We needed lawyers earlier

Yesterday morning, Gerry McCann – father of missing British girl Madeleine McCann – told delegates and the world’s press that he should have sought legal advice earlier in the hunt for his daughter. Having talked listeners through his story, showing video footage from the BBC and some of the appalling headlines his family was subjected to, Gerry (far right) reflected on what he should have done differently.

“If I look back on that time now, I would almost certainly have interacted with the press in the same way at the start,” he said. “The priority was to get information out about Madeleine and try to find her. But I would have drawn a clearer boundary between that investigation and us, the parents. I would have tried to prevent the media from photographing us or our other children in ways not related to the hunt for Madeleine. I would also have taken legal action sooner against the misleading stories in the press.”

When Kate and Gerry McCann first returned to the UK from Portugal they were hounded by press. Any time they drove outside they had cameras pushed against the car windows and were followed. Both were photographed going running. Gerry was photographed on the golf course. Even last week Kate was photographed in a clothes store, years after Madeleine’s disappearance.

The other legal issue was the stories printed in the British papers that accused the McCanns of involvement in Madeleine’s disappearance. Gerry told the IBA delegates about one particular story that was a single line in the Portuguese press, blown up into a front-page headline in the UK, and then reported again in Portugal as something “confirmed by The Times of London” – giving it much greater credibility.

The McCanns finally took legal action against the papers at the beginning of 2008, when several stories were run that just recycled old, false allegations. No newspapers defended the cases, either on the grounds of truth or responsible journalism, and published unprecedented apologies. Although there were damages awarded to both the McCanns and their friends, those went straight into the fund for Madeleine’s search and Gerry told the IBA audience “the priority was just to stop those stories from distracting from the search”.

Gerry emphasised that “we should probably have got legal advice earlier, but we were just focused on finding Madeleine. You don’t want to fight a war on two fronts if you can help it. Equally, we never got criminal law advice, which perhaps we should have done. But it never occurred to us for a moment that that was necessary.”

Kelli Sager, a speaker from David Wright Tremaine in Los Angeles, pointed out that the UK system had worked: “The papers stepped over the line and there was redress. They suffered damages and had to apologise. Perhaps it should have happened sooner, but this clearly isn’t a system that is broken.”

Others disagreed. Paul Tweed from Johnsons Solicitors in Northern Ireland said: “The deterrents are just not big enough for papers to be put off. The law here is really in development, certainly in Ireland and to a lesser degree in the UK. The damages are commercially small and facing the ‘wrath’ of the Press Complaints Commission is not a threat. The paper may have to print the PCC’s decision. Big deal.”

Pre-emptive injunctions on publishing false stories are also difficult. Roger Mann (above left) of Damm & Mann in Hamburg said that an injunction against a story in Germany can take effect within 24 hours. But judges are unwilling to issue pre-emptive injunctions to stop publication for fear of curtailing the press. But in Belgium, Herman Croux of Marx Van Raast Vermeersch & Partners told the audience that people are taking action. Some weekly papers have been taken out of circulation, which costs the publishers a lot, and one €20 million case concerning a doping allegation is about to reach judgement.

“Everyone is waiting eagerly to see what the decision is there,” he said.

Elsewhere, speakers were split about the role of investigative journalism as questions were fielded by co-chair Mark Stephens and Nigel Tait (of Finers Stephens Innocent and Carter-Ruck respectively). Discussing his family’s problems with invasion of privacy, Gerry McCann said that he would like to think any information that someone puts in the public domain is public, but everything else is considered private.

Kelli Sager disagreed. “It just doesn’t work that way. Investigative journalism plays a very important role in uncovering the truth,” she said. Nigel Tait also pointed out that journalism has been important in revealing the parents as the guilty parties in other murder cases. He asked Gerry McCann whether the innocent have to pay a price for that investigation elsewhere. Julian Porter QC from Toronto thought that wasn’t a fair question: “It’s one thing to be suspicious, quite another to assert without any evidence that parents were responsible for the murder of their child.”

Gerry McCann, who handled himself with dignity and calm throughout, was happy to answer the question and asserted that “it is the police’s job to investigate, not the media. I think that’s the point at which we differ.”

Roger Mann and Herman Croux also spoke in defence of investigative journalism, though none of the speakers defended the actions of the English papers in the McCann’s case. Paul Tweed’s view was that “it has to be a different way. Investigative journalism plays a very important role in uncovering the truth.”

The campaign to find Madeleine continues. For more information visit www.findmadeleine.com.
How to help children testify

The International Criminal Court (ICC) is pioneering a new, more sensitive court system. As people such as Thomas Lubanga Dyilo are put in the dock for their alleged use of child soldiers, the court is creating new ways for children to give evidence.

Speaking at a session entitled ‘Children as a weapon of war’ yesterday, Manoj Sachdeva (one of the prosecutors of Lubanga at the ICC) described how the court is adapting to help vulnerable witnesses tell their stories.

“It was clear from the outset that something other than the usual voice and face distortion, and pseudonyms, was needed to permit those who ‘we say were former child soldiers to give evidence,” said Sachdeva. “When the first witness took the stand, the child could see the accused and during the testimony appeared to be re-traumatised.”

As was reported following the start of the trial, the prosecution’s first witness claimed that he had lied about being kidnapped by Lubanga’s soldiers and that he had been told what to say to the court by an international aid agency.

Under Article 68 of the Rome Statute, the court has a responsibility for the wellbeing and safety of the witness. To fulﬁl this, the ICC introduced several new protections to help witnesses give evidence.

The ICC reduced the number of people in the court to one or two counsel per party. The witness was admitted to court before the accused and positioned so as not to see the accused. And instead of the typical Q&A led by the prosecutor, the witness was allowed to narrate their story.

This more ﬂexible environment could become a regular feature of the court. “This is a process that can be used for other types of vulnerable witnesses, such as those that have suffered sexual assault,” said Sachdeva in response to a question from the Daily News. “Statements can also be submitted to the court as evidence to reduce court time, which can alleviate the trouble that some witnesses have when testifying.”

However, the ICC cannot prove a witness’ story (when the prosecutor discusses the witness’s statement and likely questions) before it gives evidence. The Court can however prepare the witness for the experience of giving evidence.

Witnesses typically arrive in The Hague at least a week before they are due to take the stand. They are given a tour of the court, told who will sit where and allowed to review their statement to refresh their memory of their evidence.

But this is not necessarily sufﬁcient, according to Cecile Apfel (above), head of the children’s programme at the International Center for Transitional Justice. “The Hague is very far away from the crimes being committed. It’s hard to ask witnesses to leave their small villages, get in a car – let alone a plane – for the ﬁrst time and then arrive in another country where the weather and food are drastically different,” said Apfel. “And these children are already traumatised.”

She suggested that the ICC instead consider holding some of its hearings nearer to the place of the crime.

This was just one proposed change. The trials in Sierra Leone and those underway in The Hague have highlighted the need for improved communication with those affected by alleged war crimes. And, in cases where child soldiers have been deployed, this communication needs to be child friendly.

That would be improved by employing child protection experts to act for the ICC and by ensuring that the intermediaries that identify potential witnesses are reliable and suitably protected.

Apfel also highlighted the dangers of using one charge to indict a suspected war criminal. In the case of Lubanga, who has been charged speciﬁcally in relation to suspected use of child soldiers, Apfel argued that many other equally grave crimes were committed in his name and that he should also be tried for these.

“If the changes are perceived as just a way to get Lubanga, people may not realise how serious the charges are and this will limit the ability of the ICC to change perceptions about the use of child soldiers,” she said.

Speaking from the ﬂoor, Sudarsamy Njereje, deputy chair of Zimbabwe Lawyers for Human Rights, asked why Lubanga had not been charged with other crimes such as sexual slavery relating to abducted girls. With the case still ongoing, Sachdeva was not able to comment but Stuart Allford, a former UN prosecutor for East Timor and chair of the session, highlighted this matter as an issue to be discussed at next year’s ICC conference.

IBA Daily News Wednesday, October 7 2009

PRO BONO

IBA should act as clearing house

The IBA should act as a clearing house for allocating pro bono work across the world, according to lawyers tested.

Horacio Bernardes-Neto, of Xavier Bernardes Braganca in Brazil, said that the greatest problem facing lawyers is that they want to perform pro bono but are often allo-

cated cases that do not fall within their expert-

ise. He mused that “if I did a pro bono divorce, it would probably be one of the worst divorces ever”. He made this suggestion during Tuesday morning’s Pro Bono and Access to Justice Committee panel.

The global ﬁnancial crisis has hit pro bono work hard, leaving many struggling to gain access to justice as lawyers scramble to generate revenue. But while the economy has hit the least fortunate hardest, now is the time for lawyers to “change the world for the better” and establish a new world order for pro bono, according to Bernardes-Neto.

One way to do this is to make the IBA responsible for allocating pro bono work. It would free up spare time for lawyers, ensuring that they can maintain billable hours, while offering their expertise to those who wouldn’t otherwise have access to it. And the bigger pool of lawyers would make it less likely someone would be working in an area they didn’t specialise in.

Fernando Peléz-Pier, IBA President, echoed the need for a focus on pro bono at the moment. He said lawyers should not shirk their responsibility to provide everyone with sufﬁcient legal assistance. “It is important to maintain our obligations to provide part of our time to pro bono. The commitment to it should come from partners right down to front-

year lawyers. This type of work is fundamental to being a lawyer and should not be ignored,” he said.

Joss Saunders, general counsel at Oxﬁam in the UK, urged lawyers to treat pro bono work in the same way as large clients, so it could be “taken that one stage further”. He explained that there needs to be a shift in perspective. “It is a question of analysing the problems that society is facing, and then being up to the lawyers to identify the best solutions.”

Session co-chair Tino Souris, of Clifford Chance in the UK, reiterated the sentiments made by Peléz-Pier and Saunders by calling on lawyers to take advantage of the recession to offer their services to the neediest. “Firms are restructuring, graduates are being deferred and partners are retiring early. With all this negative news, it is easy to think that access to justice is pretty bleak, but that is not the conclusion we should come to.”

There was positive news from one speaker. David Hillard, of Clayton Utz in Australia, said achieving a balance of pro bono and billable work is possible. “I think this type of work makes people feel better at work and reminds everyone that they got into law to give people access to justice. We experienced 20% growth in pro bono last year and there is no Australian law ﬁrm that has reduced in pro bono work.”

But with lawyers in his ﬁrm only perform-

45 hours of pro bono per year, Hillard was sceptical as to the likelihood of pro bono increasing even more. “Most lawyers spend more time drinking coffee over a year,” he said. “If it gets any higher then the number-crunchers will start asking questions and realise that these hours could be allocated to billable clients.”

Other audience members were also keen to promote their pro bono operations at home. Most felt more was needed from inter-

national communities to ensure access to jus-

tice, but that state funding is the largest barrier to developing this practice further.

Earlier, the panel had begun with an out-

line of the IBA’s new pro bono website (www.internationalprobono.com). It brings together lawyers involved in pro bono work in a global and local scale. The site carries resources including calendars, training materi-

als and videos.

Robin Wright Westbrooks, the committee’s communications ofﬁcer, explained that one exciting aspect of the website is the ability for pro bono lawyers to blog about their experiences. “Around 90 people visit the blogs each week, which I believe is an extremely popular resource.”

The blogs cover individual countries and outline the opportunities and barriers to work. They are regularly updated and include comments from individual bar association pro bono committee members. Perhaps in the future it could even help the IBA allocate pro bono work.

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What if Messi wanted to go to Real?

A

pparently, Lionel Messi wants to play for Real Madrid. Michael Gerlinger, Head of Legal at Bayern Munich certainly chose a controversial hypothetical example at a session on employment in international football yesterday morning.

So, Messi has been interviewed on television and expressly said that he wants to play for Real Madrid. What can a club do? In reality, the player is not going to terminate the contract himself. Despite the fact that it might be difficult to enforce, it is widely reported that Messi’s buyout clause is €250 million. Even a club of Real’s magnitude would be hard pushed to pay that.

But the player has set his heart on a move. In that situation Gerlinger stressed the lack of options available to the club. “It could issue a written warning to the player so that if he said it again they would terminate,” he said. “But then the player would say it again and get his wish!”

The session was a battlefield for pitching the problems for clubs against those of the players. Former player Theo Van Seggelen is General Secretary of FIFPro, the global representative association of professional footballers, and was eager to highlight the issues for the employees.

“Everyone expects players to respect contracts, but clubs need to too,” he said. “Often players are pressured to sign a new contract or leave in the final part of their contract.”

Or even very early in their contracts. Rafael van der Vaart only signed a new contract for Real Madrid last year, but in the last transfer window his hand was virtually forced.

The club didn’t issue him with a squad number. It was only when other transfers occurred that the coach changed his mind and Van der Vaart was rescued. Players want to play football – with the exception of Winston Bogarde, who was happy to sit on the bench at Chelsea for an estimated £40,000 ($63,600) per week.

“A football player has to be treated as a normal employee and a normal human being,” said Van Seggelen.

Gerlinger was keen to fight for the clubs though. In the summer his club’s star player, Franck Ribéry, had his head turned when Real Madrid enquired about a transfer. Gerlinger had previously stressed the importance of solving problems early, so the sporting management of Bayern Munich held discussions with the player and the matter was resolved. Ribéry stayed in Germany.

But Gerlinger recalled a conversation he had with Van Seggelen during that process: “Theo came to me in the summer and asked: ‘Why shouldn’t Ribéry join the club of his dreams?’ Because he had signed a four-year contract, Theo. We didn’t want him to leave.”

When talking about employment issues in football, it is easy to get distracted by the glamour of the elite players. We all want to know the intricate details of their contracts. But what about the 99% of professional footballers that don’t earn much, and arguably need more flexibility to move as well as increased certainty of salaries?

Well, they can take heart from the decisions coming out of Fifa’s Dispute Resolution Chamber (DRC), set up in 2001. “The majority of the decisions passed in the chamber are in favour of employees – the footballers,” said Omar Ongaro, a representative from Fifa. The downside is that the DRC receives over 2000 disputes a year of which 900 are employment related. Of those, 300 receive a decision.

The major issue for the 99% is payment. Ongaro provided an interesting example. In January 2007 a player at an Estonian club signed a loan agreement to play for a Kuwaiti team for six months after passing a medical exam. He then took part in two weeks of training and two friendly games. The Kuwaiti club then asked him to have an MRI scan that revealed he had a serious knee condition, so asked the player to sign a different agreement.

He refused and turned to Fifa to force the club to honour the contract he had signed.

The Kuwaiti claimed that they couldn’t book an MRI scan before they signed the player and turned to a clause in the contract that allowed them to break the contract based on medical tests. But the DRC called on Fifa’s Regulations on the status and transfer of players. Article 18 paragraph 4 does not allow employment contracts to be made dependent on medical tests. Therefore the player had just cause for compensation.

The Kuwaiti club suffered sporting sanctions including a ban on signing new players for two registration periods. And as Chelsea found out this summer, this is a rule that is enforced even against the top teams.

DON'T MISS THIS

The Right Honourable Morgan Tsvangirai is speaking tomorrow lunchtime at an event in the Velada Hotel (Alcala 476, Madrid). He will discuss current developments and challenges affecting Zimbabwe. It will be a unique opportunity to hear this world leader talk about his efforts to bring stability and progress to the country. The ticketed lunch runs from 1pm to 3pm, with Tsvangirai’s address taking place at 2pm.

Also tomorrow is the showcase session on international terrorism and the European courts, chaired by Justice Richard Goldstone and Tomasz Wardynski of the Polish Bar Council. Hans Corell, former legal counsel of the United Nations (profiled in tomorrow’s Daily News) is also speaking. It takes place in the auditorium, lower level -4, between 10am and 1pm.

FOOTBALLER’S RIGHTS

“Everyone expects players to respect contracts, but clubs need to too” Theo van Seggelen

Meet in Madrid: Rolf Auf der Maur, Benedict Christ, Uwe Haege, David Jenney, Christoph Pestalozzi

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Lord Bingham first thought seriously about his interpretation of the rule of law back in 2006, before he was due to give the annual Sir David Williams lecture at University of Cambridge. He has, by his own admission, “been thinking about the subject ever since”.

Until July last year, Lord Bingham was the Senior Law Lord in the UK, the title given to the head of the judicial branch of the House of Lords. Lord Bingham held this position for eight years, during which time he was a vocal advocate for divorcing the judicial branch of the House of Lords from Parliament by setting up a new Supreme Court of the United Kingdom.

This was achieved through the Constitutional Reform Act in 2005, and Lord Bingham’s successor, Lord Phillips of Worth Matravers, took his seat as President of the new court when it opened last week.

Today, between 10.00 and 13.00, Lord Bingham will be the keynote speaker at the Rule of Law symposium, the annual IBA session run by its Rule of Law action group, established in 2007 to act on the IBA’s continued commitment to address what it sees as the increasing erosion around the world of the rule of law.

“I emphatically disagree that human rights should be separate from the rule of law”

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interview on the rule of law he has been quoted as saying that: “powers should be exercised for the purposes for which they were conferred in the first place, and therefore a source of obvious concern – and this would be multiplied worldwide – would be if a power enacted to counter terrorism is used to arrest a heckler at a party conference.”

5. The law should embrace the protection of human rights
Lord Bingham is unequivocal on this point: “I emphatically disagree that human rights should be separate from the rule of law.” Yet it is not an easy belief to impose, particularly given the lack of a globally agreed standard of human rights.

Ascension to any international standard is a choice made at national level, and diverse moral and political agendas threaten UN conventions and make their transition into law impossible.

“There’s no point to entitlement if people don’t know what the law is and how they can access it”

6. There must be machinery in place for the resolution of disputes
Differences of opinion will always arise, and when they do there should be adequate measures in place to resolve them, whether this is through mediation or in court. But the emphasis here is on the right of access to court that every person should have if and when they require it. This also raises the problem of the cost of providing courts and their staff. British courts have long been self-financing, funded through the fees recovered from litigants. This means that costs can be passed onto those who use the courts, a concept that does not sit comfortably with Lord Bingham: “The danger is that the cost of obtaining redress may lead to its being denied to some at least of those who need it.”

7. State procedures in place for trying cases should be fair
This is despite the inevitable temptation, particularly to counsel, to resort to unfair tactics when fighting a case. Lord Bingham cites an example where “a judge is shown a piece of evidence submitted in a case, but this evidence is not revealed to the opposing side until it’s too late for them to prepare a response”.

Distorting a case in this way is common, but it does not serve the ultimate ambition of a fair trial.

8. States must observe their international duties
An impassioned critic of the legality of the Iraq war, it is unsurprising that Lord Bingham believes that national governments should not be immune from the rule of law. “The UN charter clearly states when force can be used,” he says, “and UN member states must respect and observe that.” In a speech last year Lord Bingham called the Iraq war a “serious violation of international law” and accused the US and the UK of acting as vigilantes for the rest of the world.

Looking further back, he describes the Suez expedition of 1956, where Britain, France and Israel launched a military attack on Egypt after the country nationalised the Suez Canal, as “undoubtedly unlawful”.

The Rule of Law symposium, with keynote speakers Lord Bingham of Cornwall and Judge Baltasar Garzón, will be held from 10.00 to 13.00, in the auditorium on the lower level (-4) of the Palacio Municipal de Congresos. It will be followed at 14.30pm by an open meeting of the IBA Rule of Law action group.

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By Nicholas Pettifer. Regional rankings from the IFLR1000 team, exclusive to the IBA Daily News reveal that firms in London are dominating western Europe

**Banking**

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**Allen & Overy**

"Allen & Overy is the standout firm. The people we work with there provide a level of service and consistency that we don’t get from the others.” With client quotes like this, A&O is fully deserving of its top tier ranking. And peers agree: “It is the best at banking.”

This is exactly why the firm has been on some of the most high profile deals this year. It worked on the $55 billion financing for InBev’s bid for Anheuser-Busch, advised the 17 initial lenders on the financing for the acquisition of Angel Trains by a consortium of investors and was lead arranger to the €9 billion debt financing for RWE’s acquisition of the Dutch utility provider Essent.

It also worked for Mediobanca, BBVA and Banco Santander on the €8 billion financing regarding Enel’s acquisition of a minority interest in Endesa from Acciona and the mandated lead arrangers on the refinancing of the existing credit facilities for the Bombardier Group via a new €1.75 billion facility.

It is deals such as these that encourage clients to say: “We recommend A&O as the go-to firm for hard, complex transactions.”

**Clifford Chance**

Investment grade lending is down across the board in the banking sector, but the strength of Clifford Chance’s operation is such that when large deals do arise, the firm is mandated. For example, it advised brewer InBev in relation to the financing for its $52 billion acquisition of Anheuser-Busch.

Restructuring work has also been high on the agenda for the firm this year. It represented chemical group LyondellBasell on its $27.5 billion debt restructuring, the banks on Ferretti Yachts’ €1.2 billion restructuring and the banks on Colonial’s €7 billion restructuring.

Clifford Chance also worked for Citi on a 364 day backup facility for Noble, De Nederlandsche Bank on the financing of its €16.8 billion purchase of the Fortis Group’s Dutch operations and Permaina on the financing of its $3.7 billion acquisition of the News Corporation of NDS Group.

With mandates such as this, it is no surprise to hear clients say “that I always have a very good experience with Clifford Chance”.

**Freshfields Bruckhaus Deringer**

Freshfields Bruckhaus Deringer’s banking practice is pushing hard for promotion into the top tier. One client described the team as “very responsive” and peers have underlined the benefit of the firm’s corporate client base. With corporate borrowers needing capital, the firm has benefited from a flurry of deals.

For example, it advised Terna as borrower on a €650 million unsecured financing from a consortium of banks and on a €500 million revolving financing from Eurobank, the Royal Bank of Scotland and Banco Santander. It also represented Lucchini in its liability management by borrowing €350 million from a consortium of Italian and French banks.

The firm has also been undertaking roles on acquisition financing. Most prominently, it worked for salt supplier K+S on the €1.4 billion financing of its $1.7 billion acquisition of Morton Salt from Rohn and Haas, a wholly owned subsidiary of The Dow Chemical Company.

**Linklaters**

Despite the downturn and the slowdown of transactions in the last couple of years, Linklaters has managed to complete a wide array of different types of deals recently.

In leveraged finance, it worked on the acquisition of Convex TEC by Nordic Capital and Avista Capital Partners and the $2.1 billion facilities for the acquisition of Abbot Group by First Reserve. It also worked on the first ever debt buyback by TDC.

Linklaters also performed well in investment grade transaction as seen by its presence on the €16.1 billion facilities for Schaeffler in relation to its controversial bid for Continental in Germany. Finally, the firm’s syndicated skills were highlighted by its work on the $5 billion multicurrency revolving facility for Xurata.

**White & Case**

White & Case is renowned for its emerging markets work, but the firm is deservedly respected for its banking practice in western Europe too. Indeed, its Paris office had an excellent year between 2008 and 2009.

Firstly, it acted for The Bank of Tokyo-Mitsubishi, Barclays Capital, BNP Paribas, Calyon, HSBC, RBS and Société Générale in connection with Electricité de France’s £11 billion (€17.6 billion) acquisition offer for British Energy. It then advised Qatar Investment Authority in its €6 billion investment into the Credit Suisse Group.

Finally, it worked on a $2.3 billion financing of a deal between Nordic Capital and ConvexTEC and a €800 million financing from Deutsche Bank to the Aleris Group.

**Capital markets – debt**

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**Capital markets – structured finance and securitisation**

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**Allen & Overy**

The debt capital markets practice of Allen & Overy in western Europe held in the highest regard by clients and peers. This opinion is echoed by the firm’s position in league tables too. Allen & Overy was ranked number one legal adviser to managers in all international debt issues in 2008 according to Thomson Financial. It worked on a total of 540 deals to the value of €377 billion.

The firm has worked on some excellent programmes across the continent this year. It advised BNP Paribas in relation to Metropolitano de Lisboa’s €400 million issue, Novartis Capital on its €451 billion Euro medium term note programme and the lead managers on Rede Ferroviaria Nacional’s €600 million issue. It also represented Goldman Sachs in the establishment of Banco Espirito Santo’s €2 billion programme.

**Cleary Gottlieb Steen & Hamilton**

Debt capital markets is a strength for Cleary Gottlieb Steen & Hamilton in western Europe. A lot of mandates do come from the US, but the offices in the UK and France in particular do win a lot of work themselves.

For example, in 2008 the firm advised ArcelorMittal on its $4 billion unsecured revolving credit facility, the underwriters on SEK’s $3.5 billion debt offerings and the underwriters in BP’s issuance of $3 billion of guaranteed notes. It also represented Deutsche Telekom in its $1.5 billion SEC-registered debt offering. In 2009, Cleary Gottlieb impressed further by providing counsel to Barclays Capital and Morgan Stanley in Shell International Finance’s offering of €2.5 billion notes.

**Clifford Chance**

Clifford Chance once again occupies the top tiers in debt work and structured finance and securitisation. The quality of the firm’s output is epitomised by its advice to Citibank and The Royal Bank of Scotland (RBS) with regard to the £13.6 billion refinancing of BAA’s UK airports. This transaction took two years to come to market and involved a structured debt issuance programme of £17.15 billion senior term and...
revolving credit facilities, a £6 billion junior financing secured against Heathrow, Gatwick and Stansted and a further £1.25 billion secured against other regional airports.

Elsewhere, the firm represented Co-operators Bank on the establishment of a new £3 billion covered bond programme and RBS as arranger and dealer of a £1.2 billion de-linked credit cards master trust programme for Tesco Personal Finance.

Freshfields Bruckhaus Deringer
Freshfields Bruckhaus Deringer’s capital markets strengths has always been more in the equity arena and it is ranked, once again, in the top tier. Over the last 18 months, the firm has been involved in a spate of large rights issues across the continent.

As recently as June 2009, Freshfields advised Deutsche Bank and BBVA as joint global coordinators and joint bookrunners on NN Hotels €220 million rights issue. Earlier in the year it represented Vattenfall’s Gas Natural on its €3.5 billion rights issue to finance the acquisition of Unión Fenosa, the banks on Land Securities’ €757.7 million rights issue and the banks on Hammerson’s £584.2 million rights issue.

On the continent, the firm also represented Netherlands based tyre manufacturing company Antel-Vredenstein on its £150 million share placement and Spanish real estate company Afirma Grupo Inmobiliario on its £49 million rights issue.

Linklaters
“Linklaters are clearly topping the market in equity work,” according to one client. Add to that the comment that “we only look at Linklaters as true competitors” from a peer and it is easy to see how the firm is in the top tier of two rankings and pushing hard to promotion in the third.

Linklaters’ equity practice had an incredible year considering the markets. This was encapsulated by its presence on the €6.36 billion rights issue by Anheuser-Busch InBev – the at the time, the largest non-financial institution rights issue of the year and the third-largest issue ever. The firm also continued to work on RBS’s £12 billion rights issue and subsequent £20 billion capital raising by way of a £15 billion open offer to shareholders and a £5 billion non-cumulative preference share subscription by HM Treasury.

Other notable firms
Herbert Smith has been rewarded for its excellent work in numerous rights issues by being promoted to tier three in the equity rankings. It worked for Bradford & Bingley on its £400 million issue, Hammerton on its £884 million rights issue and Deutsche Bank, UBS, RBS Hoare Govett and BNP Paribas on Woolfe’s £1 billion issue and placing, among others.

Retaining its place in the third tiers of structured finance and debt capital markets is Sidney Austin. The firm was underwriter’s counsel to Barclays Capital, BNP Paribas and Citib in the issuance of a total of $900 million notes by a finance subsidiary of Pearson. White & Case also occupies tier three in the same categories and is recognised for its advice on KazMunaiGaz – the largest emerging bond in history.

Shearman & Sterling are the final US firm to occupy the tier third in two categories; debt and equity.

Skadden Arps Slate Meagher & Flom has a great reputation for corporate work, so it is no surprise to see it remain in tier three for equity. This year it advised the joint global coordinators on the €1.4 billion IPO of New World Resources, the underwriters to Barclays’ €701 million placing and the sponsor, underwriters and co-lead manager on William Hill’s €350 million rights issue.

Mergers and acquisitions
Tier 1
Allen & Overy
Clifford Chance
Freshfields Bruckhaus Deringer
Linklaters
Tier 2
Skadden Arps Slate Meagher & Flom
Sullivan & Cromwell
Tier 3
Cleary Gottlieb Steen & Hamilton
Sherrard & Sterling
Weil Gotshal & Manges
Tier 4
Ashurst
Herbert Smith
Latham & Watkins
Slaughter and May
Tier 5
Baker & McKenzie
CMS Cameron McKenna
Lovells
Simmons & Simmons
White & Case

Allen & Overy
Like many of the other top tier firms, Allen & Overy focused on practice in transactions in the banking and financial services arena in the second half of 2008 and the start of 2009.
In this time period, it advised Alliance & Leicester on the £1.3 billion public takeover by Banco Santander and Corporate Express on the £3.1 billion takeover by Staples.

In January 2009, A&O’s London team was present on the controversial merger of HBOS and Lloyds TSB. In this £12.2 billion deal, which saw the UK government waive competition rules, the firm represented HBOS.

Just before this, A&O completed another equally controversial German deal out of the offices in Frankfurt and Dusseldorf by advising Schaeffer on its €12.1 billion takeover of Continental. In this transaction, Schaeffer used cash-settled derivatives to silently build a large stake before launching a full bid. This caused uproar in some circles on the continent, but all praised the innovative thinking behind the deal.

Despite the turmoil in the market, co-heads of department Richard Cranfield (London) and Jan Louis Burggraaf (Amsterdam) have managed to keep the department stable. Four partners may have left the firm, but four have joined. The lack of downsizing means that quality hasn’t suffered. As one corporate client concludes: “The service they provide is top-notch.”

Clifford Chance
Matthew Layton has been promoted to Global Head of Clifford Chance’s corporate department and, once again, his team has provided excellent advice across all of its western European offices. “They’re quality and our expectations of the firm are first class. I can see several occasions where their creative thinking made the deal happen,” said one client in the UK.
And it is in the UK that the firm provided its most impressive advice this year. It represented longstanding client British Energy on an extensive auction process for the sale of the company and on the eventual £12.5 billion recommended takeover by EDF in September 2008.

The firm’s German offices also had a good year. In August 2008, Clifford Chance represented the target on the sale of Dresdner Bank to Commerzbank and the sale of certain assets and bank participations of Dresdner Bank to Allianz Bank. The transaction was valued at €5.1 billion and involved assistance from offices across the European network.

Freshfields Bruckhaus Deringer
Positive peer reviews are often hard to find. So it is even more surprising when a peer is so enthusiastic. “There is no denying it, Freshfields had a storming year considering the market,” said a senior partner at a rival firm. “Despite the turmoil in the market, the service they provide is top-notch.”

The rest of tier two and tier three are

Linklaters
Linklaters has retained in place in the top tier by landing roles in some of the largest and most impressive transactions. This was proved by the comments of one peer: “Their attention to detail is excellent and their general deal experience is very strong,” he said.

Indeed, the firm won International Financial Law Review M&A team of the year in March 2009 due to achieving the rare feat of being present on all five of the IFLR M&A deal of the year nominations. It advised Boreh Dubai on the $4.9 billion acquisition of OXM, Scottich & Newcastle on its £7.8 billion takeover by Carlhberg and Heineken, PricewaterhouseCoopers on Nomura’s purchase of Lehman Brothers’ assets, Friedenst Vogli in the Resolution saga and the lenders in Schaeffer’s investment into Continental.

A couple of these deals fall out of the timeframe for this year’s IFLR1000 rankings, but Linklaters has more than made up for them elsewhere. For example, it represented Swedish client Vattenfall on its acquisition of Netherlands based integrated utilities company Nuon and Suez on its disposal of 57.25% equity holding in Distrigas.

Skadden Arps Slate Meagher & Flom
Skadden Arps Slate Meagher & Flom is world renowned for its corporate work and in recent years London, and increasingly Moscow, has proved a good hunting ground for the firm. Despite the strong presence in western Europe, it is fair to say that a number of mandates still come in via the formidable US office.

This is seen by the German offices coming to work with Skadden lawyers in New York and Washington DC to advise Dimamer on its €1.95 billion sale of a 9.1% stake to Aabar Investments. Similarly, the Paris office teamed up with the same US counterparts to represent Electricité de France on its €4.5 billion acquisition of half of the nuclear business of Constellation Energy.

The western European offices do win their own mandates too. Peter Veranneman, Walter Henke and Scott Simpson worked together in advising the supervisory board of Continental (and its financial advisers) on Schaeffer’s daring takeover.

Other notable firms
The rest of tier two and tier three are completed by US firms with a strong presence in western Europe. Of the firms remaining, Sullivan & Cromwell is held in the highest regard. One rival partner said that: “Sullivan & Cromwell always delivers a great calibre of work, just in smaller numbers.”

Cleary Gottlieb Steen & Hamilton held its place in tier three by advising BNP Paribas on its acquisition of Fortis’ operations in the Netherlands and Dexion on its €6.4 billion recapitalisation plan. Weil Gotshal & Manges also had a good year with its London team taking key roles on the sale of AIG Private Equity and the General Electric and Mabulala joint venture and the NDS take-private.
T
here are few traditions as divisive as bullfighting. A cornerstone of Spanish culture, or anachronistic animal cruelty? In spite of the dissenting voices calling for it to be banned, corrida de toros (literally running of bulls) remains a revered national custom. The aficionados defend their art as the bastion of centuries of tradition, with some claiming it has existed in Spain since the time of Emperor Claudius 2000 years ago. Madrid hosts corridas throughout the summer, its famous bullring packed full of curious tourists and die-hard fans, all drawn to the unique appeal of this brutal sport.

The home of bullfighting

The home of bullfighting in Spain, and arguably the world, is the Plaza de Toros de Las Ventas (Metro Las Venta). With a capacity of 25,000 and measuring an impressive 60 metres in diameter, it is the largest bullring in Spain and the third largest in the world. Built in neoclassical style, the famous bullring was inaugurated in 1929. Today, the ring is used for rock concerts and political meetings. The bullfighting season draws to a close in October, although there is still a chance to see a fight on October 11. Tickets can be purchased online from www.tickettoros.com, or bought at the Las Ventas ticket offices. Prices can range from €15-100, depending on the seating area, with shaded areas (Sombra) being more expensive than sunny ones (Sol). It is advisable to book something comfortable to sit on as you will be seated on stone steps, although some pillows are distributed at the entrance. Flags (banderillas) mounted on horseback, three banderilleros (flagmen), and a mozo de espada (sword page). The matador, clad in his traje de luces (suit of lights), directs a 15 minute session accompanied by pasoible music from the in-house orchestra.

In the first stage, the tercio de vara (the lancing third), the picadores on horseback use long lances to weaken the bull's neck muscles, causing it to hold its head lower which reduces the danger of its charges. The horse wears a protective covering that was introduced in 1930; prior to this, a corrida would normally end with more dead horses than bulls. In the next stage, the tercio de banderilla (the third of flags), the banderilleros stab brightly-coloured barbed sticks into the bull's back. The beast, unable to raise its horns and losing blood, is now ready for the tercio de muerte (the third of death).

The aesthetics of man v beast

In the final, most dramatic and most iconic stage, the matador and the bull face off in a duel to the death. Armed with a sword page (sword), the matador goads the bull with a sharp needle like dagger between the eyes. It is rare but possible for the public to judge the bull to have been so courageous that it should have its life spared.

If the matador has done exceptionally well, he will be given a standing ovation by the crowd, throwing hats and roses into the arena to show their appreciation. He may receive one or two severed ears, and even the tail of the bull, depending on the quality of his performance. If a fighter receives two ears in the same afternoon, he is lifted up onto the shoulders of his peers and carried out of the ring through the Puerta Grande (great door), the highest accolade for any matador.

Ernest Hemingway said in his 1932 book Death in the Afternoon: “Bullfighting is the only art in which the artist is in danger of death and in which the degree of brilliance in the performance is left to the fighter’s honour.” The fight is an aesthetic ritual, rather than a competitive sport, judged on artistic impression and command. Whilst the outcome is rarely in doubt, the bull is perceived as a worthy adversary rather than a sacrificial victim, deserving of respect. Bulls should never be underestimated as they learn fast; a matador will often be booted or even pulled with seat cushions as he makes his exit. The final blow should be dealt in one stroke, with a flourish. Two is barely acceptable, while anything more is a bad job. If the evitado fails to kill the bull, the assistants will finish the stricken animal with a sharp needle like dagger between the eyes. It is rare but possible for the public to judge the bull to have been so courageous that it should have its life spared.

And to those who plan on attending a fight, be warned: there will be blood.

Alternatives

Combats de reines (“queen fights”)

- Valais, Switzerland
- Cow v cow
- Winner declared La Reine des Reines (“the queen of queens”) 1
- Draws up to 50,000 spectators
- Began in 1920s
- Grand final is held in Martigny, where the six best from seven districts do battle in six weight categories.
- Horns blunted, mainly a pushing contest.
- Any cow that back down from a fight is eliminated until one cow is left standing in the ring.
- It sometimes happens that the cows in a fight refuse to engage in physical contact with each other at all.
- Each fight can last up to 40 minutes.

Togyu, also known as ushi-zumo or Bull sumo

- Ryukyu Islands, Japan
- Bull v Bull
- Winner declared by judges
- the bulls lock horns and attempt to force each other to give up ground
- Each bull has a couch who helps to keep the bulls locked in conflict and encourages their bull to win.
- The match is over when one of the bulls tires and one is left standing in the ring.
- The cows may be watching, and that live coverage violated a voluntary TV cancelled live coverage of bullfights in August 2007, claiming that the coverage was too violent for children who might be watching, and that live coverage violated a voluntary, industry-wide code attempting to limit “scenarios that are particularly cruel or brutal.”

The fact that bullfighting is financed with public money has also become highly controversial. Last year, the Spanish fighting bull breeding industry was allocated €600 million in grants, with some of this money coming from European livestock funds. The European Union shows no sign of stepping in to ban bullfighting, even actively promoting an event in Coria where a bull is taunted in the streets. Such activities are deemed to be “traditions, customs and a centuries old culture”. It is difficult to gauge how many people in the audience of a bullfight are tourists and how many are local aficionados. But if public opinion continues to women and tourists stop attending, the number of bullfights may begin to diminish.

For those wishing to sample the bullfighting culture without the blood, a guided tour of Las Ventas bullring is available, complete with a bullfighting museum that details the history of the building. It is worth visiting just to witness the magnificent architecture of the world’s premier bullring, and the museum itself provides a unique insight into this brutal, passionate and intensely Spanish spectacle. Love it or hate it, this museum proves that there is more to bullfighting than meets the eye.

One of the most controversial traditions in Spain divides opinion across the world. Although undeniably brutal, some argue there is more to it than meets the eye, according to Joel Abraham

Bullfighting is justifiably criticised by many as a cruel, barbaric blood sport, in which the bull suffers a slow, torturous death. Spanish animal cruelty laws have abolished most barbaric blood sport, in which the bull suffers a slow, torturous death. Spanish animal cruelty laws have abolished most
WHICH OF US TRIPPED OVER WHILE PRACTISING THE FLAMENCO?

OUR IBA TEAM FROM TOP: DR. FARAJ AHNISH, MANAGING PARTNER, ABU DHABI; SADIQ JAFAR, MANAGING PARTNER, DUBAI; RICHARD BRIGGS, EXECUTIVE PARTNER, SAMEER HUDA, PARTNER; ERIK MUTHOW, PARTNER

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<td>The collector and the dealer: buying art – the worldwide market</td>
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**MEETING YOU AT THE IBA CONFERENCE 2009**

**YOUR SWISS LAWYERS**

meyerlustenberger l Attorneys at Law
Zürich | Lugano | Genève
Ferdinandevo 4/5 | Rote Pressestrasse 1 | 2501 Lausanne 1
T 41 44 25 91 01 | T 41 21 42 90 92
info@meyerlustenberger.ch | mla@meyerlustenberger.ch

www.meyerlustenberger.ch
QUESTION:
Why do you come to the IBA annual conference?

Nicolás Herrera
Guyer & Regules
Montevideo, Uruguay

There’s a lot of networking to be done and some very interesting sessions, but mostly I must say I’m here for the networking. I practice corporate and M&A law in Uruguay so I’ve travelled a long way to be here. I have the opportunity to catch up with old colleagues and make connections with people from lots of different jurisdictions, particularly Europe, the US and Latin America.

Rachel Levitan
Levitan Sharon & Co
Tel Aviv, Israel

I’ve been coming for the last 18 years, and initially I came for the connections – meeting people in the same profession as I am. But now I also come because I think the IBA has a lot more to offer. It’s really the heart and soul of the profession and gives you more than just an opportunity to meet friends. I’ve seen a lot of changes over the years since my first conference in Hong Kong!

Alhaji Yesiru Oladele
Ondo State Local Government Service Commission
Akure, Nigeria

There are so many reasons I have chosen to come to the IBA. But mainly I am here to benefit from the wide range of lecture sessions, and also to meet people from different jurisdictions so I can expand my frontiers. This is the first time I have come to the conference and I’m very impressed with what I’ve seen so far.

Peter King
Weil Gotshal & Manges
London, UK

It’s an opportunity to meet up with friends that I’ve often only spoken to on the telephone before, but over a long period of time. I don’t come to every conference but maybe once every three or four years I make the trip. Madrid seems much bigger than previous years, so it’s great that there’s even more opportunity for networking.

Robert S Bernstein
McCarter & English
New York, US

I get a better opportunity to meet people here than I would anywhere else in the world. Sometimes cases can come up in different jurisdictions and I find having met people face to face very valuable. The range of topics covered and the breadth of lawyers from all over the world is very impressive. This is my second IBA so now I can pick faces out of the crowds and meet them again.

Mulikat Akande-Adeola
House of Representatives
Abuja, Nigeria

The IBA affords me an opportunity to improve my knowledge and to meet people from all over the world. Sometimes cases can come up in different jurisdictions and I find having met people face to face very valuable. The range of topics covered and the breadth of lawyers from all over the world is very impressive. This is my second IBA so now I can pick faces out of the crowds and meet them again.

Utkarsh Tewari
Krishna & Saurastri Associates
Mumbai, India

The IBA is a great platform to come and chat to people from all across the world. You get to learn a lot about different jurisdictions and it’s great for networking; I’ve come from Mumbai in India and have been attending the IBA every year since Prague in 2005. I’ve met a lot of friends here over the years so now I really enjoy coming back and seeing familiar faces every year.

Douglas Leong Tze-Ho
Tan Peng Shin
Singapore

I think it’s a good opportunity to find out what’s going on in other jurisdictions. I also get to catch up with old friends from previous years, and to make new friends. This is officially my second year at the conference; unfortunately after I registered for Singapore I was unable to attend because of business commitments. I’m very impressed by the number of lawyers that are all gathered in one place.
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