



Spring 2009

The Bill of Middlesex

Official magazine of Middlesex Law Society



**Middlesex Law
Society 50th
Anniversary Dinner**



**Past
Presidents'
Tribute**





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NEW LL.M. PATHWAYS

STARTING SEPTEMBER 2009

Middlesex University has expanded its Law department and created LL.M. pathways that represent the Department's diverse expertise and provide you with the advanced skills to enter into a new field of Law.

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For further information on the new LL.M. pathways, please visit

www.mdx.ac.uk/LLM

Or call the enquiries team on **020 8411 5555**

email: enquiries@mdx.ac.uk



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Disclaimer.

The Middlesex Law Society welcomes all persons eligible for membership regardless of Sex, Race, Religion, Age or Sexual Orientation.

All views expressed in this publication are the views of the individual writers and not the society unless specifically stated to be otherwise. All statements as to the law are for discussion between member and should not be relied upon as an accurate statement of the law, are of a general nature and do not constitute advice in any particular case or circumstance.

Members of the public should not seek to rely on anything published in this magazine in court but seek qualified Legal Advice.



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FUNCTIONS

Charity Quiz Night - 12 November 2009

Annual Dinner - 3 December 2009

Family Law Dinner - January 2010

See Newsletter for ongoing events
 Lunches for specialised interest groups will be ongoing throughout the year. Contact our Administrator or Hon. Social Secretary for details or visit our website.

EDUCATION & TRAINING PROGRAMME 2009-2010

2009
 30 September
 Crime law Update - Tony Edwards

Others to be announced. Contact the Administrator or visit our website for details.

The venue for the lectures is the Thames Valley University, St Mary's Road, Ealing. Each seminar commences at 6.00pm and includes 2 CPD points. Light refreshments are provided from 5.30pm onwards. For further details to the actual times for each seminar please contact Peter Hesom on 07930 386798.

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COMMITTEE MEETINGS

2009
 15 June
 20 July
 21 September
 19 October
 16 November

2010
 18 January
 15 February

AGM

Wednesday 10 March 2010

Parliamentary Liaison
 Edward Lock

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www.middlesex-law.co.uk



President's Page



The Society met and dined on 6th Feb 2009 in the glorious surroundings of the Law Society Common Room to celebrate the 50th anniversary of the Middlesex Law Society. In attendance were many ex-presidents, current members and our guests of honour **Lord Bach**, Minister of Justice, **Paul Marsh**, President of the Law Society and **Adrian Rees**, CEO of the Solicitors Benevolent Association (see photos pages 14-17 taken by our Immediate Past President, **Maria Crowley**).

Thanks to a change to the Constitution of the Middlesex Law Society - made necessary because I am an academic and not a practitioner - I was honoured to become the 48th president of the MLS at its AGM in March. Notably it was at the same time as Barak Obama became the 44th President of the US.

It is a momentous time in many ways as we await the historic event in October 2009 with the opening of the UK Supreme Court in the renovated Middlesex Guildhall. The reform is intended to strengthen the rule of Law in the UK.

It is also important for the rule of law, in a less grand way, to remember the contribution played by organisations such as the Middlesex Law Society, in that is an example of both the voluntary sector and of the independent professions. These aspects of British society should be treasured for the small role they play to ensure the continuity of good advice and the integrity of informed opinion in a world where the limitations of government and the temptation and pitfalls of the commercial market are obvious, particularly in these times of

recession. We are blessed in the UK in having a very effective civil society that works to provide important services, opportunities and protection amongst the big battalions of Government policy and market forces.

Our Law Society Council Member, **Michael Garson** and I attended a conference organised by the Devon and Somerset Local Law Society on 31 March 2009 to discuss the topic 'Do Local Law societies work?'

It was apparent that we are a middle sized society with our membership of 400. In contrast are the small societies that meet occasionally and the bigger societies of 1,000 members or more that were formed by an amalgamation or merger of other adjoining societies such as Surrey and Holborn and Westminster; and the older societies in Birmingham, Manchester and Liverpool that have full time staff, premises and libraries. We received very admiring comments about the quality of the Bill of Middlesex, and many thanks to **Robert Drepaul** for his editorial work on the Bill, and for organising the splendid 50th anniversary dinner.

What we have in common with other local law societies is a commitment to improving professional work through training events; we act as useful means of communication and representation as is illustrated by the current consultation on the future of the organisation, regulation and control of legal practitioners. I thank **Michael Garson** for pulling together

the views of MLS members and sending them onto **Lord Hunt** who is conducting the consultation process on behalf of the Law Society.



Lord Bach.

Finally and crucially, the role of the local law society is to bring people together for social and other events. To this end, members can anticipate future events that will involve group tours, wine tasting, the **Annual Dinner on Thursday, 3rd December** in the prize winning Pillars restaurant on the Ealing campus, St Mary's Road of TVU, and not least, our popular **Charity Quiz Night on 12th November 2009**, at Ealing Town Hall. I look forward to seeing you at these forthcoming events.

*Professor Malcolm Davies
 Head of Ealing Law School and
 President of Middlesex Law Society
 2009-10
 malcolm.davies@tvu.ac.uk*



President of the Law Society, Paul Marsh and Malcolm Davies at the 50th Anniversary Dinner.

Editorial



The Middlesex Brand

What comes to mind when someone says or google the word 'Middlesex'? A county cricket club, a university or a non-existent county. Having said that despite its disappearance as an administrative county as a result of the London Local Government Act 1963, Middlesex is still retained as a postal county to this date.

The Legal Services Act will introduce competition to the legal market over the next three years or so. It is reported that Tesco has confirmed again that it is not going to take advantage of the Legal Services Act...hmm!. The Automobile Association already offer legal services through a panel of law firms. The Man, or Woman on the Clapham Omnibus (or should that now be the Central Line) will have a choice where to get their legal services in the same way he or she for example chooses their bake beans. i.e. packaging and value for money.

How will firms in Middlesex promote themselves in the full glare of competition? A dynamic website for the internet age or a quality newsletter. Think legal services, think Middlesex Law Society for value, quality and friendly advice. It's all in the branding or should that be brand name!

Robert S. Drepaul
rsdrepaul@vickers-solicitors.co.uk



Middlesex
Law Society

Annual Dinner

3 December 2009
6.30pm

Pillars Restaurant
Thames Valley
University, W5 5RF

Guest Speaker



Middlesex Law Society (est. 1959) APPLICATION FOR MEMBERSHIP

Surname _____ Mr / Mrs / Miss / Ms

Forenames _____

Name of Firm or Organisation _____

Postal Address or DX no: _____

Telephone _____

Email _____

Status & Area of Work _____ Date of Admission _____

Would you be interested in joining the Committee? Yes/No

I wish to apply for FULL / ASSOCIATE / FIRM Membership of the Society (see below for details)

I enclose herewith my cheque for £ _____ for the current year, made payable to "Middlesex Law Society"

Signature _____ Date _____

Individual Subscription Rates:

- Full Membership: £50.00 per annum - 3 years since admission or academics
£30.00 per annum - less than 3 years since admission or Members in full-time employment in Local Government or Industry
- Associate Membership: £15.00 per annum - Trainee Solicitors, ILEX members, Paralegals, caseworkers, fee earners and students of law
- Firm Full Membership: Partners/Solicitors 2-5 £125 per annum 6-10 £250 per annum 11 or more £500 per annum

Please return completed form and remittance to: The Administrator, Middlesex Law Society, 55 Brookbank Avenue, Hanwell, London W7 1LA or Middlesex Law Society DX: 5104 Ealing Tel: 07930 386 798

CONTACT THE MEMBERSHIP SECRETARY TO CHECK IF YOUR SUBSCRIPTION IS UP TO DATE



By Avi Lasarow, managing director of Trimega Laboratories

It has long been acknowledged by the medical profession that a reliable test to detect alcohol and drug consumption is required. Addicts are often in denial or embarrassed about substance abuse and over half of heavy drinkers will underestimate, or lie about, their consumption of alcohol. All of the traditional tests that exist (eg urine, blood, liver function) have severe limitations: even when accurate, they only relate to recent consumption.

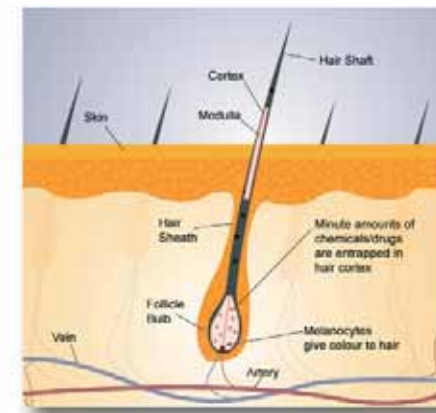
Although relatively new, forensic toxicology testing of hair is fast-becoming the preferred method of determining someone's alcohol and drug consumption. It has been enthusiastically adopted in the UK by Family Law specialists, social services, regulatory bodies, professions such as nursing and passenger transport (eg aviation) as well as being ordered by the Courts directly. The number of hair drug on parents that are requested by Social Services, for example, is estimated to be around 4,000 a year, with one-in-three testing positive to substance abuse.

Whilst hair testing is not intended to replace 'under the influence' impairment type tests taken at the time of a particular incident, its real value is in differentiating between social and excessive drinkers - or recreational and habitual drug users. Samples can be collected non-invasively and will provide an accurate record of any alcohol or drugs dependency over a three to 12 month period. From a practical point of view, hair is much easier to handle in the 'chain of custody' than blood or urine as it does not need to be stored under any special conditions. It also avoids the embarrassment of chaperones

'observing' urine collection. Plus, if a urine sample is in any doubt, it is always possible to take a fresh, identical hair sample and eliminate any false positives or false negatives

How It Works

Since hair growth is fed by the bloodstream, the ingestion of drugs or excess alcohol in the blood is revealed by analysing chemical markers absorbed by the hair. As the hair grows, it absorbs these markers into its structure, which remain in the hair indefinitely. These markers are only produced when there is alcohol or drugs in the bloodstream. The more markers there are, the more has been consumed. A tuft of hair about the diameter of a pencil is required and the industry standard is to test a length of 1.5 inches, which provides a 90 day history. If no head hair is available, body hair can be used instead. Samples must be taken by a trained collector or by a national nursing service to collect samples on behalf of clients. Results are generally available in seven to 10 working days from receipt of the sample and can be provided in a standard 'Section 9' legal statement. This is accepted, if required, by all UK courts -



although in some cases it may be necessary to also provide 'expert witness evidence' to support the results. A significant breakthrough came earlier this year when the two most common types of tests - known as FAE (fatty acid ethyl esters) and EtG (ethyl glucuronide) - were combined by Trimega Laboratories to provide 'Gold Standard' results for any case requiring unequivocal evidence.

Case Study

Merseyside law firm, Burd Ward Solicitors, has used hair alcohol tests in a successful bid to reunite children with their parents. In early January, hair samples were collected from both parents who had admitted excessive use of alcohol. Both adults reported abstinence in the four day period prior to hair samples being collected, but it was too short a timeframe for the hair alcohol test to yield a negative result. Further testing one month later did however give a negative result, showing that the donors had significantly reduced their alcohol intake. A third and final hair alcohol test carried out one month after that yielded a negative result of less than 4ng/mg, which is typical of teetotallers. This clearly showed that the parents had abstained from drinking in the three month period covered by all three tests.

Free CPD Training

Over the last 12 months Trimega Laboratories, the worldwide market leader in hair alcohol testing, has delivered more than 200 CPD courses in the UK, reaching a target audience of Magistrates, Barristers and Solicitors. Its courses, which can be arranged free of charge, cover the evolution of alcohol testing in blood through to the latest technology using hair and provide an in-depth understanding of the need for medical technology, particularly in child protection cases and the need to understand if a parent is considered to be alcohol dependent.

Trimega Laboratories
0845 388 0124
www.trimegalabs.co.uk

Respected by clients, rewarded by peers

In just seven years since it was founded, a niche law firm has established itself at the forefront of its field, winning not only the respect of its clients but its peers too.

TPP Law – until recently known as The Projects Partnership – specialises in working with public authorities and not-for-profit organisations in areas which include education, housing, health and social care. It has recently won a Law Society Excellence award for its practice management standards.

Staff at TPP Law have proved that having the right systems in place can reassure public sector clients that



TPP Law picking up their Law Society Service Excellence Award.

objective monitoring systems have been applied and reached. For TPP Law these include a carefully thought out management framework and accreditations in Investors in People and Lexcel.

Lexcel is awarded by the Law Society to solicitors that meet the highest management and customer care standards, while Investors in People provides a framework for improving performance and competitiveness through training and development. TPP Law became only the tenth firm nationally to achieve the exacting new standards of Lexcel version 4.

Lexcel accredited practices undergo rigorous independent assessment every year to ensure they meet required standards of excellence in areas such as client care, case management and risk management.

TPP Law is audited annually by Quality South East, which provides assessment and post recognition support for all organisations working with the Lexcel Standard and Investors in People.

Benefits of Lexcel and Investors in People for TPP Law

Mark Johnson, Managing Director, who jointly founded the firm with Director Graham Burns in 2001, said: "Achieving Lexcel and Investors in People has helped us attract and maintain motivated, talented professional and support staff, and to instil a clear set of values and expected behaviours to maintain reputation and high standards of service.

"As to winning the Law Society award, this has cemented the sense of pride and achievement which our managers and staff have in Lexcel accreditation."

Lexcel accreditation has brought many benefits to the firm, including:

- Increased profitability by avoiding costly mistakes and managing risks, costs have been reduced and fee income increased
- Improved financial management through applying Lexcel's

discipline improved cash flow and credit control

- Winning more contracts, especially from public sector clients who expect law firms to demonstrate value for money and evidence of quality during tenders
- Increased self confidence. Lexcel and IIP have been badges of honour, instilling a sense of pride and achievement in managers and staff

The updated Lexcel Standard not only requires policies and plans to be put in place, but also that they are reviewed and updated at least annually, and in certain areas, such as the business continuity plan, tested. The new standard places more emphasis on the technology that is needed in a modern law firm.

TPP Law's own disaster recovery plan was tested when the offices suffered a major power failure, but systems had been put in place to ensure data was saved – thanks to the pursuit of Lexcel accreditation.

Middlesex University and City Solicitors Education Trust create new Lectureship in Law

Middlesex University's Department of Law has just been awarded a three year Law Faculty Grant by the City Solicitors Education Trust (CSET). The grant provides 50% of the funding required for a new lectureship in law, with the University providing the balance. The new lectureship will focus on areas of contract law and tort (compensation and damages disputes), as well as adding to the Department's provision in core law subjects. The postholder is expected to play a vital role in mentoring and coaching students towards taking their first steps in the highly competitive professional world of law.

Professor Joshua Castellino, Head of Middlesex's Law Department, said: "At Middlesex we aim to provide the best most relevant teaching for our students. Gaining funding from CSET will help us do exactly that, both by strengthening our provision in core subject teaching, and by providing added support to students in their journey towards careers in the profession. We look forward to developing our programmes with our CSET Lecturer, who will be appointed later this year".

The Law Department at Middlesex was established 35 years ago and has built up a high standing and reputation amongst law professionals for its academic teaching and research. Undergraduates may follow either LLB or BA qualifications, and each year around 150 students graduate from Middlesex in these subjects. As well as increasing its provision in contract, tort and other key subjects, the CSET funding award means that the Department can strengthen its practical support to students in their career development. The University plans to appoint a

postholder with substantial experience of practicing law and mentoring younger colleagues, whose expertise can be used to coach students in the best routes to starting a successful career in law.

CSET was founded in 1989 and provides funding to university law faculties towards core and emerging subjects. CSET also runs a successful summer school. To date, CSET has provided grants of over £8m to more than 60 higher education institutions. Middlesex's CSET funding is one of eight Law Faculty Grants made to UK universities by CSET in 2008. Howard Jacobs, Chairman of CSET's Management Committee, said: "CSET is very pleased to be contributing to Middlesex's law provision; the application submitted by Middlesex's Law Department showed that careful thought had gone into how Middlesex could best meet the needs of its law students. We hope the CSET Lectureship will lead to a steady stream of graduates from Middlesex who will put their learning and expertise to use in the profession".

Anna Kyprianou, Dean of Middlesex University's Business School, commented: "The University is very pleased to be able to match CSET's generous Law Faculty Grant, to provide joint funding for this innovative 3-year post. The CSET Lectureship will undoubtedly enhance the experience of law students at Middlesex, particularly in terms of preparing them for careers in this often pressured profession. We look forward to seeing our graduates in key roles in the law profession of the future!".

For more details about Middlesex University's Department of Law, go to www.mdx.ac.uk/schools/bs/departments/Law/Law.asp



Copy Deadlines

Summer Issue 09
24th July

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6th November

Winter Issue 09/10
16th January

Spring Issue 10
24th April

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**Marcus Shepherd
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Online launch of College of Law's Training Programmes brings legal updates direct to Middlesex Lawyers' desktops

The College of Law has tapped into the growing popularity of e-learning by launching its multi-media distance learning programmes online.

Middlesex lawyers can now access the 76 programmes produced each year by College of Law Media across the full spectrum of practice areas directly on their desktops.

A recent survey of learning and development professionals revealed that e-learning is the fastest growing training method among major companies.

College of Law Media, formerly called LNTV, has been providing video training programmes to solicitors working in law firms and other organisations in all areas of practice for many years through its DVD service.

The new online service allows solicitors to gain CPD points by offering interactive test and feedback exercises to reinforce key points and ensure comprehension. Viewing a programme and completing the relevant exercises means one full CPD point per programme can be gained.

It also includes an automatically-updating diary feature enabling individuals and supervisors to monitor the amount of CPD points earned. Lawyers can also add in CPD points earned from other sources.



Jon Harman, College of Law Media director, said: "This is a fast and cost-effective way to fulfil CPD requirements without the need to travel away from the office and miss out on valuable billing time. Learning and Development professionals are all currently facing tough strategic decisions on training spend. The attendance at last month's Learning Technologies event in London had doubled on the previous year's. We are seeing a re-awakened interest in technology learning solutions and people are realising how much this technology has progressed, coupled with new research in neurology about how the brain actually learns."

"The College of Law has led the way with the multi-faceted use of e-learning across all programmes and is firmly placed to continue to lead the way with solutions for professional legal training. College of Law Media builds on these foundations and will continue to build."

A recent survey of senior training professionals by Cegos, part of Europe's largest learning and development organisation, revealed that e-learning was set to grow at a greater rate than any other training method. Nearly three quarters (73 per cent) of organisations are planning to use e-learning for professional development in 2009, while 36 per cent say they will increase their e-learning efforts.

In addition the recent Towards Maturity Benchmark Review, undertaken in the UK between November and December 2008, shows a stark shift of thought to learning technologies as the country enters a difficult economic period. 64 per cent of respondents said they intended to transfer their training budgets to e-learning solutions, rather than traditional courses.

College of Law Media's programmes provide topical training and legal updates across a range of practice areas: corporate/commercial; property; practice management and compliance; employment; dispute resolution; local government; personal injury; family; private client; and crime.

They are professionally produced with high production values and feature advice from leading experts. The writers and producers are also all qualified solicitors with substantial experience of the realities of legal practice.

The online programmes can be viewed both by individuals on their desktops and by groups via a projector.

For more information visit www.college-of-law.co.uk/cpdtraining. To register for a free trial call the Customer Centre on 01483 216789 or email cpd@lawcol.co.uk

Middlesex University to train human rights lawyers in Uzbekistan, Kazakhstan and Kyrgyzstan

Lecturers from Middlesex University's Department of Law and colleagues from London Metropolitan University's Human Rights and Social Justice Institute have just begun a one-year pilot project, to develop the knowledge and skills of human rights advocates in Uzbekistan, Kazakhstan and Kyrgyzstan. The project is funded by Britain's Foreign & Commonwealth Office, and aims to enhance practitioners' skills and professionalism, drawing attention to the way civil society engages with national institutions in those countries, and working towards 'best practice' in dealing with human rights issues. Middlesex lecturers will deliver training on-site and will coach and mentor attendees.

The idea for the project stemmed from a training initiative which Professor Joshua Castellino, Head of Middlesex's Law Department, worked on in Kyrgyzstan in 2008, where he coached human rights defenders from Uzbekistan and Kyrgyzstan in how human rights laws operate, and in how to develop effective strategies for dealing with human rights issues at international level. The emphasis of that programme was on empowering human rights defenders and this focus has been maintained and developed in the 2009 project, with other subjects and modules being added to create a broader programme.

The 2009 pilot project will involve groups from Uzbekistan, Kazakhstan and Kyrgyzstan. As well as creating information and resource networks in their own countries, attendees will have the opportunity to develop regional networks where they can share information, issues and strategies with colleagues in neighbouring countries. This could lead to greater cohesion and a stronger voice for civil society in the region.

Over the next year, experts from Middlesex and the Human Rights and Social Justice Institute (London Metropolitan University), who all have experience covering countries beyond the UK and Europe such as Russian and Chechnya, will deliver the project. The programme will be delivered in two week-long sessions in Almaty (Kazakhstan) and Bishkek (Kyrgyzstan), where the project team will engage human rights defenders on various aspects of human rights law. The modules will be based on course content drawn from Middlesex's newly-revalidated LL.M. Attendees can manage their studies in stages – if they follow two modules, they can achieve a Certificate, whilst following four modules could lead to a Diploma. Attendees will be offered the chance to enrol on the LL.M programmes at either Middlesex or London Metropolitan University for six months to engage in research towards a dissertation. Attendees are likely to be human rights lawyers, defenders and influencers, selected with the assistance of British Embassies in the region.

At project sessions, Middlesex staff will draw on live cases, coaching attendees to devise strategies for addressing a range of human rights issues. Middlesex's role in this will focus on moderating and facilitating, helping to empower people and build their knowledge and confidence. Eventually, as course attendees work more closely with peers in neighbouring countries and solid information and support networks are built up in the region, Middlesex's role in central Asia will be scaled down; in the future, if the pilot and its format proves successful, the project may be reproduced in other areas where human rights and social justice issues sometimes conflict with legislative practice.

Professor Joshua Castellino said: "We're delighted that the Foreign & Commonwealth Office has agreed to fund our project proposal. We believe that it is through stronger south-south cooperation that many of the entrenched global human rights problems could be resolved and it is particularly heartening to see that the Foreign & Commonwealth Office agrees with this analysis. Through the commitment of the attendees and the experience of our project team in coaching and mentoring, we hope to make a significant contribution towards the emergence of effective networks of human rights defenders across central Asia".

For more information on Middlesex University, go to www.mdx.ac.uk/law



The University of Huddersfield School of Law

The School of Law is a progressive one that is committed to offering courses that are not only innovative in terms of structure but also in terms of delivery. The School was established in 1978 and was one of the first providers to be validated to run the Legal Practice Course (LPC) from 1993.

In 2008 commenced a radical new four year degree course combining the traditional law degree with the final stage for qualifying as a solicitor, normally completed through the LPC. At the end of the four years students achieve their LLB (Hons) plus a Master of Law and Practice. We were the second University in the country to be authorised to offer this course by the Solicitors Regulation Authority, the first time the SRA has approved such radical reform since 1992. Apart from the added value of obtaining a Master's degree, students benefit enormously as all fees are

deferred until they are in employment, there are no expensive "upfront" fees as for the LPC.

Our emphasis is giving students a sound educational experience supported by an "open door" policy for academic and pastoral care throughout the student's period with us.

Our commitment to ongoing course development to meet the needs of tomorrow's professionals is demonstrated in new course areas such as a Foundation Degree in Para-Legal Studies which will be available from 2009.

We also offer both full and part-time courses leading to the Common Professional Examination. Again this course is unique in that it is offered on a flexible and distance learning basis over the internet. This means that any student, anywhere in the world can complete this course and then move on to studying the LPC or the Bar Vocational Course.

In an era of economic uncertainty when significant re-structuring is taking place, not least in the legal professions, we are also able to provide appropriately qualified applicants a range of postgraduate courses to enhance their knowledge. For those who are professionally qualified or who have simply completed their LPC or BVC courses and are awaiting a training contract or pupillage we offer an LLM by open and distance learning. This requires the presentation of a 25,000 word dissertation, coupled with a presentation. The research is usually carried out over an academic year, though this period can be extended. In addition we offer taught LLM degrees in Commercial and International Law on a full-time or part-time basis with either a September or January start.

*P H Richards LLB, PhD, PGCE, FHEA
Head, School of Law*

experience, expertise and innovation in law

The University of Huddersfield Law School offers a range of qualifications geared to the needs of the profession and delivered by trained and experienced staff.

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Middlesex University Celebrates 35 Years

The re-launching of the Law Department at Middlesex University, under the leadership of Professor Joshua Castellino, is producing a staff group which recognises the potential of the Department for a future in which existing programmes can be improved, new programmes offered and research projects undertaken.

However in the midst of the excitement concerning the present and the future there began to emerge an interest in the past on which the present rests and the future will be built. University records were drawn upon, colleagues who had long service were asked to draw on their personal memories and provide both documented and oral accounts of this history. Former students, especially alumni were consulted. It was decided to hold a celebratory event on 12th May 2009 to bring together as many as possible of those who had been associated, as teachers, external examiners and, above all, students, with the delivery of law at Middlesex, in order to reminisce on the past and rejoice at the prospects for the future.

An immediate question was, 'When and how did it all start?' We knew that there had been law teachers at both Enfield and Hendon before these Colleges of Technology were brought together to form Middlesex Polytechnic. It is within 'living memory' that law was taught at Hendon at least as early as 1960, in the context of post-experience programmes for managers (particularly trainee personnel managers) and Higher National Diplomas in business studies. The development of law was strengthened in the late 1960s by the validation of a BA in Business Studies at both Hendon and Enfield and as a component in a Joint Honours degree in Humanities at Hendon, but the present celebration is based on the emergence of the law degree made possible by these earlier programmes.

The validation of the law degree was an exercise in private enterprise by the lawyers on the eve of the creation of Middlesex Polytechnic, rather than a part of the business plan for the new Polytechnic. By and large the staff at Enfield and Hendon did not want to work together: they regarded the union of their colleges in the Polytechnic as a forced marriage. However Hendon College had an Acting Principal, one Dr Garnett, who saw the contribution that a law degree could make to the Polytechnic, so he hinted to Hendon lawyers that they should pre-empt formal introductions and immediately set up a clandestine degree working party as a joint exercise with the Enfield lawyers. The lawyers needed no further encouragement and, on the eve of the formation of the Polytechnic, Enfield College administrators sent the relevant (but still unauthorised) papers to the Council for National Academic Awards requesting it to validate a law degree. By the time this came to light the Polytechnic had been formally declared, Dr Garnett had moved on and Hendon campus was under the management of the Deputy Director of the Polytechnic. He was not pleased to learn what the lawyers had done, but he had to concede the proposal that had been put forward was strong enough to face a validation panel. CNA A visited Hendon and had no hesitation in validating a BA in Law for an intake of about 35 students there in September 1974. This established Hendon as the principal

Post 35th Summary

On the evening of May 12th Middlesex University Business School paid host to about 150 guests in a lively celebration marking the 35th year of the teaching of law at Middlesex. Guests included many former LLB, BA law and Graduate Diploma in Law graduates, several of whom remain in the Middlesex area as practitioners working in law firms, barristers' chambers, government, education and industry. Middlesex were extremely pleased to have as guest speaker **Michael Mansfield QC**, who spoke about a wide range of subjects, including his work in recent controversial cases involving civil liberties and advice to new lawyers interested in civil liberties. Michael Mansfield's remarks were followed by those of Nick Rochez of Dewey and LeBoeuf, who is a Middlesex alumnus and acts for international clients in the field of insurance law. The event concluded with comments from Professor Joshua Castellino, Head of the Law



base for law in the Polytechnic though for a number of years law continued to be offered at Enfield in business studies and joint honours degrees.

The law degree has gone from strength to strength since that first modest intake of students, though it was several years before CNA A decided that every law degree it had validated should be known as an LL.B. In Middlesex the law portfolio has grown to include many other programmes, including the CPE diploma for non-law graduates, a cluster of LL.M. and supervision of MPhil and PhD programmes. Research has also become part of the department's culture, building on an early funded project on health and safety law on offshore installations, staff have achieved a research record which includes many projects particularly in employment law and human rights. However the present celebratory event is to mark the giant step forward made by that first intake of law students 35 years ago. We hope that it will bring together many friends who will be able to celebrate the past, enjoy the event and contribute to the future.

*Brenda Barrett, Emeritus Professor
Middlesex University Law Department*

Department at Middlesex University followed by refreshments in the stunning setting of the Sir Raymond Rickett Quadrangle in the Hendon Campus of Middlesex University.

*Susan Scott-Hunt
Lecturer, Middlesex University Law
Department
s.scott-hunt@mdx.ac.uk*



MIDDLESEX LAW SOCIETY 50TH ANNIVERSARY DINNER

6 February 2009 at the Law Society Common Room, Chancery Lane



Top Table

Lord Bach, Under secretary of State for Justice
Paul Marsh, President of the Law Society
Sheila Marsh
Professor Malcolm Davies, President of the Middlesex Law Society
Pamela Davies
Maria Crowley, Immediate Past President of the Middlesex Law Society
Adrian Rees, Solicitors Benevolent Association, Chief Executive
Michael Garson, Law Society Council Member for Central and South Middlesex
Morag Goldfinch, Law Society Regional Secretary
Frances Goodman, President of the West London Law Society

2

Mrs Lesley Vickers (PP) Vickers and Co
Alexander Atchison (PP) Vickers and Co
Stephen Ingall Vickers and Co
Sue Ingall Vickers and Co
Robert Drepaal (PP) Vickers and Co
Maurice Guyer (PP) Vickers and Co
Lina Chauhan Vickers and Co
Vincent McGrath Vickers and Co
Dr Timothy Baldwin Garden Court Chambers
Peter Hesom Administrator, Middlesex Law Society

3

Brian Regler (PP) Colemans LLP
John Barry (PP) Nicholls Christie & Crocker
Richard Hansom (PP) Nicholls Christie & Crocker
Sandra Kurth Nicholls Christie & Crocker
Dave Debidin (PP) Debidins
Miss Radha Gobin Sriharans
Ariya Sriharan (PP) Sriharans
Renuka Sriharan Sriharans
Irene Sriharan Sriharans
Miles Sriharan Sriharans

4

Stephen Booth (PP) Iliffes Booth Bennett
Susan Booth Iliffes Booth Bennett
Simon Hobbs Iliffes Booth Bennett
Paul Kite Iliffes Booth Bennett
Jan Galloway Iliffes Booth Bennett
Carolyn Tann Iliffes Booth Bennett
Ian Davis Iliffes Booth Bennett
Peter Burnett Iliffes Booth Bennett

5

Edward Lock (PP) Lock Marlborough
Caroline Lock Lock Marlborough
John Goldman 7 New Chambers
Lynda Goldman 7 New Chambers
Ian Clark 7 New Chambers
Lottie Clark 7 New Chambers
John Lackington HSBC
Barry Harwood HSBC
Sonia Singh Kayders solicitors
Sanjeev Bisauthsingh Kayders solicitors

6

Neeta Desor (PP) Desor & Co
Hardeep Dhillon Desor & Co
Anita Anthony Desor & Co
Rajinder Khosa Desor & Co
Darrell Webb Duncan Lewis & Co
Amajit Lali Duncan Lewis & Co
Savita Sharma Duncan Lewis & Co
Ana Nanovski Duncan Lewis & Co
Christine Dooley 2 Pump Court
Richard Bearman HSBC

7

Maralyn Hutchinson (PP) Kagan Moss
Jeremy Stevens TVU Law School
Jane Stevens TVU Law School
Rowana Lustey TVU Law School
Philipp Elliott Wright TVU Law School
Dina Elliott Wright TVU Law School
Philip Ells TVU Law School
Linda Hunting TVU Law School
Chris Clarke Lloyds TSB
Crawford Edgar Lloyds TSB

8


Alured Darlington (PP) Hanwell Chambers
Elizabeth Van Der Weit Hameed & Co
Juliet McCammon Home Office
Gillian Travers CPS
Susan Scott Hunt Middlesex University Law Group
Stephen Homewood Middlesex University Law Group
Dr Joseph Cokin Middlesex University Law Group
Dr Boaz Ben-Amitai Middlesex University Law Group
Dr Mariette Jones Middlesex University Law Group
Dr Nadia Bernaz Middlesex University Law Group





Social




 RECLIVED
 29 FEB 2009
 Frances Goodman
 President
WEST LONDON LAW SOCIETY
 9 Oaklands Grove,
 Shepherd's Bush
 London W12 9JD
 Direct Tel: 020 8743 8867
 E-mail:
 frankiegoodman@hotmail.co.uk
 19th February, 2009
 Dear Robert,
 Re: The Anniversary Dinner on 6.2.09.
 Very many thanks for inviting me to share your
 50 year celebrations at the Law Society. Please
 pass on my thanks to your immediate past
 president, Maxia, and your current President,
 Malcolm, and to all your Committee members.
 It was an excellent evening. The speeches
 were superb; it was all most convivial. I was
 highly flattered to be seated at the right of
 your guest of honour, Lord Bled. As he'd
 been a prominent member of the Criminal Bar
 we were able to chat away happily.
 Yours sincerely
 Frankie Goodman





Middlesex Law Society Summer Party

at
The Bury
Church Street
Chesham
HP5 1JE
Tel 08456 381381



on Saturday 25th July, 2 - 5 pm

£10 entry, children free

Register your interest contact Simon Hobbs
simon.hobbs@ibblaw.co.uk



Wine Tasting

17 September 2009
7.00pm
£20 per head

Pillars Restaurant
Thames Valley
University, W5 5RF

Limited places available.
To register your interest
contact Malcolm Davies
malcolm.davies@tvu.ac.uk



GROUP TOURS

Register your interest by e-mail

Jack the Ripper Tour
Contact: Renuka Sriharan
info@sriharansolicitors.co.uk

Tour of Lords Cricket Ground
Contact: Dave Debidin
Debidins.sol@virgin.net

RAF Museum Uxbridge
Contact: Simon Hobbs
e-mail: simon.hobbs@ibblaw.co.uk

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Moving on from soliciting – the life of a local notary public

A few years ago I decided to abandon the joys of the daily
Central line commute and find a way to work either from home
or closer to home. A friend had just started the course leading
to a Diploma in Notarial Practice run on a part-time basis over
two years by Cambridge University, and suggested a possible
career change which might work for me.

Notaries represent the oldest and smallest branch of the legal profession. A
Notary Public is a legal officer of ancient standing; in Latin a 'notarius' was a
clerk or secretary, a sort of legal scribe. Indeed part of the Diploma course
requires a study of Roman law so that the notary has some understanding of
subsequent legal systems based on Roman law. Most notaries have qualified
and practised for some years as solicitors before moving on to include a notarial
practice as part of their work portfolio.

The admission and regulation of general notaries in England and Wales is one
of the functions of The Faculty Office of the Archbishop of Canterbury based
near Westminster Abbey in London. Until 1533 notaries were appointed on
papal authority by the Archbishop of Canterbury. Following the break from
Rome, appointments continued to be made by the Archbishop of Canterbury -
but on the authority of the Crown. So the Court of Faculties (now known as the
Faculty Office) has its origins in the Ecclesiastical Licences Act 1533. Today the
Faculty Office is presided over by the Master of the Faculties who is the most
senior ecclesiastical judge and commonly also a judge of the Supreme Court.
The functions of the Office are now the issue of marriage licences, the
regulation of the notarial profession, and the awarding by the Archbishop of
"Lambeth" Degrees.

Scrivener notaries (approximately 30 in number) are members of the Worshipful
Company of Scriveners. The membership of the Company includes not only
notaries but also members of several other professions. Scrivener Notaries have
their own separate governing and professional bodies, and they generally
practise exclusively as notaries, mainly in London. Thus they are not usually
qualified solicitors too. They are required to have a knowledge of foreign law
and foreign languages as well as a knowledge of English law. This does not
apply to general notaries although proficiency in one or more foreign languages
can be helpful.

The Notaries Society is the representative society for the 900 or so Notaries
Public practising in England and Wales. Scrivener notaries are represented by
the Society of Scrivener Notaries.

A client may need a notary public for many things, such as selling or buying a
house abroad, opening a foreign bank account or transferring money from it,
giving a power of attorney, certifying copies of documents such as examination
certificates or qualification certificates, opening a branch office of a UK
company or business abroad, getting translations of documents certified,
assisting with the paperwork for marriage abroad and so on. The need for a
notary public is dictated by the requirements of the country where the
document is to be used.

Being based in West London I see a
number of Indian clients now
resident in the UK. For example, if
the client is not in India, but wishes
to buy a property there, his Indian
lawyer or other donee will require a
power of attorney to deal with the
purchase and registration of
ownership and possibly the on-going
management of the property. The
client will appear in front of the
notary who will confirm the client's
name and identity, observe the
signature by the client before
witnesses, and sign the document
and seal it with his or her official
seal.

The document then will usually need
to be further authenticated by having
the U.K. Foreign and Commonwealth
Office confirm the validity of the
notary's signature and seal. This is
done by legalisation or
authentication – the FCO attaches an
official certificate to the back of the
document, known as an apostille.
This is internationally recognized in
most countries due to the Hague
Convention, and so nothing further is
required from the consulate of the
foreign country in question.

I operate a purely notarial practice
from home. As it is not a full-time
occupation, I combine it with part-
time teaching at the Law School at
Thames Valley University and some
voluntary activities. However it does
mean that I can be fairly flexible and
see clients in the evening or at
weekends if required as well as
during the working week.

Rowena Lusty
Lecturer, Thames Valley University



Today we need your help...



Hunt Review of Regulation of the Legal Profession

By Michael Garson

The Law Society commissioned a review of regulation by Lord David Hunt in response to its experience of dealing since 2006 with governance of the separated Solicitors Regulation Authority (SRA) and Legal Complaints Service (LCS). It took account also of the development following the Legal Services Act 2007 of the establishment of the Legal Services Board (LSB) – the oversight regulator and, from 2010, of the Office of Legal Complaints (OLC) to replace the LCS and establish a new complaints handling system.

Members of the profession were invited to comment on their experiences to Lord Hunt, who as a solicitor in practice for many years and now active in Parliament, has been heavily involved in the passage of the Legal Services Act (LSA 2007) reforms and the design of the new regulatory landscape.

Middlesex Law Society organised a submission through the members of its committee to reflect shared views from the perspective of high streets firms offering both general and niche services. There was also a training and education viewpoint expressed by our members who train entrants to the profession.

The implementation of the LSA 2007 led to the appointment of the chair of the LSB, David Edmunds, and the issue of a work plan setting out priorities in relation to LSB's role of supervising regulators of the legal profession. The LSB is keen to promote alternative business structures as soon as possible.

The SRA has been in place for more than two years and the re-appointment of its Board is imminent. The Law Society has responded to feedback from the profession and many have expressed a view that regulation of practice is problematic and unduly burdensome. The larger city firms have submitted a collective view through the report of Nick Smedley and this has now been published. The report explains the ways in which the larger firms believe that the regulation of practices dealing with certain clients – broadly sophisticated clients on the global stage – could be handled rather differently by an SRA equipped with expert regulators. Many of the views expressed would be shared by practitioners across the country in all sizes of practice and the observations and suggestions could be adapted to meet the needs of other types of practice outside the city.

The submission for Middlesex looked at a number of aspects of regulation and difficulties of applying certain rules across all types of practice. Many have views based on a monitoring visit or other interaction, be it in connection with training, advice on professional matters or disciplinary procedure. It is widely felt that a number of improvements are needed to make application of the rules more proportionate and relevant. SRA should be more understanding of practicalities faced by practitioners and more mindful of the cost of the increased burden of regulation imposed in recent years. Much regulation is now somewhat 'gold plated' and aimed to be preventative, such as in relation to money laundering, or intended to protect the reputation of the profession with the public, such as in relation to mortgage fraud. It bears heavily on smaller firms who on a wide and 'sympathetic' view do not necessarily present a greater regulatory risk.

The SRA policy of 'principle based' regulation is applied on a risk assessed basis. This is not universally accepted or even fully understood. It involves weighing up the 'risk score card' devised by the SRA in relation to facts and matters that it deems relevant. This takes account of risks pose to the protection of the public and/or to the reputation of the profession. In some respects this assessment is seen as arbitrary and both uncertain and variable. This presents a problem to many of our members who have to organise their working lives on the basis of certainty not just to avoid risk of mistakes, but also to keep control of costs. Many members of the profession were trained to operate their offices within clearly defined rules backed by extensive guidance; this is no longer available in the same way as it once was. Overall it appears that there may be a lack of trust by on the part of practitioners concerning the SRA and a lack of experience or pragmatism of approach by SRA as regards the problems that arise in practice.

Members generally express the view that the independence of the profession and of legal advice from government is paramount. Also there are concerns at the imbalances between the regulated sector and those who are not so strictly regulated or not regulated at all and the inconsistencies should be ironed out. This affects will writing and the intrusion of referral fees into various aspects of legal practice.

The cost of regulation is high both in relation to constant changes to meet new situations and in the time needed to implement and monitor work carried out by others. This is an increasing concern with the advent of Legal Disciplinary Practices which are now allowed and also with the proposals for Alternative Business Structures (ABS). It remains to be seen how the LSB will approach the imposition of the profession's high standards on non-solicitors who become members of LDPs and, in due course, businesses using the ABS model.

Some regions (our area included) have been affected by SRA disciplinary activity that has led to a perception that some new and smaller practices are particularly vulnerable to adverse findings. Inspections lead to disciplinary procedures that larger or more established firms, might not suffer. It is possible that some newly formed firms with inexperienced partners would benefit from post qualification training or mentoring and this idea is being considered by the Society and its education and training members as a result of recent discussions.

Additional training for those who are considering embarking upon practice on their own account would seem a sensible initiative, if only to be better equipped to deal with the strict requirements of regulation. The downturn in economic activity has seen, and will continue to see, redundancies in the legal profession and for some the way to stay in practice is to strike out on their own.

Overall regulation of the solicitors' profession is extremely strict and calls for high standards of conduct. Solicitors are expected to support the rule of law and government agencies for anti terror legislation, money laundering, tax collection and other anti-fraud policies. The benefit of this to government seems to go largely overlooked when considering the terms of which the profession operates.

The review will now proceed to its next stage with a consideration of all submissions made. This will include one from the Regulatory Affairs Board on behalf of the Law Society Council that deals with concerns as to the ways in which the SRA share its ideas and thinking in relation to the making of rule changes. There will be a series of road shows around the country which started in May.

Michael Garson
Council Member for Central & South Middlesex
Michael.garson@kaganmoss.co.uk

SBA
Caring since 1858
...tomorrow you may need ours

Section 194 Pro Bono Cost Orders



The legal profession has, for some time, sewn a rich vein of pro bono work into its history. Today that trend continues and looks set to grow thanks to the introduction of pro bono costs orders, otherwise known as section 194 orders.

Perhaps now, more than ever, pro bono legal work is more important with so many people being affected by the downturn seeking access to justice.

The Law Society is backing Lord Goldsmith, QC, the former Attorney-General's call to all lawyers carrying out pro bono cases to utilise Section 194 pro bono costs orders to increase resources for access to justice.

Under the new process, where a pro bono assisted party wins its case, the court may now make a section 194 order in its favour. Put simply, if pro bono lawyers provided pro bono legal advice and representation worth a certain amount on a case, the court may now make an order that the losing party must pay those costs, in the same way it would had those lawyers been charging the client for those services.

All the monies will now go direct to a single charity – The Access to Justice Foundation, a registered charity, chaired by Lord Goldsmith QC, with trustees drawn from across the legal profession and the advice sector, reflecting that the scheme as a whole is a cross-profession initiative.

The Foundation was established to receive and help distribute these funds to voluntary, not-for-profit and charitable pro bono organisations, places where such funds are needed the most so that those needing pro bono legal assistance can obtain it.

Previously where a case had been won with pro bono help the losing party would have escaped liability for costs, but the introduction of section 194 orders via the Legal Services Act 2007 has changed that rule.

The very existence of the cost order has other benefits. In negotiations, the pro bono lawyer can use this “carrot” to encourage settlement or to obtain a better settlement for their client than they might have obtained previously. If the opposing party knows it will face a costs order, it has a real incentive to settle - and to settle on good terms.

By helping one client, the pro bono lawyer assists a second for free. Lawyers can double their pro bono effort because the section 194 order they obtain will go to support pro bono services, and another person or maybe many people can be helped in other cases via the Foundation.

The Access to Justice Foundation is approaching its first full six months in operation, and has received both funds from a modest first section 194 order, and some strategic donations from the legal profession. Lawyers have also reported achieving settlements in pro bono assisted cases due to the other party's potential liability to pay section 194 costs.

Lawyers in a position to apply for a section 194 order need to remember only six key points:

- They need to record their time just as they would for a paying client.
- They will need to tell the judge how many hours they worked and their usual rate - a costs schedule is a good way of doing this.
- Lawyers must always ask the judge to make a section 194 order where their client wins their case.
- They must tell the judge he can and should make an order in the same way as if it were an ordinary costs order – except of course that the funds will not go to the lawyer on the case but to the Foundation to support voluntary and not-for-profit organisations that provide pro bono assistance.
- Lawyers must tell the judge that he or she may choose from a summary or detailed assessment in determining costs. The judge can order all or part of the costs that would have been payable if it had been a fee paying case. Lawyers must provide their draft order and costs schedule to the judge. The Foundation hopes to provide a sample draft order on its website soon.
- Finally, the lawyer must send a copy of this order to the Foundation.

Pro bono work is vital in providing access to justice for those who cannot afford legal assistance but cannot get legal aid. However, it is vital that pro bono only compliments and does not substitute a publicly funded legal aid service.

The Law Society is committed to supporting the pro bono initiatives of the solicitors' profession, which are recognised annually as part of National Pro Bono Week. For the solicitors carrying out pro bono work section 194 is another string in the pro bono bow.

Paul Marsh is President of the Law Society of England & Wales



Law Society Council Member's Report

Summary Report on Council Meeting of April 2009

The Council remained extremely concerned about the effects of the recession on the profession. Although there is no accurate information available, it is anticipated that there will be a drop in the number of practising certificate fees next year and that this will have a considerable effect on income at a time when the demands are going to be far greater.

As part of the Legal Services Act (LSA), the profession must pay a significant proportion of the start up and the running costs of the Legal Services Board (LSB) and the Office for Legal Complaints (OLC), there will be no contribution whatsoever from government funds.

In addition to the costs of the OLC the profession will be required to ensure that the Legal Complaints Service is in a position to complete its outstanding work and for a period, it is likely there will dual running of both services.

The enduring problem of the pension fund is also likely to mean that there will be further demands on the profession in the next few years and despite savings made by the representative Law Society, it is clear that not all of the projects the Society would wish to carry out on behalf of the profession, will be able to take place without a substantial rise in the practising certificate fee.

The SRA also anticipate increased spend as a result of the recession, Council were very concerned that every effort be made to keep the practising certificate fee to a minimum and further steps of being considered which will inevitably mean there are difficult choices to be made.

The effect of the recession on property work in particular was noted and there is a plan of work to support solicitors and ensure that they remain at the heart of the conveyancing process. Council agreed that notwithstanding the current financial difficulties it would like to explore this further work and a requested that a detailed business plan be submitted to it.

The news that reaccreditation of those with higher rights has been delayed did not entirely allay concerns. The SRA indicated that they remain committed to the principle that any form of accreditation should be subject to further review and that they have made representations to the Bar Standards Board that they should also re-accredit barristers. Council felt that it was unlikely the SRA would persuade the Bar Standards Board that reaccreditation of barristers should take place and because of the SRA's commitment to reaccreditation in all accreditation schemes there is a risk that this is only a delay before starting the process. Council made it clear to the SRA that they would expect a fair system across advocacy and that reaccreditation should only be made compulsory for solicitors if it was also to be compulsory for the Bar. Peter Williamson, the Chair of the SRA, was not able to commit to this as the discussions had yet to take place with the Bar Standards Board.

*Michael Garson
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TVU's LPC Engages with the World of Legal Practice



Thames Valley University's Legal Practice Course hosted a meeting on 1st April 2009 with representatives of the solicitors' profession to take their views on the education and training of the solicitors of tomorrow and to ask them what they expected of trainees.

Solicitors were invited from a wide range of practice, including partners of firms who are involved in the national Law Society, the Middlesex Law Society and in City practice,

solicitors from legal aid practice and from Her Majesty's Courts Service. Ex-TVU LPC students who have gone on to qualify as a solicitor or who are in a training contract also attended.

The solicitors learned about the nature of education and training which our students experience on the LPC course and gave their views on what they expect from trainees after they leave the LPC. Issues which emerged strongly from the profession were the necessity for students to acquire appropriate professional attitudes, ethics and a sense of the law firm as a business. They should appreciate time-costing, budgets and the importance of achieving fee targets.

The profession wanted to employ trainees with a good grounding in law and procedure who could be useful from day one in the office. They expected a good knowledge of professional conduct and a solicitor's duties. They stressed the importance of being client focused, having the ability to analyse what the client is trying to achieve, to assess a situation, diagnose a problem, manage the client's expectations and communicate effectively.

Ex-TVU students present said they had found the LPC course and the learning materials very useful to them in their training contracts and that they felt well-grounded and prepared for practice.

As the first stage of a solicitor's professional training the LPC at TVU aims to provide a bridge from academic work to legal practice, and to make students ready for the challenges and excitement of legal work. We encourage our students to make contacts with the profession through the Middlesex Law Society and our LPC work experience and mentoring scheme.

Jane Stevens
LPC Course leader, Thames Valley University



Immediate Past President, Maria Crowley presenting the Charity Quiz Night cheque to Adrian Rees at the 50th Anniversary Dinner.

FILM AND THE LAW No4: The Lawyer Who Went to Bed a Conveyancer and woke up a Criminal Advocate (aka Nightmare on Arcadia Avenue)



By Vincent McGrath
The author runs The Film Nite film group on Tuesdays at The Soho House Club in central London. The next term commences October 2009.
www.filmnite.co.uk
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In 1966, one of this country's greatest if not its greatest director had to exit these shores under a cloud for the tabloid press was so 'disgusted' with his profoundly disturbing Peeping Tom (1960) - now an acclaimed masterpiece - and this sadly, signalled the premature end of Michael Powell's glittering career.



Australia in those days was a retreat where creatives escaped to when things were out of kilter here. Witness Anthony Aloysius Hancock and more recently TV celeb Michael Barrymore. It was a bolt hole where anonymity and work were almost guaranteed. A place to lick wounds, safe in the knowledge, that a career may be salvaged by a grateful but supposedly less sophisticated audience.

Previously, all us non-Aussies knew about down-under movies was perhaps the film Hurry on Sundown and maybe the ubiquitous thespian Chips Rafferty. The establishment in the 1960's of a series of Aussie film schools changed all that. Oz Film went from a dependent cottage industry to a thriving independent one with an international dimension

Directors such as Peter Weir, Philip Noyce, Gillian Armstrong, to say nothing of the kiwi Jane Campion now make movies that are both commercially successful, and critically acclaimed throughout the world.

In the vanguard of this explosion was the film BREAKER MORANT (1980), directed by Bruce Beresford and set during the second Boer War. A group of Aussie volunteers achieved a lot of success operating behind enemy lines and acting in a not so gentlemanly manner. HMG was looking for a way out of this costly South African venture, and in order to achieve a resolution, a sacrifice was needed to show good faith. Their senior officer conveniently dead, the three Aussies were ripe for offering up on the altar of appeasement. With their court martial set for the following day, an officer albeit a solicitor was ordered to defend the hapless trio, who faced the ultimate sanction should they be found guilty. Unfortunately for the three accused the newly elevated advocate's only experience of Law was the buying and selling of real estate in the Australian outback and will drafting.

As you would expect he started off badly, and got steadily worse with his clients being less than impressed. But an Aussie is an Aussie and he got stuck in. If justice hadn't had her

scales decidedly weighted in the direction of the powers that be, in the shape of Lord Kitchener, he would have pulled off a famous victory. Had that been the case of course, we may never have known about the incident, there would not have been a film and I wouldn't be writing this. Such is the perversity of human nature - failure engages us much more than success!

A miscarriage of justice there was, and on a grand scale to boot.

Two of the defendants were executed by firing squad the day after the inevitable verdict, with the third, because of his youth being allowed to go home, albeit on a commuted life sentence.

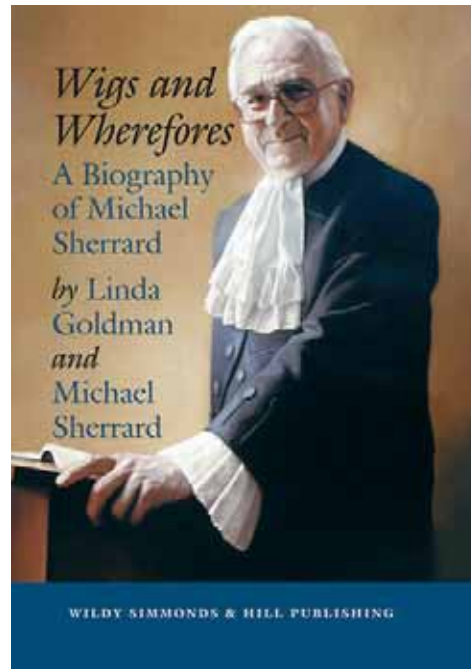
And as for the erstwhile advocate? He returned to conveyancing and probate work in the outback, thankful in the knowledge that his failed land transactions hadn't ended up in a pool of blood on his waiting room floor.

The poor chap never spoke about the matter again.

But today, would metamorphosing from a conveyancer to an advocate be the stuff of nightmares? With the housing market in sharp decline, I suspect we will see a lot more conveyancers rising to their feet, if not from their dreams, presumably with the advantage of a Law Society approved course behind them - not like our indomitable colleague 100 years ago on the wind-swept veldt, who had just one restless night to hit the books and get up to speed!

'Erh, if it pleases the erh....erhm...court.....'

Book Review



Wigs and Wherefores: A Biography of Michael Sherrard

Linda Goldman and Michael Sherrard

Wildy Simmonds and Hill Publishing:
London (2008)

The law does not enforce itself. People do. They do so with a variety of influences upon them and in a range of contexts. The Good Law School will try to convey this reality by teaching law as more than just a set of rules, liabilities and duties.

But how to do this?

It was once assumed that the best way was to teach the socio-legal context but this soon fell into the hands of those who love the grand sweeps of history or conspiracy theories and who would explain the reality of law as being down to class, status, caste, privilege, birth sign or whatever trip the exponent was on. These accounts were not necessarily wrong.

The other story, the other more complicated one, with the meandering ways of personality, contingencies, ambiguities and fortuitous circumstance required the student of law to have a sound knowledge of the rules and its procedures but to appreciate that it was essentially conducted by human beings with a story to tell.

Wigs and Wherefores is just such a story of one practitioner, Michael Sherrard QC, and his encounters with humanity in its various forms. It is very well written but what makes it distinctive is it is about some of the most high profile and historically interesting cases over the last fifty years that are still of interest to today's students of the law.

Sherrard, or his clerk, certainly knew how to pick 'em.

His cases meant that he met the famous and the notorious: Robert Maxwell (Captain Bob) owner of the Daily Mirror who defrauded the company's pension scheme; John Stonehouse 'one of our MPs is missing' was a minister in the 1964-1970 Labour Government; Peter Hain during his 'campaigning period' of disrupting sporting events and the ner'do'well activities of the South African secret service; George Brown (Deputy Prime Minister in the Wilson Government in the 1970s) and his conviction for drink driving and the stuck trouser zip incident; Dr Savundra who was convicted of fraud following the collapse in 1966 of his Fire, Auto and Marine Insurance Company, a case galvanised by the David Frost programme on BBC television in 1967.

He helped to reveal the illegal activities of Detective Sergeant Challenor of West End Central Police Station who planted half bricks on Greek protestors, but the defence had the two halves of the same brick that were allegedly to be thrown at the Greek Royal family during a visit in 1963 of Queen Frederika by two different defendants in two different incidents.

He acted to extradite the Liverpool football supporters following the Heysel football disaster in 1985; he defended Gerald Ronson, one of the Guinness four, in 1990 (he was also offered the prosecution brief in this case); he advised on the sanction busting by the oil companies during the international embargo on Rhodesia following Ian Smith's unilateral declaration of independence in 1965.

He defended the beautiful actress Constance Smith who in 1962 stabbed her lover the film documentary maker Paul Rotha. Other celebs he encountered through the law included, Sid James, Trevor Howard, Judy Garland, Kim Novak, Bernard Levin and Bruce Forsyth.

Those protagonists of the view that 'law is a series of miscarriages of justice' will not find a happy ending in this book. Michael Sherrard was the defence barrister for James Hanratty who was executed for murder in 1962 following the trial at Bedford Assizes. However despite years of campaigning – the Bootleg Theatre Company ran a play suggesting that Peter Alphon was the murderer – recent scientific advances of DNA analysis and the exhumation of Hanratty's body in 2001, was able to establish, as conclusively as is possible, that Hanratty did rape and shoot Valerie Storie and murdered Michael Gregsten in a lay-by on the A6.

This is the version of stories about the law that Shakespeare and Dickens would have preferred: had they gone to Law School.

Professor Malcolm Davies
Head of Ealing Law School

Angel Solicitors (a firm) v Jenkins O'Dowd & Barth (a firm) and Others

The judgment in *Angel Solicitors (a firm) v Jenkins O'Dowd & Barth (a firm) and (1) Barclays Bank Plc and (2) Close Brothers Limited and (3) Ellenwell Properties Ltd* [2009] EWHC 46 (Ch); [2009] WLR (D); [2009] All ER (D) 133 (Jan) earlier this year sent a serious message warning solicitors of the high risks involved in giving undertakings without first obtaining the necessary information on which such undertakings would be based.

The case concerns the enforcement of solicitors' undertakings given in the course of acting on separate sales of three residential properties. "It demonstrates", said the presiding judge, HHJ Hodge QC, "both the folly of giving the usual solicitors' undertaking to redeem or discharge existing mortgages and charges over the property which is being sold without having first obtained a redemption statement and the mortgagee's agreement to release the properties from all relevant charges upon payment of an ascertained sum, and also the dangers of any delay in paying over the moneys required to redeem such charges following the completion of the sale".

The Claimant and the Defendant (Jenkins O'Dowd) were firms of solicitors who acted for the purchaser and the seller respectively in the course of three residential property transactions. Two properties were mortgaged to Barclays Bank ("Barclays") and one to Close Brothers ("Close"). In the case of each of the properties, it was charged to the relevant financial institution by way of an "all-moneys" charge as part security for a loan facility considerably in excess of the value of the individual property.

For each transaction the Claimant sought and obtained from the Defendant standard undertakings to redeem or discharge the mortgages and charges on completion and to send to the Claimant standard discharge forms, the receipted charge(s) or confirmation that notice of release or discharge had been given to the Land Registry as soon as the Defendant received them.

It appeared that the Defendant gave the said undertakings without first obtaining the redemption figures. Furthermore, there was no evidence before the court that any part of the sale proceeds from any of the three properties was ever paid over to Barclays or to Close.

In *Udall v Capri Lighting Ltd* [1988] QB 907 at 917 Balcombe LJ said there are three ways in which a party seeking to enforce a solicitor's undertaking can proceed (a) by an action at law; (b) by an application to the High Court to exercise its inherent supervisory jurisdiction over solicitors; and (c) by an application to the Law Society. In the exercise of the supervisory jurisdiction over solicitors, 'what in practice has always been done is that the court, if the circumstances warranted, makes an order on the solicitor to do an act which he has undertaken to do': *Re a Solicitor* [1966] 3 All ER 52 at 56. It is for the court to determine (1) Whether the Defendant gave the undertakings; (2) If Defendant gave those undertakings, have they been performed? (3) If they have not been performed, are the undertakings ones that are impossible to perform?

Having failed to secure the performance of the Defendant's undertakings to redeem the existing charges without resort to litigation, the Claimant invoked the summary jurisdiction of the court to enforce the said undertakings pursuant to its inherent supervisory jurisdiction over solicitors. The Defendant did not shy away from the likelihood that, ultimately, it would have to perform the said undertakings (or make payments in lieu). However, it submitted that, had it sought to redeem the relevant charges at, or within a reasonable time after, the said undertakings were given, both Barclays and Close would have accepted a lesser sum than they are now seeking to recover.

However, the judge held in the circumstance that, due to the Defendant's breach of its undertakings, the sum 'now' required for those undertakings to be performed may be greater than if the undertakings had been honoured in due time was unfortunate for the Defendant but it cannot detrimentally affect either the position of the Claimant or the legal and equitable entitlements of the mortgagees of its clients' properties.

Pursuant to *Udall* before making its application for summary judgment the Claimant had made an application to the Law Society, which led to a delay in making its High Court application. Consequently, relying on observations of Mummery LJ in *Taylor v Ribby Hall Leisure Ltd* [1998] 1 WLR 400 at 409H-410B, the Defendant submitted that judgment ought not to be granted. However, the judge held that the court should be slow to encourage premature resort to litigation before alternative methods of compelling performance of a solicitor's undertaking have been exhausted. Summary judgment was therefore granted.

This case has implications beyond those dealing solely with undertakings given by solicitors during the property transaction process. It is clear that if a solicitor is contemplating giving an undertaking it must first be sure of the extent of the risk by making suitable enquiries before committing itself accordingly. Otherwise, it runs the high risk of a sum or otherwise 'now' required for those undertakings to be performed/fulfilled being greater than had the undertakings been honoured in due time based on information sought and known prior to those undertakings having given.

Ryan Clement is a practicing barrister at Conference Chambers and represented the Claimant in the above named case

As the season changes, so will HIPs

The launch of new HIP regulations this month – combined with important changes in local authority and personal search charges – are set to make this a seismic Spring of Change, says Andrew Lloyd, Managing Director at SearchFlow.

The new HIP regulations introduced on 6th April are going to have a massive impact on the world of property search information. These latest changes come as a further response by the government to reform both the completeness and accuracy of the information contained in a HIP. In addition to the Property Information Questionnaire (PIQ) and the requirement for an agent to obtain a HIP before marketing a property, it's the search content in HIPs that's getting the biggest shake up under these new regulations.

To begin with, Incomplete Answer Insurance, which has thus far allowed private search companies to insure against data that was "not available", has now been removed from personal searches in the HIP. As a result, the practice of relying on data from derived sources that cannot be proven to be current - nor directly applicable to that address or geography – is simply no longer possible.

At the same time, local authorities are now also required to give access to private search companies for all relevant data, so that a complete personal search can contain the same information as the CON29 Official Search that is favoured by solicitors, especially when acting for the buyer. On the face of it, this mandate sounds like good news, since it will go some way to ensuring that there is fuller search content included in HIPs – but that's only true if this area is policed effectively by Trading Standards Officers and the Property Codes Compliance Board.

If both fail to show real teeth, compliance may be slow and some personal search companies may continue to rely on incomplete and/or inadequate information – albeit without the "safety net" of Incomplete Answer Insurance – thereby leaving consumers at risk of discovering something on completion that will affect the enjoyment and/or value of their new home. For law firms in particular, this is an important change, because sub-standard search information can clearly cause a number of serious problems down the road.

The second big change that came into effect on 6th April was the new pricing model for obtaining search information. Since December last year, local authorities have been able to charge for property search information on a cost recovery basis (i.e., not profit-making). These charges, however, are likely to vary widely, as each local authority is responsible for setting its own budget, based on its own individual cost of operation.

The Ministry of Justice, meanwhile, is expected to announce a rise in the fees that local authorities can charge personal search companies to access their data. These new fees (which may be twice as much as existing fees, according to some sources), combined with a variable charge across the country for the additional information required by the new regulations (such as Environmental Health and Building Control answers), will mean that the traditional price and operating models of the personal search businesses will have to change.

Not only will the impact on margins be significant, but it will be compounded by the variable charges for the extra information (which will need to be funded upfront), as well as the need for additional working capital. At the same time, these variable costs will mean that a personal search won't necessarily cost less than a CON29, especially since many local authorities have yet to declare their prices. As such, some practices may prefer the certainty of the CON29 price, or – in the short term – to work with a supplier that can help smooth out these anomalies through an effective billing policy that accounts for this variability and lack of clarity on local authority pricing.

For all of these reasons, it will be very difficult for HIP providers and search companies to manage the variability of these charges and commit to a firm fixed price over a long period, until real clarity is achieved nationwide on the charging regime – especially as many local authorities have still not declared their prices.

Fortunately, there is a silver lining to all of this: the changes that came into effect on 6th April – if policed correctly – have the potential to improve the quality of a HIP by ensuring that it contains more comprehensive and reliable information, which means that HIPs will be more useful and offer better protection for the buyer. Not only that, but with more reliable information contained in a HIP, a lot of duplication will be eliminated as well, since the majority of law firms – 60 percent of those questioned, according to our most recent survey – still conduct an official local authority search even when a personal search has been completed.

Even more importantly perhaps, this new legislation has sparked a renewed interest in how we, as an industry, can work together to get important property information through the system more effectively. This renewed focus, combined with the recognition that property search and HIP information must be at a standard that is acceptable to all parties in the chain, will help to get house sales moving more quickly, which is an objective that I'm sure we'd all like to achieve.



Come home to quality

As the seasons change, so do the rules for HIPs and property search content from April 6th. New HIP regulations mean choosing a provider that will get all the required local authority search information to be compliant.

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