# Gresham College Main logo

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**‘Cases I have known’**

Sir Geoffrey Nice Qc

I must find in my 44 years at the Bar of England and Wales something more than the merely amusing or interesting. What can be inferred from cases I have done that informs us about the law, its development the changes in society? Let’s see.

What we will certainly see is how there are lessons to learn from failures. As in other professions, I only learn from what went wrong rarely from whatever successes I may have had. But please don’t assume that the strike rate of failures I narrate is necessarily representative of my practice overall.

BIOGRAPHY

The relevant biography can be dealt with swiftly. Brought up in South London my family had no connections of any kind with the law. But I was immensely privileged, not in the sense of our having much money – my father was in the print and my mother was a primary school teacher and my first teacher. My privilege was in excellent parents who knew how to encourage not to force a weedy, lazy child so he could pass from good junior school to excellent local direct grant school, privileged in that school having a disproportionately good hold on the universities to which I went in the slip stream of my brother, privileged in the best universities giving the best prospects of getting a reasonable job and all on a welfare state that made it possible to finish education with no debt. Better still as Lewisham Council gave me a grant to cover fees at the Law School when, after a couple of other jobs, I decided to go to the Bar and privileged yet more in entering the Bar when Legal Aid had expanded dramatically in the money available for the enlarged types of cases for which legal aid was granted. I was launched at a favourable time onto a career I chose almost by chance.

A START

Luck too played its part. A neighbor and friend, John Leech, noted I had no connections for my chosen profession so he created a summer job in the legal department of the Commonwealth development Corporation and a lawyer there, Michael Konstam, saw I had no contacts and sent me the head of a set of chambers he knew. Now for the hard bit – really hard – the interview to get a pupillage, an exercise today in which a small percentage only ever succeed and then after anxious rounds of interviews and reams of application forms filled in in triplicate.

I entered the Head of Chambers room – he a tall patrician figure about to become a judge. ‘Have a cigarette? Konstam thinks you’re OK when would you like to start? September?’ That was that.

My interview by his successor a year later when after 6 months without being allowed to work and the second six months of the year ‘on my feet’ chamber felt obliged to take me on, perhaps because a solicitor had negligently entrusted me already with a two week rape case in the Old Bailey and the other tenants thought I might contribute to the Chambers income sufficiently. I am not sure what my client the rapist would have though having chosen me over more experienced counsel – but he had 5 years of seclusion to think about it. Two pupils were taken on that time. The new head of chambers, a man soon to go on the High Court Bench but not beyond and not a man missed much when he left chambers or the bench observed: ‘The other pupil is clearly the much nicer man but we have decided to offer you a tenancy’. He then said something about my flared trousers (tailor-made though they were) but the detail of what he said lost in confusion caused by the warmth of his overall welcome.

I had earlier heard him telling a woman pupil in the back of a Triumph Herald on a long journey from Norwich that she - like women generally - should be at home being a wife and mother and should not be a barrister. That improved the conversation in the car

There were some shockers around at the time.

EARLY DAYS

Once practice started in earnest it was roughly like this. Get up really early. Maybe by train (less tubes, buses and train then so not necessarily that easy) or old banger on a 2/3 hour drive to a county town or City (Norwich for example or Wisbech in the Fens or Canterbury or Lewes). Arriving by 0930 latest – see clients probably in cells with strong smell of eggs and bacon although sure not for the prisoners. Open a couple of pleas of guilty for the prosecution; blended with mitigation on behalf someone else pleading guilty. Rushing up and down the cell steps to see your client bumping into one you had just prosecuted. Maybe followed by a trial. If it was in front of the High Court judge on the equivalent of assize (and I heard the very last commission of assize read in Maidstone) then maybe lunch with the county set as guest of the High Sherriff or carted away in the judicial Daimler with the judge robed in the back and an outrider to his lodgings for a quick but formal lunch

Things have changed and some of this theatricality gone – shame

When that day - or stint, staying in a 2-star sticky-carpet commercial travelers hotel – was all over, back to chambers to collect briefs wrapped in red tape for more of the same – perhaps civil cases this time – often for overnight preparation to be in court the following day.

We learnt very fast and only hope our clients did not suffer too much.

MORE LUCK

Some chambers liked to squeeze as much as possible from the system and would have their man in Stratford East London at 1000 and Ealing at 1400. Great if it worked but what if the morning case overran or the buses and trains did not quite do it? My chambers – Farrar’s Building – were run by a traditional senior clerk Arthur Hathaway and George Hales his number 2 and they did not take this kind of risk. One day the chambers next door had taken the risk and it hadn’t worked. Their man would miss the 2pm Barking case. I was free. It came to me even though I was not approved Metropolitan–Police counsel. And there followed weekly appearances in this case that was for a particularly powerful in-house Police Solicitor, Clive Winston. He saw that we had been loyal to him and he repaid the compliment. First with trade union picketing cases one of which, sitting behind a QC, went to the House of Lords and another had me prosecuting a present member of one of the front benches.

I was then promoted to sex case, that I did not much like but it did allow me to be against John Mortimer in dirty books cases, immensely boring but Mortimer made clear he never read the books and in his standard right to free speech address to the jury held the book – if he even touched it – upset down with his spectacle at a jaunty angle and the jury always acquitted. From there a short hop to prostitutes and escort agencies taken very seriously by the CPS as the prosecuting authority was now called and leaders – QCs - were taken in to lead me. I worked with a few significant leaders and here’s a story one of these trials.

John Marriage QC was an extremely skillful advocate with true animal attraction to all jurors. He was nearly a toff but of a rakish style. He had a horse race trainer’s license and was a member of the Horse Race Betting Levy Board. The case he led me in was about an Escort Agency – Nina Spitzer’s Agency – where her ‘nice gals’ accompanied only the best class of gentlemen and engaged in conversation at and presumably in the interval at the theatre but nowhere else. Or perhaps not

The trial was in a room immediately opposite the back door of Harrods and the trial judge, a very nice man from my chambers, Munroe Davies, smoked and liked his morning breaks. So every morning at about 1145 the judge rose for a couple of cigarettes and John and I popped across the road for a double G&T – or perhaps two. That’s the way things happened – sometimes

There were four women defendants and they all gave evidence in their own behalf. Nina Spitzer was a glorious target – John destroyed her in cross examination. No2 had written lots of documents and it is documents that make for the best cross examination often enough. John destroyed her in short order. Next one from the tumbril? But john was away the following day at a Levy Board meeting. ‘You can cross examine’ he said I‘ll be back the day after’.

There were no documents against Defendant NO 3. I was hopeless; absolutely hopeless. Back for Defendant 4 John was on tip-top form and in any case found No 4 attractive, at least to question. He had her spinning with absolutely silly answers but kept her too long in the box because he was enjoying himself. Then closing addresses summing-up and verdict. Another Betting Levy Board meeting loomed And I was all alone after John’s closing speech. Counsel for number 3 enjoyed himself. When he ran out of good things to say about his client he had a go - and then another go - at me for my palpable incompetence. I shrank and then some more and just when I thought it was over he had another swipe. Stephen Solley was and is counsel’s name. We get on perfectly well. The jury verdict – the inevitable final humiliation was to be Guilty, Guilty Not Guilty, Guilty. My final humiliation. But no. Bless the jury. It was Guilty, Guilty, Guilty (for No 3) and Not Guilty (for number 4). It might have been hard to think an intelligent person could really give credence to any of the defenses but perhaps the public was a little more naïve then than now – and a reasonable interpretation of the verdicts was that the jury would not have me bullied so merciless by NO3’s counsel and punished poor Defendant no 3 who really had the best prospects of an acquittal and would not have Defendant 4 treated with quite such relish.

Perfect result for me. John was as happy as could be for me and generally. Stephen Solley still looks surprised.

John was also my route to the part-time bench as a Recorder, a job I have enjoyed for some 6 weeks a year for over 30 years. These days the application form takes about a week to complete and competition is so fierce many highly qualified potential judges simply do not bother to apply.

At lunch – in a wine bar inevitably in Beauchamp Place – John noted that someone form the Lord Chancellors Department had asked for names of those suitable to be Assistant Recorders. ‘Phone this number’ – he said ‘and say John Marriage says you’re suitable’. I did and was on the training course in a few weeks.

Luck heaped on privilege in many ways

BATTLE

The adversarial system requires the barrister to do battle on behalf of her/ his client. But the battle is stylised and the barrister should never be exposed to great embarrassment provided he has read his papers and the relevant law and knows what his case is. The odds are stacked in favour of the barrister getting out reasonably honorably whatever befalls the client.

But outside court the barrister does have to fight without protection – for example when bargaining in civil cases or in criminal cases some procedural issue or about pleas to be accepted and can find himself in difficult personal conflicts with other counsel in multi-party cases where interests do not coincide. One way and another, the experienced barrister will have had personal battles and for many, I think, the time comes when the have had enough and want an easier life. And for them the bench can be a comfortably different place – so do not believe those silly judges who say they went to the bench for Queen and country – they may well have run out of battle steam and found the pay more than sufficient (whatever they say pretending to earnings they may not have received) and the pension very attractive

In my case I learnt about the need to fight personally from two unappealing judges each of whom wanted to hurt and harm me by publicly condemning what I had said in mitigation. In each case they said that but for what I had on behalf of my clients they would have more lenient. The first, a high court judge also once in my chambers relished various things as revealed in the annotations on a text book he accidentally left behind when he went on the bench. He criticised me for providing him with a probation or social services report on the woman of very limited intellect for whom I was appearing. I was trying to flesh out detail of her limitations to help the judge and was clearly acting conscientiously. Whether my poor client realised our relationship of client and lawyer had been intentionally destroyed in public by a deeply unpleasant man I do not know Insomnia followed – perhaps I will say more of insomnia later. The second judge - a mere circuit judge – was known for his delight at hurting counsel and after I had pleaded in mitigation for three men of previous good character whose crimes were bound to take them straight to jail according to then guidelines started his sentencing ‘When I read the papers I thought all three of you should receive suspended prison sentence but having heard Mr. Nice I am nearly persuaded you should serve immediate terms of imprisonment’. These three chaps did understand what he had done and the post sentence celebration was awkward. But I was not going to leave it at insomnia this time. The judge needed to learn the error of his ways and to apologise. And he did. I realised that the superficially civilized world of the English legal system is a jungle in which there are some nasty beasts against whom the advocate must be ready to fight personally once he has done all he can for his clients. It is a lesson that has served me since, has made me tougher and that has in turn made it easier to protect clients in the court room in parts of cases when they do, as in reality they sometimes do, get really tough.

DEATHS

Cases - civil and criminal – arising from deaths become a significant part of the common lawyers practice and provide many lessons, boiled down in the following five examples.

Croydon

A railway man found dead on the busy tracks in Croydon somewhere with his head close but not touching a part of a train that had just come to rest. Had he died of a heart attack or been hit by the train. The British Rail investigation was inconclusive – two trains could have been involved and just possibly a third. But no explanation made sense. The widow did not recover. I just about kept the case alive but my solicitor was negligent and the case was about to expire for want of his action. We were all sacked. New trial counsel did what we had not thought to do and sent and inquiry agent to the home of the train driver of the remotely possible candidate train. He opened the door and confessed. The widow recovered compensation. Lesson: never take anything for granted always ask and allow for the unexpected.

IN SILK

In 1990 I ‘took silk’ – became a Queens Counsel

Barrett v MOD

A naval airman who died on his 30th birthday at a UK naval base at Bardufoss in Norway. The base had a culture of extreme use of alcohol. The deceased was concerned – as he wrote to his wife and the mother of his young son – about they would do to him on the night. Justifiably. He passed through officer’s mess, NCO’s mess and his own mess by which time – perhaps having drink poured down his throat and possibly thrown in the snow – he was paralytic and carried to his bunk where he was left with inadequate supervision in the coma position to die on his vomit.

I had a great junior Anthony Seys Llewellyn who knew the law and was ultimately conscientious. A kindly high court judge – Popplewell J – compelled the MOD to hand over their inquiry report into the death something they were then reluctant to do – and later they found another equally substantial report into the death that they had completely forgotten – all useful material. We dared to call the Chief Petty Officer who was willing to tell the truth of the regime. All was going well. Brian Leveson who defended did it extremely well but the terrific circuit judge Phelan sitting as a high court judge for these purposes found in our favour and made a modest reduction for what was call contributory negligence, as my junior and I had recognised he would.

Our advice to the widow when Brian Leveson made an offer to settle was vindicated. Alas the Court of Appeal, presided over by an expert in defamation law had a common law judge sitting with him conversant with the navy He delivered the judgment and started with a passage for a book – imprinted in my mind The Wooden World that said:

Disciplinary measures to limit drunkenness in the Royal Naval have a long history. In his acclaimed work on life in the Georgian Navy, "The Wooden World", Dr. N.A.M. Rodger devotes a section of his chapter on shipboard life to the subject of drink. At page 73 he states**: "Everybody knew that drink was a factor in crime, most often the chief factor, but it was virtually impossible to do much about it.** If liberty men came on board drunk, some captains put them in irons, but the regulations of Admiral Smith's divisional system went as far as most officers thought it reasonable or possible to go; **the midshipmen of the watch were to "see all men they find far gone in drink, put in their hammacoes".** If riotous they were to be confined until sober and then punished. Drinking as such was not a crime. The midshipmen were not:    "... to interrupt the men in mirth and good fellowship while they keep within the bounds of moderation, the intention of it being to prevent excessive drinking, which is not only a crime in itself but often draws men into others which when sober they would most abhor."      Even excessive drinking was only a slight offence, and no man who was peaceably drunk would normally be punished for it but in this as in all things, there was a great difference between the standards obtaining at sea and in port ..."

Apportion of liability was reversed. The deceased was now said to be the principle cause of his own death. The offer Leveson had cleverly made exceeded what the widow recovered so she had to pay every penny awarded to her in the MOD’s costs, the employer of her husband who ran the alcohol-cultured base and had sought to keep evidence of what happened from her.

But this is not a case over which I lost that much sleep. Of course Seys Llewellyn and I could have advised ‘take the money on offer’ and no one would have known whether she would have got more. But our true view was as it was and I am certain this case would be decided quite differently today in Mrs. Barrett’s favour.

Mrs. Barrett who had a modest job in a shop or cleaning – was absolutely resolute. She was not going to allow her son Liam to go through life believing that his father was author of his own untimely death and the money was unimportant – she was entirely happy to have fought for what she knew was right

I sat next to the judge who quoted from the Wooden World at a memorial service the other day. He had no idea who I was. I saw no reason to say anything.

Lesson? Justice can be more important even than result

[Other cases (for which there may be insufficient time in the lecture showed how :

Even a conscientious forensic scientist can make a mistake seemingly trivial to leave forever unexplained a fascinating murder.

How a comparatively excusable mistake by counsel can lead to months of insomnia.

How I could hold the clue to a murder in my hand day after day and miss what it showed.]

POST 1998

In 1998 I started as a prosecutor at the UN’s International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague, maintaining my UK practice but letting it sleep. I applied for the UN job because it seemed interesting, not to save the world. It pretty well changed my career for good. After over 6 years prosecuting there I have remained in practice but normally work on war crimes related issues, usually advising governments and some individual’s at risk of prosecutions or those who want to bring actions arising from conflicts but can’t (victims groups or representatives of interests in North Korea, Burma, Iran, for example).

What did I need from my previous experience to work at the UN; what was there to rely on?

Making war crimes cases is enormously hard work – it was no problem for me to do it 7 days a week and literally every possible working hour because it was fascinating work and because there was ALWAYS more to read more to learn more to research and put together. 27 years of having done the same helped.

The court was political on various occasions and posed ethical problems that needed personal fight if I was not to surrender standards and compromise a fair trial. It was never difficult to fight partly because I had already met some nasty types and because the independent barrister knows that yielding once to temptation or weakness in the face of pressure can destroy the self-employed reputation for good.

Perhaps above all and in a somewhat unclear way it was essential to remember that the law was not the only God that needed to be served. Apart from Justice, whatever that was, there were bigger and better objectives to serve however hard to express and just occasionally to give absolute them priority.

There is sometimes the need to ask the impossible and face the risk of defeat and to come to work every morning smiling and to be smiling when I left.

Without 27 years of working in the way the Bar of England and Wales required I doubt that would have been possible.

My team varied in size for the Milosevic case but was a dozen or so lawyers and up to 100 people altogether, not all full time on this case. I remember as one of my more successful management actions a day when we had lost badly some procedural issue in court. I can’t recall precisely what it was but probably to do with excluding evidence or not being allowed to adduce evidence in a particular way that would have allowed much more evidence to be admitted, or having our case but down in some way.

The following morning there was a meeting of the lawyers and other skills round a large table – the team probably about 15-20 people, mostly lawyers at that time. All with long, long faces and a somber mood. I told them they were the luckiest lawyers in the world. They looked confused. I reminded them that the case they were working on made them the envy of all their lawyer friends who would give various parts their anatomy to be on the case. Their faces did not lighten. I explained that the lawyer does his job because he cannot do a proper job like farming or manufacturing and is lucky to be allowed to fiddle with decisions of others. They remain confused. I suggested that being a lawyer – judge or advocate – is to be involved in solving problems? Dim acceptance. And that as problem solvers nothing could be more satisfying than having a hard problem to solve and solving it. Nothing could be more boring than having an over simple problem. Accordingly, I reasoned, the set back of the previous day simply made their jobs more enjoyable as the judges had made our work more difficult. Lucky them.

I am not sure they really understood but it is the reality. The lawyer is never happier than when in the middle of something difficult and uncertain of result.

One example of this concerned the infamous and historically significant massacre at Racak. Unhappily we were in possession of – but have overlooked - stacks of material showing it was not a massacre at all but a fight between Serb military and violent KLA. We did not believe this material but had to deal with it. Many wanted to avoid embarrassment and drop the charge - impossible and in any case it would have been wrong. No-one wanted to take responsibility for getting out of the mess and the problems was, in any case, mine. I loved it. Confront it without fear, I said, to the very investigators who thought they bore some responsibility for not having deal with the bad evidence earlier and we will see what comes out. Rather like the chap who knocked on the door of the train driver. We all went down to Kosovo and got on with the problem starting at the very beginning. Little by little the falsity of bad evidence became clear, its creation was manifestly fraudulent – or at least very arguably fraudulent – and we were able to strengthen our previous case by the fact that the Serbs had felt the need to create this mass of false material.

Problems like these require the approach of almost careless indifference to the result that the proper prosecutor in UK brings to his job.

And let me recite at least one success one of the best things I did.

There was – as we have seen in a previous lecture about Yugoslavia – a paramilitary group called the Scorpions who were filmed buy one of their own number killing 6 very young men from Srebrenica. The film was of critical value as the group was from Serbia not Bosnia and thus was under the command of the government of which Milosevic was President. It could link Serbia directly to the genocidal Srebrenica massacre and this link was what Milosevic was determined to obscure.

The film was sensationally good as it had all members of the Scorpions face to camera at the start when they were blessed by a priest – with these ‘mug shots’ every member of the group including the particular killers could be identified by anyone who could see the film. By great good fortune at the very moment when it became safe for me to use the film (when the safety of the provider of the film had been secured) there was in the witness box a defense witness, Serbian Police General Obrad Stevenovic to whom, ultimately, this unit might report. But I knew if I attempted introduce the 1¾ hour long film there would be objections for almost any reason and either it would never be shown or it would take forever to overcome obstacles thrown in my way.

I also could not rely on the office not to object as from the very top there were curious forces at work that seemed keen to save Serbia! I laid a careful plan and had the necessary minimum extracts from the film prepared so that I could reduce to a couple of minutes the amount of film that had to be shown to make my point and had to get it in before objection stalled my progress.

The witness gave evidence for Milosevic for 15 days altogether and my cross examination start on the 8th day and lasted about 5 days. There were many other matters to deal with. How should I deal with the Scorpions video?

I knew that I had get as much done as possible before anyone realized what was afoot and to lull the witness, despite all the other nasty suggestions I put to him, into cooperation. Very early I asked the General:

Q. You've taken the solemn declaration. Are you prepared to help this Chamber if I give you that opportunity a little later? Are you prepared to help them? Or are you here to help the accused?

A. I have already said that. I am here to answer questions both put to me by the Defense and the Prosecution, and I will answer them by telling the truth.‘

As the days of my cross examination passed I returned regularly enough to the theme – usually by reference to some detail on which I sought his help although I did not really need it. He was conditioned to think he was helping and being treated seriously. When the time was right I turned to the scorpions

Q. I'm going to show you some extracts from a video. The video lasts about two hours but it will only be a few minutes of it that we will show in order to give its context. It comes in several clips.

I asked a few questions based on the opening of the film which simply showed the members of the unit being blessed. Then:

Q. Now, this -- pause there. This video, which is potentially distressing viewing and I'm only going to play very small parts of it, reveals, Mr. Stevanovic, if the evidence is in due course admitted, and that's why I want your assistance, reveals that men were brought from Srebrenica in batches to this group of Skorpions to be executed and they were executed, and what you see here is a lorry load of six young men. This is the same truck with the men in the back. And you can see the red berets.

A. Yes, I see that, but I don't see or, rather, I haven't seen any Skorpion insignia so far.

Q. You'd recognise the Skorpio insignia, would you, if you saw it?

A. Well, I think it would be clear. I don't know exactly what it looks like, but I assume that there's a picture of a scorpion.

Q. You just guessed that, did you?

A. As I said, in Erdut I had occasion to see several members of this unit. I think they were in uniform and had insignia.

MR. NICE: Can we just pause for one minute, please.

Your Honours, exceptionally I'm going to make a very rapid phone call, with your leave.

THE INTERPRETER: Microphone is on

MR. NICE: Thank you. Press on.

[Videotape played]

MR. NICE: The lorry leaves. The men are eventually taken up into the hills. It may be difficult to move it, but I don't need to linger on this. Here they are taken up into the surrounding countryside.

Two remaining not shot are untied. I needn't go into the detail,

We needn't view the detail. They're untied, they move the four bodies, and then they are themselves shot, and I'll leave it there.

…………

JUDGE ROBINSON: Mr. Nice, can you tell us about that film?

MR. NICE: Yes, to a degree I will. But if I can just deal with --

MR. KAY: We haven't established any foundation for this. To my mind, this looks like sensationalism. There are no questions directed to the witness on the content of that film in a way that he can deal with it. It's merely been a presentation by the Prosecution of some sort of material they have in their possession that has not been disclosed to us and then it has been shown for the public viewing without any question attached to it. It's entire sensationalism. It's not cross-examination.

JUDGE ROBINSON: Mr. Nice, there is some merit in that. That's why I asked what we are going to be told about the film. Who made it, in what circumstances, and what questions are you putting to the witness in relation to it?

MR. NICE: Certainly. I'm coming to that.

Q. I'm suggesting this film shows Skorpions executing prisoners from Srebrenica.

A. As I am upset, I have to say that this is one of the most monstrous images I have ever seen on a screen. Of course I have never seen anything like this in -- live. I am astonished that you have played this video in connection with my testimony because you know full well that this has nothing to do with me or the units I commanded. I attempted to explain this yesterday, and I have also attempted to explain it today. I'm not saying that you do not have the right to do this, but I have to say that I am really upset --

JUDGE ROBINSON: Do you agree with the -- do you agree with the Prosecutor's suggestion or proposition that this is a film that shows Skorpions executing prisoners from Srebrenica?

THE WITNESS: [Interpretation] Of course I do not intend to cast

doubt on what the Prosecutor is saying, but I have not seen a single person I know here, and I have seen no evidence that this is the unit in question.

….

JUDGE ROBINSON: Just a second, Mr. Nice.

[Trial Chamber confers]

JUDGE ROBINSON: Yes, Mr. Nice.

THE INTERPRETER: Microphone, please, Mr. Nice.

MR. NICE: I'll come back to two matters of detail later.

Q. I want your assistance with the following……. I want your assistance, please, now or later, with the identification of and with the function of the people we can identify from this film.

The first one, the leader of the --

JUDGE ROBINSON: That's on the ELMO? [Overhead projector]

MR. NICE: That's on the ELMO.

Q. Is Slobodan Medic, and there are two photographs of him. Do you recognise that man?

A. I recall only the nickname. The nickname Boca is familiar, but I cannot recall his face. I think I saw a man with this nickname in Erdut in 1995 on two or three occasions, but he did not come to see me. I saw him, if I recall rightly, at Mr. Milanovic's place.

Q. And he was the man who headed the Skorpions from the time when they guarded the oil fields in Djeletovci right through to his engagement of the Skorpions in Kosovo, because we're going to come to Kosovo as soon as we can. Is that the man?

A. I don't know that. I explained about Djeletovci, that I don't know, I don't know what he was doing. I saw him on two or three occasions, I told you where, but I had nothing to do with him.

JUDGE BONOMY: Well, I'm not clear about that answer. Are you acknowledging, General, that that is Boca?

THE WITNESS: [Interpretation] No, I'm not acknowledging that because I can't recall his face. All I recall is the nickname Boca in a group of five or six men whom I saw three times at the most, on three occasions.

JUDGE BONOMY: And that's a person you saw as a member of the Skorpions?

THE WITNESS: [Interpretation] I think so, yes.

JUDGE BONOMY: Thank you.

MR. NICE:

Q. The next photograph, and again what's been done in order to assist you to help us is to take photographs that we assert are connected. This is Branislav Medic, also known as Cipa, seen killing the fourth person, I think, to be killed, but then seen face on. Are you able to recognise the man at all from that photograph or do you know the name?

A. No. I do not remember any other name or nickname. I just happened to recall the nickname of Boca, as I have already said, but I remember no other names or nicknames, nor was I ever told the first or last names. Perhaps they were introduced to me, yes, but I can't recall that.

Q. We'll go through the next pictures quickly.

Had the court been conditioned and the witness manipulated into being an unwilling helper?

This is a question asked shortly after by Judge Bonomy:

JUDGE BONOMY: I think the question was asked because in relation to some of the earlier documents you made the comment that you could make inquiries. Now, is that not something that can be done in relation to the material that's now been presented to you in this video?

THE WITNESS: [Interpretation] Along those lines, of course, I think I can. I don't know what the response will be from the organs involved, but if you give me a list of names at the end of my testimony, I could check it out and see whether they were members of the MUP or not.

JUDGE BONOMY: Thank you.

Coda

Uren v MOD and the one question I had to ask

I had one substantial domestic case after my return from Holland. IT involved the MOD. As in the case of Barrett it involved the MOD not revealing the truth and seeking to blame a completely blameless man – this time a man who became paraplegic doing what he was told to do by the MOD and the event organisers the MOD engaged for a fun day of events. At the first trial his claim was dismissed on the basis that diving headfirst into 18 inch of water in a plastic pool was safe. `The judge at the first trial asked a questioned clearly aimed at separating out the claimant’s conduct from the conduct of others and if that was how the answer to his question left things then he might well rely on the answer to find against the Claimant.

At that moment – however calm things would have appeared in court – I knew and other lawyers in court probably did too that unless I put it right there and then my client might be doomed. The years of experience bring an almost instinctive reaction – all lawyers of experience will know it – because this is battle however elegant where you must fight or you will be felled.

‘My Lord may I ask a couple of questions rising from your Lordship’s question’

Yes………..

I asked the questions - armed with the arguably unfair weapon of the leading question that is allowed in cross examination - and was able to drive the witness to the position needed to safeguard the Claimant’s proper case that, years later, was resolved in his favour.

CLOSING THOUGHTS

Legal decisions in our system but probably in all systems often turn on a word here, or an answer there or a whim of a judge or a mistake by counsel. Are justice systems self-defining: he who wins in a justice system achieves a just result.

What is clear to me is that, as I explained to the lawyers in The Hague, the lawyer who spends his time solving the problems within justice systems has an enjoyable job.

Does it make any difference if you compare the lawyer with the natural scientist or the inter-galactic explorer or even the engineer that whereas the for the most part solve problems set by the goodness of the gods we lawyers seek to solve the problems set by the badness of man.

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