People’s hero makes the case for class actions

“John Travolta made more money playing me than I ever made,” joked Jan Schlichtmann talking about the Woburn toxic tort litigation in a session yesterday. Schlichtmann, a high profile plaintiff lawyer as well as the subject of feature film A Civil Action, joined other litigators including Melvyn Weiss, the so-called king of class actions, in a session on whether these cases are “necessary… evil… or a necessary evil.”

The debate comes at a time when class action litigation is stretching outside the US, explained speakers. Schlichtmann spoke first to defend the use of class actions. “The financial benefits of bringing cases and the social good that comes from them are mutually compatible,” he said. “That’s the beauty of capitalism.”

He did acknowledge, though, the need for plaintiff lawyers to improve their public image and “answer the claim that this is all about lawyers and not about clients or justice”. Class actions can have benefits even when you lose, said Schlichtmann. In the Woburn case, for example, it was his team rather than a government body or corporate that first brought together the necessary scientists to discuss the possible effects of industrial toxins that had been leaked into the town’s local water supply.

“Class actions are not about fighting power,” he concluded. “They are not about revenge. They are not about abusing power. They are not about any of those things. They are about civilizing power and we civilize power through the law.”

Weiss, of Milberg Weiss in New York, argued in his address that fewer class actions are frivolous than are presented as such by the media, while emphasizing the costs that firms take on when pursuing actions.

Seventeen years after the Exxon Valdez scandal his clients are yet to receive any payment despite winning a $6 billion jury verdict, he told delegates. “The firm itself spent millions in billable time on that case.”

Looking ahead to afternoon sessions in which the trend towards class action-type legislation in Europe and elsewhere was discussed, Weiss said “there is not a society in the world that doesn’t need class actions”.

Responding to the case put by Weiss and Schlichtmann, Robert Giuffra of Sullivan & Cromwell opened after coffee by joking that he felt inclined to stand and cheer during their session. “It’s amazing that you can have justice without class actions,” he added wryly.

But the picture of class actions painted by his colleagues in the morning was far from complete, he said. In fact, argued Giuffra, the “cowboy justice” that is made possible by class action legislation leads to an increase in the cost of capital, discourages entrepreneurial risk taking, distracts management and has small benefits for class members but big benefits for their lawyers.

Plaintiff counsel often turn to a small stable of clients, said Giuffra, with those clients holding tiny numbers of shares in a large number of companies. Few cases reach trial because of the costs of discovery, particularly in the age of email and the proliferation of documents it creates, he said. “That means defendants are often forced to settle, whether a case has merit or not.”

Speaking specifically about securities litigation, Giuffra pointed out that company stock prices can rise or fall for many reasons. “That’s capitalism,” he said.
Lawyers on the lookout for ambush marketing

Law firms need to get creative to protect corporate clients’ interests against rival’s marketing campaigns, delegates were warned yesterday. Ambush, or guerrilla marketing is any technique through which organizations attempt to associate themselves with a sponsored event or product. The audience at the Legal Practice Division session was shown examples of ambush marketing campaigns from companies including airline Lufthansa and Viagra-producer Pfizer, but given a serious warning from panel members that creative thinking is required to protect clients’ interests.

“Marketers are clever and highly creative,” said Richard Wirthlin, partner at Latham & Watkins in Los Angeles. “They are aware of the dangers of breaching intellectual property rights and will conduct campaigns that do not infringe formal legal rights.”

So lawyers are faced with a situation where clients have paid substantial sums to sponsor events such as the Olympics Games or the soccer World Cup but are left without direct legal redress in the event of ambush by a rival unofficial sponsor. The answer is to assure the commitment of event hosts to protect exclusivity against third parties, said W. Rithlin. Lawyers must ensure that licence agreements with host organizations such as Fifa and the International Olympic Committee contain adequate undertakings to protect sponsors’ interests.

The panel drew a distinction between strict legal rights and wider commercial interests, and advised that lawyers must protect both. Jory von Appen of sports marketing company Sportfive in Germany used examples from the recent Fifa soccer world cup to illustrate how creative ambushers can be. Von Appen drew laughs from delegates with an account of how Fifa organizers confiscated the trousers of thousands of Dutch supporters before their country’s match with Ivory Coast this summer. The orange lederhosen-style trousers had been distributed by brewer Bavaria, a rival of official sponsor and Budweiser-maker Anheuser Busch. As a result, groups of Dutch supporters watched the game in their underpants. The panel cautioned that efforts to protect sponsorship must be exercised reason-ably or face the prospect of becoming the subject of legal challenge.

Soren Pietzcker of German firm Heuking Kuhn Lueer Wojtek told delegates that the concept of ambush marketing dates back to a dispute between photographic materials companies Kodak and Fuji during the 1984 Olympics. “Ambush marketing is difficult for lawyers as it encompasses both illegal infringement and legitimate commercial exploitation,” said Pietzcker. “But left unchecked ambush marketing threatens the financial future of many sporting events.”

Not all ambush marketing is threatening however. Examples extend beyond sporting events and delegates heard that lawyers acting for rights holders need to appreciate the value of publicity. “The technique has been welcomed in other circles,” said Wirthlin, who pointed to a campaign run by Chevron associating itself with the Pixar animation film Cars through the use of unofficial advertisements.

The IBA’s ART lessons

Continued from front page

“Science is ahead of the law,” said session moderator Stephen Komie, who also chairs the IBA Family Law Committee. “Lawyers are notoriously bad scientists, so we have to join in partnership with the medical community.”

In the US, family matters are committed to the states, a reality that panellists said has resulted in widely varying laws concerning ART-related issues. Illinois, for example, recently passed a statute requiring insurance for ART-related issues. Illinois, for example, recently passed a statute requiring insurance for ART-related issues. Illinois, for example, recently passed a statute requiring insurance for ART-related issues.

During the morning session, medical professionals discussed the processes involved with procedures such as egg donation, surro-gacy and PGD, while later in the day, attorneys representing the UK, Canada, Spain and the US compared their legal systems’ varying approaches to ART.

Domenic Crolla of Gowlings in Canada noted that, in light of the fact that ART is still widely uncharted territory for legal professionals, “there is a huge need to share experiences across the globe on regulatory procedures.”

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I BA DELEGATE QUIZ

Join the fun

Throughout the week, the IBA will be running a competition for IBA delegates. Winners will be announced each day in the IBA DAILY NEWS. Below is a list of questions which must be answered correctly on the correct day. Answers should be written on the back of a business card and put in a ballot box on the IBA Marketing Stand. There will be a different prize every day.

WEDNESDAY

Prize – Kenneth Cole Leather Luggage Bag

1) Who is the managing editor of Chambers USA and Chambers Global?

2) According to the July/August issue of Asialaw, which international law firm has the most “Leading Lawyers”?

Quiz rules
1) New prize Monday, Tuesday, Wednesday and Thursday.
2) One entry per person per day. Entries each day must only answer the questions for that day.
3) Prizes are non-refundable and non-exchangeable.
4) Winners will be listed in the IBA DAILY NEWS.
5) Winners will be selected at the IBA marketing stand each evening, the main prize for the Hyatt vouchers will be selected on Thursday 21 September at 5pm.
6) Winners must bring their business card and post in the ballot box on the IBA marketing stand.
7) A winner will be found at the relevant exhibitor stand.
8) Staff of the IBA and exhibitors cannot enter the competition.
9) The IBA decision is final.

Jonathan Chu, Esq
Golden Gate University
San Francisco, US

Come and collect your prize at the IBA stand opposite the registration desks.

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EUROMONEY
Delegates warned of the dangers of wireless

Before you read this article you might want to check that your laptop is secure: someone close by could be reading your or your client’s private data. At a session yesterday delegates were warned of the challenges to internet security, and in particular the risks posed by new wireless technologies.

Wireless applications, and particularly WiFi computer networks, are rapidly becoming indispensable tools for the legal profession as lawyers try to stay in touch with clients, deals and cases, often while on the move. But even in the apparent safety of a gathering such as the IBA conference you could be at risk from hacking, and the results can be disastrous.

At yesterday’s meeting Daniel Preiskel of the London-based firm Preiskel & Co told delegates that in the conference centre on Monday his computer was able to detect eight or nine other laptops that were signed on to vulnerable computer-to-computer systems. Anyone with basic IT skills would have been able to access these computers and remove information, he said.

Preiskel recalled a fellow lawyer who recently had a laptop stolen from which thieves took sensitive information regarding a number of high-profile celebrity clients. He also pointed to the dangers posed by using local wireless networks while conducting negotiations with an opposing law firm, perhaps at a private club used by that firm. While doing so may save time and the use of awkward cables, said Preiskel, it also leaves you exposed to potential hacking by the opposing firm or a third party who could then use price sensitive or personal information about your client in the negotiations.

The thought of either of these scenarios should send a shiver down any lawyer’s spine, but Preiskel suggested some practical tips for limiting the risks. Firstly, lawyers should bear in mind that equipment such as PDAs, laptops and Blackberries can and will be stolen and take appropriate steps. Firms should also go beyond basic WEP-level security and use Temporal Key Integrity Protocol, or TKIP, measures to encrypt laptops and office WiFi networks. Law firms with WiFi areas for clients to use inside their offices should make sure these cannot be seen or accessed from outside the building.

Particularly risky places to be online include trains, where potential hackers are in close proximity and often have hours to get into your machine, and free city-wide WiFi networks. Lawyers should limit the amount of time they spend online or with their laptop’s WiFi port activated, said Preiskel, as that is when they are most vulnerable.

To limit or remove their liability, firms should (in addition to adopting technical measures) ensure that clients who log onto their WiFi networks can only do so by accepting terms and conditions. They should also check the fine print of their contracts with clients to limit their liability as far as possible. In-house counsel, meanwhile, should ask their outside lawyers what security measures are in place to prevent hacking, if possible get a demonstration, and again look to the contract to make sure they have recourse to sue the firm if there is a problem.

The dangers of internet security are by no means limited to wireless systems, and are rapidly becoming front page concerns for governments and regulators around the world. Speaking at yesterday’s session, Steven Wernikoff of the US Federal Trade Commission (FTC), which is charged with consumer protection, highlighted the extent of the problem. According to Wernikoff, losses to internet fraud in the US grew from $205 million in 2003 to $336 million just two years later.

Fifty-seven million people are on the receiving end of phishing attempts, said Wernikoff, which have so far had little effect on the explosion in internet-related crime. “There’s no silver bullet to this problem, you have to take a multi-pronged approach,” said Susan Schorr of the International Telecommunication Union. Schorr argued that technological, industry-based, regulatory and enforcement approaches will all be required to stay ahead of the phishers, spammers, hackers and traffickers. In the meantime, the simplest and quickest way to avoid any nasty surprises might be to make sure that WiFi connection on your laptop is turned off.
A t 329 North Dearbon, Marina City sits Chicago's House of Blues. Whether you want to eat a meal, watch a band or just drink a few beers in atmospheric surroundings, the House of Blues is a popular place to be. You are just as likely to bump into a blues legend at the bar as you are to catch a set by bands or popstars who wish to add an element of authenticity and credibility to their tours. Only last month Justin Timberlake previewed songs from his new album at the venue. In contrast, BB King and Aretha Franklin are lined up for the coming months.

Chicago has always been heavily connected to many forms of music. Jazz, gospel, Dixieland, blues and hip-hop all have strong links to the Windy City. From the piano riffs of Big Maceo Merriweather to the chart topping beats of Kanye West, “Chi-town” has been integral to the development of American music and it is no surprise that the owners decided to place a House of Blues here.

However, there is no larger brother to the city (bar Jake and Elwood) than Muddy Waters. He may have been born in Mississippi, but Waters moved to Illinois in 1943 and is now perceived by many as the father of Chicago blues.

Aside from his music, it is well known that Waters was an excellent southern style cook. According to his website, “he often entertained friends and family at his suburban Chicago home and it was certain that he would be in his kitchen preparing a feast to keep his guests satisfied.” Southern food goes hand in hand with the spirit of the blues and it is therefore an essential addition to the music at the House of Blues. The restaurant and the main stage are separated, but they are by no means mutually exclusive. Indeed, music spills into the restaurant where live blues is performed on the Back Porch Stage every night at 9.00pm.

Jessica Yell of the House of Blues explains that “there is a cover charge of $7 at the bar and most people on hectic business trips love to relax and watch an authentic Chicago blues band.”

It is hardly a surprise that many people flock to the restaurant and attached bar. On top of the first rate music on offer, the restaurant’s excellent menu caters for those with a taste for the south. Naturally seafood, chicken and ribs are high on the agenda, but all your other favourites are expertly cooked with a sense that it has been homemade from scratch. This is especially the case on the starter menu where options from the Stock Pot come highly recommended.

The House of Blues

Nicholas Pettifer invites you to try out one of Chicago's famous music venues

LOCAL ATTRACTIONS

The American Lawyer’s “A-List” identified Jenner & Block as one of the top 20 law firms in the nation. The American Lawyer’s “Litigation Department of the Year” edition recognized Jenner & Block as having one of the top five litigation departments in the country.


Thank you to our clients, colleagues and community for recognizing our performance.

BTI Consulting Group’s survey indicated corporate counsel consider Jenner & Block a “go-to” law firm and one of the “Power Elite.”
humbly titled Music Hall is modelled on the Estavovski Opera House in Prague, a fact that will no doubt be a topic of conversation at the conference closing party on Friday evening.

This is not to say that the décor is entirely eastern European. Indeed, the themes of different areas are as diverse as the bands that play the venue today. Gothic design is mixed with East Indian themes and Moroccan undertones fuse with Asian aspects and, of course, styles from the southern US states. This hotchpotch of cultural influences blends well to create a surprisingly homely atmosphere, where what hangs on the wall is just as interesting as the music played, the food served or the drinks poured. For the closing party, the IBA has hired the whole venue, so Friday night will be the ideal time to explore the House of Blues yourself.

In particular, this is a special opportunity to visit the exclusive Foundation Lounge which is usually reserved for members only. Shooting off this luxurious area are multiple themed Prayer Rooms for groups to speak privately. These rooms provide quiet, secluded islands amidst the noise of the rest of the venue – the perfect place to round off that last bit of business before the end of the week.

But make sure you do not miss out on all the entertainment provided. The IBA has hired a steel guitar trio, a blues quintet, a Flamenco guitar duet and a Sitar, Tanpura and Tablas trio to play in all areas of the venue on Friday evening. The undoubted highlight will be on the main stage, where the Frank Catalano Jazz Quartet will perform.

Why not catch a band in the Music Hall this week? This week’s line up is as follows:

**Wednesday September 20:**
Sugarcult with The Spill Canvas, Halifax, Maxeen and So They Say

**Thursday September 21:**
Three Dog Night

**Friday September 22:**
IBA Closing Party

**Saturday September 23:**
Peter Frampton with The Elms

It is advisable to book tickets for the 1300 capacity Music Hall in advance. For a unique experience you may wish to rent one of the Opera Boxes that flank the stage. They hold between 10 and 25 people and come with their own cocktail server.

Ticketline: 312.923.2000 (then select option one)
Guy Beringer is speaking to The IBA Daily News from home in the UK before he flies out to Chicago for this year's conference. He is excited about the weekend's Rule of Law Symposium, but has some words of caution for law firm managers.

“The legal world is changing,” says Beringer. “There is more consolidation coming and there is only going to be space for a limited number of global law firms.” Beringer says that this consolidation will involve transatlantic mergers and will go ahead at some point in the next five years, though no one can say when. The message is that this changed legal world will accommodate both global and national (or niche) firms, but nothing in between. “National firms can prosper, provided they are correctly managed,” says Beringer. “There is room for both types of firm, in fact they compliment each other. The trick is not to get caught in the middle.”

Beringer identifies one other big challenge facing large firms, how to attract and retain the best people. The current generation have different expectations and ambitions than those that have gone before them, says Beringer. Their experiences are more diverse than ever before and they will seek out careers that match these demands. All firms are struggling with this shift in expectations, he says. There is no magic bullet but firms have to adapt to cope with the demands or the profession as a whole will miss out.

Beringer thinks that the IBA has a big role to play in this respect. No other organization can produce the breadth of firms in one place and make combined knowledge on best practice available to all. Turning to the challenges facing the legal profession as a whole Beringer is keen to emphasize the importance of engagement. “The profession needs to be better at looking ahead. The right to self regulation has to be earned and we must be more proactive in promoting change.” Beringer admits there is no historical basis for this sort of engagement with government and regulators, but this is something he thinks needs to change. “It would be a mistake to continue to fight tooth and nail over every piece of regulation,” he says. “Instead, the profession should be offering its own solutions, dealing with issues and promoting change before regulators are moved to act.”

On the issue of effective regulation, Beringer thinks the focus needs to be moved from the exclusively individual to an acknowledgement that firms have a big role to play in the quality of legal services provided to clients. “Regulators have traditionally concentrated on qualification requirements and offering means of redress,” he says. “But firms are effectively proxies to quality and systems determine the quality of advice clients receive.” Beringer thinks that regulators have been slow to pick up on this and that it is one instance where law firms can be proactive in offering solutions.

Ethics is another theme Beringer likes to concentrate on during IBA conferences, where lots of time is spent looking at different codes. He thinks codes need expanding to incorporate a duty on the profession as a whole to provide career development for its individual members. “Without a commitment to training and progression the profession will not attract the best people,” he says. “The case for change here is the same as that for quality – duties need to be placed on firms as well as individuals.” Beringer thinks that training is one area in which government will regulate unless the profession takes the initiative.

As evidence for a change in approach to outside regulation, Beringer points to the European Commission’s report on competitiveness and the debate over the Services Directive. The profession has fought the Commission over this but Beringer thinks constructive engagement will ultimately prove more satisfactory than belligerent opposition.

In terms of what it takes to be successful in the micro-management of a global law firm, Beringer is reluctant to steal too much of his own thunder ahead of Wednesday’s leadership session. But he does reveal that active engagement is the key not just to dealing with regulators, but also with matters in-house. “The partnership model demands engagement,” he says. “A dictatorial position does not work.” He thinks that a set of clearly articulated objectives is vital, but that this is just the start. Momentum will only be generated if you take people with you, he says. “Management must encourage and win others over. This requires a lot of work and effort, but with consensus the partnership model is strong, without agreement it is weak.”
A trip to the Symphony Center of the Chicago Symphony Orchestra should not only be on the to-do list of classical music lovers across the globe, but also on those of any visitor to the city wanting to absorb all of the vibrancy that it has to offer. Within the striking architecture of the Center lives an orchestra that continues to be a real musical force, greeting the music world with some of the greatest performers in the US. Designed by the famed Chicago architect Daniel H Burnham and completed in 1904, Orchestra Hall, now a component of the Symphony Center complex and the orchestra's main home, is located at 220 South Michigan Avenue.

For some 90 years the orchestra has offered the world its glittering performances, with many noted recordings – the orchestra has amassed a discography totalling more than 900. In fact, as early as 1916, the year that the poet Carl Sandburg announced the "stormy, husky, brawling…City of big shoulders", the Chicago symphony became the first American orchestra to record under its regular conductor. But a true measure of their success is that recordings by the orchestra have earned 58 Grammy Awards from the National Academy of Recording Arts and Sciences – a haul which no other orchestra can match. No surprise then that broadcasts and recordings are an important part of the CSO’s activities, with performances so well received that they are offered on over 200 radio stations across America.

Over the years, guest conductors have naturally flocked to the orchestra. Such household names as Richard Strauss, Camille Saint-Saëns, Edward Elgar, Leonard Slatkin, André Previn, Michael Tilson Thomas, Leonard Bernstein, Leopold Stokowski, Morton Gould, Erich Leinsdorf, Walter Hendl, Eugene Ormandy, George Szell and Charles Munch have all visited. The Chicago Symphony Orchestra has also performed music for various movies, including Immortal Beloved (conducted by Sir Georg Solti) and Fantasia 2000 (conducted by James Levine). The orchestra has gone from strength to strength over the past year or so, with two of the world’s most celebrated conductors assuming titled positions for the 2006-2007 season. The foremost Dutch conductor Bernard Haitink has been handed the role of principal director and the revered French composer and conductor Pierre Boulez, the CSO’s Helen Regenstein principal guest director since 1995, will assume the role as its conductor emeritus. As for tonight’s performance, Myung-Whun Chung, principal conductor of the Seoul Philharmonic Orchestra and music director of the Orchestre Philharmonique de Radio France, leads the Chicago Symphony Orchestra in works by Beethoven and Shostakovich. Born in Seoul, Korea, in 1953, Chung made his conducting debut in 1971 with the Korean Symphony Orchestra. Carlo Maria Giulini appointed him assistant conductor at the Los Angeles Philharmonic in 1978 and two years later promoted him to associate conductor. In 1989 he became music director of the Opéra Bastille, a post he held until 1994. This September, music lovers around the world celebrate the 150th anniversary of Dmitri Shostakovich’s birth. The Fifth Symphony is one of his most beloved works. Written after he was toppled almost overnight from his position as the leading light of Soviet music after Stalin denounced his Lady Mabel of Minsk, the Fifth Symphony was his successful rehabilitation and was reported as “a Soviet artist’s practical creative reply to just criticism.”

The champagne reception and gala performance takes place tonight at 18:15, in aid of the IBA’s Human Rights Institute. Start the evening off in style with a glass of champagne while admiring the theatre’s spectacular interior design. IBA’s Human Rights Institute. Start the evening off in style with a glass of champagne while admiring the theatre’s spectacular interior design.

The performance begins at 19:00. Local lawyers who do not register for the conference will have the opportunity to purchase concert tickets for $35. For further information on this please contact the IBA office for a booking form. The IBA would like to thank the following firms for kindly hosting the concert: DLA Piper Rudnick, Kirkland and Ellis LLP, Mayer Brown Rowe & Maw LLP, McDermott Will & Emery LLP, Sidley Austin LLP and Winston & Strawn LLP.

Myung-Whun Chung, principal conductor, Seoul Philharmonic Orchestra

Michael Kibblewhite previews tonight’s gala performance by the Chicago Symphony Orchestra.

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IBA Daily News - Wednesday, September 20 2006
Age of enforcement

Geoffrey Robertson QC will speak this week about his recently published work, which links present-day Iraq with Britain in the 1600s. Michael Kibblewhite profiles a career spent advocating human rights.

The founder and head of Doughty Street Chambers, Justice Robertson boats an impressive résumé, acting as counsel in a number of landmark cases in constitutional, criminal and media law in the courts of Britain and the Commonwealth, frequenting the Privy Council and the European Court of Human Rights. In 2002 his expertise was called upon to act as appeal judge for the UN war crimes court in Sierra Leone, where he served as the Court's first president.

As for this conference, Geoffrey R obertson's primary reason for speaking is to discuss his recent critically-acclaimed book, 'The Tyrannicide Brief'. In this work, Robertson assesses the execution of Charles I though an alternative lens, that of the radical barrister John Cooke, holder of the title of “bravest barrister in British history”. Skillfully reenacting the events that actually led to the trial and execution of Charles I, Robertson has brought an almost forgotten agent of history into the light, one “who was the only barrister courageous enough to take on the prosecution of the king”.

Cooke is presented as “a man ahead of his time”. A lawyer that even in the mid-1600s was advocating the limitation of capital punishment, suggesting the link between poverty and crime, calling for an end of imprisonment for debt and the end of Latin in the courtroom.

Robertson also highlights the fact that unfortunately Cooke brought about another great reform – that of the so-called cab rank rule. He was the “first barrister to take advantage of that rule, although this was no advantage to him because he was disbarred”, says Robertson.

The Tyrannicide Brief is also particularly pertinent for an American audience. Robertson enthuses that the work is “very appropriate given the American failure to recognize their own intellectual input into the civil war and the parliamen
tary side.” The author reveals that the input of Harvard's graduation class - Hugh Peters and Henry Vain during their puritan colonial experience - proved considerable in moving the country towards a republic, something that still holds considerable strength now. "The basic western democratic values that we all revere today were all fought for by these men," he says.

Justice Robertson is also keen to assert that practitioners in this age can learn a great deal from John Cooke. “In searching our conscience for the root of our professional ethics, we need to go back to Cooke and his writings on the vindication of the legal profession and those who profess it. He was writing in defence of it at a time when many practitioners were crooked and corrupt, yet he was able to define and argue for a legal good life.”

“All lawyers today have a duty and interest to support human rights, but also to study it and see in practical ways how it can be adapted and enforced. We are now in the age of enforcement”

Finally, Robertson reiterates the fact that Cooke in his capacity in prosecuting Charles I successfully made tyranny a crime, representing a change that set the precedent for centuries after. Sacrificing his life, Cooke ensured that tyrants would not be above the law; a message that the court currently requires them to enforce. Robertson insists that we are only at an early point in a long march. Elsewhere, he believes that the much-criticised Israeli trial was a great milestone in what is considered the age of enforcement (as opposed to the previous age of ideas), but exposed the need for fine tuning in the procedures of the international court. Robertson believes that beginning at the rudimentary, procedural level is the start to make sure that the courts run on time.

Clearly there was an overwhelming demand for another edition in the wake of more international trials - a further instalment of the “book to stop another holocaust” (The Observer). Moreover, the law remains astonishingly unclear.

And in this age of enforcement, where international trials are often a daily fixture portrayed on numerous platforms, understanding of the protocol has to be “comprehensible to millions of people”. Overall, the aim was “to write a text book that could be understood by ordinary people and make these momentous changes comprehensible to people whose support for them is vital”.

He proceeds to enthuse that, “the members of Amnesty International (now over one million) have to understand what it’s all about and I don’t think the cause is helped by non-lawyers or by complicated Latin phrases.. international law is gobbledygook even to other lawyers too often and is very academic”.

As for the future of human rights, naturally R obertson acknowledges that history will judge the UN (as chief enforcer) on whether it succeeded in its “vital role”. Critical of the UN code of conduct in the past, he has recently “willingly” worked with them as a judge and more recently on a complicated report on its internal justice mechanisms, arguing that “when looking at the justice that it provides for its own staff, you have to recognize that it’s often not practicing what it preaches”.

But as there is no alternative, “one has to try and make it a more effective force in the world”. R obertson believes that a police force is a necessary start because peacekeeping is such a vital role, particularly after the handling of the D arfur debacle by the African U nion. But so is setting up courts and justice systems.

He says that the wars of the 21st century will be consistently fought in the court room, because of the persistent criminal elements (which “surface in the end”) where a quick-fix deal by diplomats can be nothing more than smoke and mirrors. In a sense, with the consolidation of the human rights movement and the rise of mass media, the world is getting closer to understanding what a just society may look like.

Therefore “sooner or later you will get demands to deal with those who man the death squads or the torture chambers” as opposed to the forgive-and-forget rhetoric of times past. What is more, Robertson says he is “unforgiving where crimes against humanity are concerned and I suspect) that no matter what deals may be patched together to promote a

“THE TYRANNICIDE BRIEF IS PARTICULARLY PERTINENT FOR AN AMERICAN AUDIENCE GIVEN THE AMERICAN FAILURE TO RECOGNIZE THEIR OWN INTELLECTUAL INPUT INTO THE CIVIL WAR”

particular peace it will be useless unless there is a measure of accountability”. Universal declarations such as the Geneva and genocide conventions came into force in the 1940s, only to disappear during the Cold War until the setting up of courts in the early 1990s. To continue the progress, “all lawyers today have a duty and interest to support human rights, but also to study it and see in practical ways how it can be adapted and enforced. We are now in the age of enforcement, which means that as lawyers we ought to be very aware of it”. Robertson remains confident that the problems associated with previous cases will be rectified.

Throughout his career, Justice Robertson has been a staunch opponent of capital punishment, with long standing dissent in courts and in books. In his own words, “this came to the crunch when I was involved in the training of the judges to try Saddam, and the Americans were very supportive of the death penalty. I was not”. It is obvious that Saddam cannot remain in Iraq at the pleasure of its government. Without extradition, execution is the only option, but from a diplomatic point of view, this is a morbid compromise.

Robertson emphasises that he “tried to persuade government ministers that we should do what was done with N apoleon and put him on St Helen but the people of St He lena want to turn themselves into a tourist resort and don’t want international convicted criminals there”. Ever flexible, Robertson suggests that the Falkland Islands would make a good alternative.

Finally, Robertson enters the conference this week intent on remaining indefatigable in his attempts to widen the global struggle for justice. It is likely that Robertson wishes to involve a more effective force in the world. Robertson believes that the Falkland Islands would make a good alternative.
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## TODAY’S SCHEDULE

**09:30 – 17:00**

- Law firm leadership: transitioning your firm from ‘good’ to ‘great’
  - Room N426c
- Apres moi – le deluge
  - Room S504d
- Breaking down barriers to justice
  - Room S503a
- Expert witnesses: outstanding issues
  - Room S503b
- Leadership in law firms
  - Room N426c

**09:30 – 12:30**

- Career development and management for the new generations
  - Room S504a
- Doing business with indigenous peoples
  - Room S502b
- Transfer pricing arbitration
  - Room S401d
- The emergence of condominium hotels converted from traditional hotels
  - Room S404d
- Entrepreneurship and the lawyer: understanding the power of entrepreneurship in the context of the closely held company
  - Room S403a
- Corporate governance
  - Room S501
- International trade in art – earning a living dangerously
  - Room N426a
- Unlocking the value of intellectual property rights
  - Room N427bc
- Crisis management – how to handle the media
  - Room N427d
- Big brother is helping you: how space will support your business
  - Room N426b
- The basics of international franchising
  - Room S402b
- Update on WTO/GATS and Developing Bar Leaders meeting
  - Room S504bc
- Pro Bono Session – Who’s doing the best international pro bono work? What models are being developed? How can they be adapted?
  - Room S502a

**11:15 – 12:30**

- Guidelines for setting up a national young lawyers’ association
  - Room S505a

**12:30 – 14:00**

- Public and Professional Interest Division lunch
  - Pane Caldo
- Antitrust Committee Lunch
  - Pane Caldo
- Capital Markets Forum Lunch
  - Bistro 110

**14:00 – 17:00**

- Arbitrator disclosure, conflicts of interest and challenges to arbitrators – IBA Guidelines on Conflict of Interest
  - Room S401a
- Everything should be made as simple as possible but not simpler – the drafting of commercial legal contracts and the drafting
  - Room S504a
- General Interest – Increasing your value to current and future clients: the RAINBOW strategy
  - Room N229
- CSR: outsourcing and offshoring under NAFTA – corporate social responsibility and the role of in-house counsel
  - Room S501a
- Lawyers in lobbying in the United States and Europe
  - Room S502a
- Cross-border loss recognition
  - Room S402b
- Aboriginal gaming: a roll of the dice
  - Room S502b
- Competition law compliance in the shipping industry
  - Room N427a
- Investment banks as gatekeepers in structured finance transactions
  - Room S404d
- Hot topics’ roundtable: burning issues affecting investment funds around the globe
  - Room S404a
- Recent developments in M&A law
  - Room S402a
- Litigators’ forum for corporate counsel
  - Room S504bc
- Damages calculations – cross-border aspects
  - Room S401d
- Equator Principles and other bank guidelines for financing mining projects
  - Room S505a
- Entry into the US market: agency, distribution or franchising – pros and cons
  - Room N426b
- International adoption: a US perspective – the good, the bad and the ugly
  - Room S501bc
- Specialised intellectual property courts and tribunals: challenges and recent developments
  - Room N427bc
- The future of international terminating access
  - Room N427d

**18:15 – 20:00**

- Chicago Symphony Orchestra Champagne Reception and Gala Performance
  - Symphony Centre, 220 South Michigan Avenue

**20:30**

- Arbitration Committee Dinner
  - Mid-America Club
- Insolvency, Restructuring and Creditors’ Rights Section dinner
  - Everest
- International Construction Projects Committee dinner
  - Union League Club of Chicago
- Committees on International Sales and Product Law and Advertising joint dinner
  - Nine
- Intellectual Property and Entertainment Law Committee dinner
  - Bistro 110

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LEGAL NETWORKS

A firm friendship

Not everybody wants to wear white shoes or step into the magic circle. Joining a network is a way to be part of something big without giving up your independence, writes Ben Lewis

As in nature, the survival of the fittest decides who survives in the legal industry. Firms may call it extending their global network, but the principle is the same: big fish eat, little fish get eaten.

Of course, rules are there to be broken. Just as fish learn to swim in shoals to create the image of something much larger, the rise of the law firm network, consisting of independent firms working together on an informal basis, has been a challenge to the idea that bigger is better.

The appeal of networks is that their members can retain their identity, autonomy and culture, while exploiting a broad international base. And their clients benefit too - they receive the individual attention and local knowledge offered by an independent firm, without having to go through the local telephone directory looking for a high-quality practice. Furthermore, the chance of a conflict of interest, an increasingly common obstacle to international legal work, is greatly reduced.

But which network to join? Although there’s no clear answer to that, there are numerous strategies on offer, and it is worth considering your priorities before making a commitment. All alliances involve a trade-off which is more significant than just a joining fee, but if they are well chosen and maintained, relationships with other firms can be fruitful for all parties.

Stay independent

Lex Mundi, Terralex, TAGLaw and their ilk emerged in the 1980s and 1990s in response to the relentless growth of firms such as White & Case and Sullivan & Cromwell. These firms made (and continue to make) huge profits, but the pressure on individual offices to generate those profits is intense. James Fisher of FSBL Corporate Counsel, a network of in-house lawyers, says: “Each one of the offices [in an international firm] is its own profit centre. There’s an incentive to capture as much of the billing as possible locally.”

In addition, running a global law firm drives up fees: “There’s just a ton of inefficiency in the large law firm model,” says Fisher, citing the rental of premium office space and excessive employment of support staff. “Everyone knows the fees are too high - clients complain about it all the time. They also complain that they can’t get access to the type of lawyers they want. What the clients pay for is what’s between our ears, not the mahogany desks or the ivory towers.”

The networks, by contrast, offer independence, both cultural and financial. Balázs Máté, a Hungarian corporate lawyer who left magic circle firm Linklaters to join local outfit Hayhurst & Robsin, and subsequently set up his own practice when his new firm announced a merger with CMS Cameron McKenna, says: “I certainly see the advantage of an independent practice in a country like Hungary, which will never be like New York, Shanghai or London.”

Instead, small practices with low overheads, high flexibility and local expertise are more suited to smaller markets, says Máté. “That’s the future I’m betting on. Foreign counsel need, more than ever, the solid hand of a reliable name.”

According to Carl Anderlid, the president of Lex Mundi, the idea of a tiny regional office becoming a one-stop shop is often a fallacy. A taller, the scale of the business is something that needs to be harnessed: “The huge benefit is that the member firm can respond to the local situation and culture.”

Joining a prestigious network is a boon for a small practice, but complacency doesn’t pay: most networks systematically review their members for quality and are not afraid to act on their findings. Besides simply being good practitioners, members are also expected to demonstrate their commitment to the network. Anderlid says: “The biggest challenge for all networks is to increase participation by member firms. The most important thing they can do is to be active in the network. The cliché is that you get out what you put in, but with us you also get out what others put in.”

There are plenty of opportunities for member firms to show willingness. Lex Mundi holds several annual conferences, including one held exclusively for managing partners, which was attended by 108 of members’ top brass last year. In addition, the network runs professional development courses, which combine important face-time with the chance to exchange practical knowledge and experience.

Terralex’s new chairman, Charles McCaullum, plans to increase the contact between the network’s more specialized members. Rather than relying on just big events, he feels these members are likely to respond better to informal get-togethers, such as a Terralex event within the annual intellectual property conference organized by the International Trademark Association (Inta).

“The people who meet there are not necessarily the people who would come to our regular or annual meetings,” explains McCaullum. Instead, their networking tends to take place at school reunions, sports clubs and other social events, a mood Terralex aims to replicate. “The only way you can forge a meaningful network is by forging opportunities for direct and personal contact.”

But not all networks are so coy. As Máté, who says he is considering joining a network, observes: “Some of them are really close to becoming one firm; others are like a Yellow Pages with one name in every country.”

Best friends

Although they have many advantages over the homogeneous global firms, networks typically have one serious drawback: they lack a strong, unifying brand. “The familiarity factor cannot be underestimated, particularly in countries where a strong marketing strategy means the firm has a web page.”

In an effort to capture the best of both worlds, UK firm Slaughter and May has established informal referral relationships with local heavyweights including Hengeler Mueller in Germany, Bredin Prat in France and Uría Ménendez in Spain and Portugal. This arrangement differs from global firms and more traditional alliances in that its members are not obliged to keep work within the group.

“We have no formal network as such,” says David Frank, a partner at Slaughter and May. “Whereas 10 or 15 years ago it was a consistency of approach, of management, and of risk analysis. The effect on clients’ experience is the illusion of dealing with a single firm.”

Not every lawyer harbours plans for world domination - some of them are happy to conquer just a part of it. Many international alliances carve their global networks up into bite-size regions, which helps to retain their members’ local cultures as well as making the network easier to manage.

James Davies, a partner of ius laboris member firm Lewis Silkin, says: “The Holy Grail is to say: ‘We’ll be your global employment lawyers.’ But it’s much more common to do things in regional blocks. That we envisage in five years’ time is that our prospective Chinese member will be working more closely with our prospective Japanese and Singaporean members than with us.”

There are already plenty of networks that exist to serve a specific geographical area, ranging in size from the south of England to the Asia-Pacific region. These networks are in a better position to respond to specific regional issues, such as the needs of firms in emerging markets, which can get sidelined by the more pressing issues of a global strategy.

The map shows a selection of the larger general practice networks covering each region. In addition, there are countless specialized regional alliances, networks covering only part of a region, and networks covering two or more regions.

www.legalmediaigroup.com

IBA Daily News - Wednesday, September 20 2006

Law firm networks swim together like a shoal of fish

Benelux region. In fact, business exchanges such as the AOLT ime Warner deal showed that the two networks share more than just a resemblance. Gerhard Wegen, a partner of Gleiss Lutz who helped forge the alliance in July 2000, is surprisingly candid about the link between the two groups: “The concept is the same. The Herbert Smith ring and the Slaughter and May ring are complementary.”

Unlike the Slaughter network, however, Herbert Smith, Gleiss Lutz and Sibbde share a logo style and colour scheme, and all three of their websites trumpet their affiliation via a prominent badge of alliance.

The effect on clients’ experience is the illusion of dealing with a single firm. “For me, as a client, [the network] was more or less invisible,” says Kent R oen, chief legal counsel of Beam Global Spirits & Wine, which consulted Herbert Smith and its affiliates on the company’s purchase of 20 alcoholic drinks brands from Pernod R icard. “I there was a consistency of approach, of management, and of risk analysis.”

So why not just merge?

In the past, the firms have considered becoming a single entity, even going so far as to perform due diligence. “We
The focus narrows – or widens

“The global law firms are great at what they focus on, but they’re not interested in employment law,” says James Davies, a partner of Lewis Silkin, a firm which is part of specialist labour law alliance Ius Laboris. The same, claims Davies, can often be said of the standard law networks: “If you go to a more generalist alliance, you’re not going to necessarily get the leading practitioners in that practice area.”

Specialist legal networks exist in most practice areas, from immigration (such as Immlaw) to estate planning (such as the National Network of Estate Planning Attorneys). There are also industry-specific networks, catering for firms and their clients in the pharmaceuticals, technology and insurance sectors, among many others. Besides access to a targeted source of business, members can expect more autonomy: “For firms keen on retaining their independence, joining an alliance which focuses on their particular area of practice compromises that independence a lot less,” says Davies. There is also, he claims, more affinity between members: “We find kindred spirits who have normally resisted the overtures of the global firms. Therefore, you do get quite a high community of spirit.”

It is easy to paint such an alliance as a clique for bou-tiques, but this is not necessarily so. Only roughly a quarter of Ius Laboris’s member firms are niche firms – the rest are classed as semi-niche (general practice with a focus on labour law) or full-service firms – and the alliance appreciates the cultural differences between them. On the other hand, the network’s head office creates consistency by managing a virtual brand across its membership, and is now working towards a system of shared document templates which use similar headings and typefaces. Ius Laboris also monitors aspects of its members’ service such as responsiveness, with the aim of creating a network-wide seal of quality.

“It’s necessary to get to the next stage and be more than just a referral network. Our competitors are really those firms that are operating ostensibly as a single firm with offices in different jurisdictions,” explains Davies. “I think people looking under the surface of the alliance would be surprised at the level of integration.”

“The cliché is that you get out what you put in, but with us you also get out what others put in” Carl Anduri, president of Lex Mundi

Selling the network

Legal partnerships have come a long way since the days of the informal referral network, when a meeting, a handshake and a glass or two of wine were a good substitute for a bind-ing contract. Nowadays competition is fierce, and the networks are raising their game accordingly.

“One of the greatest challenges is selling ourselves,” says Davies. While their members must prove themselves by passing regular quality reviews and generating positive client feedback, the networks themselves also need to demonstrate their effectiveness to attract the top firms. For example, many offer training programmes and secondments for lawyers, which can also go some way towards improving members’ level of English, often a problem when there is no central headquarters from which to distribute native English speakers among the offices.

Maintaining a high profile is just as important within the network itself. A high level of participation is crucial to the alliance’s success. Lex Mundi regularly sends out directories, newsletters and resource guides to all of its members, the aim being to increase communication and keep the network in the forefront of their minds.

There is some way to go before the network model matches the international firms’ reputation for seamlessness and consistency. For one thing, they are battling against tradition - their global rivals have built sturdy relationships with blue-chip clients, and winning them over is no mean feat.

But according to Gerhard Wegen, the hardest act for networks to follow is their own: “We have proven our case,” he says. “The strategy for the future is to keep the momentum.”

Lex Mundi recently asked one of its largest US members to resign from the network for not meeting required quality standards. While many of its members offer specialized services, MSI is so keen to preserve its small-scale focus that it shuns specialization in favour of general practice, although it classed as semi-niche (general practice with a focus on labour law) or full-service firms – and the alliance appreciates the cultural differences between them. On the other hand, the network’s head office creates consistency by managing a virtual brand across its membership, and is now working towards a system of shared document templates which use similar headings and typefaces. Ius Laboris also monitors aspects of its members’ service such as responsiveness, with the aim of creating a network-wide seal of quality.

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Lawyers are the priests of the legal profession," Microsoft senior anti-trust counsel Greg McCurdy told delegates at a session organized by the Corporate Counsel Forum yesterday. "And priests must be available to hear confession." Without the protection of attorney-client privilege, the role of in-house lawyers is fundamentally undermined, said McCurdy.

Delegates heard, from a panel consisting of both private practitioners and in-house counsel, that the principle of privileged communications between attorney and client is under threat in both common and civil law jurisdictions. Denying in-house lawyers the same privilege protections as outside counsel, said McCurdy, will act as a deterrent to full and frank confession on behalf of company employees and an incentive to concealment. McCurdy said that without the benefit of in-house privilege, companies will be forced to rely on outside counsel more often and be less inclined to communicate in writing.

Legal advice privilege protects disclosure of communications between a legal adviser and his client provided that they are confidential and in relation to seeking legal advice. The audience also heard, from John Heaps of UK law firm Eversheds, that legal privilege is an ancient right that is fundamental to the rule of law. But privilege is a complex area of law and it is under attack said Heaps. Lawyers have a duty to ensure their clients are fully apprised of the pitfalls of privilege said Heaps, who explained that he operates “mornings from Hell” workshops with his clients to clarify their position in the event of a surprise investigation, or dawn raid, by investigators.

Earlier delegates heard that the problems facing in-house counsel in relation to privilege stem from the dual nature of their responsibilities. "Courts often presume that in-house counsel is acting in a business rather than a legal capacity," said Vincent Walkowiak of Fulbright & Jaworski.

Meanwhile, delegates heard from experienced general counsel on the panel about what it takes to be a successful in-house lawyer at a global corporation. "General counsel is now increasingly likely to have a prosecutorial rather than transactional background," said William Lytton, general counsel at Tyco International. "This reflects the rise in high-stakes litigation and a media culture that demonizes big business while lionizing prosecutors."

Lytton told delegates that corporate scandals in the US had resulted in prosecutors portraying in-house lawyers as “villains in a populist novel”. Those wishing to pursue a career in-house need a range of skills and characteristics. On the one hand, said Lytton, counsel need the tough investigative qualities associated with trial lawyers, but on the other they need the more subtle and nuanced attributes common among successful transactional advisers. "General counsel is expected to become both an expert crisis manager and a business adviser in one," said Lytton.
Clients’ tips on getting hired

There was standing room only in a session yesterday devoted to how to win clients and get more business from those they already have.

A panel including in-house counsel from Reed Elsevier, Motorola and Metaldyne gave the audience tips ranging from how to dress for pitch meetings to the intricacies of pricing.

Getting feedback from clients after an unsuccessful beauty parade figured frequently as the main suggestion for firms about how to get better at getting business.

Consultant Ann Lee Gibson listed falling to ask for feedback as the number one mistake in her top five ways lawyers can win new clients and get more business from those they already have.

According to Gibson, firms should consider asking clients if they are happy to give feedback before even beginning a pitch process.

Henry Horbaczewski, a North American general counsel for Reed Elsevier, pointed to the increasing importance of formal pitches in a changing market, with “client mobility at an all time high and client loyalty an all time low.”

“The three Rs are the key to getting new clients,” he said: “Relationships, referrals and reputation.” Keeping clients is different, though. Here the emphasis is on quality of service and responsiveness.

As few as a third of corporate counsel say they would be willing to recommend a firm from their own roster to another, he revealed, saying: “Life is a beauty contest that never ends.”

Horbaczewski went on to share his “pet peeves” with the audience, which included nasty surprises that deny him time to condition the expectations of management, failure by firms to allow his team prior input on key decisions, and any big diversions from the budget.

Smaller irritants include billing that is confusing and the failure of outside counsel to return phone calls and emails. These can “build like barnacles on the hull of a ship,” he warned. “Eventually they will bring it to a dead stop.”

According to session chairman, Logan Robison, general counsel at Metaldyne here in the U.S., lawyers should get better at exploiting personal contacts to win business.

Speaking to IBA Daily News ahead of the session, Robison said personality counts as much as anything when selecting outside counsel. Because corporate legal departments increasingly are keen to keep parts of work in-house, even on matters where they have already sought outside advice, it is necessary that lawyers working on a specific matter get on well.

Outside firms need to develop an affinity with the client, Robison said.

That means researching the backgrounds of individuals at the client and even selecting specific partners from the firm with matching interests or experience to present in a beauty parade to that client.

It is quite probable that firms will have lawyers already who have worked with or gone to law school with an individual at the client company. “That is something that most firms overlook completely,” said Robison.

The process by which external counsel are appointed has changed completely during the working lifetime of today’s general counsel, he said. In the past there were no real negotiations when work was awarded. “That model has largely been replaced. This has forced firms to be more like suppliers of other services.”

Turning to advice for in-house counsel hiring outside firms, Robison’s top tip for clients running a beauty parade is to focus attention on the initial request for proposal letter to outside firms. Clients need to be precise about what exactly they are looking for and should ask firms to give details on those points, he said.

For example, staffing is often a contentious point: “Clients don’t want to subsidise inefficiency.” So in-house counsel should ask firms to specify how they plan to staff projects and what controls the client will have over any variation on those plans once the work is underway.

Lawyers need to adapt to a new age of private equity

Attendees at yesterday’s European Forum session heard that lawyers in central and eastern Europe (CEE) are failing to live up to the challenge presented by a new age of private equity that sees investment firms drive into emerging markets.

Session chair Dariusz Wąsikowski of Polish firm Wardynski & Partners said that the private equity sphere is experiencing a huge shift away from the developed markets that dominated in the “golden age” of the 1990s. Now the focus is on new markets such as the EU Accession States, hence the decision to present a joint session between the IBA European Forum and the Private Equity section.

However, Khal Tan of private equity firm Advent International in Warsaw said that one of the problems with these new deals is that local law firms aren’t always up to the job. Tan, who could not attend the session in person but had recorded a DVD of his presentation and was on speakerphone to take questions, said often local advisors were too formalistic and impractical. Around a half of the audience was from CEE.

“We are always very lucky if we see people on the other side that we know,” said Tan. “Often firms come along to meetings and fan out the whole law on the table, refusing to discuss anything until the relevant legal provisions have been read through. That’s not very helpful if you’re preparing a 100-page document.”

Although younger staff at law firms are often more flexible and approachable, the turnover is very high among non-partners so it is rare that one ends up working on two deals with the same lawyers. “The process is that you have to have three or four proposals. It is quite unlikely that a client will have lawyers already who have worked outside the CEE.”

“Local lawyers often don’t understand or can’t cope with the urgency of the process” Justin Bickle, Oaktree Capital Management
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