have done for us, mostly for making us laugh so wonderfully for so long. We wish Patricia Lynch Q.C. every success as she takes over. The Mess is in good hands.

So why not come along to the Annual Dinner which this year is being held at Down Hall at Hatfield Heath on Friday 4th November? Tickets are a steal at £75 for the fat cats (Judges and Silks) and £65 for the workers, sorry, the juniors. The hotel is offering discounted room rates. Ring our junior, Alan, on 0207 440 888 or 07776 143 059 to reserve your place.

'Billericay Dickie'

North London Bar Mess

Sadly, one of our most popular judges, HHJ Roger Sanders, Resident at Harrow, is retiring at the end of the year. He bounced back after an illness last year, but has decided, having been sitting in one capacity or the other since 1976, that he would like to do more Tribunal work, and to work in the voluntary sector. We wish him the best of luck, and will miss him as a judge for whom we have great respect and affection, and as a true friend to the Bar. A dinner is being planned by the Mess, to be held in January/February. HHJ Moss formerly Resident judge at Luton is now sitting permanently at Harrow, where he is a welcome addition. Harrow now has new Juniors, Philip Misner and Avi Chaudhury, assisted by Tim Forte. Snaresbrook has a new Judge, HHJ Huskinson, and new Juniors, Pam Oon and Ged Doran, assisted by Caroline Milroy. At Wood Green, HHJ Lyons (who has been working hard on modifying the PCMH's) has organised a dinner on 20 October at the Army and Navy Club, to mark the retirement of HHJ Zucker. Tickets at £60 can be obtained from HHJ Lyons. Wood Green Juniors for 2005-6 are Dee Connolly and Brendan Morris, assisted by Modupe Thomas. Finally we warmly welcome Michael Gledhill Q.C. as our new Deputy Chairman, and Zarah Dickinson as our new Membership Secretary.

Nigel Lambert Q.C. or Michael Gledhill Q.C. would be only too pleased to help and advise any member of the Mess, who may e mail them on nigellambertqc@hotmail.com
or Michael.gledhillqc@2dyersbuildings.com.

Kaly Kaul, Junior

Squirrels and Silks

Soon we will have new Silks, so lets remind ourselves of some we know and love!

Soon after Stephen Leslie took Silk he had a fax machine installed at his Spanish villa, and tried to explain his urgent need for such a device to the Spanish engineer,

'You see I am Queen's Counsel, do you understand, I am avocato reina, avocato reina' (I am the Queen's avocado!') Exit one very confused engineer. Young Jenning's grandmother was so proud when he took Silk that she went to tell all the neighbours, ' My Tony is a Q.C., you know what that means….yes he really is the Queen's Chauffeur'. When Massih (one judge calls him Mr. Massive?) took a group from the Bailey to the Japanese conveyor belt restaurant nearby, he imperiously summoned the Manager saying, 'Manager, this sushi tastes of rubber', the Manager replied, ' it is rubber Sir, you have just eaten the display!' (He told me that himself!)

Which of Her Majesty's Counsel once temporarily shared a flat with the late Paula Yates, if you guess – Arlidge will buy you a bottle of champagne, only one clue – he is very handsome! (No its not Arlidge) Can you guess which Senior TC always pulls his socks up before he examines a witness? It had an interesting effect on a female counsel defending, she found it very sexy! We must not forget our very own Kim Hollis Q.C., basque wearing Silk, who danced her way round Berlin on the recent Circuit Trip, it did wonders for international relations! (I am sworn to secrecy about the rest…) As for Judges on that trip, who would have guessed that the bicycling HHJ Pawlak so enjoyed clubbing or HHJ Sanders had such a wonderful singing voice? As for humble juniors, the following were recently seen queuing for the 24 hour tanning booth in Winchester: Sandy Munro, Tim Forte and Charles Burton, something strange in the water at 2 Dyers? Perhaps they are seeking to compete with Neil Griffin (9 Bell Yard) and Stephen Donnelly (2 Harcourt) who are soon to begin a modelling career. We knew the current situation with fees would cause casualties – but models? Well, why not?

On the same note our best wishes to our budding author Constance Briscoe with the release of her forthcoming book-'Ugly' in January 2006… won't it be fun to watch Arlidge being Mr. Briscoe for a while and for Constance to be paid lots of money with no PCMH forms, clerks' fees or Contract Managers…heaven!

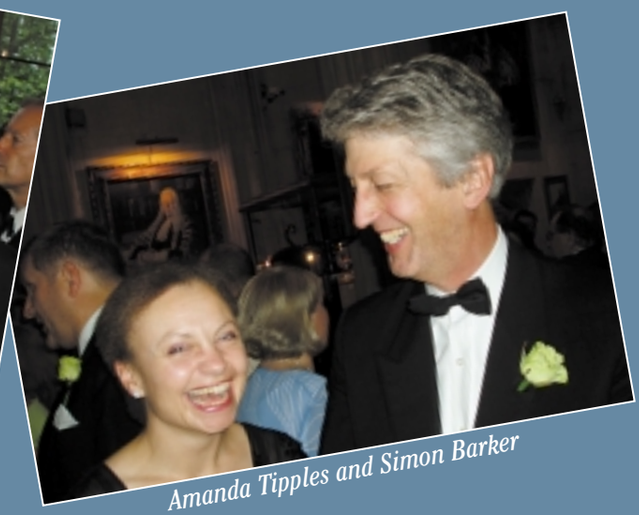
Annual Dinner

See page 4

HH Judge Madge, HH Judge Marr-Johnson, HH Judge Pitman and Tanya Robinson

Sir Sydney Kentridge, Q.C., Kim Hollis, Q. C. and the Lord Chancellor

Nicola Shannon and Kevin Martin



Amanda Tipples and Simon Barker

Jon Swain, HH Judge Peter Moss, and Mohammed Khamisa

Philip Bartle, Q.C., Mr. Justice Aikens, HH Judge Hall