

Holiday Reading

December 19, 2024 Robert Blackett

PRACTICES Energy Litigation

Bearing gifts we traverse afar

We Three Kings John Henry Hopkins Jr (1857)

Introduction

In a break from normal service, this article forbears to examine any recent cases, but seeks to recommend some holiday reading (and viewing) for those who need a civil litigation fix to get them through the dark winter nights. Criminal trials are a media staple. Civil litigation not so much, though the use of juries in civil litigation in the US still makes US civil litigation a fairly rich source of material for books, films and TV adaptations. Much US civil litigation is, to a degree, already packaged and presented for the lay jurors, so much so that, on occasion, even the raw trial footage itself may prove popular viewing (*John C. Depp, II v. Amber Laura Heard*).

People interested in English civil litigation face leaner fare. Such cases are not presented with juries in mind, few trials are broadcast or widely reported on, transcripts are costly to obtain, and so the material is inherently less accessible, and the potential readership / audience tends to be smaller – books and TV shows about English civil litigation are unlikely to attract an international audience.

There is, nonetheless, the odd diamond in the rough, and this article presents some recommendations for holiday reading and viewing based on three English civil cases.

***Thwaytes v Sotheby's* [2015] EWHC 36 (Ch)**

Italian baroque artist Michelangelo Merisi da Caravaggio (“**Caravaggio**”) is the subject of a modern fascination – a Caravaggiomania – and a vast attendant literature. Searching for books about Caravaggio on Amazon returns over 1,000 results. Caravaggio sells, and so there is a trend for his name to feature prominently in the titles and promotional literature for art exhibitions from which his works are absent, or nearly so. Many books about Caravaggio appear more like fan fiction novels, replete with exaggeration, invention and speculation (particularly about Caravaggio’s sexuality) rather than serious historical works.

For so long as the fad persists, demand is unquenchable because supply is so modest. There are only around sixty known works by Caravaggio, almost all in public collections. One such made headlines very recently (in May 2024) when Caravaggio’s [*Ecce Homo*](#) went on display at Madrid’s Prado. The painting had been listed in a minor auction catalogue in Spain with a guide price of €1,500. Experts from the museum spotted it, suspected it had been misattributed, and succeeded in having an export ban imposed. Following restoration it was authenticated as a Caravaggio, and went on display after having been acquired for loan to the Prado by an anonymous British citizen for a reported €36 million.

Prior to *Ecce Homo*, the last Caravaggio painting to come to the market was some 24 years ago. The *Denial of St Peter* purchased in 1997 by the Metropolitan Museum of Art in New York for a rumoured \$10 million. Prior to that, the last Caravaggio painting to come to market was *The Cardsharps* (I Bari in Italian). The Kimbell Art Museum in Fort Worth, Texas acquired [The Cardsharps](#) in 1987 for an undisclosed sum. It is convenient to refer to that work, painted in around 1594, as the “**Kimbell Cardsharps**”. The game depicted is *primera*, an ancestor of modern poker.

Surgeon Captain William Thwaytes (‘Uncle Bill’) lived on a small country estate called Holesfoot in Cumbria, England (now marketed as a wedding venue [\[link\]](#)). Uncle Bill was a prolific collector with a taste for Caravaggio and acquired several copies of Caravaggio paintings. In 1962 he bought a certain copy of *The Cardsharps* at Sotheby’s for £140 (the “**Painting**”). This was one of four (!) copies of *The Cardsharps* owned by Uncle Bill.

Among the works acquired by Uncle Bill was a painting he bought in 1947 showing four boys in classical costume, three playing instruments and a fourth dressed as Cupid reaching for some grapes. An expert called Sir Denis Mahon identified this to be a ‘lost’ Caravaggio known as [The Musicians](#) and Uncle Bill sold it to the Metropolitan Museum of Art in 1952.

Sir Denis Mahon was a collector and historian of Italian art born in 1910 who had a longstanding fascination with Caravaggio. An heir to the Guinness Mahon banking fortune he decided not to enter the family business but study art, working at the Ashmolean under Kenneth Clark (of *Civilisation*) and at the Courtauld Institute under Nikolaus Pevsner (of *Pevsner’s Buildings of England*). Mahon had a long association with the National Gallery in London, serving as one of its trustees and in various other roles. If you visit the National Gallery today you can see paintings from Sir Denis’ collection on level 2 in room 32. None of them is by Caravaggio. A picture emerges of Sir Denis as having had a long-held wish to own a Caravaggio himself.

A few metres to the left are two of the Gallery’s three Caravaggio paintings *Boy bitten by a Lizard* and (my favourite) [The Supper at Emmaus](#). The third work (*Salome Receives the Head of John the Baptist*) is not on display at the time of writing.

By way of an aside, the *Supper at Emmaus* rewards seeing in person, if you can. It ‘pops’ off the canvas and, in a room full of old master paintings, immediately stands out as something special, with its cropped, cinematic composition. There are many interesting details. My six year old son was particularly impressed with the realism of the pilgrim’s scallop shell worn by Cleopas on the right. Note, too, the symbolism of the fish in the shadow formed by the fruit (there is another fish symbol formed by the wicker strands in the basket).

Uncle Bill died in 1965, leaving Holesfoot and its contents in trust to 4 year old Lancelot Thwaytes (“**Thwaytes**”) the son of Uncle Bill’s cousin.

Forty one years later, in 2006, Thwaytes, who worked as a building surveyor, decided to sell the Painting he had inherited from Uncle Bill to help fund his children’s school fees. He entrusted the Painting to the well-known auction house, Sotheby’s. Sotheby’s listed it in its auction catalogue as “A 17th century copy after Caravaggio’s original” with a guide price of £20,000 to £30,000. It was sold on 5 December 2006 for £42,000 plus buyer’s commission. The purchaser was Orietta Benocci Adam but she bought the Painting on behalf of her undisclosed principal and close friend Sir Denis Mahon.

Sir Denis had the Painting cleaned and restored and, in November 2007 (at a party to celebrate his 97th birthday), announced to the world that he had achieved his long held ambition and the

Painting was an autograph replica of the Kimbell Cardsharps painted by Caravaggio himself, and that he would be loaning to the Ashmolean Museum in Oxford. The Telegraph reported it with the headline “*Caravaggio Worth £50m discovered*”. The loan to the Ashmolean never materialised (apparently because Sir Denis and the Ashmolean could not agree as to how the painting should be labelled). Sir Denis died in 2011. Had he achieved his ambition of owning a Caravaggio? Or had it been wishful thinking on his part?

On 30 January 2013 Thwaytes (with the benefit of a CFA from Boodle Hatfield and litigation funding from Harbour) commenced proceedings against Sotheby's in negligence and for breach of contract, alleging that Sotheby's experts failed adequately to research the Painting and failed to notice certain features of it that should have indicated to them that it had 'Caravaggio potential', i.e. that it might actually be by Caravaggio rather than a copy. Thwaytes did not go so far as to assert (as Sir Denis had insisted) that the Painting was by Caravaggio. But Thwaytes alleged that if Sotheby's had performed their duties towards him properly, he could either have sold the Painting for much more money or he would have decided not to sell the Painting and would own a work of art of much greater value than he received on its sale. The case is often summarised as having been concerned with the question of whether the Painting was a Caravaggio, but the issue was rather more nuanced because the claim included this point of whether Sotheby's should have spotted the painting had Caravaggio potential and consulted Sir Denis, who would have recommended cleaning and restoring it, and would then have endorsed it as a Caravaggio, greatly increasing its value even if Sir Denis' view was not universally accepted.

Sotheby's spent over £6 million defending the claim, keen to secure a precedent that would deter copycats. Judgment was handed down on 16 January 2015.

Some Caravaggio scholars, termed 'expansionists', claim to believe Caravaggio painted replicas of his own works, though there is a striking lack of any consensus among them as to which replicas are said to be from the artist's hand. Other scholars, dubbed 'restrictionists', while not dismissing the possibility that Caravaggio might have painted a replica, maintain that there is no convincing example. Sotheby's relied on an expert of the latter persuasion called Professor Richard Spear who said the painting was an obvious copy.

Spear subsequently wrote a book about the case called *Caravaggio's Cardsharps on Trial* (2020). The book is fascinating, lavishly illustrated and I highly recommend it. It offers a candid insight into the litigation and Sotheby's and its legal team's reasoning, the process of preparing Professor Spear's evidence, his experience of giving evidence, of the other experts and of what worked and what didn't when it came to cross-examination, followed by a detailed post-mortem commentary on the judgment. I know of no other book giving so detailed an account of the story behind an English civil case, revealing details of the journey that the judgment – the destination – can never offer.

The real pleasure in the book, though, is in the insights it grants the world of old master paintings, art connoisseurship and auctions and in the technical details and the scientific analysis and in the wide ranging discussion of other works. Spear's point-by-point breakdown of the Kimbell Cardsharps and the Painting side by side is fascinating, and – with a generous helping of hindsight – you will, like me, no doubt convince yourself that you too are an expert who would have spotted the 'obvious' tell-tales (if you get the book, compare the close-ups of the dupe, particularly the ear, and the older cheat's face on p77 and the feathers on p79). The Kimbell Cardsharps (particularly in the faces) exhibits a vivid, realistic almost photographic appearance where the Painting appears instead 'flat'.

It was put to Sotheby's witnesses and experts at the trial that these shortcomings in the Painting did not mean it was not a Caravaggio. Per Rose J:

"... any technical shortcomings in Caravaggio's work in no way diminish the overwhelming impression that one is looking at a masterpiece of composition and craftsmanship when one looks at Caravaggio's paintings of this period. A good example is one that was put to Mr Bell, namely the fact that the hands of the figure with outstretched arms on the right side of the Supper At Emmaus in the National Gallery are out of perspective and that the foreshortening is not correctly done. Mr Bell's response was that that did not affect the visual impact of the painting which he described as 'absolutely stunning' and 'extraordinary'. He said that a passage in a painting, such as a hand, can be very convincing and powerful even if it is not anatomically correct or in perfect perspective. The same point was made by Professor Spear when he was asked about the variable quality of Caravaggio's accepted works. He accepted that there were anatomical mistakes in his early work but went on to refer to Caravaggio's:

"... uncanny ability to represent natural forms in light and the glistening surface or the nature of fruit, the what I think of as the thingness of things, he doesn't slip, and that's where the connoisseur sees the difference."

Reading Spear's detailed demolition of the Painting it would be easy, with hindsight, to come away somewhat unimpressed by Sir Denis, for ever having thought it might be a real Caravaggio. But it is relevant to note that he had already found one missing Caravaggio, and I can add to that a further gloss concerning Sir Denis' track record which is absent from the book.

The case holds a particular interest for me because it is strikingly redolent of the first 'real' piece of litigation I ever encountered, on a week's work experience in a barristers' chambers in around 2001. On showing up for my first day of work experience I was immediately subjected to an odd test where I was handed a big print of a painting and asked what I thought it showed.

There are people with Roman style shields and people carrying objects out of the burning building, including a Menorah, so I guessed this was the destruction of the second temple at Jerusalem, to the satisfaction of my interrogator.

This odd quiz turned out to concern a claim by the executors of pig swill magnate Ernest Onians, who in 1995 had retained Sotheby's to sell a certain painting Onians had bought for £12 in the 1940s and stored in a chicken shed for decades (one of a collection of over 500 paintings). Sotheby's had catalogued the painting as *The Sack of Carthage* by Italian artist Pietro Testa, with a guide price of £10,000 to £15,000. The painting had been spotted in Sotheby's catalogue by none other than Sir Denis Mahon and a London gallery, on his recommendation, had bought it for £155,000, ten times the estimated price. They had then restored it, declared it not to be the sack of Carthage but a missing work by Nicholas Poussin called ... [The Destruction and Sack of the Temple of Jerusalem](#), painted for Cardinal Francesco Barberini in 1626 and mentioned in sources from the time, but since lost. The gallery sold the work to Sir Jacob Rothschild for £4.5 million and he donated it to the Israel Museum in Jerusalem, where it can be seen today. Onians had brought a claim against Sotheby's claiming £4.5 million damages alleging Sotheby's had been negligent or in breach of contract in failing to have spotted its potential, including that it was not of the sack of Carthage, and to have consulted Sir Denis. The claim was the subject of an out of court settlement in 2002 but reported at the time as a victory for Onians.

One should thus approach Spear's book mindful of Sir Denis' track record, and perhaps look on him more generously than Spear's account might otherwise lead you to do.

So that is my first suggestion for holiday reading and entertainment - Spear's **Caravaggio's Cardsharps on Trial** - and perhaps a trip to the National Gallery to admire the *Supper at Emmaus* (or Fort Worth, Texas to check out *The Cardsharps* itself).

Irving v. Penguin Books Limited, Deborah E. Lipstadt [2000] EWHC QB 115

In *Thwaytes v Sotherby's* Rose J remarked that:

"... it is clear that an art historian may express his or her current view with considerable certainty based on what may appear to a lawyer to be scant available evidence. A greater freedom of surmise and speculation may also be legitimate in an article or treatise than is generally appropriate for a witness statement. This does not rule out another equally qualified expert expressing a different view with equal certainty based on the same scant evidence."

Speculation on scant evidence may be the norm on questions about Caravaggio's life and works (which ultimately, do not matter very much) but historians writing on weightier topics can expect to be held to a higher standard. While a search for *Caravaggio* on Amazon returns over 1,000 results there are, reportedly, more than 16,000 books catalogued at the Library of Congress as concerned with the subject of the Holocaust (I take that from Peter Hayes *Why?* published in 2017 – no doubt the number is now even greater).

One book on that topic, published by Penguin in 1993 was called *Denying The Holocaust: The Growing Assault on Truth and Memory* by American historian Deborah Lipstadt. It was an obscure, academic book which, prior to the events described below, had sold fewer than 2,000 copies. In it Lipstadt discussed a peculiar phenomenon, broadly termed "*Holocaust denial*" whereby, in a thin but seemingly continuous line of writing since the Second World War, some people had always sought to deny that there was ever any deliberate, planned extermination of Europe's Jewish population by the Nazis, deny gas chambers were used as a means of carrying it out, insist all evidence for the same has been deliberately falsified pursuant to a vast conspiracy, that vastly fewer were killed than is generally accepted to have been the case and that such killings as did take place were incidental byproducts of war rather than the result of any central planning.

One person Lipstadt identified in her book as a Holocaust denier was a British author called David Irving. Irving had no university degree and never formally studied history but styled himself a self-taught historian. Over the course of forty years Irving had, by that time, written over 30 books in English and German concerned with the Third Reich and the Second World War. He was best known for his criticism of Churchill, and of Britain's involvement in the Second World War, his thesis that Hitler did not know about the Final Solution and for having claimed that vastly far more civilians had died in the allied bombing of Dresden than is generally considered to have been the case. Some of his books had been published by reputable publishing houses and had enjoyed some critical and popular success. Selling in the hundreds of thousands, and had been through several successive editions. Latterly, Irving had switched to self-publishing his works. Lipstadt's book referred to Irving only relatively briefly (five pages in more than 200) but painted him as an apologist for and partisan of Hitler, a Holocaust denier who had misstated evidence, misquoted sources, falsified statistics, misconstrued information and bent historical evidence to conform to his neo-fascist beliefs, and who was discredited as a historian. Lipstadt referenced Irving having at one point sought to found a right wing political party, founded on a belief that he was destined to have been a leader of Britain, and suggested that "[o]n some level Irving seems to conceive of himself carrying on Hitler's legacy".

In 1996 Irving commended proceedings against Penguin and Lipstadt in England, claiming they had defamed him and destroyed his reputation. Penguin and Lipstadt accepted that what Lipstadt had written was defamatory, but that it was justified (i.e. substantially true). The case resulted in an extraordinary trial before Gray J commencing in January 2000 and concluding on 15 March 2000. The trial was widely reported and much discussed at the time. I was in my first year of undergraduate study at the time, read Lipstadt's book in the university library and went to watch a morning of the proceedings (my first visit to the Royal Courts of Justice – I didn't get a seat, though I did spot Irving and historian Sir Martin Gilbert). Gray J handed down a 350 page judgment less than a month after the last day of the trial, on 11 April 2000.

The case has since generated a substantial literature – there is probably more written about it than any other English civil case. The full texts of all the trial materials and transcripts are available online at www.hdot.org (including probably the best written expert reports you will ever read). The full text of the judgment was briefly published as a Penguin mass market paperback *The Irving Judgment*, which now changes hands for about £75 (though you can, of course, read the judgment for free at <https://www.bailii.org/ew/cases/EWHC/QB/2000/115.html>). There are two films about the case. A 2000 TV documentary called *Holocaust on Trial* (available online at <https://archive.org/details/HolocaustonTrial>) and a more lavish 2016 production called *Denial* starring Rachel Weisz as Lipstadt (Irving is played by Timothy Spall, best known for another villain - Peter Pettigrew / Wormtail in the Harry Potter films).

Four of the expert historians who appeared for the Defendants promptly wrote books about the case adapted from their expert reports *Irving im Braunen Milieu* by Hajo Funke and Thomas Skelton Robinson (which I can't claim to have read), *The Case For Auschwitz* by Robert Jan Van Pelt, *The Unwritten Order* by Peter Longerich, and the book I would recommend which is called *Lying About Hitler*, later retitled, *Telling Lies About Hitler* by Richard J Evans. Evans' book is out of print, but the paperback can presently be had second-hand for around £25.

The case was commonly referred to as something akin to a trial about whether the Holocaust really happened. The film, *Denial* frequently lapses into portraying the issues in the case in that rather superficial way and, while perfectly watchable, probably exaggerates what was at stake, and focuses on Lipstadt whose role in the proceedings was very little. For obvious reasons, the filmmakers seek to introduce much narrative tension and interpersonal drama, and suggest the case was a closely fought thing and that Irving could easily have won, with disastrous consequences. Having read the judgment, expert reports and some of the transcripts it is very hard to see how the verdict (comprehensively dismissing Irving's claim and finding all Lipstadt's defamatory statements to have been justified, and that Irving was a racist, anti-Semite and admirer of Hitler) ever having seemed anything but a foregone conclusion. Irving represented himself and was clearly out of his depth, and there are many examples in Evans' book of the poverty of Irving's performance. It probably tells you all you need to know that, in a Freudian lapse during his closing argument, Irving forgot to address the judge as "your Lordship", and deferentially addressed him as "mein Fuhrer".

The real issue in the case was not whether or to what extent the Holocaust happened, but whether Irving's historical methodology by which he arrived at his conclusions on those issues fell short of the standard to be expected of a conscientious historian. A point emphasised at the start of the judgment:

"1.3 Needless to say, the context in which these issues fall to be determined is one which arouses the strongest passions. On that account, it is important that I stress at the outset of this judgment that I do not regard it as being any part of my function as the trial judge to make findings of fact as

to what did and what did not occur during the Nazi regime in Germany. It will be necessary for me to rehearse, at some length, certain historical data. The need for this arises because I must evaluate the criticisms of or (as Irving would put it) the attack upon his conduct as an historian in the light of the available historical evidence. But it is not for me to form, still less to express, a judgement about what happened. That is a task for historians. It is important that those reading this judgment should bear well in mind the distinction between my judicial role in resolving the issues arising between these parties and the role of the historian seeking to provide an accurate narrative of past events.”

Evans presents a painstaking and meticulous dissection of and (unsurprisingly) convincing refutation of Irving's claims, replete with examples of Irving having misrepresented and distorted the evidence he purported to cite.

Just as interesting as the historical analysis, though, is Evans' discussion of the public and journalistic aftermath. Particularly depressing is Evans' description of the ill-informed journalists leaping to condemn Penguin and Lipstadt for attacking Irving's freedom of speech, missing that it was Irving who had brought the claim, and that it was Lipstadt's freedom of speech which was sought to be attacked.

The case raises many questions, particularly concerning Irving's aims and motives. Did he think he would win? Was the case, in some sense, a win in publicising his ideas and bringing him to attention of a wider audience? After the trial an unrepentant Irving suggested he had won, and gave an account of his having run rings around the defendants' lawyers and achieved all his objectives. Newspaper cartoons depicted him at the time denying the verdict as he had the Holocaust. Evans suggests this was not a victory for Irving, and that Irving likely displeased and alienated former supporters by the concessions he was forced to make in the trial. By the end, he was largely reduced to claiming that his numerous demonstrable errors were the result of his incompetence rather than his neo-fascist beliefs.

Twenty five years on the case remains of interest in various ways. The internet was still something of a nascent phenomenon when Irving and Lipstadt wrote their books and I suspect the modern reader will be struck by the relative “offline-ness” of the whole affair. The trial, in 2000, was four years pre-Facebook and six years pre-Twitter. Irving maintained a website with excerpts from some of his speeches and articles but Evans and the other experts mostly had to comb through physical copies of Irving's speeches and articles in obscure publications. Evans describes having to read successive editions of Irving's books in the British Library, and – on disclosure – the Defendants also obtained videotapes and audiocassettes of Irving's speeches, his complete private diaries, many of his letters and his research notes.

Prior to media reporting of the trial, I had never heard of Holocaust denial. That, I suspect, was a facet of a pre-internet, print-based world and few people today, in an era of Alex Jones and Pizzagate, would be surprised to learn that others claimed to believe such things. The economics of print media presented a natural brake to the dissemination of such conspiracy theories. One had to be prepared to invest considerable time, effort and money to write lengthy books and articles, to risk publishing one themselves, or persuade someone else to publish and promote them, and hope a receptive audience chanced upon, and parted hard-earned money for them at the bookshop and invested the time and effort to read them and encourage others to do the same. What was remarkable about Irving, really, was that – in that pre-internet world – someone like him had nonetheless succeeded in obtaining the recognition, platform and audience that he did, even if his reach was very modest by modern standards.

More extreme than the positions stated in his best known books – many published earlier in his

career – were things Irving had said in speeches at conferences and to some degree in articles for obscure publications. A picture emerges of Irving having drifted, over time, into stating increasingly extreme views, encouraged by the reaction of the audiences he spoke to at far right and revisionist meetings, who became his principal customers and supporters. The same dynamics of playing to an audience are writ large, of course, in the dynamics of modern media where it is extreme and controversial positions of pseudo-journalists and pseudo historians, rather than unexciting accuracy, which search algorithms reward with attention and remuneration.

The most puzzling question, as with many weird beliefs (e.g. people who insist the Earth is flat), is whether and to what extent the leading exponents of such ideas really, in their heart of hearts, believe them. One can imagine how unsophisticated, unworldly people, on encountering Irving's and other deniers' claims might think them superficially plausible and parrot them unthinkingly. Indeed such patina of authority and respectability as he retained was what made him, as Lipstadt said "*one of the most dangerous spokespersons for Holocaust denial*". Yet Irving was clearly not himself a stupid man, was well informed about the topics in question, well placed to have understood the true position and exhibited some critical faculty. He made concessions in the course of his evidence, albeit he swiftly recanted or retreated from these once out from under the forensic spotlight. It leaves one wondering to what extent he was sincere in his claims, or if he was a prototroll, a decade before the word became part of the popular lexicon, professing to these beliefs principally to shock and offend and for the attention it garnered but, in doing so, causing others genuinely to believe what he espoused.

Vardy v Rooney [2022] EWHC 2017 (QB)

For light relief, one might next turn from a libel trial concerning the most serious of historical topics to one concerning the most frivolous, and situated very firmly in the social media age.

In 2019 Coleen Rooney, wife of a former England footballer called Wayne Rooney, posted a statement on her Twitter, Facebook and Instagram accounts:

"For a few years now someone who I trusted to follow me on my personal Instagram account has been consistently informing The SUN newspaper of my private posts and stories. ... After a long time of trying to figure out who it could be, for various reasons, I had a suspicion. To try and prove this, I came up with an idea. I blocked everyone from viewing my Instagram stories except ONE account. (Those on my private account must have been wondering why I haven't had stories on there for a while.) Over the past five months I have posted a series of false stories to see if they made their way into the Sun newspaper. And you know what, they did! The story about gender selection in Mexico, the story about returning to TV and then the latest story about the basement flooding in my new house. It's been tough keeping it to myself and not making any comment at all, especially when the stories have been leaked, however I had to. Now I know for certain which account / individual it's come from. I have saved and screenshotted all the original stories which clearly show just one person has viewed them.

It's Rebekah Vardy's account."

Rebekah Vardy was the wife of another former England footballer called Jamie Vardy. The implication was clear. Over a period of years Vardy had regularly and frequently abused her status as a trusted follower of Rooney's personal Instagram account by secretly informing The Sun newspaper of Rooney's private posts and stories, thereby making public without Rooney's permission a great deal of information about Rooney, her friends and family which Rooney did not want made public.

In the best tradition of hubristic libel claimants Vardy brought a claim against Rooney seeking to clear her name, with surprising little regard to the inconvenient facts that she had done substantially as Rooney claimed, and that the forensic process would inevitably establish that. There was a seven day trial in May 2022. The case was the subject of intense media interest, and dubbed the “*WAGatha Christie trial*” in the press (combining WAG - being an acronym used to refer to the Wives And Girlfriends of prominent sportsmen, with a reference to Ms Rooney’s detective work – what she termed her ‘sting operation’).

By *Vardy v Rooney* the common law defence of justification relied on by Lipstadt and Penguin had become a statutory defence of truth, but the task faced by Rooney’s lawyers remained to prove that what Rooney had written was substantially true. A nail biting drama ensued. Had Vardy been the Sun’s source for its ground breaking story about Rooney’s basement having been flooded?

The trial transcripts were distilled into a two part TV drama for Channel 4 with the prosaic title ***Vardy v Rooney: A Courtroom Drama***. The comic juxtaposition of straight-faced forensic rigour with trivial subject matter cannot help but entertain, and there is always the pleasure in seeing people who can well afford it throw money away over trivia. The cross-examination of Vardy delivers some comedy gems which I shan’t spoil – it is well worth watching. If you like the production, I do think the experience is liable to be enhanced, though, by skimming the judgment. The judge’s description of Vardy’s and her associates’ attempts to explain the convenient ‘loss’ of their mobile phones and data is particularly good.

Merry Christmas!