

THE SURVEYOR AS AN EXPERT WITNESS

A one-day course arranged by CALUS was recently held in London and well attended by members of the estate profession, including a number of quantity surveyors. The course was sponsored by the General Practice Division of the RICS, and the proceedings were opened by P. D. Orchard-Lisle, TD, MA, FRICS, President of that Division. W. H. Rees, BSc, FRICS, a member of the Lands Tribunal, was the Chairman and the speakers were G. A. Eve, FRICS (Surveyor), G. R. R. Hart, LLB (Solicitor), M. St. J. Hopper, FRICS (Surveyor), M. B. Horton, MA, LLB (Barrister), D. J. Morton, FRICS (Surveyor) and R. C. Walmsley FRICS (The Lands Tribunal).

The general background was the role of surveyors in connection with proceedings in the High Court, the Lands Tribunal, planning appeals, public enquiries, etc. However, general principles and practices are common to all such proceedings and, as such, are also relevant to the interests of practitioners concerned with disputes in the construction industry.

The following points of interest emerged from the papers and the subsequent question/discussion:-

1. The activities of an expert witness may be divided into three phases:
 - (a) qualifying to give evidence;
 - (b) preparing a Proof of Evidence;
 - (c) giving evidence.
2. The cliché: 'there are horses for courses' applies to solicitors, barristers and professional advisers; in selecting the barrister and professional/technical consultants to form the 'team' engaged for a particular matter, the instructing solicitor has to take into account the question of personal compatibility between them and the client as well as between each other.
3. The surveyor should write, read, edit, re-write and re-read his Proof of Evidence; if anything is capable of being misunderstood – it will be. An expert witness must have been personally involved in pre-trial 'home-work' in order to remain credible under cross-examination. 'Asserting' is not the same as 'proving' – for 'he who asserts must prove'. The weight attached to eminence/experience is not as great as it was and sweeping statements such as 'I have been fifty years in the profession' are no longer treated with the reverence they once attracted.
4. Witnesses of fact should not be present at any pre-trial conference with counsel and it remains an open question whether witnesses of fact *and* opinion should attend. When attending a conference, the surveyor should not assume that counsel knows everything – especially about professional/technical matters. However, 'face' is an element not to be overlooked, and it is not wise to 'up-stage' him. Even so, the surveyor must be honest enough to expose any weaknesses in the case he is called to support. He should also be aware of how his evidence fits

into the general strategy adopted by counsel and he should not hesitate to offer his own opinions about the legal principles involved. Such opinions should not be included in the surveyor's Proof of Evidence and are better conveyed in supplementary 'Notes for Counsel'.

5. When a client disagrees with a consultant's advice, he should be listened to with patience and, if it is agreed that the client's objections have substance, the consultant should be prepared to modify his report accordingly.
6. The degree of formality in various sorts of proceedings has been known to vary from being too rigid (High Court), too slack (Planning Appeals) and about right (The Lands Tribunal).
7. At the hearing, a 'witness-in-waiting' can take notes – which can often help to fill gaps in other records.

As D. J. Morton reminded the audience, the best advice for all contenders may be to settle as soon as possible and, in confirmation, referred to St. Matthew 5 : 25 –

'Make friends quickly with your accuser, while you are going with him to court, lest your accuser hand you over to the judge, and the judge to the guard, and you be put in prison.'

Otherwise, additional loss of time and money, if not liberty, may be the result for the unsuccessful party.

A. T. G.

THE COST OF VANDALISM

This was the title chosen by the National Housing Consortia for their 1979 Annual Symposium held on 21st March under the chairmanship of Councillor John Bradley, Chairman of the Housing Committee of the Association of Metropolitan Authorities.

In opening the proceedings, the Rt. Hon. Reg Freeson, MP, Minister for Housing and Construction, suggested that we should begin by looking beyond vandalism itself to our society which is to a great extent characterised by insecurity, frustration and boredom. Subsequent behaviour engenders alienation which, in turn, lies at the root of many other problems. Adults, he indicated, must bear the greatest blame for attitudes which tolerate and, in some cases, perpetrate such socially irresponsible behaviour as litter-dropping, aerosol spraying and passively observing the anti-social antics of children and young people. As antidotes, he wants to see a greater degree of 'community involvement' by individuals and a more sympathetic 'neighbourhood approach' by local authorities – both of which are encouraged by the current Housing Bill. If and when it is necessary to punish offenders, said Mr. Freeson, this should be on the basis of restitution rather than retribution and, he added, in all this the authorities (Central and Local Government) should be seen to be operating at the centre rather than at the apex of the administrative pyramid.

By the end of the day, a great many interesting comments and suggestions had been made by the invited speakers, as well as other contributors, about the sociological factors which