Carrot and Stick – Contempt of court in the digital age

CBQ

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Have You Emptied Your Pockets?

How to get into court and keep your clothing on

HEARSAY EVIDENCE

Dealing with implied assertions

JACQUETTA WHEELER: HUMAN RIGHTS AND ME

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FEATURED IN THIS ISSUE

VIEW FROM THE EDITOR

Testing Times

EDITOR
John Cooper QC

In this issue we welcome Max Hill QC as the new Chair of the CBA alongside Michael Turner QC as Vice Chair. They both bring with them a vast amount of experience at the criminal Bar and it will take every piece of that as we approach one of the most testing periods in the history of this profession. It is important for the criminal Bar to look widely as it seeks to establish itself in various disciplines and no doubt, the presentation of the Bar as business leaders is important to create a modern image of our profession, but in doing this, we should not, as criminal barristers forget the grass roots of what it is to be at the criminal Bar and sustaining an internationally respected criminal justice system. It is criminal barristers who know how a fair trial is run, to protect witnesses and ensure that the defence is fairly heard and it is the criminal barrister who knows the effect that the cuts to the publically funded criminal justice system will have on colleagues and upon Society at large.

As Max Hill properly points out in his column, the fact that the court system coped with the rush of cases going through it in the aftermath of the riots was, to a significant extent, due to the dedication of lawyers, many of them young advocates, just beginning their careers at the criminal Bar. These are the very people feeling the full ferocity of government cuts, these people, and those about to come after them. A word also perhaps for another group of people who hardly seem to have been mentioned during this difficult time, the court staff. I know, that many of the clerks and ushers working through the night are the very people facing redundancy when many magistrates' courts close. It is difficult to accept that all these people, from lawyers to ushers have been given such little credit for their amazing work.

This edition of *CBQ* continues to raise the bar in terms of the range and quality of articles and we have some incisively written pieces, finishing with an exclusive article by the Super Model Jacquetta Wheeler, on her new career path.

A wide ranging edition, I hope you agree. ■

25 Bedford Row. The views expressed here are not necessarily the views of the Criminal Bar Association.

Work in Progress

CHAIRMANS COLUMN
Max Hill QC

London is burning as I write. Birmingham and Manchester too. The 2011 Summer Riots will be a memory by the time you read this – such are the copy deadlines for *CBQ* – but we will all still be counting the cost of a discontented August.

The Prime Minister, recalling Parliament in the midst of the chaos, issued stern warnings to the rioters that they would be made to feel the full force of the law. Perhaps like me you were tempted to add "yes, but who is going to pay for the law to be effectively enforced?" Those charged with riot must be efficiently prosecuted and defended. The guilty should be locked up, the innocent set free. CBA members do more than others in maintaining the criminal justice system. At a time like this, perhaps the Government will finally recognize that this country should preserve the system it so badly needs, rather than settling for a cheap alternative imported from the US. Further, we have a government all too keen to take credit for quelling the riot, and to issue political instructions to the courts on how to sentence miscreants. I say leave the lawyers and judges to apply the law. We know what we are doing, we do not answer to any political master, and it is time to recognize the extraordinary quality and commitment which criminal barristers bring to difficult cases.

It is the curse of the criminal Bar that the general public never believe they will have need of our services. Events in London and around the country this August give the lie to that. The country needs us, and we will deliver, but who will pay?

National Meeting

No riot ensued, but the last big event before the summer break was the national meeting of the criminal Bar on July 26. If you were amongst the 600 who attended in person in London, or via one of the 15 videolinks nationwide, then you know what happened. There can be no doubt that you gave the Attorney General a strong impression of the anger felt by a long suffering criminal Bar, subject to real-term funding cuts since the mid-Nineties, and now dealing with the governments refusal to engage properly with the principled arguments we put forward in response to the consultation on Legal Aid during the Spring and early Summer. Under less stress than during the riots in August, but suffering from the failure of his governments plans to reshape sentencing policy, the Prime Minister claimed that the purpose of a consultation is to listen to what respondents have to say. I saw no evidence of that in the Legal Aid consultation.

A Step Too Far

As if the latest round of fee cuts were not enough, we are now facing the Government's declared intention to introduce tendering for block contracts and OCOF. I hope that by the time you read this issue of *CBQ*, everyone in government will have accepted that the process by which criminal cases move, from police stations *via* magistrates' courts to the Crown Court above, simply cannot work upon the basis of one fee to be split between however many legal professionals are needed to deliver all of the necessary litigation and advocacy services. The criminal Bar will not stand for OCOF in the Crown Court. Ring-fencing advocacy for jury trials is a must.

QASA

Woe betide anyone who claims that the criminal Bar is outmoded or unable to cope with a changing legal market. Our detractors, or those who fail to understand what we do, would have the wider public believe that is the case. It must be our task to prove them wrong. Where we have failed to win appreciation for the vital public service we provide, we must now succeed as never before. The QASA scheme provides an opportunity for barristers to show that nobody does it better than us, when it comes to the delivery of advocacy in cases where long term deprivation of liberty is at stake. You and I know that effective advocacy is an acquired skill, requiring years to learn and many more to perfect. Whilst it may feel insulting to have to demonstrate that skill upon the basis that Judges will complete a tick-box evaluation form at the end of the case, and whilst it may add injury to that insult that we face paying for the privilege to join a compulsory scheme amounting to no more than a licence to continue doing that which we have all done since pupillage, QASA presents an opportunity which we have to grasp. We have nothing to fear.

What about televising court hearings? Most commentators would expect the criminal Bar to be conservative, even hostile towards media proposals to introduce live coverage of sentencing hearings in significant cases. I have news for them. We are prepared for a mature debate about the pros and cons of televising criminal courts. There are many dangers, but there are opportunities here to blow the cobwebs away from the public perception of what we do. I say we should engage with the media to see what agreement might be found. We may wear wigs and robes – for good reason too – but we are not behind the times in our outlook.

Procureco Part Two

2011 should be commemorated as the year the government failed to deliver. Never mind the debacle over their sentencing proposals which almost cost the Justice Secretary his job. Never mind their declared intention to introduce a best value tendering competition into legal services, and upon the basis that cost

but not quality was the sole criterion. We have a government who fail to deliver, because their policies are fundamentally flawed. That does not mean that the criminal Bar should stand still. Alongside our fight – and no other word will do – to show why we are the best at what we do, we must explore every avenue to diversify our practices and to supplement inadequate remuneration for our publicly funded work. The CBA came out against general contracting for legally aided cases in our public announcements in July. I stand by every word. We must be creative in planning a future for the criminal Bar which both preserves the livelihood of current members and provides succession planning for the next generation. But none of that requires fusion, or best value tendering, or doing what this government believes it can get away with in the name of the economic recession.

The Year Ahead

Legal Aid cuts, OCOF and QASA represent the immediate landscape for my year as Chairman. Rather than allowing these issues to divide and depress us all, my mission must be to raise our chins from the floor, and to deliver one key message to anyone who will listen: you can destroy the publicly-funded Bar if you want, but you will want it back when it is too late to recover what you have lost. Others must be made to listen to us. Frankly, it is puerile to dismiss our arguments as little more than financial self-interest, when the criminal Bar has for decades proven that it is efficient and exceptionally hard-working. Many of you will have heard my efforts *via* the media to convey the sheer physical effort undertaken by barristers up and down the country, week after week, working 60 hours or more in order to do our job to the high standard for which we have been taken for granted for too long.

Alongside all of this political activity, 2011-12 promises the usual round of legal and educational activity for which we are rightly celebrated. Our Committee works tirelessly through Working Parties on legislative and other legal research proposals, and we are highly regarded for our input. Moreover, our Bailey Lecture series remains a cornerstone of our excellence in lecturing, to be delivered this year under the guidance of our new Director of Education, Jonathan Laidlaw QC. We are fortunate to have secured his services.

Lest any should think that the CBA stands for London alone, I made plans before taking over as Chairman for a full CBA Committee meeting outside London, in fact in Manchester on November 22. I am grateful to Rick Pratt QC, Leader of the Northern Circuit, for welcoming us on what I believe is an unprecedented move outside London. Further, I have decided to hold the CBA Spring Conference 2012 in Newcastle, and am grateful to Stuart Browne QC, Leader of the NE Circuit, and his Education Committee for their continuing help. The CBA stands for all criminal barristers throughout England and Wales. I look forward to working with all six Circuit Leaders, together with the leadership of the Bar Council, in delivering our message throughout the country.

I have delayed writing this article long enough to be able to celebrate the election of Michael Turner QC as Vice Chairman. He brings a wealth of experience in the most challenging criminal cases. I look forward to working with him, alongside our dedicated and excellent Secretary Nathaniel Rudolf, his Assistant Gillian Jones, and our Treasurer Edmund Vickers. Together with our efficient Administrator Aaron Dolan, we strive to do everything we can for the criminal Bar.

I know the CBA. I was proud and privileged to be your Secretary in 2003-4, and it was an honour to return to the Committee as Vice Chairman last year. I did so then because I knew it would be rewarding to work with Chris Kinch. He was an exceptionally dedicated Chairman. He has not received the credit he deserves for leading the CBA as he did in difficult times. Whilst Chairman, he did not take so much as a week of leave. We owe him a real debt of gratitude. ■

FILM REVIEW

London Film Festival 2011

55th BFI LONDON FILM FESTIVAL

The latest London Film Festival is about to begin and this is advance notice to put some time aside to catch the latest films from around the World.

The Festival runs from October 12 to October 27 and the depth of the programme can be seen from some statistics from last year's Festival. Back then, 201 Feature films and 112 Short films were shown from 68 different countries in 530 screenings.

The final statistic really demonstrates how important this event has become in the World calendar of Film Festivals, with over 132,000 people attending over the three weeks.

The European premier of **360**, staring Rachel Weisz, Jude Law and Sir Anthony Hopkins will open the festival. Directed by Fernando Meirelles (City of God, The Constant Gardener, Blindness) and with an original screenplay from the acclaimed writer Peter Morgan (The Queen, Frost/ Nixon).

For more information: lffrsvp@premierpr.com.

Put the dates in your diary. ■

John Cooper

Have you Emptied Your Pockets?

PREFACE

How to get into court and keep your clothing on

CONTRIBUTOR

Maximillian Hardy

"Do your back?" Any criminal barrister reading those words will not conjure to mind the tender ministrations of an expert depilator at some upmarket beauty salon but instead the final act of the tedious business that is crossing the threshold of just about any court building in the land. It was only a few issues ago that the esteemed editor of this august publication fulminated on this topic in the hope of precipitating a popular uprising against the daily vexation with which we are all so wearily familiar. And so it is that I have been enjoined to take up the cudgels to ensure that this, the most pressing of all the issues with which the Bar is currently grappling, remains on the agenda. I have two wishes, one realizable, and the other as fantastically unlikely as a triple rollover Euromillions jackpot win. The first is that a scheme be set up whereby barristers and, in a spirit of solidarity, others who hold themselves out as advocates can show a card or other form of identification to enable a bypassing of the maddening and bovine intrusiveness of the daily "arching" and "wanding". Why should police officers in uniform be spared this quotidian ordeal upon presentation of a warrant card when robed barristers stepping momentarily out of court for a Nicotine fix or in search of elusive mobile phone reception have to submit to pocket emptying and the rest by a sullen security guard who watched them walk out the door only moments previously? My other, albeit fantastical, wish is that the ghastly and hugely expensive "securitization" of the courts be rolled back to a pre-lapsarian, or just pre-9/11, period when one or at most two security guards would greet one cheerily at the door and use their discretion to decide if they wanted to look in a potential malefactor's bag. Are court rooms really any safer than they were 10 years ago thanks to this huge security apparatus? Is society really now so dangerous that millions of pounds needs to be spent on these squadrons of privately contracted guards with their wands and their arches and their conveyor belts? Might all this money not be better spent on some more worthy cause like, I don't know, legal aid? It can be easy to overlook how life diminishing those tiresome moments being held up at the threshold of a courthouse can be. Over time one gets used to the idiosyncrasies of the different courts. I'm always struck, for example, by the absurdity of the wands used at Luton and St. Albans Crown Courts which upon finding metal sound like Sooty undergoing some sort of sexual indignity. Every day it seems the guards at Kingston Crown Court are engaged in building anew a fragrance collection to rival Selfridge's as they confiscate scents and deodorants from unwitting lady visitors. All courts display dire warnings about the consequences of bringing knives to court. Surely even the most doltish thugs realize in our current day and age that this is not a good idea. I would be intrigued to know how many knives have actually been confiscated by court security guards in the last 12 months. If I wasn't trying to earn a living I might even make a Freedom of Information request. Instead one customarily sees cameras and sometimes Dictaphones zealously confiscated completely ignoring the fact almost every single person in the building is allowed to roam free with camera and voice recording enabled mobile phones. The inconsistency, as ever in life, is what really riles about this petty intrusion into our daily comings and goings. When a pupil, I received a stern lecture from a famously punctilious Silk who did not beat about the bush when it came to correct dress for a barrister. One prescription I never forgot went thus: "If you wear trousers with belt loops you must wear a belt – that is if you must wear trousers with belt loops". Accordingly I have fogishly worn braces since. Every single day therefore I set the arch going like a Christmas tree and have to adopt the position of the resigned Redeemer on the cross as the braces are identified, yet again, as the culprits. How easy it would be though to secrete a truly lethal weapon about one's person and smuggle it past the uninterested "wanding" ritual. Lest one was tempted to think that if a thing is worth doing it's worth doing properly it would be as well to remember what the security consequences of that would be: Woolwich Crown Court. Why do we have to remove our shoes and inflict barristerial bunions on the foyer area but not the rest of our clothing? What is the point of the exit capsules that allow only one person to escape at a time and sulkingly disable themselves should two have the temerity to attempt flight from the learned Judges therein? We know if the recent heroics of one of Her Majesty's Judges is anything to go by that misuse of blunt metal cutlery is hardly going to provoke judicial palpitations so why must we endure plastic. Is it really too much to ask that we be issued with identification to enable us to avoid this nonsense? The card could even have a hologram or biometric data if security really was a concern. The guards would then be free to concentrate on really important matters such as confiscating bottles of water and supervising access to the room with the cassette player in it. ■

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Carrot and Stick

PREFACE

The relevance of contempt of court in the digital era

CONTRIBUTORS

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In his October 2010, Kalisher address, the Attorney-General reaffirmed the relevance of contempt of court in the digital era[1]. His stance was clear: when the proverbial "carrot" fails there should be no hesitation in resorting to the "stick". Recently, the "stick" has been used to prosecute the now notorious juror Joanne Fraill[2] and both *The Sun* and *Daily Mirror* newspapers following reporting in the *Yeates* case. This article seeks to provide an overview of the present position of contempt, surrounding issues and possible solutions.

The Law

Criminal contempt of court, contained both in statute and the common law[3], is a broadly based and continually evolving offence. At common law, it has been defined as behaviour, "involving an interference with the due administration of justice, either in a particular case or more generally as a continuing process"[4]. No exhaustive list of behaviours constituting criminal contempt exists.

The first branch of acts potentially constituting contempt, generally referred to as constructive or indirect contempt, is the publication of material that creates "a substantial risk that the course of justice will be seriously impeded or prejudiced". Liability in such cases is normally strict, with prosecutions usually brought by the Attorney-General to limit future publication of prejudicial material. Contempt may also occur in circumstances where publication is intended to prejudice possible future legal proceedings.

The second branch, codified in s.8 of the Contempt of Court Act 1981, makes it an offence to "obtain, disclose or solicit" the details of jury deliberations. This form of contempt is commonly referred to as contempt "in the face of the court". This can be committed by jurors and/or an individual who discloses or publishes details of jury deliberation.

1 Attorney-General's Criminal Bar Association's Kalisher lecture October 2010, *Contempt of Court: Why it still matters*.
2 *R. v. Fraill* [2011] EWHC 1629 (Admin).
3 See, the Contempt of Court Act 1981.
4 *A-G v. Leveller Magazine Ltd* [1979] AC 440, *per* Lord Diplock at p.449.

The Press

Professor Thomas' 2010 report titled, "Are Juries Fair?"[5] found approximately one third of jurors in high profile cases remembered pre-trial coverage in the media. More worryingly, the report found that in high profile cases, 20 *per cent* of jurors who recalled coverage of their case said they found it difficult to put these reports out of their mind while serving as a juror.

The issue of juror exposure to extraneous material has long been a concern of those involved in the criminal justice system. Although most prosecutions receive little news coverage, contempt by the press, in its widest sense, has been increasingly visible in the media as a result of instant news and the unregulated Internet. Today, the challenges posed by the Internet have rapidly extended from simple access to material, to instant communications via social networks.

There have been a number of high profile examples of contempt as a result of publication of material. In *AG v. Associated Newspapers Ltd & News Group Newspapers Ltd* [2011] EWHC 418 (Admin) material published solely on the Internet was considered for the first time when the *Sun*

5 Ministry of Justice Report, February 2010.

and *Daily Mail* published a photograph of a defendant in a murder trial holding a gun on their web sites. Although, no actual prejudice was caused and the court accepted that the publication was a mistake, both papers were found guilty of contempt as a matter of strict liability.

In late July 2001, *The Sun* and *Daily Mirror* were held in contempt of court and collectively fined £68,000 as a result of articles published regarding the now notorious Christopher Jeffries in the aftermath of Joanna Yeates' murder. During the contempt proceedings, the Attorney-General argued that had Mr Jeffries been charged, the publications would have posed a substantial risk of serious prejudice to the fairness of any trial - an argument with which the High Court whole heartedly concurred.

Juror Misconduct

A potentially more widespread form of contempt relates to juror misconduct. In many cases, reporting of the misconduct would make for light reading, if the consequences to the administration of justice were not so serious. A much reported example is that of jurors conducting Facebook polls to determine the guilt of a defendant. A further recent example was provided by Joanne Fraill. Fraill, a hardworking mother of three of previous good character, is currently residing at Her Majesty's Pleasure as a result of disclosing information to an acquitted defendant whilst deliberations were ongoing in relation to co-defendants. The impact was not limited to Fraill, with the cost to the public purse of a re-trial an estimated £6m (not including the costs arising out of the contempt proceedings).

Perceived Threat

In light of changes to the admissibility of bad character evidence *pos*t the Criminal Justice Act 2003 and the availability of instant reporting, it has been suggested that the law of contempt in relation to the press is to some extent redundant, and should be relaxed. This has been encouraged by the general consensus that the vast majority of jurors are capable of following directions to ignore information from sources outside the courtroom and to respect the confidentiality of deliberations.

However, relaxation of the law seems to be at odds with the norm that justice must be seen to be done. As pointed out by the Attorney-General, defendants, "must be tried solely on the evidence that is presented in court [and] nothing else". It is therefore crucial that jurors are not influenced by sources external to the courtroom. Further, the view held by the Lord Chief Justice is, "that unless juror consultation of the Internet is stopped, the Jury system will not survive."[6]

Solutions – Clearer Directions

Upon admitting her behaviour Fraill stated, "Can I just say I'm really sorry it wasn't meant to... ". This suggests that despite proper directions being given, they were not understood. Although the actions of a jury can never fully be policed by the system, at the outset juries should be expressly warned of the severe consequences of contempt. Juries must also be reminded of their collective responsibility to be vigilant for indiscretions on the part of fellow jurors.

Duties of Court Participants

In the Irish case of *Byrne v. DPP* [2010] IEHC 382, an application was made for the DPP to sweep the Internet for information prejudicial to the defence. Unsurprisingly, the court held that it was not part of the DPP's function to conduct such an exercise. Although the defence request in Byrne was fairly bold, what may become *de rigueur* is reliance on Internet research by prosecution and defence to monitor and prevent prejudice arising.

Advisory Notices

A little used weapon in the war on contempt is the advisory notice. Traditionally requested by the prosecutor, a notice takes the form of a warning to the press regarding their reporting of a particular matter. The Attorney-General has commented that notices should be issued, "very rarely". Bearing in mind the statistical findings of *Thomas,* perhaps this view should be reconsidered.

Sequestering a Jury

There have been calls to return to sequestering a jury for the duration of a trial. However, the notion that for a jury to be truly impartial they must be isolated, is a controversial one due to both cost and (in)convenience. Every juror comes to court relying on their life experience and knowledge to assess the evidence before them. In this sense, no jury is ever truly impartial. However, what sequestering does is limit the extent to which they can rely on extraneous sources that were not within their experience prior to the trial commencing and allows a trial to continue in such a manner that is seen to be fair. Sequestration in every case would be impractical, but a review on a case-by-case basis on the likelihood of contamination may be an appropriate remedy.

A cautionary tale was told in *R. v. Young* [1995] QB 324, when a sequestered jury attempted to contact the deceased in a murder trial *via* a Ouija board to reveal the identity of the murderer. Although the lengths the jury went to be "sure" was somewhat novel, the Court of Appeal was not impressed and quickly quashed the conviction.

Conclusion

Proactive policing by the current Attorney-General has resulted in a recent resurgence of the law of contempt. The law of contempt has demonstrated that it is capable of rising to any occasion the digital age throws at it.

However, there is an argument that the Attorney-General should use more "carrot" to reduce the amount of "stick" necessary to protect the administration of justice. Arguably, clearer and earlier directions, a greater use of advisory notices and greater understanding may do more to maintain faith in our sacred jury system than imposing nominal fines on wealthy corporations or locking up a mother of three. ■

SOPHIE JOHNSON and MORAG OFILI
Third Six Pupils at 25 Bedford Row

6 JSB Lecture . November 16, 2010.

Hearsay Evidence

PREFACE

Dealing with implied assertions and hearsay evidence

CONTRIBUTOR

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The issue of implied assertions in the context of the hearsay rules continues to vex the courts. Several recent decisions in this area have arisen from cases of possessing drugs with intent to supply where the issue was whether the defendant had the requisite intention and the Crown sought to rely on inferences from text messages received by him to show that intention. Two such cases are *Leonard* [2009] EWCA Crim 1251, and *Twist* [2011] EWCA Crim 1143. In each case text messages were found on the defendant's mobile telephones. In the former case they were alleged to be comments by the senders regarding drugs sold to them by the defendant. In the latter case they were alleged to be requests for the supply of drugs. In neither case did the messages expressly say that the defendant had ever supplied drugs. Therefore, the Crown had to rely on an inference from the messages. In the former case the Court of Appeal held that the messages were hearsay, whereas in the latter case it held that they were not. At first glance the decisions may appear to be inconsistent with one another. The questions that arise are whether they are in fact inconsistent, and, if so, which is to be preferred.

The Statutory Provisions

The starting point when considering what is and what is not hearsay is necessarily the Criminal Justice Act 2003.

Although "hearsay" is never explicitly defined in that Act, s.114 provides that, "In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if …", going on to set out the well-known circumstances in which such evidence may be admissible.

This definition is refined by s.115, which provides that:

"(1)In this chapter references to a statement or to a matter stated are to be read as follows.

(2)A statement is any representation of fact or opinion made by a person by whatever means; and it includes a representation made in a sketch, photofit or other pictorial form.

(3)A matter stated is one to which this Chapter applies if (and only if) the purpose, or one of the purposes, of the person making the statement appears to the court to have been:

(a)to cause another person to believe the matter, or

(b)to cause another person to act or a machine to operate on the basis that the matter is as stated."

It had been held that implied assertions from hearsay were themselves hearsay: *DPP v. Kearley* [1992] 2 AC 228. *Kearley* was a case concerning telephone calls made to the home of the defendant in which the callers sought the supply of drugs. The House of Lords held that the calls amounted to implied assertions that the defendant was a drug dealer and were therefore hearsay. However, it has subsequently been held that this decision was reversed by the 2003 Act: *Singh* [2006] EWCA Crim 660. How, then, did the Court of Appeal in *Leonard* conclude that the messages were hearsay?

Leonard

In *Leonard* the Crown sought to rely on two text messages to show that the defendant had supplied drugs to the senders of the message. The messages were alleged to be comments as to the quality of drugs supplied, for example, the first such text was, "Cheers for yday! Well sound gear:-S! feel well wankered today!"

The Court of Appeal considered the 2003 Act and determined whether the messages were hearsay by addressing three questions: "[A]re the two texts statements of fact or opinion made by a person by whatever means?" (para.34).

"What was the reason for those statements being adduced in evidence? Was it to prove "any matter stated" in those statements?" (para.36).

"[D]oes at least one of the purposes of the person making the statement in each of the texts appear to the court to have been to cause another person (ie the recipient of the text) to believe "the matter" set out in the text, or to cause another person (ie, the recipient of the text) to act on the basis that the matter is as stated in the statement?" (para.37).

The court answered the first question in the affirmative. The court also answered the second question in the affirmative. The court's reasons for this second conclusion were that the Crown wished the jury to infer from the matters stated (for example, in the first text, that the sender was happy with the drugs), that the defendant had supplied drugs to the sender, but that in order for there to be such an inference, the Crown had first to prove the matters stated. The court went on to answer the final question in the affirmative, holding that, using the example of the first text, the purpose of the sender was to cause the recipient to believe that the sender was happy with the drugs. The court therefore concluded that the texts were hearsay.

Twist

In *Twist,* the messages were not specified, but were contended to be requests that the defendant supply drugs to the senders.

Again, the Court of Appeal considered the 2003 Act and set out a series questions to ask in determining whether the statements were hearsay (at para.17):

"(i)identify what relevant fact (matter) it is sought to prove;

(ii)ask whether there is a statement of *that matter* in

the communication. If no, then no question of hearsay arises (whatever other matters may be contained in the communication);

If yes, ask whether it was one of the purposes (not necessarily the only or dominant purpose) of the maker of the communication that the recipient, or any other person, should believe *that matter* or act upon it as true? If yes, it is hearsay. If no, it is not."

(Emphasis included in the original judgment.)

The difference from *Leonard* is the focus on what is being sought to prove; identifying this is the first suggested step in *Twist*, whereas the approach in *Leonard* was to identify any statements contained within the text messages and to consider whether the messages were being adduced to prove any of those statements. This difference in focus led to a different result when applied to the facts of the case (at para.29): "The matter sought to be proved was that the defendant was a supplier of drugs … . The messages did not amount to or contain any statement that he was. Even if they could be said to amount to an implied assertion that he was, the purpose of the senders did not include causing him or anyone else to believe that he was."

The court concluded that the messages were not hearsay.

It should be noted that the court in *Twist* was critical of the use of the term "implied assertion", referring at para.19 to two problems previously identified by the Law Commission. Most relevant for present purposes is that, "it begs the question as to whether as to whether the words or conduct in question *are* an assertion of the fact that they are sought to prove. It is at least arguable that they are not assertive at all, but directly probative – in which case it would follow that they should not be caught by the hearsay rule" (emphasis included in the original). In other words, it is arguable such statement are not hearsay as they are not being admitted "as evidence of any matter stated", as required by s.114, but rather as evidence of something inferred. It is respectfully submitted that this is an accurate analysis. It is reflected in the court's own analysis in para.29, in which the messages were rejected as hearsay because they did not amount to or contain any statement that the defendant was a supplier of drugs. It was through first identifying that this is what was sought to be proved that the court was able to identify the absence of any statement of this in the text messages. That being the case, the court's alternative analysis (regarding the possibility of an implied assertion) is strictly speaking unnecessary.

Conclusion

The difference in focus between the cases led to a different conclusion, but which is to be preferred? Whilst the conclusion in *Leonard* was not strictly incorrect (as acknowledged in *Twist* at para.24), it does feel strained, relying as it does on the contention that the Crown was seeking to prove that the senders of the texts were happy or unhappy with an earlier sale, when in reality it is unlikely that the Crown cared either way about this. Further, *Twist* demonstrates that this additional step was unnecessary. *Twist* and has the obvious advantage to the Crown that the messages are not classed as hearsay and it is on this route that prosecutors should seek to rely. ■

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Courting Controversy

PREFACE

Representing accused before the International Crimes Tribunal in Bangladesh

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It would not be an exaggeration to say that this case, for many reasons, is a career defining moment. The cases that the International Crimes Tribunal in Bangladesh (hereinafter: Tribunal) will hear are all capital cases. Without exception, the defendants are all members of the opposition political parties. The legislative framework and Rules of Procedure of the Tribunal are undoubtedly controversial. In essence, the Tribunal has imported crimes of an international nature such as war crimes, crimes against humanity, crimes against peace and genocide, whilst simultaneously exporting fundamental rights afforded to accused in ordinary criminal proceedings.

The Government of Bangladesh, largely through its Minister for Law, Justice and Parliamentary Affairs, Shafique Ahmed, has consistently stated that the Tribunal will meet the highest international standards of fairness and transparency. It is arguable that to date this has not been the case and as a result the Tribunal has been widely criticized by a number of international organizations including the International Bar Association War Crimes Committee, Amnesty International, Human Rights Watch and the International Center for Transitional Justice.

The Tribunal at present has not decided on what side of the fence it wishes to fall. It is neither an international (or *ad hoc*) tribunal nor is it a purely domestic judicial organ. The Tribunal has at times attempted to identify itself as an international tribunal; however, in reality the only international aspect of the Tribunal is in its assigned name. Of course, an international tribunal that is the paradigm of fairness has yet to come into existence. Nonetheless, however biased or one sided an international tribunal may appear, there does exist behind it a Statute which clearly sets out the definition of crimes and the burden and standard to which they must be proven. It has procedural rules which set out rules of evidence, rules of disclosure and the boundaries within which each party is permitted to play. The international and *ad hoc* tribunals provide the defence with the necessary tools to which to mount a challenge to the very serious charges they face. Finally, the Judges, prosecutors and the defence, are selected on the basis of their proven expertise in complex international criminal law. On the reverse side of the coin, a domestic judicial body is defined by its position in the domestic judicial hierarchy. It is quite clear that a domestic judicial organ must apply domestic law and domestic procedure. There are many examples of each type of tribunal. At one end of the scale there are the *ad hoc* international tribunals that have dealt with the conflicts of the former Yugoslavia, Rwanda, East Timor and Sierra Leone to the hybrid courts of Lebanon, Bosnia, Cambodia, Iraq and Kosovo. It is difficult to place the Bangladesh Tribunal in either camp.

The Tribunal was established by the enactment of the International Crimes (Tribunal) Act 1973 following the Liberation War 1971, in which East Pakistan was separated from West Pakistan to create the newly independent state of Bangladesh. Although no verified numbers exist, it is reported that three million people were killed or tortured to death and over 10 million refugees fled to India. Initially, it was the intention to try Pakistani military and auxiliary forces in a military tribunal. One hundred and ninety five Pakistani prisoners of war were to be put on trial, but were subsequently amnestied and repatriated back to Pakistan.[1] The 1974 Tripartite Agreement between Bangladesh, India and Pakistan subsequently put an end to any prosecution on any side of the conflict.

For the following 38 years nothing was done by any of the ruling parties to bring an end to impunity. Neither of the two main political parties, the Awami League (hereinafter: AL) nor the opposition Bangladesh National Party (hereinafter: BNP) sought to address the "war crimes" issue until it became a major election pledge for the AL in its 2008 manifesto.[2] The AL won a landslide victory, in large part as a result of its promise to purge the land of war criminals. However, it has to be noted that these alleged "war criminals" are not members of the Pakistani military; these are Bangladeshi citizens who may have opposed independence. Whatever the strength of the evidence against them, that is questionable in itself, the allegations are largely formulated on the basis of their collaboration with the Pakistani military apparatus.

The inability, or unwillingness, to target the actual perpetrators of the crimes was of course a stumbling block. The laws enacted in 1973 were not intended to target civilians. In order to address this "oversight" the newly elected AL Government, led by Sheikh Hasina, daughter of Sheikh Mujibur Rahman the founding father of Bangladesh, adopted a resolution to initiate the process

1 The 195 alleged Pakistani war criminals were held as POWs in Indian custody. They were repatriated to Pakistan under the Shimla Pact negotiated between India and Pakistan, presumably with the acquiescence of Bangladesh, in 1972. The repatriation agreement was negotiated on the basis of a pledge that Pakistan would prosecute them on the basis of the recommendations of its own Judicial Commission, established in December 1971 to investigate and report on the 1971 East Pakistan crisis.

2 See Election Manifesto of Bangladesh Awami League-2008, Ninth Parliamentary Election 2008, "A Charter for Change".

of prosecuting war crimes at the first session of the Ninth Parliament in 2009 to establish a civilian court, which in turn led to an amendment to the International Crimes (Tribunal) Act. The International Crimes Tribunal was subsequently established in March 2010. The Government appointed the three Judges and registrar, the prosecutors and members of the investigative agency. Just four months after its establishment it started to arrest its first suspects. Coincidentally, the suspects were all members of the two opposition parties that formed the previous coalition Government and each of the suspects were arrested for non-war crimes related matters.[3] They were then promptly brought before the Tribunal where their custody was ordered. It is important to note that at the time of writing (end July 2011), none of the six detainees have thus far been formally charged.

I first became involved with the Tribunal in July 2010 when I was invited by Lord Avebury to speak on behalf of the International Bar Association War Crimes Committee[4] at a specially convened meeting at the House of Lords. Members of the Bangladesh Supreme Court Bar Association, Amnesty International, IBA and members of the British-Bangladeshi civil society attended the meeting. I spoke principally about the rights of the accused in international criminal trials and addressed a number of flaws in the International Crimes (Tribunal) Act 1973. Following this presentation I was invited to speak at a conference, along with Steven Kay QC, hosted by the Bangladesh Supreme Court Bar Association in Dhaka in October 2010. Following the conference our team from 9 Bedford Row International, including John Cammegh and Sarah Bafadhel (pupil barrister), was instructed to represent the five political leaders of the Jamaat-e-Islami opposition party. I was also instructed to advise a sitting Member of Parliament, S.Q. Chowdhury who was arrested in December 2010.

In January 2011, Bangladesh Foreign Secretary, Mohammed Mijarul Quayed, invited the United States Ambassador-at-large for War Crimes Issues, Stephen Rapp, to visit the Tribunal in Dhaka. His report, released in March 2011, set out a number of areas in which the Tribunal's rules were deemed deficient. He made a number of recommendations and undertook to seek technical assistance from Congress should Bangladesh implement the necessary changes. To date the Government has failed to sufficiently implement any of the recommendations made by Ambassador Rapp. It has also ignored the repeated calls by HRW, AI and ICTJ to amend the legislative framework to bring its procedures in line with international standards and to ensure that the fundamental rights of an accused brought before it are fully respected.

It would appear to the outside observer that the Government has no intention to do things properly. It is responding to an eager public to convict a number of individuals that have been vilified by the Government and demonised by a virulent media campaign. Criticism of the judicial system is met with the threat of contempt proceedings and criticism of the Government is met with charges of sedition. However, having spent eight years in Bosnia involved in human rights and war crimes cases and having seen how badly things can be done, both politically and judicially, it is clear that there is a dire need for public debate on this issue without further delay and without fear of speaking the truth. Currently, Bangladesh is acting behind the guise of ending impunity, a noble cause blindly accepted by the wider international legal community. However, armed with just a few facts, it is woefully apparent how shockingly poor the situation is. The following commentary sets out the issues that need urgent debate before the Government proceeds on an irrevocable course of action that has the potential to set a very dangerous precedent in a part of the world that is only now entering the field of international criminal justice.

Presidential Order No.16 of 1973

It is largely recognized that mass crimes were committed during a relatively short period in the war of liberation. Unsurprisingly, many authors suggest that both sides committed crimes.[5] However, under the Presidential Order No. 16 of 1973 only war crimes committed by the Pakistan Armed Forces and their aiders and abettors can be tried under the 1973 Act as the Order grants immunity from prosecution to members of the liberating forces who may have committed war crimes during the national war of independence. It is clear that the legislation has a discriminatory intent and seeks to prosecute war crimes committed by one side of a liberation war. This is in clear violation of art.26 of the ICCPR which provides, "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".[6]

First Constitutional Amendment

The First Constitutional Amendment 1973 introduced art.47 (3) and art.47A into the Bangladesh Constitution. Article 47 (3) provides that those detained or charged under any law or provision with genocide, crimes against humanity, war crimes or other crimes of international law are unable to challenge such laws as being void or unlawful on the grounds that such laws or provisions are inconsistent with, or repugnant to any of the provisions of the Bangladesh Constitution. This is particularly lethal in light of the art.47 (A) which explicitly denies those

3 This must be taken in context of the political instability of Bangladesh. See recent comments made by British High Commissioner to Bangladesh, Mr. Stephen Evans, on July 30, 2011.

4 Toby Cadman served as the communications officer to the IBA War Crimes Committee 2009-2011.

5 See, S. Bose, "Dead Reckoning: Memories of the 1971 Bangladesh War" (2011), C. Hurst & Co (Publishers) Ltd: London; N. MacDermott, International Committee of Jurists "The Events in East Pakistan, 1971, A Legal Study", June 1972; K. A Huskey, Crimes of War "The International Crimes Tribunal in Bangladesh: Will Justice Prevail?', June 2011.

6 See, Full Opinion of Honorable Michael J. Beloff Q.C of Blackstone Chambers dated December 21, 2009: "The effect of the Presidential Order might plausibly be said to violate this prohibition inasmuch as the sides taken by persons in the civil war would necessarily be in consequence of their political belief (ie, for or against a united Pakistan)".

detained under International Crimes (Tribunal) Act 1973 (hereinafter: IC(T)A 1973) from accessing their ordinary constitutional rights. These withdrawn constitutional rights include: the right to protection of the law, protection from *ex post facto* (retroactive) laws, the right to a speedy and public trial and the ability to enforce guaranteed fundamental rights. These are all guaranteed rights afforded to suspects under both international law and Bangladesh domestic law.

Exclusion of the Criminal Evidence Act and the Criminal Procedure Act

The Act specifically provides that the Bangladesh Evidence Act and the Criminal Procedure Act, both of which apply in all criminal proceedings in Bangladesh domestic courts, do not apply to proceedings under the IC(T)A 1973. This removal emphasizes the capacity for unfairness in proceedings before the Tribunal and is evidence that it is neither an international tribunal nor a domestic judicial organ.

Death Penalty

Those convicted under the IC(T)A 1973 are liable to a sentence of death. Expectedly, this has attracted wide criticism from the international community including IBA, AI and HRW.[7] Despite having jurisdiction over the same crimes, namely crimes against humanity, genocide and war crimes, the International Criminal Court and the *ad hoc* international tribunals do not employ, and have never employed, the death penalty.[8]

Foreign Counsel

There is a continued refusal to allow foreign counsel to appear before the Tribunal. The decision maker, the Chairman of the Bar Council is in fact the Attorney General, a government appointee and a member of the prosecution team in the *Chowdhury* case at least. Moreover, the current Minister for Law, Justice and Parliamentary Affairs and the State Minister for Law, both strong advocates of the Tribunal and opponents of foreign counsel, are also members of the Bar Council. Further, both the Attorney General and the Bar Council previously commented that they would refuse any request for representation by foreign counsel even before the request was submitted thereby demonstrating that it was predetermined. Although the Rules of Procedure of the Tribunal do potentially allow for foreign counsel to appear in proceedings before the Tribunal, this is only with *consent* from the Bangladesh Bar Council and not the Tribunal. In turn the Bar Council has stated that it has no such authorization to determine whether or not foreign counsel can appear in proceedings in Bangladesh. In effect, the Tribunal's Rules of Procedure have created a dead-end right without a remedy that gives the mere appearance of a fair trial being sought.

The People's Inquiry Commission (People's Court)

A number of members of the Tribunal participated in the Peoples' Inquiry Commission (or People's Court) that prejudged these cases in the early 1990s. Indeed the current Chairman of the Tribunal is listed as a member of the Commission. In these "mock trials", real people were named as suspects and following their conviction by the Commission, their effigies were burnt to signify that a sentence of death was passed. Worryingly, some of those convicted before the People's Court are now accused before the Tribunal and its Chairman.

Absence of Rules on Evidence and Disclosure

As abovementioned, the ordinary Bangladesh rules of evidence have been removed[9] and as a result the Tribunal is not bound by any technical rules of evidence and will employ a non-technical procedure in order to expeditiously admit evidence. This is of enormous concern when considering that events in question occurred 40 years ago. Further still, under the IC(T)A 1973, the Tribunal, under its Rules, *will* take judicial notice of all official government documents. In a Tribunal accused of being used as a political tool, this rule allows the Government to present its own version of events without challenge or scrutiny.

With regards to the Tribunal's rules on disclosure, the area is equally lacking. Up until the newly amended Rules of Procedure on June 28, 2011, there was no explicit obligation on the Prosecution to disclose evidence to the Defence. This was in contrast to the Defence obligation to disclose its entire case to the Tribunal and Prosecution on the commencement of trial. Even with the amended Rules of Procedure, there is no obligation on the Prosecution to disclose exculpatory material to the Defence and no opportunity for discovery. The new rules oblige the Prosecution to disclose its case to the Tribunal and Defence three weeks prior to the commencement of the trial. The defence is then expected to review the disclosure made by the Prosecution, formulate its case and make full disclosure to the Tribunal and Prosecution all within three weeks. This is notwithstanding that the investigations against the detainees are still ongoing after more than a year and concern 40-year-old facts.

It is of particular note, that the one-sided nature of the rules, though requiring little action on the part of the prosecution, nevertheless requires the defence to *prove* an alibi or any fact it wishes to put forward as part of a defence.

Lack of Independence and Impartiality

The right to be tried by an independent and impartial tribunal is a cornerstone of due process and enshrined in both art.14 (1) ICCPR and art.10 UDHR.[10] Under

7 See, C. Reiger, "Fighting Past Impunity in Bangladesh: A National Tribunal for Crimes of 1971", ICTJ, July 2011 and most recently letter from ICTJ President, Paul Talbot dated March 15, 2011; Human Rights Watch "Bangladesh: A unique opportunity for justice for 1971 atrocities' dated May 19, 2011 and letter from Amnesty International's Deputy Director for Asia-Pacific, Madhur Malhotra dated June 21, 2011.

8 In 2010, reported executions in Bangladesh stood at nine + and reported death sentences at 32 +. See "Death Sentences and Executions 2010", Amnesty International, March 2011, Index: ACT 50/001/2011.

9 See point 3.

10 Article 14 (1) ICCPR: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair

the IC(T)A 1973 and the Tribunal's Rules of Procedure, neither the Prosecution nor Defence may challenge the appointment of any member of the Tribunal. Conflicts of interest or bias may not be raised in order to challenge the impartiality and independence of proceedings before the Tribunal. As a result, the Chairman's questionable involvement in the People's Court[11] cannot be challenged. Further, the suggestion that members of the Tribunal frequently hold *strategic* meetings with members of the Government, however innocent they may appear, can never be the subject of challenge. In this regard the notion that justice must be seen to be done is quite removed from the process. It should be recalled that Geoffrey Robertson QC, a member of the Bar of the highest standing, was recused for precisely the same reasons. A Tribunal trying the most serious crimes must be held to the highest standard and its members must be completely beyond reproach in order for justice to be seen to be served.

International Observers

One of Ambassador Rapp's recommendations includes the need for international observers to participate in proceedings before the Tribunal.[12] International observers of trials play an important role in ensuring the effective and fair administration of justice by observing trial processes and applying legal knowledge and training. Proceedings under the IC(T)A 1973 are in dire need of such assistance.

Statute of Rome and International Covenant on Civil and Political Rights

Despite Bangladesh becoming a member of the Statute of Rome on March 24, 2010, the same month the Tribunal was revived, the Tribunal refuses to acknowledge its obligations under the Statute. Although the ICC has no temporal jurisdiction in this particular case, following its complementary principle, the spirit of the Statute of Rome must be employed. One hundred and twenty states participated in the negotiations at the Rome Conference which formulated the Rome Statute in 1998 and as a result it is a model for international criminal justice.

As of September 6, 2000, Bangladesh is also a state party to the ICCPR, which guarantees fundamental rights to an individual and ensures international due process. Examples of ICCPR breaches are apparent throughout this article.

Crimes not Clearly Defined

The crimes that fall within the jurisdiction of the Tribunal are largely taken from the Nuremberg Charter. This is 66-years-old and pre-dates the Liberation War by 26 years. As a result the definitions of crimes against humanity, genocide and war crimes are outdated and incorrect when held against the current definitions employed by the ICC and *ad hoc* International Tribunals. Ambassador Rapp and HRW have both recommended that the Tribunal refer to the ICC's Elements of Crimes in order to align its definitions with current acceptable standards.[13] In failing to conform to this recommendation, Bangladesh is ignoring the vast progress made in international criminal law.

Minimum Rights of the Accused

It has been a real struggle to get the Tribunal to recognize basic rights afforded to an accused under both international and national laws. These rights include, *inter alia*, the right to be presumed innocent, the right to remain silent, the right against self-incrimination and the right to a fair and public trial without delay. Following the amended Rules of Procedure in June 2011, these minimum rights have to a certain extent been afforded to suspects. However, these minimum rights are only referred to in the Tribunal's Rules of procedure and not in its Act. The concern here lies in the fact that the Rules of Procedure are fluid in nature and can be amended or repealed at any moment by the Tribunal. There is also concern that in order for these rights to have any meaning they must be given practical effect. Merely referring to provisions of the law and granting the theoretical or illusory provision of such rights is not consonant with the notion of securing rights and thereby in breach of the State's positive obligations.

Training and Resources

The Tribunal Judges, prosecutors and investigators lack experience and training in a very complex field of law. It is essential that the Government engages with the international community to ensure that its professionals are sufficiently well versed in concepts of international criminal and human rights law in order to ensure that uniform or generally accepted standards are observed in practice.

Conclusion

The first trial is expected to start in September following formal charges being brought in August. It is unclear whether this will in fact happen. It is unclear whether the Prosecution is in fact ready or whether what we are hearing at present is little more than "sabre rattling". I for one hope in earnest for the ability to appear before the Tribunal and be given a fair chance to defend the first of six clients.

The concluding point to this article would be this: bringing an end to impunity and recognizing a state's obligation to hold accountable those accused of grave crimes cannot override the obligation to secure fundamental rights to accused persons. A nation's commitment to democracy and the rule of law is defined not by how it treats its most treasured subjects but by

and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children." Article 10 UDHR: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

11 See, point 6.

12 See, Ambassador Rapp's recommendations dated March 21, 2011.

13 Id. Fn. 5

how it treats those accused of the most heinous crimes. It is this very notion that defines a nation's commitment to ensuring the protection of fundamental rights, rights that 66 years ago our forefathers fought to uphold and that established a number of treaties that now define our concepts of how conflicts are fought and how those that commit crimes during conflict are brought to justice. As any lawyer will adhere to a strict set of principles based on accountability and bringing an end to impunity, the judicial system must ensure a strict adherence to the same set of standards. It is of course the cornerstone of any democratic process that there is free debate on the issues and that the executive authority must be called to account for any process it seeks to implement. The rule of law and free speech is what distinguishes a democratic nation. Censoring criticism due to the fact that it is repugnant, controversial or against the interest of the State does not represent a democratic process. In order to properly address the past Bangladesh must first address the suppression of these very basic rights otherwise whatever judicial process it implements will have little or no meaning for the real victims of 1971.

Post Script

Speaking publicly for the first time since the denial, Toby Cadman told Radio Netherlands that ,"although nothing was provided officially, it appeared that an order had been given to refuse me a visa on arrival due to my involvement with those accused by the International Crimes Tribunal." He said that an immigration officer showed him a document, written in Bengali, with some references in English. "I saw my name, that of Ambassador Rapp's references to the ICT, the name of the accused Salauddin Quader Chowdhury and the [names of the] Jamaat leaders' in detention." ■

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HUMAN RIGHTS

Human Rights and Me

PREFACE

From catwalk to Reprieve

CONTRIBUTOR

Jacquetta Wheeler

I started working at Reprieve January 2010, having previously worked full time as a fashion model for ten years. In my early and mid 20s my career had been a constant roller coaster of flights, catwalk shows, photo shoots and parties, but aged 28, I needed a change. I still model, and I still enjoy it, but am extremely glad that I made the decision to diversify my life a little, and come and work at this incredible charity called Reprieve. There is only so long that the whirlwind that is the fashion industry can be exciting and fun, and only so long before your head craves some stimulation beyond makeup, lighting, and hair.

I had always been interested in human rights. My dad used to bring the subject up round the dining table often. He has always been very anti-torture, and is an advocate for the various causes that Reprieve endeavours on. I remember naively arguing with him, having watched three box sets of the Kiefer Sutherland starred American series *24*, that torture *was*, in some circumstances necessary. If 100,000 people will die unless you torture somebody, then surely you have to do it! Little did I know back then that the "ticking bomb" scenario has never actually happened, and most probably never will, and so to legalize torture with that argument in mind would be a crass, and wrong, way of ensuring homeland security. I know that now.

My Dad invited me to go with him to Reprieve's annual Fundraiser in November 2009. I'd moved back to London from New York where I'd lived for six years a year before, and was still struggling a little to find my feet back in my home city. He'd bought a table at the event and invited me along with eight others. I sat there and listened to Clive Stafford Smith talk about death row in America, and Guantanamo Bay, a topic I was already privy to and firmly against. There was this scruffily dressed, very clever man, who had saved many, many lives and got 65 men out of Guantanamo Bay, and I thought – I'd like to work for someone like that. Then Omar Deghayes got up and talked of the torture he had endured at the hands of the Americans, and that really struck a cord. Then Martha Lane Fox got up and talked about how she had donated £10,000 towards a DNA test, which had ended up saving someone's life and Lord Bingham, Reprieve's then Chair, got up and talked about parallels with the American civil war. And I started to wonder how on earth I might be able to help this amazing organization.

The next day I picked up the phone and called Clare Algar, Reprieve's Executive Director. A meeting was set up, and it was arranged that I would start work in January, working with the LAG (Life after Guantanamo) team. I swatted up on Clive's book, Bad Men, over Christmas, but still walked into the office completely out of my depth on January 6, 2010. Here I was amongst a pack of law degree

students from Oxford, Cambridge, and Harvard, and I hadn't even been to University. I kept my head pretty low for the first few months, and reverted to being the painfully shy girl in the classroom that I was as a child. As daunted as I was, I also found it thrilling, and enjoyed every day more and more. I started by volunteering four days a week. Polly and Chloe would give me various topics that they needed research on, be it Islamic populations in Argentina, or educational opportunities in Croatia for immigrants. I learned a lot, fast. At the time LAG was working furiously on getting European governments to agree to take prisoners from Guantanamo; the ones that had been "cleared for release" but had nowhere to go. They feared persecution or torture if they were to return home, but posed no threat to anyone. I read many of their stories, and all were sad. It seemed they had all been caught in the wrong place, at the wrong time, and most had been sold to the Americans for bounties in 2001/2002, as pawns in Bush's War on Terror. I remember getting especially sad reading about Yussef Barkoui, a Palestinian who, having been denied an education in Saudi Arabia where he was born, went to Afghanistan to attend a school there. When war broke out, he got swept up in the turmoil, and ended in the hands of the Americans. He had never raised arms against, or harmed anyone, and eight years later he was still in Guantanamo Bay. Letters from his mother to Yussef read: "My son, I miss you so much every day, I miss the way you smell, I miss the sound of your sweet voice. Please come back to us. We all pray for you every day. "

Partly due to the amazing hard work of the LAG team here at Reprieve, Polly Rossdale, Chloe Davie and Katherine Taylor, Yussef was transferred to a European country, where he is now married, and starting a new life. He has an exceptionally positive outlook on life, and is determined to make it all work – quite remarkable for a man who has been tortured for eight years of his life. Polly and Katie (Chloe has left) work tirelessly making sure Yussef has English classes, comfortable accommodation and enough money to live off until he starts to make his own.

I've moved into the Resource Development team now, but still work in the same room as Polly and Katie, and hear them every day speaking to former Guantanamo prisoners, in various different languages, offering them support, letting them know they are not forgotten, that we are here to help. They coordinate with government officials in countries including Georgia, Slovakia, and Spain, encouraging them to give the men a fair and positive new start in life, and ensuring that their human rights are finally adhered to. Every day they make a huge difference to the esteems of these men, and I admire them enormously. It's not an easy job. Then there are the investigators, who dig around whatever sources or files they can get their hands on to uncover secret prisons in Afghanistan or Pakistan, or anywhere, that have or are still being used to detain men and women without any trials or due process. They find out about British nationals being imprisoned in Bagram, and then work ferociously with the lawyers to get them the hell out. They go on trips to Eastern Europe to uncover locations that were used for extraordinary rendition, and to Pakistan to hold conferences on US Drone attacks that kill civilians every day.

The lawyers that work here have all chosen small salaries over huge ones to do something they believe in. They fly to Washington and back, to Guantanamo and back, nearly as often as I used to fly for modelling trips. Their work is gruelling, but they never seem to lose their determination for justice, and they complain far less than models do when they walk into work off an eight hour red eye flight. It certainly puts my (other) job in perspective.

Upstairs there is the Death Penalty team. Recently, some sad emails were sent round the office after Mark Stroman was executed in Texas. Three Reprievers had moved out to Texas for two months to fight for clemency for Mark. He'd been imprisoned since 2001, when he shot three men, two of them dead. Mark had been diagnosed with mental disorders from the age of ten, and his childhood was filled with abuse and neglect. He shot three Muslim men in the wake of September 11. The one that survived, Rais Bhuiyan, campaigned, alongside Reprieve, to save Mark's life. Rais visited Europe to garner support for his cause, and sued the Texas government over his rights as a victim – a case which went all the way to the US Supreme Court and delayed Mark's execution by several hours, before Rais' request for a stay of execution was eventually denied. An e-mail from Clive was sent around the office consoling those who had been working on the case, but talking of the outcome, reminding us that: "What that shows is not that the work you all did failed, but that the unpleasant venom of power won out because it could, not because it got the better of the argument … And in the battle for public opinion, we won, perhaps even putting a small oar into Gov. Perry's presidential ambitions at the same time."

I am now a part-time member of staff here at Reprieve, and doing something I have past experience in, event planning. On November 10, 2011, Reprieve's annual fundraising event will be in the form of the "House of Trivia," a sort of mobile quiz night. I have exercised this unique event format twice before when I lived in New York, those times raising money for a children's charity in Morocco (I have a family holiday home there). Both nights were successful, mainly because they were different, and had a strong element of fun. On November 10, 20 different teams, eight people in each, from law firms, banks, hedge funds and fashion labels, will arrive at the 33rd floor of Broadgate Tower, kindly leant to us by the law firm Reed Smith, and embark on an exciting evening of Trivia Pursuit. Each team will be chaperoned around this stunning venue, that has 360° views of London, from one room to another, answering questions in each room pertaining to its theme. It is a bit like a live board game, where the people are the pieces. It is strictly timed and fast; they will have six minutes in each room to answer eight questions, before moving to the next. The cleverest team wins a holiday in Morocco, the runners up a box at the Royal Albert Hall, the third, forth, fifth and sixth prizes have yet to be secured, but they will be good. It costs £4,000 to buy a team of eight people, and we have sold 11 out of 20 so far, including Hoares Bank, Hargreave Hale stockbrokers, Ben Goldsmith is in, as is Vivienne Westwood.

We're hoping to raise a large amount of money from this event, which will enable the investigators, the lawyers, and everyone else here at Reprieve to continue doing the vital work that they do. If, by any chance you, or your chambers, would like to take part, please get in touch! ■

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