



His Honour Judge Welchman, a Circuit Judge, sits at Wandsworth County Court and Kingston Crown Court.

### HAVE AN OBJECTIVE FROM THE START

Most tips about effective advocacy are equally applicable to any court or tribunal and are well covered in the training Gray's provides the newly-called, whether you call it the 'Battle Plan' (per Master David Hunt) or the 'Case Concept'. Essentially it means you need to know what you want and what needs to be established in order to obtain it. Litigation is not to be regarded as a ramble across unfamiliar territory with pauses at places of interest with no idea where the destination is going to be! Judges like to know in advance where you are trying to take them and prefer a comfortable ride.

### A PROPER DEGREE OF RESPECT

Some years ago I attended a lecture on advocacy given by Lord Griffiths. The advice he gave to the Bar was that they should treat the Judicial Committee of the House of Lords as if they were the East Ham Magistrates. I should add that you would need to be an advocate of the calibre of Lord Griffiths to do that but the point was an important one – do not be overawed by your tribunal. Equally, when appearing in the County Court do not underestimate it. Many a barrister has lost a good case by underestimating his tribunal or his opponent. (See *Forensic Fables: The Double First and the Old Hand* – Lord Denning at a Christmas Miscellany in Hall confessed to being the Double First.)

### WORK FROM THE BLUE PRINT

Effective preparation is the key to success at every level. Master Mark Potter has provided a blueprint for advocacy in the Court of Appeal (see *Graya News* Number One) but the advice given has general application and with appropriate adjustments will stand you in good stead in the County Court.

## CHARLES WELCHMAN **WINNING WAYS IN THE COUNTY COURT**

### WHO, WHAT AND WHERE

The County Court provides some interesting challenges of its own. Where is it? How do I get there? Will I get on? What is the judge like? One of my ushers when asked that question answered after a pause, "Well, he is very nice to me".

### REAL PEOPLE

A vast range of work falls within the jurisdiction of the County Court. Nearly all of it is likely to have an element that involves a human and social problem with children and family cases very much to the fore. Whatever the media may say to the contrary, it is impossible to be closely involved with the work of the County Court without knowing what goes on in the real world. Find out about housing and other benefits so that you are able to provide practical help and do not just advise a client to visit the CAB or the local housing advice centre. A working knowledge of such matters could keep your client in a home that would otherwise be lost.

### THE LITIGANT IN PERSON

Your opponent may be a litigant in person who has an excellent case or no case at all. Integrity, tact and understanding are called for. Such a litigant may be deeply suspicious of you and the court process but a dialogue before the case starts is likely to identify and narrow the issues and may result in a resolution of the case. The matter of concern to your opponent may have little to do with the actual case before the court. Do not take advantage; play fair but do not forget whose side you are on.

### AFTER THE CIVIL PROCEDURE RULES

Civil litigation has been changed by the CPR. There is an emphasis on alternative dispute resolution, fewer trials and hearings are usually relatively short. It is the waiting at court that takes the time! In general the progress of a case to trial is more effectively managed and cases are more focused. Most but not all the case management is undertaken by District Judges who are going to have a good understanding of what is likely to be required. So, if those instructing you wished to adopt the Chelsea Football Club approach to expert witnesses (the more and the more expensive the better), you are going to have put in a star performance and be technically sure-footed to have any chance of getting your team into the match.

### A FEW DO'S AND DON'TS

- In almost every case a short relevant chronology is helpful – do not overload it.
- Prepare a draft order complying with the appropriate practice directions and giving any appropriate undertakings.
- In cases where a skeleton argument has not been ordered it must be a matter of judgment whether you submit one. A collision at a traffic-light controlled road junction is unlikely to require one and the judge may treat it with suspicion if you do. In any event keep it short. The advent of the word processor has meant that even the inept typist can reproduce great chunks of statute and the rules at a double click. Be selective and if the material is unlikely to be readily to hand then the relevant extracts are most helpful.
- Be concise but do not rush. Make your points in a measured way. Play to your strengths and your opponent's weaknesses. Do not seek to make too many points. You are unlikely to win a case on your nineteenth submission.
- Do not cite authorities that are merely illustrative. Identify the principle or

proposition that you say is established and be able to identify the relevant passages in the judgment or judgments relied upon.

- Do not cite County Court authorities.
- Read your tribunal. There are likely to be some clues, although you should not assume that a kindly smile means you can sit down because you have won your case. Neither should you necessarily abandon a point because the judge seems unimpressed. Make it, explain it and move on. If you never thought much of the point in the first place then you would be wise to take the hint.
- Examination-in-chief might be thought to be a thing of the past but it is still taught by Gray's during advocacy training. Why? First, it is important to learn how to avoid asking a leading question and there will be occasions when a witness will be called in chief without the prior exchange of witness statements or even when there has been. So be prepared! Do not ask supplementary questions just for the sake of it. Consult the Battle Plan and establish only those facts that you need to establish. It is not just the one question too many in cross-examination that can ruin your case.
- Cross-examine on material matters only. Be careful and focused if you cross-examine as to credit. Do not hector or be unpleasant and do not think that you have to continue until you have won the argument. It has happened that a police officer has admitted, sobbing, that his evidence is all lies, but in my experience this only happens after supper when I am watching television. Make as many telling points as you can putting the essentials of your case as you do so and sit down.

Good luck! See you in the County Court! ■