The showcase

The proceedings were described as the showcase of our branch of the profession, reports David Wurtzel.

Opening Keynote and Plenary

Opening the 25th annual Bar conference the Conference Chairwoman, Kim Hollis QC called the proceedings "the showcase of our branch of the profession". She then laid down her challenge: "My objective is that by the time you leave, each of you is thinking laterally about your future." Having asserted that there are things such as access to justice on which we will not compromise (core values), she held out the prospect that there was a huge global marketplace out there (opportunity).

Getting down to basics

The Chairman of the Bar, Nick Green QC, immediately got down to basics. The starting point is that "there is no more money" and no promise from the government that they will reinvest once the State's finances improve. He then set out how the Bar can rise above all this. We are "a low cost, high quality profession" and clients are increasingly instructing us. In the past year, a "series of fundamental changes which will transform the Bar" have been driven through which will give barristers "far greater freedom" to meet new market circumstances. "The end game is the creation of real options for the Bar to fight back and secure its position in crime and in family." Nevertheless, "I regret to say—because doing publicly funded work is a noble cause—that the Bar will need to diversify away from legal aid work."

Time to diversify

That, however, is only the beginning: "We must get out of chambers. We must get onto planes and trains and get out into foreign markets." There are hundreds of millions of pounds worth of work which the Bar could obtain but which it presently is "unable to service because of a perception by clients that we are not easy to contract with". Proposals to turn the Advocacy Training Council into a College of Advocacy will develop the Bar's core advocacy skills. Chambers still retain their own sense of unique identity and discrete selling points.

The numbers game

He concluded with the issue of numbers. There are now 4,000 applicants routinely competing for only 460 pupillages. "I simply do not accept the 'volentir' argument that students know the risks and voluntarily assume them"; and the aptitude test is only a step in the right direction. "This seems to me to be one of the major issues of the day and one which the profession needs to grapple with sooner rather than later." People should only attempt to come to Bar if they "have a realistic prospect of succeeding" and they "have the wherewithal intellectually".

Consumerism v the rule of law

There were further reminders about core values from the Master of the Rolls, Lord Neuberger of Abbotsbury. The bulk of his speech dealt with the tension between the "tyranny of the consumer" and the rule of law. "The official view has veered towards the view that the consumer is king, and all fetters on free markets are to be scrutinised ... The consumerist approach appears to give rise to opportunities" while the greater importance given to the plethora of standards councils and disciplinary bodies "are perhaps more concerned with core
values. But are opportunities and core values in opposition, or can they work together in the public interest?

“It is of fundamental importance that, particularly when it comes to the professions, above all the legal profession, society does not adopt what might be called a form of unreflective consumer fundamentalism.” Clients are not just consumers, and a lawyer has a special place in society because “the rule of law is of the essence of a modern democratic society”. The ethical duties in the Bar’s and the Solicitors’ Codes of Conduct “require the consumer interest to take second place to the public interest”; indeed, an independent judiciary has to consider the public interest no matter what the parties may agree between themselves.

Lord Neuberger singled out a remark made on 11 October by David Edmonds, Chairman of the Legal Services Board, that the introduction of alternative business structures would “free up the existing players to innovate, to create new partnerships and to be free to act in a less restrained way”. Innovation would allow the legal profession to service both “the consumer interest by increasing competition, by reducing costs through innovative practices, such as legal outsourcing, and so on,” was fine. But to “act in a less restrained way” could (not that Mr Edmonds intended it that way) be misinterpreted as meaning that lawyers “could place to one side their commitment to their core duties, to ethical rules, to their professional duties” – such as not drawing unfavourable precedents to the court’s attention. “We are citizens first and individual consumers second. We are only consumers because we are citizens.”

Quality assurance

The Master of the Rolls then turned to a subject of even more immediate concern, Quality Assurance for Advocates (“QAA”). “Without quality advocacy our adversarial system cannot operate efficiently, effectively or fairly. The court cannot carry out its duty to ensure that justice is done” and cannot act consistently with its art 6 duties. He therefore put the support of the judiciary strongly behind the QAA scheme in which the judges themselves “are essential to the quality assurance process”. “Historically the judges controlled rights of audience. It is not difficult to see why. They still do where unregulated individuals are concerned.” In the absence of a single advocacy regulator, “the QAA scheme is the next best alternative. The judiciary will ensure that it works ...” Who is better placed than the judges, who hear and should listen to the advocates, to assess them? Particularly in the present cash-strapped times, who but the judges will in practice actually carry out the assessments? Some may be less assiduous than others, but it is not in their interest to act in a biased way and no one judge would be able to veto an advocate’s progress.

The Bar Pro Bono Award

Just to lighten the mood before the morning coffee break, the Mayor of London, Boris Johnson, took to the rostrum and was in characteristic form.

He cited his own success in dealing with the crime rate – in the first three months of the “Boris-bikes” scheme only four had been stolen compared to 700 in a comparable period in Paris.

Posing the rhetorical question of what is the clinching factor for London being the business and commercial capital of the world, he concluded that it was the quality of the legal profession.

He then presented this year’s Sydney Elland Goldsmith Bar Pro Bono Award to Maria Scotland of 7 Bedford Row, who has taken on a huge number of pro bono cases and reviews cases regularly for the Bar Pro Bono Unit.

Runner up was Robert Banks of Rye Green Chambers for the large amount of pro bono legal advice which he has given over the years to serving prisoners.

David Wurtzel is Counsel’s Consultant Editor
A time of change

The message here was that the criminal Bar can profit from change and thrive as before, finds Nigel Pascoe QC

Broader horizons: How the core values of the criminal Bar offer wider opportunities

ORGANISED BY THE CRIMINAL BAR ASSOCIATION

News from the Chairman of the Bar that the true reduction by way of legal aid cuts was a whopping £500m might have suggested that this workshop would have been swamped by despair. Not a bit of it. It was a well balanced and even uplifting justification of its title. The CBA Chairman, Christopher Kinch QC, set the tone with a witty PowerPoint presentation. Amongst other things, the CBA have a group (led by Amanda Pinto QC) looking at the often underestimated opportunities for work from overseas.

The new First Senior Treasury Counsel, Brian Altman QC, interpreted core values as achieving excellence in prosecution, demonstrated by the practical operation of Treasury Counsel’s room. It is a beacon of excellence covering the most serious cases and has survived successfully two independent enquiries, in 2000 and in 2006. The message was, in part, the route to selection and the way that potential candidates are monitored. Nor is it limited to London-based practitioners: two recent senior applicants came from the North. He described an institution which merits its reputation. There is always a friendly atmosphere in the room and it is open to suitably qualified candidates. More than one junior barrister would have been encouraged by this clear presentation to see a possible advancement in their career. He also spoke movingly of the satisfaction he has in dealing with the relatives of the victims of crime: an object lesson to all of us.

Paul Mendelle QC, former CBA Chairman, did not shrink from detailing the radical change in the delivery of criminal services, pointing out that the number of London providers will be shrinking from 400-500 to 40. But barristers will be free themselves to tender for a contract. If a single fee is paid to solicitors, we should be at their complete mercy. Obviously the way ahead is to set up a ProcureCo to get control of that single fee. To be successful, we must be in a position to make arrangements to sub-contract the advocacy services. Why, ask solicitors, do the Bar think they can make a better job of the police station work which has been done by solicitors for years? We have advantages: our overheads are smaller and we can sub-contract some aspects in the future. So a time of change, but no reason to fear. We can profit from change and thrive as before. His message was realistic and upbeat. Later Nigel Lickley QC, the new Leader of the Western Circuit, with two other Circuit Leaders present, raised the undesirability of one case one fee, but the format of the seminar meant that that is an issue for another day.

Michael Hillman moved from the self-employed to the employed Bar,
to become a senior in-house Crown Court advocate. In another clear presentation, he first traced legal aid development before explaining the in-house experience. He was frank: in the future — faced with a single fee — the firm would not be able to employ Sills or a team of advocates. He spoke of the increased need for co-operation and the friendship and help he had received from the Bar. When questioned, he said equally frankly, that if there is a conflict, then the firm would return the case, in all probability to chambers.

Lastly, Sean Larkin QC really lifted the spirits by setting out, in convincing detail, the potential opportunities for all barristers in regulatory work. This was first class advocacy and exactly what was needed: the encouragement to criminal barristers to pursue work which they do at present in different forms and which they will do better than anyone else. He accepted that much of the work at present was in the hands of a few chambers, but nevertheless the tone of this excellent presentation would have encouraged many in the room. An excellent seminar.

Nigel Pascoe QC is a member of Counsel’s Policy and Editorial Board

Paying the price

The Open Forum demonstrated the impact enforcing the laws has on society, writes David Wurtzel

Open Forum – core values v opportunities: The “price” of freedom?

The concluding Open Forum took place sadly in the absence of Lt Col Yvonne Bradley, the American military lawyer who had been a key figure in getting the release of Binyam Mohamed from Guantanamo Bay. She had not been allowed to leave the US, but she sent a message in praise of lawyers willing to fight for justice at a cost to themselves: “we must keep our vision clear” and protect even our enemies, she wrote.

Brian Paddick (former Deputy Assistant Commissioner of the Metropolitan Police) explained that the police do not have enough resources to enforce all the laws all the time. This led to his decision to give street cautions for possession of cannabis in his former patch of Lambeth, since local people saw more of a threat in heroin and crack cocaine. He cited the “justice” gap and the distortions which arise when the police have to meet targets for “clear up rates”. This encourages them to issue fixed penalty notices to people who find it easier to admit guilt and to get a caution rather than to go to court where they might be found not guilty. He felt that communities may be in a better position than the police to defeat terrorism.

Sir Geoffrey Nice QC, now Vice Chairman of the BSB, used the example of Africa to ask whether we should indulge in a colonisation of ideas on our part by imposing our system of justice in unsuitable circumstances. It could also lead to local politicians using it for their own ends. He stated that a self-employed lawyer is in a less vulnerable position than an
Looking further afield

There is plenty of work available to English barristers elsewhere in the world, discovers Chris McWatters

Developing international practices

ORGANISED BY THE INTERNATIONAL COMMITTEE

Short of work at Snaresbrook Crown Court? High and dry in the High Court? Then start looking further afield for more rewarding cases. Go East, young man (or West, or South, or any direction you choose, in fact). According to leading barristers who are already consolidating their own international practices, there’s no need to feel constrained by the gloom and uncertainty affecting the Bar on British soil – because there’s plenty of work available to English barristers elsewhere in the world. And this workshop gave chapter and verse on how to find it. First choose your corner of your foreign field, then go and take it.

The meeting, chaired by James Dingemans QC, discussed working in Commonwealth countries, the Middle East, Russia and the CIS, the USA, the UN, and China. Dingemans himself, who has an impressive track record in international commercial arbitration, led the way by offering advice on Commonwealth jurisdictions and international conferences. Dingemans had an eight-point common sense checklist for any barrister hoping to raise his profile in a foreign jurisdiction. It included attending international conferences, particularly Commonwealth ones because of shared language and laws (the Commonwealth Law Conference in 2011 is in Hyderabad, India); undertaking pro bono cases which are international; joining the International Committee; and if called to the Bar of an overseas jurisdiction, offering a lecture on any area of speciality.

The chairman of the meeting’s Middle Eastern group, Ian Edge, said the Middle East and Islamic law could be added to most barrister practices. The key area of work in the region is commercial arbitration. The Gulf States are
particularly attracted to the English common law system. There are already arbitration courts in Dubai and Abu Dhabi, and there will soon be another in Qatar. There is also an international arbitration panel in Egypt, and a move towards an international arbitration centre in Bahrain. Edge said London’s School of Oriental and African Studies offers a stand-alone course in Islamic law for those who want to develop crossover practices.

Russia, and other ex-Soviet members of the Commonwealth of Independent States, are also a realm of growing opportunity for barristers qualified in English law, according to Rupert D’Cruz. Making the first contacts with fellow-lawyers in these faraway lands, he added, is easier for those who join bilateral law associations. There are more than 30 of these listed on the Law Society website. Membership costs around £40-£50 and, D’Cruz said, offers excellent networking opportunities: with a little effort, it’s not hard to create a high profile within such an organisation.

Representing the Young Bar was criminal practitioner Bo-Eun Jung. Her tip for younger barristers wishing to get on the conference circuit was to apply for a grant covering international expenses from the International Professional and Legal Development Grant Programme. This body, set up by the CBA and the Bar Council, funds barristers of less than seven years’ Call to attend international conferences, covering up to two-thirds of their expenses. Jung had obtained a grant to attend a transnational crime conference in Paris. She emphasised the importance of staying at the hotel where the conference takes place, as that is the location where all the socialising happens.

Ian McDermott QC spoke about how to develop a practice in the US. He recommended attending the American Bar Association’s annual conference in the first week of August. Sounding a note of caution, he pointed out that, although conferences were great networking opportunities, they wouldn’t necessarily produce work overnight. Developing

an international practice, he said, is a slow burn.

Crime specialist Helen McDonald QC described the opportunities for barristers at The Hague, and the growing workload of criminal work in European and UN-sponsored courts. For those starting out in crime, McDonald strongly recommends pro bono work at the Privy Council.

Adrian Hughes QC spoke about the ever-increasing opportunities for barristers in China, whose economic growth is now a major engine for global prosperity. In particular he discussed arbitration at the China International Economic and Trade Commission. His tips for building up a practice in China included recommendations to be sensitive to local culture, learn a little Mandarin, join interest groups, and get travel grants to visit, either through the Bar Council or the UK Trade and Industry Body.

Chris McWatters, Garden Court Chambers, is a member of Counsel’s Editorial and Policy Board

**A level playing field**

This workshop was an opportunity for panellists to discuss and share their own experiences, says David Wurtzel

Past barriers, future challenges: Leading change to enhance the Bar

ORGANISED BY THE ASSOCIATION OF WOMEN BARRISTERS

Panellists spoke of their own experiences as well as those of other barristers who were also in the same position.

Christopher Rogers (5 Paper Buildings), co-chairman of the Bar Lesbian and Gay Group ("BLAGG"), felt that there was not much discrimination against gay and lesbian barristers, the problem was more with perception. Barristers may well be more open to their families about their sexuality than they would wish chambers.

BLAGG can provide the social and support network which exists in large firms of solicitors, but not in entities as small as chambers. The group participated in the last PRIDE march, wearing their wigs and gowns.

Kaly Kaul, the vice president of the AWB (9-12 Bell Yard), recalled that when she joined her Inn, her sponsor told her that no one would instruct an Asian woman. When she first applied to sit as a Recorder, a QC — who did not know her — wrote to the Lord Chancellor that she should not become a Recorder. She went on instead to have a busy career and recently became a Recorder. Noting that her (former) chambers had a 100 per cent attrition rate for women who had children, she fought to change attitudes, knowing that she was making herself unpopular and that she would have to leave chambers, as indeed happened.
The aim of this workshop was to encourage delegates to sign up for the SEC’s flagship new practitioners’ course at Keble College, Oxford but in its own right it presented good practice which was relevant to everyone present at whatever stage of their career.

David Etherington QC (18 Red Lion Court) gave an abbreviated version of his well known demonstration of a closing speech in a (medical) manslaughter case, with each important element touched upon: grab the jury’s attention (“I only want to put in your mind one image”), summarise the evidence which is relevant to your theme, give them a yardstick (“the prosecution case is a chain with links in it, we say every link snaps”), ask and then answer some rhetorical questions, go back to the yardstick (“and the chain is in pieces, at your feet”) and then state your positive case.

Anesta Weekes QC (23 Essex Street) urged delegates to “help the judge to write the judgment and make sure you are in it”. She reassured them that when everything and everyone around you is against you, “retaining a modicum of charm will help you through these difficult times. If however you have no charm, do anything you can to get some”.

Charles Haddon-Cave QC (Quadrant Chambers), Chairman of the Advocacy Training Council, explained the Hampel method of feedback and conducted a demonstration on how it is done in respect of cross-examination.

Patricia Lynch QC (18 Red Lion Court) advised on how to deal with vulnerable witnesses: prepare, consider special measures including an intermediary, the shorter time the witness spends in the box the better, stagger the witnesses to avoid keeping them waiting and act appropriately. As for questioning technique, keep the questions chronological, short and easy, one fact at a time, engage with the witness, and don’t dwell on the details of a sexual assault. She then demonstrated how one could utterly undermine the credibility of a child witness during cross-examination while still using open questions.

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