

A eulogy

Mr Justice Barling delivered the eulogy at the funeral of David Vaughan CBE QC in Brecon Cathedral on 3 February 2018.

This is an edited version

THE LAST time I saw David Vaughan was in November. I asked him what he had been doing since I had seen him in the summer. 'Washing up', he said. Anything less likely would be hard to imagine. His wife Leslie has since confirmed that housework was definitely not his forte. Nor was retiring. David was not the retiring type, in either sense of the word. The idea of David hanging up his wig and silk gown and leaving Brick Court Chambers, which had been his workplace and second home for well over half a

century, had always been unthinkable. And he never really did leave. True, he wound down his practice a year or two ago, and he surrendered his room. But he retained his chambers' email address to the last, and he never missed a chambers' event, however small.

The occasion at which he made the improbable claim to domesticity was the fifth David Vaughan CBE QC Lecture on Antitrust Litigation, an annual event jointly sponsored by David's chambers and Clifford Chance. At the start of those

lectures, when introducing the speaker, David invariably raised a laugh by expressing surprise at finding himself still around to hear the lecture. This November was no exception. We shall miss him when the next lecture is given.

The extraordinary feature of those lectures was not that David was still around to attend five of them, but that one of the largest law firms on the planet thought fit to honour him with an eponymous annual lecture, and to do so while he was still very much alive and practising at the Bar. But David was a quite extraordinary person.

Of course, above all, David was a family man, devoted to Leslie and to their children, William and Kitty. I shall try to give a flavour of his career in the law.

When David first came to the Bar in 1962 he was a pupil of Lord Neill of Bladon, and was friendly with two other young barristers whom he is generally credited with having recruited for his own chambers at 1 Brick Court in the Temple. Together with David, these young men



Brecon Cathedral. (Robert Harding/Alamy)



Temple Church, London, where a memorial service for David Vaughan was held in April. The church serves the Inner and Middle Temple. 12th–13th c., restored. (Richard Bryant/Arcaid/Alamy)

Court is one of David's greatest and lasting achievements.

But he also had the knack of spotting a winning point. And he was a master tactician. For well over half a century, 34 years

of which were in silk, David developed an EU law practice that is simply unrivalled by any other member of the Bar. He pioneered EU law in the courts of this country, taking on (and usually winning) the most unpromising cases, at which more timid and less creative lawyers would blanch. Nor is his fame limited to these shores. David has long been a warmly admired celebrity in EU circles throughout Europe and beyond. He appeared more than 100 times in the Court of Justice in Luxem-

bourg. The members of that Court loved his visits. As 'Maître Vogon' rose to address them, you could see the Judges lean forward in anticipation of the first joke.

A few choice titbits from the dazzling array of David's cases will have to suffice. Prime position must go to the 15-year-long *Factortame* saga, in which David masterminded a successful challenge to the validity of an Act of Parliament, the effect of which had been to prevent about 100 Spanish-owned, British-registered and



licensed fishing vessels from fishing against the UK quota, resulting in loss of livelihood and ruin for many of the fishermen. After several visits to the Luxembourg Court and the House of Lords, the Act of Parliament was suspended and ultimately disapplied. Legal and constitutional history was made, the owners were awarded damages of £100 million, and questions were asked in the House.

Many of the fishermen were based in La Coruña, where David is regarded as a

strong candidate for canonization, and deserving of a monument of his own, to rival the one to Lieutenant-General Sir John Moore (1761–1809) already there. One of the boat owners was John Couceiro, and I hope he will not mind if I quote his remarks on hearing that David had died: 'He led us on a great journey, which I would not have missed for the world.'

In another outstanding achievement, David led B&Q's legal team in a long war of attrition against the somewhat bizarre

English and Welsh Sunday trading laws. David's now famous opening salvo at one of many hearings in the European Court was typical of his ability to express what was at the heart of the legal argument, while at the same time making the Judges chuckle: 'My lords, it is well known that shops sell more when they are open than when they are closed.'

The *Sunday Trading* litigation resulted in the Government's decision to repeal and replace the Shops Act 1950. They also

caused the Luxembourg Court to rethink its case law on free movement of goods.

Perhaps not so well known is David's involvement in the action brought by Stanley Adams in the ECJ against the European Commission. Adams had worked for the pharmaceutical company Hoffmann-La Roche and had secretly informed the Commission of certain alleged anticompetitive practices of his employer. The Commission revealed to Roche the name of the whistleblower and Adams was convicted in Switzerland of industrial espionage, and imprisoned. Adams, represented by David, sued the Commission who settled the case, but not before David had once more made legal history by getting permission to cross-examine a Commission witness in the ECJ.

There is a sequel. A well-known Hollywood studio decided to make a film loosely based on the Adams affair, and commissioned a script. The studio wanted a woman to play the Stanley Adams character, and the script was sent to Jane Fonda. She read it and said: 'I'll do it—but I don't want to play Adams. I want to play the lawyer.' David enjoyed this enormously, not least because at the time Jane Fonda had found a second career producing keep-fit exercise videos for the middle-aged.

I should also mention a much more recent, and equally resounding, forensic triumph. David's client, the People's Mojahedin Organization of Iran, was an Iranian resistance movement opposed to the current regime. In exile in France, EU sanctions had been applied to them on the ground that they had terrorist affiliations. David successfully argued in the ECJ that the group had been unfairly and unlawfully proscribed.

The reaction of this client to news of David's death demonstrates the lasting admiration and affection he engendered in all those with whom he came into contact, professionally and in other spheres of his life. This is a passage from a letter sent by the organization's president to Leslie:

'Please accept my sincere condolences and deepest sympathies on behalf of the people of Iran and members of the Iranian Resistance on the sudden demise of this prominent defender of our cause, Mr David Vaughan. Your husband stood with us in the darkest days of our history and defended justice. ... By standing on the right side of history, not only did he do a



'David never failed to attend BEG's annual conference abroad, including in Crete last year'. Chania, Crete. (Alamy)

great and unforgettable service to the people of Iran but I am convinced that his name has also been registered in British history.' What lawyer would not be proud of such an accolade?

Of course, there are countless other cases that would merit a mention, including those where David took what proved to be a pioneering stand, or snatched victory in the most unpromising of circumstances. The list of battle honours is lengthy. In Cyprus he is a hero in the light of his victories in the *Anastasiou* litigation. Nearer to home, his representation of the publican Mr Crehan in his battle with Courage, the brewery, became the leading case in obtaining damages for breach of the EU competition rules, and David's astonishing series of successes for ICI over a quarter of a century or more are now the stuff of legend.

No wonder he was described as 'a great motivator and team-player', 'a great fighter', 'innovative', 'silk of choice' and 'doyen of competition law', to mention just a few of the tributes in legal directories over the years.

One reason for his popularity with clients may be that he was not given to pusillanimous advice. When asked by clients what were the percentage chances of winning, his answer tended to be one of only two alternatives: 'bound to win' or

'bound to lose'. Reassuring though this rare declaration of certainty by a lawyer was for the client, David's juniors sometimes felt a little daunted as they were sent away to prepare a written advice substantiating the 'bound to win' version.

Apart from his cases, David excelled in a bewildering number of other areas. He was a deputy High Court judge, and a judge of the prestigious Courts of Appeal of Jersey and Guernsey; a Bencher of Inner Temple; the first Leader of the European Circuit, which he founded; the much-cherished Honorary Vice-President for life of the Bar European Group, which he also founded, and whose annual conference abroad he never failed to attend, including in Crete last year. Ever the innovator, in about 1977 he started a law partnership in Brussels with two other English barristers, an entirely revolutionary step. When his practice was at its most frenetic, David somehow managed to conceive and partly write a substantial two-volume addition to *Halsbury's Laws of England*, which for the first time provided comprehensive coverage of European law. He combined all these activities with his duties as Visiting Professor of European Law at Durham University, and with the delivery of countless other papers, lectures and contributions on EU law at innumerable conferences and seminars around the world.

As if that wasn't enough, he was the driving force behind, and managing trustee of, the Lord Slynn Foundation, set up by his great friend and mentor Gordon Slynn, with the aim of training judges of the new Eastern European Member States in the principles of EU law.

I don't think David's achievements as a lawyer and a person could be better summed up than in David Anderson's moving tribute on his chambers' website: 'David rarely failed to win, and never failed to entertain. He took on the established order with relish, daring and humour. He saw the best in everyone, and helped others to see it too. Having done so much to humanize European law and make it palatable to the British, his death at this time is especially poignant. We will not see his like again.'

Indeed we will not. □

Royal Courts of Guernsey, St Peter Port.
(Nicholas Hare Architects/Arcaid/Alamy)