

A BRIEF ENCOUNTER



Five years ago, trainer Jamie Osborne was still a National Hunt jockey recuperating from a bad fall at Cheltenham. It was 6.10am on January 27 1997, and still dark, when three Vauxhall Vectras full of policemen pulled up in the drive of his cottage in Lambourn Woodlands. They hammered on the door and when no one responded, broke it down.

The police later claimed that they had had the jockey under surveillance, yet it took them over an hour to realise they were at the wrong address. Osborne hadn't lived there for six months. When they eventually found him, asleep at his girlfriend's elegant old farmhouse in Upper Lambourn, it was nearly 8am.

Even though he was still crippled with an arm injury, they insisted on coming into the bedroom while he dressed. By 8.30am, he was on the road to Charing Cross police station. By 10.30am he had been "processed" by the custody sergeant and locked in a cold cell.

Osborne had never been in trouble with the law before; understandably he was mystified at what was happening to him. His solicitor had little experience in criminal law and, in any case, was not available. In the end he was advised on the day of his arrest by a lawyer he did not know to reply "No comment" throughout the interview. He was bailed, released in the evening and had to find his own way home. He was never charged but remained on police bail for nearly a year, while they investigated allegations of race-fixing. Even though his first action after his release was to hire a criminal solicitor, the story was widely reported in the national press and his life and career were in limbo until the police finally wrote to say no action would be taken.

In the unlikely event that you find yourself on the wrong side of the law, without proper advice you may inadvertently do and say things which could seriously compromise your defence. You need advice from someone who understands criminal

law. The police must disclose certain facts before they interrogate you. For instance, who has made the allegations? When is the crime alleged to have taken place? Your solicitor must be allowed to evaluate the evidence before he advises you. While an old lag will immediately know who to go to, you may not.

Steven Barker, of solicitors Barker Gillette and Osborne's criminal solicitor, has represented dozens of wealthy men and women in trouble with the law; he handled Lee Bowyer's defence in the recent trial at Hull Crown Court. He has a world-weary air. "I spend up to 350 hours a year in police cells. I deal constantly with the police, I know how they work and I don't take anything they say at face value. I start from the principle of not trusting what is said to me."

When one of Barker's clients is interviewed, he will be the only lawyer in the room and his knowledge of the law and the rules of evidence is invaluable. "If a man is accused of assaulting the police and is asked if he is a homosexual and I feel that's not relevant I will tell my client not to answer. You must know what is admissible in evidence and what is not."

Similarly, if the evidence against an individual is overwhelming, Barker advises his clients not to answer questions. "Also you must never be caught out in a lie, because if the judge decides you were not telling the truth in interviews and you are found guilty, he may give you a longer sentence."

"And don't imagine that because you come from a privileged background or are wealthy, this will cut any ice with the police," Barker warns. "It is more likely to have the opposite effect. If you are distinguished in some way, you are vulnerable because of the police expertise at manipulating the media. Many times details of my clients' arrests have been leaked to the press before he or she even arrives at the station. There's little you can do, but it is important that your solicitor is able to deal with reporters and minimise damage before the trial."

Most people inexperienced in the ways of the law automatically want to help the interviewing officers, says Barker. "But an emotional remark uttered in a cold, inhospitable interview room may sound completely different in front of a jury two years later when it is quoted out of context. An innocent aside can be refined into a hideously embarrassing admission."

Someone with Barker's credentials can recognise these pitfalls and make sure they are clarified on tape at the time.

And a good criminal solicitor will cost less than the fat-cat City lawyers often briefed during prosecutions for serious fraud. During a major fraud trial in the mid 1990s, one of the defendants employed solicitors who had little experience of complicated criminal law. They were obliged to spend hours accumulating what to any half-decent criminal solicitor would have been basic knowledge, and all the time the clock was ticking.

If and when you are formally charged, you will go through a series of court appearances before your case comes to trial. Your barrister will come from the criminal Bar, a hard school which regularly throws up outstanding junior counsel. Criminal solicitors tend to favour certain chambers, although you have the right to choose your own barrister if he or she is available, but it's a difficult decision which needs careful thought.

In court seven in the Old Bailey last November, I witnessed Sarah Forshaw lead the prosecution against Liverpool John Sweeney, who was charged with actual bodily harm and false imprisonment of his girlfriend. Forshaw oozes class and her elegant delivery gave her the edge over the defence and the mumbling skinhead in the dock. It was not an easy prosecution; the woman Sweeney had attacked with an axe was reluctant to give evidence. But Forshaw's closing speech was brief, eloquent and passionate with a dash of

theatre and it was one of those occasions when you know an advocate has the jury in the palm of their hand.

Sarah Forshaw was called to the Bar in 1987 and is a member of Brian Higgs QC's chambers. Like all junior counsel, she has done time in the crown courts. Her name has cropped up over the years - prosecuting a policeman accused of rape in Maidstone or defending a member of the Peckham "Rude Girls" at Inner London Crown Court. Many criminal silks agree she will be a major success. Personally, if I was on the wrong end of a prosecution, I could think of no one I would rather have representing me.

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Except, perhaps, Eamonn Sherry, one of a handful of Ulstermen at the bar. His head of chambers, Richard Ferguson QC, says he is the type of defender you want on your side when you are in big trouble.

I watched Sherry in Court 15 in the Old Bailey where he was junior to Nigel Lambert QC in a difficult defence of convicted murderer Duane Daniels. Sherry, a crop-haired, tough-looking 36-year-old from County Tyrone, has been with Ferguson for five years; his style is quirky, his cross-examinations littered with language which keeps the jury alert.

In the case of Benjamin Pell, aka Benjy The Binman, at Blackfriars, who was found guilty of stealing 'waste' from solicitors' offices, Sherry's defence was

little less than brilliant. Benjy's room was bulging with 300,000 documents when he was arrested, yet he was fined a measly £20. The sentence expressed the judge's contempt for the charge. "Sherry has character and is a bit of a street fighter," says Ferguson. "He'll go a long way. He enjoys the *craic*."

The farcical detention of the British planespotters in Greece at the end of last year was a warning to anyone who thinks the same standards of justice apply abroad. According to Prisoners Abroad, there are more than 1,500 British subjects currently imprisoned in foreign countries. Three are on death row and

61 are serving sentences of more than 65 years. So who do you turn to when you find yourself under sentence of death in Botswana or Sierra Leone? Desmond de Silva QC, one of the most prominent specimens of British legal exotica has, in the last 30 years, saved 35 people from the gallows. The tabloids dub him the Scarlet Pimpernel; his knowledge of international law and his refusal to be bullied are behind his success. He is a dangerous adversary.

An Anglo-Sri Lankan, married to Princess Katarina of Yugoslavia, he is larger than life in every respect: a big man with a big voice and a sharp intellect. He is always worth watching in court, where his exaggerated vowels and theatrical

style disguise his skill as a ruthless and deadly advocate. He took silk in 1984 and has been head of his chambers for 15 years, dealing with all types of criminal law. He has a penchant for representing sporting celebrities and is expert in the complexities of serious fraud. But it is his skill fighting for the lives of those condemned in sweaty, fly-blown courtrooms at the ends of the earth which has made his reputation with the tabloids. If de Silva was a saint, he would be the patron saint of hopeless cases. Of course, he's expensive; he worked with Steven Barker on Lee Bowyer's trial in Hull and the costs came to £1 million, not far off de Silva's annual income. He is well-connected and authoritative, just what you need when you're banged up in some banana republic after your deal with the president's brother has gone pear-shaped.

All men are equal before the law, which means amongst other things, that being innocent, rich or famous is no guarantee that you won't get a knock at your door in the middle of the night and carted off to chokey. The police make mistakes and have even been known to bring malicious prosecutions. So I submit there is a case for getting the telephone numbers of one or two of the more effective members of the criminal Bar. I rest my case, m'Lud. ♦

IN MY DEFENCE

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