Protéger la liberté d'expression

By William Quill

2015 began with a challenge to a culture of free speech when cartoonists working with Charlie Hebdo were shot dead because of depictions of Mohammed in their magazine, often in provocative or even crude forms. World leaders clamoured to show their support and solidarity with those who had been killed, yet we see increasing restrictions in law on the freedom of expression. To stand by the claims made in January, let us re-examine the basis of these laws. In doing so, we would show proper respect for all opinions and cultures, through a free and open society, allowing for difference and dissent.

Prominent among these are laws against hate speech and laws against Holocaust denial. Yet these laws can have both a counter-productive effect, and can serve to undermine the integration of other immigrant communities.

The earliest post-war conviction for hate speech was of Julius Streicher, who was prosecuted and executed in Nuremberg for his role as editor of the incendiary anti-Semitic publication, Der Stürmer.
After a dedicated service to the Law School at King’s Inns, Dean Mary Faulkner has decided to retire from her position in the Summer of 2015.

Collectively all the Students of King’s Inns extend our warmest wishes to Mary Faulkner on her retirement.

A wonderful new chapter awaits.

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After the initial invites had been sent out to a selection of artists, chosen by the exhibition’s curator, Louise Gartland, the first phase culminated in a presentation of the project at the library on the evening of the 20th November 2014. The project was presented to the artists by Louise Gartland. Our Acting Librarian, Renate Ni Uigin, spoke about the history of the Inns and the Library and the categories of books we house. She spent time showing a sample selection of books we had on display to give the artists an idea of what they could expect to find in the Library. Also present and supporting the project were Sile O’Shea, Assistant Librarian and George Guilfoyle, Library Assistant. After the presentation and follow on tour of the building we were joined for drinks and nibbles by Chairman of the Library Committee, James O’Reilly, and committee member Elizabeth Donovan. There was a great energy about the evening and a lot of excitement felt by all of those present.

The project, driven by Louise Gartland and Renate Ni Uigin, is now in its second phase. Artists are in the midst of their research in the Library and it is expected that they will submit their finished piece of art by February.

The very well attended exhibition took place in April 2015, opened by the Honourable Justice Moriarty and the Chairman of the King’s Inns Library Committee, Mr. James O’Reilly SC.
After you are called to the Bar and you move to the next stage of your career, I hope that the following advice helps you on this part of your journey.

1. Read the brief before a consultation or else you might slide off the chair and melt onto the ground or more disastrously, fall asleep. Decide in advance what is to be gained from being in any meeting/consultation – don’t be passive - it’s all too easy to switch off. Do up a memo, if you can.

2. Speak as you would normally in Court. It takes a bit of pressure off, sounds more sincere and therefore persuasive, and doesn’t obscure the content.

3. Eat a nourishing breakfast. When an arbitration goes into its fourth consecutive hour and everyone decides to work through lunch such is their appetite for resolving the case you will appreciate a breakfast bar like never before.

4. Get to know different judges and how they react to certain arguments. Some Judges interrupt your argument a lot more because they’re procedurally a few steps ahead. Be as flexible as you can in that regard and don’t be put off. Some don’t say a word, which can be equally as daunting.

5. Don’t take it personally when you’re fighting a losing battle in a Motion – I found this hard. The flip side of this is never lose something as a result of not spotting that some of your papers were missing. You may feel humble starting out but you should ask your solicitor for something if it’s not there. Put something to second call if you’re not certain and always ask for help.

6. While you’re whiling away the hours in the Masters Court or in the Common Law Motions list, listen to the applications that come before the Court. You will learn a lot. My Masters made me do this and it was really worthwhile.

7. Be courteous in Court and with your opposite number. Likewise, don’t be a lamb to the slaughter for the odd more experienced practitioner preying on your vulnerability. This rarely happens, to be fair.

8. Make a plan for next year, sometime around Christmas. Who are you going to devil with, if you haven’t arranged that – is there a particular area that you enjoy?

9. Reinvigorate your enthusiasm for devilling outside the four walls of your work environment. It’s a collegiate world filled with fascinating and clued-in people, similarly it can consume you in drawing many aspects of your personal and professional life together.

10. A good indicator of needing to apply no. 8 is when you find yourself making law jokes. There’s no such thing as a law joke.

11. Mr. Justice Donal O’Donnell once told us as students graduating from the King’s Inns in pursuit of our legal careers not to confuse scepticism with cynicism in our learning, the former being a far more useful approach to law. For a number of reasons that has remained in my mind as appropriate advice.

12. Enjoy it. It will be a tremendously exciting, challenging and worthwhile year.

Hit the Ground Running
Anita Finucane BL

For a third year in a row
KING’S INNS are Winners of the Eoin Higgins Memorial Moot competition
The Winning Team are:
Hugh Good
Declan Harmon
Dylan West
William Prasifka
Niamh Ryan
Congratulations to the team and also to Hugh Good who won best Advocate.
Well Done
Daring to Devil
Advice for 1st Year Devils

By Emma Ryan

There’s a level of difficulty in writing this article because each and every Devil has their own distinct experience of what their first year is like and, I don’t want to do an injustice to anyone’s individual experience. So what I propose to do is address some of the more general “need to knows” that will hopefully be of some use to all and any of you coming down to the Library later this year or in the future.

Your Master

It should go without saying that your Master is probably the most important person in your Devilling life. Each Master/Pupil relationship is different but as you are likely to be spending a massive amount of time with your Master I would recommend doing two things:

1) Choose wisely!

Pick an area of law you have an interest in and then hunt down a Master who has a practice in that area. There’s no point in signing up to Devil with someone who practices in commercial law if you want to practice in family. On the other hand, quite often you find that you like an area you previously had no interest in. So, if you do find yourself with a Master whose practice is not what you had initially hoped for don’t have a melt down! Part of my Master’s practice is asylum and immigration, 2 areas of law I had neither studied nor intended to pursue as a practitioner. However, I’m finding that my enthusiasm for and, interest in these areas is growing with each case I research.

2) Get to know your Master.

You will spend a large chunk of your time in first year with this person so you might as well make an effort to get along with them. You don’t need to know their family tree or medical history but do need to know their personality so spend a bit of time chatting about non-work related things.

I think the most important thing every Devil should remember is, you’re new at this and it is an absolutely enormous learning curve so never be afraid to say “I don’t understand” or “can you explain that again?” to your Master. It might feel like they’re moving at 100km per second but they’ve been in your shoes, they know it’s hard so don’t be afraid to take them back to beginner’s pace if and when needs be (especially in your first term!).

The Courts

Get to know your way around. This may seem like a statement of the obvious but not everything is in numerical order or where you expect it to be in the Four Courts complex so make sure you get familiar with the layout of the Four Courts, Áras Uí Dhálaigh and the new Court of Appeal (located in the old records building). The CCJ is a little easier as you can’t really get lost in a circle but don’t make the same mistake I made in my first term and get stuck in the staff corridors because I hadn’t activated my “Barrister” ID card for use in the CCJ! had to wait for someone to come along and let me out. If you are based primarily in the Four Courts you need to activate your card at reception in the CCJ to use the various access points (i.e. to get into the staff section of the restaurant and out of the robing room corridor etc.).

When you eventually find the Court you’re supposed to be in make sure you know what you’re talking about when you open your mouth. As a Devil you’ll spend a lot of time in Monday morning motion lists, dealing with things on consent and seeking adjournments so please pay attention to the next sentence, I swear it will help. Have a reason for what you’re asking for, know why you’re asking for it and be able to tell the court (even in broad terms) what the case is about. Judges and Registrars (with good reason) don’t like giving adjournments when the person asking for them hasn’t got a reason for seeking them and, if the application is contested you need to convince your Friend that your application is justified on the merits of the case or under the circumstances as they stand at that moment in time.

Something that is important to remember (that you really only pick up on the commencement of practice) is that the order of seniority is important, recognised and practiced in many non numbered and consent lists so don’t be the first person to jump up when it’s asked “are there any consent orders to be made?”. Devils are always last in these lists and it will be pointed out to you if you get it wrong but don’t panic or worry about that—if it happens, you won’t be the first person to have made that mistake. You’ll see very quickly what lists and what Judges like things done by order of seniority but whatever you do, don’t let the Judge rise from the bench before you make your application. You might be a Devil but you have the same right of audience in the Court as any senior, you just have to wait a bit longer for your turn but when it comes don’t be afraid to stand up and make yourself heard.
Continued from page 6.........

A good way to learn the running order and etiquette of the Courts is by observing—so if you lose your Master (as can happen) after a meeting or court appearance, you find yourself at a loose end some afternoon or just want to go and see how seasoned practitioners run a trial and sit in any court room for a while. You may be sick of compulsory court visits after the BL course but once you start in practice this kind of learning can be invaluable so don’t rule it out! Maintaining a good Devil network will also help you immeasurably. This year a large number of Devils have a what app group that allows us to keep up to date with how fast lists are moving in various courts; what time the Master sits; when the County Registrar has started; find out have consents finished etc. It also provides a forum for you to ask questions of your peers or put something to second call if you’re stuck elsewhere (as frequently happens).

While you’re making an application or appearing in Court don’t forget to be courteous! Don’t use slang or inappropriate language when addressing the Judge and don’t forget to finish with ‘May it please you Judge/may it please the Court’ or ‘I’m obliged to the Court’ after making an application or being granted an order. In fact, you should always offer a verbal courtesy to the Court once you have finished whatever you’re there to do. Again, it’s obvious but easily forgotten with the nerves and excitement of whatever you’re there to do. Again, it’s obvious but easily forgotten with the nerves and excitement of your early appearances.

House keeping

Some very general pointers to keep in mind are as follows:

Don’t be afraid to get it wrong. This is a whole new world of experiences and challenges for you and the learning never stops. You may have studied and crammed and thought the learning was over—it’s not (sorry!). As a Devil you are still a student and you’re learning all the time. But how and what and the way in which you learn is completely different to classroom learning. You learn on your feet, through your research, at trial and in a much more comprehensive and interesting way than sitting at a desk cramming for an MCAT but you’re not going to know it all by the end of your first week. So if you make a mistake don’t panic, learn from it and keep going.

Don’t call the County Registrar ‘Judge’. Call her County Registrar and call the Master, Master.

Use the Library Services. There is a great team in the Library ready to help you find resources so go and talk to them when you’re desperately trying to find something that’s proving to be irritatingly elusive.

Dress properly. You’ve heard it a thousand times but for god’s sake pay attention to it. You’re about to commence practice in a very traditional occupation and that tradition calls for dark suits, clean shirts, ties and waistcoats for the gentlemen.

Ladies, if you take heed of nothing else take heed of this: ALWAYS have a pair of flats at your desk. Heels make a pencil skirt look great but if you’re trying to be in 10 places at once they are of no use to you, especially when you’ve been bundled into a taxi to rush to a last minute meeting across the city and your Master says “it’s a nice day lets walk back”.

Make the most of the vacations and days you finish early. This might seem like a silly statement but you have no idea how exhausted you’re going to be at the end of your first term. It gets easier as you come into the Hilary term because you’re getting used to the run of the place but do take advantage of any time you have off.

Be prepared for odd working hours. You may have a regular ‘9 to 5’ or ‘10-6’ but you can also have anything from ‘8 to you can leave when it’s finished’. The only advice I can give you on this is-get used to it. There’s always going to be times when you have 3 things that all require a mountain of work and they’re all due on the same day, it can be a pain but it’s a consequence of the job. That’s why the preceding paragraph is so important!

Have more than one set of tabs—tabs for around your neck and tabs for paper. Both can be bought in the Legal and General shop on the ground floor of the Four Courts.

Put Court dates in your diary the minute you get them. Do the same for submission dates, mention dates and everything you get a date for from consultations to full hearings.

The final, absolute and most important thing that I think every Devil should be told on their first day is: ENJOY IT! You’ll feel like a headless chicken at times and some days you will run out of the place hoping never to return but it’s a job that is like no other. There are few other professions that allow you to wear a wig and be taken seriously while in such attire and even fewer institutions where you can pick up the phone to a complete stranger and ask for help. Most importantly, it is a profession in which coffee is available in abundance in the surrounding area (I’m not a coffee drinker but I have learned how important this resource actually is while sitting on the floor of the unassigned seating room, surrounded by paper, at 8pm cursing books of authority).

I hope this article hasn’t overwhelmed anyone but a lot of what I’ve included are things I wish I had been told before I came down so hopefully these pointers will be of some use to you. I’ll finish by wishing each and every one of you the very best of good luck in your exams and saying, on behalf of all your future colleagues, we look forward to welcoming you to the Bar.

Emma Ryan, BL
BOOK REVIEW

Christine Traynor

As the title suggests, "A Brief History of Time" is a concise review of this challenging task, providing the reader with an overview of key cosmological theories, past and present - including multidimensional space, the inflationary universe and the cosmic fates that may come to pass.

Special attention of course is paid to TIME because it is a concept that has no meaning before our celestial genesis. Both space and time emerged at the instant of creation.

The first half of the book provides an account of the various views of our universe over the last millennia and in particular it discusses the revolutions of general relativity and quantum mechanics which forces physicists to think in different ways.

Or instead you can enjoy a ‘Briefer history of Time’ for those long journeys visit www.audible.co.uk or enjoy and latest movie ‘The Theory of Everything’

In an era of deficits and bottom lines, Hawking defends this esoteric field and he seeks “The discovery of a complete unified theory . . . which may not aid the survival of our species,” “It may not even affect our life-style. But ever since the dawn of civilization, people have not been content to see events as unconnected and inexplicable. . . . Humanity’s deepest desire for knowledge is justification enough for our continuing quest. And our goal is nothing less than a complete description of the universe we live in.”

Stephen Hawking's ‘A Brief History of Time’ has sold more than 10 million copies since it was first published in 1988. ‘A Briefer History of Time’ was later published to give mainstream readers the opportunity to enjoy this account of the concepts of physics without the complications of his first book. ‘The Theory of Everything’ is a movie account of the books author a and it is a compelling movie about his charismatic nature and his enduring illness, quite simply a beautiful movie about a brilliant man.

It is a complicated subject presented in an easy to read format and whilst some concepts are not easily understood it is an enjoyable read.
The applicants were involved in attacks on 21 July 2005 in which four bombs were detonated on the London Underground but failed to explode. The perpetrators fled the scene but were later arrested. The first three applicants were temporarily refused legal assistance in order for police “safety interviews” to be conducted for the purpose of protecting life and preventing serious damage to property. Under the Terrorism Act 2000, such interviews are permissible in the absence of a solicitor and before the accused has had an opportunity to seek legal advice. During these interviews, the applicants denied any involvement in the events but claimed the bombs were a hoax. At trial, they acknowledged their involvement and their interview statements were admitted at trial. They were convicted and sentenced to 40 years imprisonment. The fourth applicant was not initially a suspect but was interviewed as a witness, but as the police continued to take a statement from him he began to incriminate himself. At this stage the police did not arrest him and advise him of his right to silence and legal assistance, but continued to question him as a witness. He was subsequently arrested and in the following interviews made a number of references to his initial statement. The initial statement was admitted in evidence and he was convicted of assisting one of the bombers and failing to disclose information about the bombings. The third applicant was convicted and sentenced to ten years imprisonment which was reduced to eight on appeal on account of the early assistance which he had given the police. The Applicants alleged a breach of their Article 6.1 and 6.3(c) rights due to their lack of access to lawyers during their initial interviews and argued that their convictions were unfair due to the admission at trial of the initial police interviews.

The Court then examined whether the fairness of the applicants’ trials were prejudiced as a result of the admission in evidence of their statements which were made prior to receiving legal advice. The Court noted that the Terrorism Act 2000 provided certain safeguards and that the conditions for authorising a delay in accessing legal advice were strict and exhaustive. The Court was of the view that the 2000 Act struck an appropriate balance between the right to legal advice and the pressing need in exceptional cases to enable the police to obtain necessary information to protect the public. In the applicants’ case, their access to a lawyer had been delayed by four and eight hours respectively which was well within the 48 hour time limit that was laid down by the 2000 Act. Of particular note to the Court was the fact that none of the applicants’ alleged coercion, compulsion or any other improper conduct that allegedly pressured them into denying their involvement in the events. Furthermore, there were procedural opportunities at trial to allow the applicants to challenge their admissions. The ECtHR held that the trial judge had given “rigorous consideration” to the circumstances in each applicant’s case as well as giving careful and considered directions to the jury. Finally the ECtHR held that there was a significant body of independent evidence implicating the applicants. The Court concluded that no undue prejudice was caused to the applicants’ right to a fair trial as a result of the failure to provide legal advice before and during the first three applicants’ safety interviews or to caution or provide access to a lawyer to the fourth applicant during his initial interview. No violation of Article 6 found.
Kites rise highest against the wind, not with it.
- Winston Churchill -

The position Churchill found himself in once he got his feet under the table at Number 10 Downing Street was not unlike the position faced by the King's Inns rugby team as they arrived at the Aviva Stadium on a blustery and overcast afternoon in February: trying to present a united front against a backdrop of infighting and bickering (in particular, the sensitive question of who would sit beside John Monaghan in the changing rooms), facing a well-organised and aggressive enemy (with tall dark and handsome centres who would not have looked out of place in Der Fuhrer's dream of a super-race), and determined to make a defiant stand against all of the odds.

History will be kind to me, for I intend to write it
- Winston Churchill -

Like the great bulldog of World War II, the Bar Council understood well the nuances of what was required to achieve victory. By appointing one of their own number as referee, our foes captured the crucial middle ground and made our difficult task all the more daunting.

The King's Inns' players assured each other that the spirit of fair play would transcend any perceived issues of bias, but alas, the proof was in the pudding.

The two tries scored by the Bar Council both arrived deep into lengthy periods of injury time at the end of each half, despite the fact that there were no substantial stoppages to the game in either.

Led ably by captain Fergus O'Higgins, the Inns traded blows with their adversaries from the Bar Council, and appeared destined to go into half time in the lead, before the Bar's number 8 barrelled over for a try in the dying stages.

Despite being behind at the break, the Inns were not to be discouraged and weathered an early second half storm from the Bar before striking with Panzer-like speed and precision.

Never, never, never give up
- Winston Churchill -

Picking the ball up in midfield, centre Neal Flynn darted for the line with pace and power, and left the wheezing barristers fumbling in his wake and for even the most partisan of Bar Council supporters, Flynn's try was a moment to savour. His personal journey, his private struggles, his physical and psychological torments, all seemed to dissolve in that moment, as the perennial underdog had his day. Tears of joy streamed down the faces of Flynn's legion of female fans on the sideline, while scouts from various professional outfits – both local and international – quietly took notes and exchanged knowing glances.

We shall show mercy, but we shall not ask for it
- Winston Churchill -

What followed was a fearsome rear-guard action, with the Inns players, to a man, courageously putting their bodies on the line again and again, deep in their own 22 defending their slender lead. On several occasions, the half-back pairing of Ciaran O'Rourke and Ciaran Murphy provided relief with some impressive kicking, but on each occasion, the Bar came again. With seconds remaining, the intricate defensive system masterminded by consultant coach Niall Storan came undone, and the Bar crossed the line at the clubhouse end. The Inns players lay strewn across the pitch, overcome with exhaustion and disappointment.

Following the fearsome competition on the pitch, the socializing and mixing which followed the match underscored the values of collegiality and conviviality at the Law Library. Both captains delivered gracious speeches, with the Diarmuid O'Donovan Trophy awarded to the Bar Council by Sara Moorhead SC.

Success consists of going from failure to failure without loss of enthusiasm
- Winston Churchill -

Four days later, refusing to allow their spirits to be dampened by the events at the Aviva, the King's Inns approached their next match against the Law Society at Donnybrook Stadium with even greater relish and enthusiasm.

The less said about that, the better......
The King’s Inns have had a great sporting year and while we have yet to bring back any silverware, our hopes are on the ladies hockey team who take on the Bar Council on May 8th!

The season began on a cold, dark January evening when the soccer team turned out to face Blackhall in a friendly match. Unfortunately, it was not our night as Blackhall stole the show. But as they say it’s the taking part that counts, right?! All is not lost however, as the team are now more determined than ever to succeed, with a game against the Bar Council set for early June the stakes are high! Thanks to Rory Mulvaney, team manager who has been dedicated to the cause from the very beginning.

Next out it was the King’s Inns rugby team who put on a spectacular performance against the Bar Council. Having put in serious training sessions over a number of weeks before the game the team were focused and prepared for the battle that lay ahead. Victory was in sight when a heart-breaking last minute try came from the Bar Council cruelly snatching away our deserved trophy! A great evening was had by all and a thrilling display of rugby. Thanks to Captain Fergus O’Higgins, Vice-Captain John Lynch and William Morrin for all the time and effort put into preparing the team.

A mini tournament of tennis against Blackhall made for an enjoyable afternoon in Claremont Railway lawn tennis club. In a first for the King’s Inns a cricket team has been formed. Our scheduled game against the Bar Council was unfortunately called off due to bad weather. Training has been going well and we are hopeful of a victory! The game has now been rescheduled for Tuesday May 14th and I hope to see many of you there.

Back from a brief absence is the golf tournament. This year, we will take on both the Bar Council and the Law Society. It is great that this competition has been revived as the last round of golf that was played by King’s Inns was back in 2005 and with a nice trophy gathering dust in a cabinet it would be a shame if we did not attempt to retain our title!

Tag rugby is due to get underway on May 21st. The King’s Inns have entered a team into the summer league which takes place every Thursday in Harold’s Cross. The Law library enters a number of teams into this league and it is a great way of getting to know future colleagues. Last year, we had a very enjoyable season and I expect that this year will be no different. Anybody wishing to play but has yet to sign up please contact either myself or Hugh McDowell.

A big thank you to all players and spectators who have made the effort to support King’s Inns this season!

Ellen O’Brien
A Public Right?

Examinng Access to Justice

By Conn Corrigan

THE COURT system in Ireland poses many difficulties for journalists who cover legal affairs, including the highly frustrating restriction placed on accessing court documents.

This restriction surprises many people - including solicitors - who assume that a document filed in the Central Office of the High Court is a public document that can be accessed by journalists and members of the public. This assumption is entirely understandable. After all, Article 34.1 of the Constitution states: "Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public." But this assumption is sadly misplaced.

The constitutional provision on the public administration of justice should mean that the starting point should be that documents opened in court are available for inspection by the public, unless there is a good reason to the contrary (for example, in relation to family law matters or in relation to cases that involve anonymity, including sexual offences). But the current situation in Ireland is the reverse: the default position is that the public don't have access to court documents, save for some limited exceptions.

Currently, should you as a member of the public go to the Central Office of the High Court and request a court document that has been opened in court - such as, for example, a court order, affidavit, etc. - you will be told in no uncertain terms that unless you are a party to the case itself, you enjoy no such right. The same goes for legal practitioners who are not involved in the case themselves, but who may wish to see how a particular case was pleaded.

There are several reasons - both as a matter of law and in terms of the proper administration of justice - why this situation is unsatisfactory.

Parties to legal actions - especially defendants - often want to keep their dispute private. This is an entirely understandable reaction.

These parties could well argue that members of the public have no business in going through documents that relate to their disputes. But members of the public already have the right to attend court in their capacity as members of the public, while journalists have the right to report fairly and accurately on court proceedings, subject to certain restrictions. If members of the public and journalists are allowed to attend court sittings, why can't they view the court papers upon which those court sittings are based? In general terms, and subject to certain well-known exceptions, a plaintiff or defendant's desire to have their legal dispute kept low key and publicity free, should not subvert the constitutional requirement that justice be administered in public.

Currently, a court reporter present in court may be given access to court papers by the court registrar, while they are actually in court. But this arrangement is far from ideal as there is no rule or practice directive compelling the court registrar to provide access to the court reporter in question - it is simply customary practice that is carried out on an ad hoc basis.

It is also the case that, according to Bar Council rules, a barrister in court may give a court reporter access to court papers, as long as his or her client agrees. Again, there is no obligation on the part of the barrister to furnish these documents.

Outside of court, where a journalist is reporting on a legal action and seeks to obtain court documents, it is up to one of the parties - usually on the advice of their solicitor - as to whether the court documents can be furnished.

This means that because the journalist is essentially reliant upon a solicitor, who may be selective in terms of what is actually released. For example, he or she can give a particular affidavit that sets out their side of the story - but not a replying affidavit that refutes an alternative version of events. The story that gets written up is not as full or as fair as it should be.

A further difficulty relates to the practical aspect of being reliant on a barrister or solicitor for a court document. Take, for example, where there is a court case in which a settlement is agreed, which may be long and complicated, but which is not actually read out in full to the court.
This can pose difficulties for a journalist, who will want to get the report entirely accurate, given that an error could result in a libel action.

In addition, it is often the case that while an affidavit is ‘opened’ in court, the judge will ask the barrister to summarize the contents of the affidavit or to simply focus on the salient points. This can mean that certain details contained in the affidavit go unreported, unless the barrister decides to furnish the reporter with the said affidavit.

It was hoped by some observers that the Legal Services Regulations Bill would include provisions that would end the restrictions on accessing court documents. But when asked about this possibility, the Department of Justice, said: “The legally and operationally complex matter of public access to court documents currently falls outside the scope of the Legal Services Regulations Bill. However, it may fall for further consideration by the Department in due course.”

That response doesn’t inspire much confidence but, thankfully, there have been some positive recent developments in this area. In October 2013, the Chief Justice Susan Denham issued a new practice directive, which means that members of the public can now obtain copies of written submissions made in a Supreme Court case (for a fee), provided the case had been heard. This is obviously a step in the right direction, although the bad news is that the new Court of Appeal (which of course deals with cases that previously would have gone to the Supreme Court), has no plans to introduce such a facility at present.

Furthermore, a High Court judgment from Justice Gerard Hogan delivered in March 2013 could also change the practice with regard to the public right of access to court documents. The case, Allied Irish Bank Plc v Tracey (No. 2), involved an application from a developer named David Agar, who had previously been in business with the defendant in the case, George Tracy. In related proceedings involving AIB and Mr. Tracy, the latter had alleged that Mr. Agar had misappropriated loans that were supposed to be advanced to AIB to companies controlled by the two businessmen. Mr. Agar - who was not mentioned by name in the affidavits, but who, according to Justice Hogan, is clearly identifiable in them - then sought the affidavits sworn by Mr. Tracy in which these allegations were made and was refused access to these affidavits. He then asked the court to intervene to gain access to the documents.

Justice Hogan placed a considerable emphasis on the fact that the sought after documents in the Tracy case had already been opened in court. He continued that, “pursuant to the requirements of Article 34.1 of the Constitution, it follows that any cloak of confidentiality or protection from non-disclosure vanished at point” It’s worth quoting another elegantly phrased extract from Justice Hogan’s ruling at length:

“The open administration of justice is, of course, a vital safeguard in any free and democratic society. It ensures that the judicial branch is subjected to scrutiny and examination and helps to promote confidence in the fair and even-handed administration of justice. Any system of secret court hearings could pave the way for judicial arrogance, overbearing judicial conduct and abuse. In these circumstances the public are entitled to have access to documents which were accordingly opened without restriction in open court. This is simply part and parcel of the open administration of justice which the Constitution (subject to exceptions) enjoins.”

Justice Hogan’s judgment was initially welcomed by some journalists as an important advancement in terms of the open administration of justice. The Courts Service said in the aftermath of the Hogan judgment that it had no plans to facilitate the ruling, because it was under appeal before the Court of Appeal.

Other common law countries, such as the UK and the US - which take seriously the notion that justice should be administered in public - allow the public access to documents filed in court, subject to certain exceptions. In the US, where there is a commendable tradition of public right to information, a publicly available website called PACER has existed for over 20 years which allows users access electronically filed federal court documents for a fee of 10c a page. Ireland is lagging far, far behind and doesn’t look set to catch up anytime soon.
The implication in his conviction is that had he been stopped, fewer would have been converted to the Nazi ideology. However, Flemming Rose, in the recently published The Tyranny of Silence, draws attention to the existence of hate speech laws in Weimar Germany. Streicher was prosecuted and served time under these laws, which served only to raise his profile and bring fervour to his cause.

A contemporary example is Holocaust-denier David Irving. After Irving wrote extensively to minimise both the extent of the Holocaust and Hitler’s role in it, the historian Deborah Lipstadt wrote a devastating critique of his claims in denying the Holocaust (1996). In response, Irving sued for defamation. He lost, with a 333-page written judgment served against him, cataloging his distortions, relying on the evidence at trial of several renowned historians. This response to historical fabrications, even such an insulting one as Holocaust denial, showed the power of open debate.

Contrast this with the Austrian law under which Irving was imprisoned in 2005 for contravening laws on Holocaust denial. As Streicher before him, the trial and imprisonment served as a rallying cry for those who held Irving’s noxious views. The irony is that those countries which criminalise Holocaust denial are probably those where society could most benefit from the meticulous criticism from Lipstadt and other historians. There is a worrying growth in extreme nationalism across Europe in the past decade. However, measures inhibiting public debate will not help combat racist or nationalist myths, which could gain traction as an underground or contentious phenomenon.

There are many other forms of speech or expression besides Holocaust denial which many find offensive. These include not only denial of other past acts of genocide or imperial misrule, but also depictions of religious figures. The selection of specific topics which may not be questioned can lead to accusations of bias, that concerns of other communities are ignored. And the same French state which rallied to defend cartoons of Mohammed, has also the restricted wearing of religious dress.

One response would be to extend the subject matters which are given protection against offence, and to give greater local decision-making power to community leaders. But this would only inhibit criticism of political and religious leaders and ideologies, as greater areas are closed from discussion.
So inherent is stereotyping, the legislature is required to introduce legislation to ensure that victimisation of those labelled, is not permitted. The Employment Equality Act and the Equal Status Act were introduced to prohibit discrimination and victimisation of minorities, labelled in various ways by others within society.

We all remember a time when women were ostracised and incarcerated for having sex outside of marriage, this is something most would like to place in a time so long ago, but only 21-years ago this attitude still existed and continued, these were not stories from your doddery old grandma gripped by Catholicism. Nowadays we do not want to be associated with such devastating attitudes, but it was because of those sentiments that today we continue to pick up the pieces. How are we to grow into a well-rounded society if we continue to supress and label others, because this will be yet another primitive story that we will have to fix in the future?

For decades in Ireland society was dominated by religion and for so long the social, political and psychological landscape was repressed by the attitudes of the church. A nation warped and bitter by repressed sexuality which has perversely damaged our society, as children grew up with a belief that sex was the original sin, the supreme evil. Sex is for procreation, and procreation is for marriage. But we all know the sin of our “fathers”! Did you know that statistics in 1966 revealed that Ireland had the lowest rate of marriage and the highest number of births in Europe? It’s a strange thought that there were so many babies when there was so few marriages. Women were punished and the men disappeared. While young women were institutionalised and there were no men marrying these women, these women still ended up becoming pregnant?

Mary Robinson presented what she herself referred to as the ‘Ugly Titled’ Illegitimate Children Bill in 1974, so unequal were children that were born outside of marriage that it required a law to give them the same status as children born inside marriage like there is a special status for those children. She called upon the political audience to introduce this important law so that one day ‘illegitimate’ would be removed from our language.

Article 40.1 of the Constitution guarantees “that all human persons, be held equal before the law”. In 2015 not all persons are equal before the law. If a gay person wants to marry currently they are not equal before the law. This means that homosexuals are discriminated against in that they do not have the same rights as straight persons. Their relationships are not given full recognition and protection, and they are also burdened with a social label. It is impossible to fathom, that society would continue to label people within society with ‘straight’ or ‘gay’, there is no way that people go around calling themselves ‘straight’ like it requires some sort of clarification.

"the state shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall inform all the institutions of the national life” Article 45 Section 1 of the Irish Constitution.

The Constitution protection was not afforded to those horrors of times past, unwanted children who were separated from their mothers, neglected and mistreated persons, abused persons all have travelled a damaged and difficult road.

There are opportunities in this forthcoming Referendum and there will always be opportunities for us all to accept all persons within our society to inspire and motivate people and to bring out their best not just for themselves but to benefit all of society.

For more details on stereotyping of young people see
INEQUALITY AND THE STEREOTYPING OF YOUNG PEOPLE BY MAURICE DEVLIN

Christine Traynor
Moot Achievements

On February 28th, the King's Inns competed in the national finals of the Jessup International Mooting competition, which was held in the Law Society.

The King's Inns team, consisting of Siobhan Buckley, Fergus O'Higgins, Neal Flynn, Hugh McDowell and Joseph McGranaghan, was joined at the finals by representatives from the Law Society, University College Dublin and University College Cork.

This year’s moot question proved to be both stimulating and challenging, and touched on issues of international law spanning from secession and non-interference to the construction of treaties and sovereignty over natural resources, all in the context of dispute which was factually similar to the recent conflict in Crimea. Although the King's Inns team performed ably on the day, the national competition was won by UCC, who represented Ireland at the World Final in Washington DC in April.

The King’s Inns team would like to take this opportunity to thank coaches Maria McDonald BL and Eoin Sreenan BL for their many months of hard work and preparation, and the King’s Inns for all of its support.

Inaugural Meeting

LSDSI, 185th Session

The inaugural meeting of the 185th session of the Law Students Debating Society of Ireland was held in the dining hall on the evening of Wednesday 18th February. This year’s auditor, Hugh McDowell, delivered an address entitled ‘King’s Inns at a Crossroads: 1916 – 1926’, which concerned three episodes in the history of the institution: an IRA raid in June 1920; the trial and execution of Erskine Childers in November 1922; and the split between the Northern and Southern Bars in 1926.

The meeting was chaired by The Hon. Mr Justice Adrian Hardiman of the Supreme Court, who demonstrated his expertise in both law and history during the course of his opening and closing remarks.

The two respondents, The Hon. Mr Justice Hogan and Mr Paul Anthony McDermott, brought a great deal of legal history and humour to the event respectively.

The inaugural meeting was well attended, with members of the judiciary and the Bar as well as King’s Inns students, in the audience. Following the meeting, the speakers and the LSDSI committee were invited to dinner with the Under-Treasurer and the Dean of Law in the Benchers’ Room.

Brian Walsh Moot Competition

The final of the Brian Walsh mooting competition took place in the Four Courts on February 25th. The Brian Walsh is the King’s Inns flagship mooting competition and attracted substantial interest from diploma and degree students this year.

The moot question for this year’s final (written by Simon Donagh BL) involved a witness who refused to testify in court having given a substantial witness statement to the Gardaí, and an application of Section 16 of the Criminal Justice Act 2006. The finalists were Hugh McDowell (winner), Ciaran Murphy, Derek Scully and Dylan West. The case was heard by O’Hanlon J and O'Malley J of the High Court, and, for the final time before his retirement, Murray J of the Supreme Court (a relative of the Walsh family).
What a difference a year makes…

The Barrister at Law Degree provides an opportunity for exceptional personal growth and achievement. Sometimes frustrating but mostly a year that will change your life’s perspective.

Here are our TOP 3 Tips to Get You Through the Year

1. Get Fit and Stay Fit
2. Prepare for Tutorials ALWAYS
3. Support others who are on the same journey

If you don’t exercise now, take it up and get ready for the year, you will need the energy to keep going, it is exhausting and requires stamina.

The most important thing to remember and I kid you not you will forget this during your first few months is to stay confident and push yourself, stay focused on the end-goal.

Out favourite DO NOT’s

◆ Don’t tell everyone about your legal connections
◆ Don’t be overly opinionated and/ or full of yourself
◆ And Don’t rubbish others

Skeleton Justice

By David O’Reilly

Six surly skinless skeletons settled
Neath a misty moonless sky
In judgement of an ignominious slight
Upon their betrayed chalk white bones

Centuries since and yet to come
Upon those old arthritic frames
Flesh and soul had made their home
Abandoned them to earths dank clay

The soul of each was now sought out
Retribution paved the way
Stealthily six set out same night
’Avenge!, Avenge! each jaw cried out

Gnashing teeth and stone washed skulls
Six plus six plus sixty more
From more to scores and millions more
Till all Earth’s earth stirred long stilt bones

An army now was on the move
Laying siege to the gates of Hell
The Heavens too were on the route
As every soul was now searched out

Flames of fires and heat of Hell
Illuminated all those souls
In chain and pain and stagnant dwell
Bones now rattled and battled hard

Avenge! Avenge! their battle cry
Seizing each and every soul
Marching through the deepest depths
Soul and Bones now made their way
Back to Earth and earths dank clay

All souls’ day and all souls’ night
Scores of skeletons settled scores
Heaven held till holding hurt
Then emptied all its souls to earth
Souls and Bones now made their way
Back to Earth and earths dank clay
Get Involved & Thank You

Thanks to all who contributed to this Issue. If you are looking to contribute please feel free to submit all articles to any of the following.

NEXT EDITION September 2015
William.Quill@kingsinsns.ie

King’s Inns
Law Review

Call for Submissions
Volume V

The King’s Inns Law Review (KILR) is currently accepting submissions for its fifth volume. This is a wonderful opportunity for students to showcase their legal writing in a wide national and international audience.

Articles must be between 2,000 and 4,000 words (excluding footnotes) and should contain some reference to Irish and/or European Law. Articles must conform to the OUPCSAL Ireland style guide for previous issues. The deadline for submissions is Monday, 19th April 2015 at 18:00 GMT. Only articles on Irish law will be considered for inclusion in Volume V of the KILR. Articles will be peer reviewed in Volume V and there will be a prize for the best article published in Volume V and the winning student will also receive a special mention for their excellence in the review.

Submissions should be sent to
submissions@KILR@gmail.com. For further information on how to submit articles or to request a copy of the KILR, contact William.Quill@kingsinsns.ie.

Sports at King’s Inns

Anthony Slein welcomes anyone interested in participating in Golf at King’s Inns. Contact amslein@gmail.com

Deadline for Enrolment on New Courses

Sunday, May 31 2015
Closing date of enrolment for the Barrister-at-Law Degree Entrance Examination.

Tuesday 1st July
Closing Date for applications to Diploma in Legal Studies

Friday, 4th September
Closing Date for Advanced Diploma Courses in:

♦ Applied Employment Law
♦ Juvenile Justice
♦ Public Procurement
♦ Immigration & Asylum
♦ Corporate, White Collar and Regulatory Crime
♦ Legislative Drafting
♦ Lawyer Linguist (Irish Language)
♦ Legal Translator (Irish Language)
♦ Legal Practice Through Irish

Wishing all Diploma Students the best of luck in their exams

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