

January 2024

# AS news

## Dear Friends...

**T**ransitional years are tough and none was more so than 2023. The official end of the pandemic coincided with people still going down with the virus and worse. More generally, uncertainty remains about the extent to which people are going to be working physically together or remaining in their homes. This state of indecision almost feels like the “new normal”.

For me, 2023 strangely combined many things I have been happily doing for decades with some new departures and even some throwbacks to the past. For the first time, I received a payment from the UK Government that was not a tax rebate and, in a remarkably minor way became part of the English judiciary. I have written a book - but this time a short one - which is due out in February.

I still spend most of my working life teaching or training people, advising and writing on a combination of financial-services compliance and international dispute resolution and sorting out the problems that these issues create. I have been doing this for more than 35 years. Comfortingly, many of the cast of characters in this newsletter have played important roles in my life over a similar length of time.

This last year, as part of the return to normality, I tried to find my way back to some of my old haunts and add a few new ones. On a summer trip to Paris, I rediscovered the joy of walking up some of the world's most beautiful and evocative streets along with regular lunches with Guido Carducci and Alex Blumrosen. I first met Alex in the 1980s when he randomly turned up on his bicycle at the Swiss Institute of Comparative

Law in Lausanne where I worked. I have known Guido for 13 years, initially from our membership of the Chartered Institute of Arbitrators' Arbitration Sub-Committee.

My big excursion was a return to New York for the first time since 2019. I began by circling Manhattan, with a trip to childhood friend Rob Norman's rural Connecticut idyll, before spending the weekend on Long Island with Esta and Tom Czik. Esta and I dug a hole with Paul Hanau (whom I also saw on this trip) in 1980 in Israel as part of a dig. (I can still hear Paul shouting “we're here to dig, not to find things” as a complete Roman vase emerged from the sand.) The next generation of Cziks have all visited me in London.

Then, it was New Jersey and seeing Brian Derdowitz and his wife and my former student from more than twenty years ago, Olga Sekulic. They drove me to see Richard and Elizabeth Gearhart. Richard and I wrote an article on sporting arbitration in Lausanne in the late 1980s which, for years, kept us together on the internet until we finally met again in Newark station and had dinner with Brian and Olga about a decade ago. Since then, I have been able to participate in a Gearhart webinar on domain names and he and his wife Elizabeth's legendary radio show, Passage to Profit.

After that, I was based in Manhattan enjoying quality time with Kent McKeever. I bought Kent a few beers in about 1986 and have been enjoying the literary, culinary and sporting results ever since. Kent taught me baseball when I stayed with him in order to do the New York Bar Exams in 1990, so, I wanted to take him to a ballgame. I contacted my friend

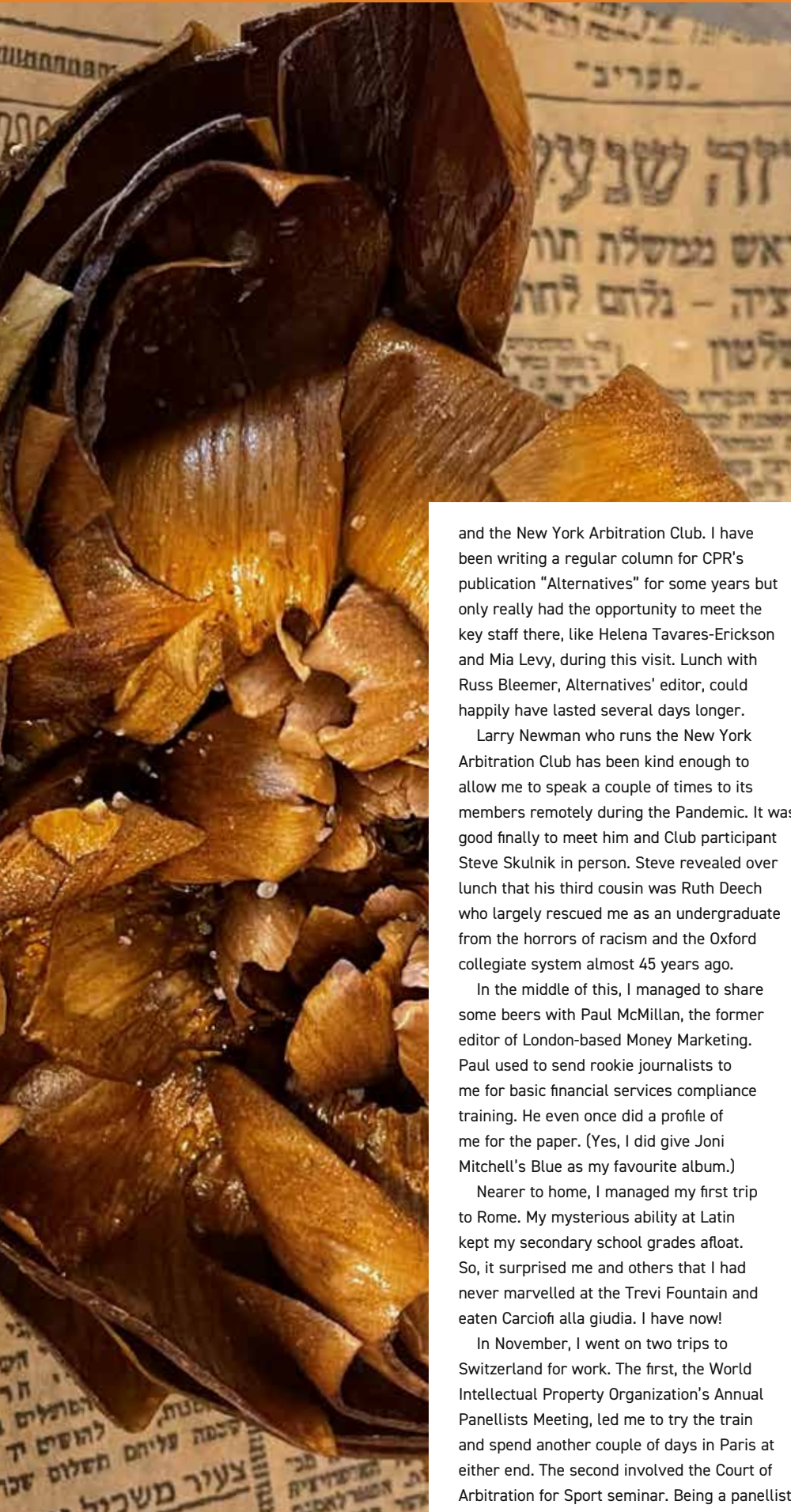


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Randy Ringler for advice about seats at the New York Mets' stadium. Randy used to work for the organization and proudly wears her 1986 World Series winner's ring to prove it. She ordered me not to pay and arranged a splendid evening for us which included an insider's trip to the radio booth for me.

Much of my time in New York involved catching up with parts of CPR (the International Institute for Conflict Prevention and Resolution)

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and the New York Arbitration Club. I have been writing a regular column for CPR's publication "Alternatives" for some years but only really had the opportunity to meet the key staff there, like Helena Tavares-Erickson and Mia Levy, during this visit. Lunch with Russ Bleemer, Alternatives' editor, could happily have lasted several days longer.

Larry Newman who runs the New York Arbitration Club has been kind enough to allow me to speak a couple of times to its members remotely during the Pandemic. It was good finally to meet him and Club participant Steve Skulnik in person. Steve revealed over lunch that his third cousin was Ruth Deech who largely rescued me as an undergraduate from the horrors of racism and the Oxford collegiate system almost 45 years ago.

In the middle of this, I managed to share some beers with Paul McMillan, the former editor of London-based Money Marketing. Paul used to send rookie journalists to me for basic financial services compliance training. He even once did a profile of me for the paper. (Yes, I did give Joni Mitchell's Blue as my favourite album.)

Nearer to home, I managed my first trip to Rome. My mysterious ability at Latin kept my secondary school grades afloat. So, it surprised me and others that I had never marvelled at the Trevi Fountain and eaten Carciofi alla giudia. I have now!

In November, I went on two trips to Switzerland for work. The first, the World Intellectual Property Organization's Annual Panellists Meeting, led me to try the train and spend another couple of days in Paris at either end. The second involved the Court of Arbitration for Sport seminar. Being a panellist,

I thought that I ought to attend, particularly if I ever wanted an arbitrator appointment. On both trips, I spent the weekend in Sion, in the Alps, at my old friend Myriam Valette's place. For the Geneva wing of each of these excursions, the Braendlins put me up in Lausanne. These names recur in my newsletters over many years. Myriam and Andreea were classmates at the University of Lausanne when I worked in the building next-door in the late 1980s. They and their families have been an extension of mine for decades.

I have known and been eating lunch with Doug Reichert in Geneva, usually in the company of Nicolas Ulmer, for a similar length of time. On my second Swiss trip, I unusually met them separately. Doug and his wife joined me and Michael and Shadia Schneider for lunch. As last year's newsletter explained, although I have known Michael for years, it took a pandemic invitation to Zoom tea for us to become really good friends. To read more of my arbitration-related adventures this year, do turn to the dispute resolution part of this newsletter. Nicolas Ulmer seems to be behind most of what has been good about my dispute resolution career, notably my panel memberships at both WIPO and the Court of Arbitration for Sport. It was, therefore, important for me to see him, "this time, in Nyon".

For the second year running, Shaheezha Lallani of the University of Lausanne organized a lunch at the University for me and invited some old friends from my Lausanne days and subsequent trips back. This might turn into a welcome tradition.

Not all of my voyaging was overseas; friend and former client, Karl Griffin, invited me to his post-wedding bash in south Devon. This proved an excellent excuse to catch up with Karl's ex boss Nick Hamlet and both of their former colleague, Lewis Harvey, for an evening out in Torquay. Nick is one of the smartest people with whom I have ever worked. He generously hosted us, claiming quite wrongly that we had made him his fortune. Karl's party was a lovely opportunity to meet his and his wife's friends and family. The following day, I did a delightful Samuel family tour across Devon, racking up visits to four third cousins and three of their spouses, not to mention a third cousin once and a third cousin twice removed!

**While I can run a training course at 7am, my inability to exercise before 9 has restricted me to the in-person occasions.**

London, though, remains home. As he did throughout the pandemic, my former colleague, Malachy McClelland, has been a constant coffee-drinking companion, mainly at the excellent Hart and Lova in Belsize Road. We also do early morning walks to remain in trim. This year, I co-authored with my other neighbourhood walking companion, Karyl Nairn, an article for a collection of essays in honour of my old boss and longtime friend of us both, Rusty Park.

Ben Nathan continues to organize his charming weekly online bridge game involving people many of whom have never met each other away from a computer screen. That is when he is not showing people parts of Highgate cemetery that other tours never reach. It seems strange to regard as a friend, someone you have met twice in real life. That, though, may be a lesson or gift of the pandemic.

I continue to teach one course a year at the University of Westminster. This earns me very little except a half-share of an office in the law school in Fitzrovia, near the BBC's headquarters. This autumn, the University added my walking tour of the area into its induction programme for new students. This produced a surprisingly large turnout. As the weather improves, hopefully, we will be able to add a Soho leg to that.

Anyway, I enjoy meeting old friends from my eight years in the area, including Shahin Toosi and Gordon Tees, not to mention the occasional faculty member, in the triad of coffee shops: the Scandinavian Kitchen, Kaffeine and HT Harris. The first two opened when I was living in the area.

I still try to keep body and soul together by attending Michael Burgess' legendary pilates and Charles Duah's pump or weights classes both for those of variable abilities. Michael's remote sessions continue from the



pandemic. While I can run a training course at 7AM, my inability to exercise before 9 has restricted me to the in-person occasions.

One abiding goal is to keep the good stuff that I learnt from the pandemic. That means remote coffees with Lisa Brenskelle in Houston and Paul Hanau and Esta Czik in Long Island and Massachusetts and "cultural slugfests" with Anca Baciu in

Transylvania. It also involves doing some driving for the food charity, Feast with Us.

As ever, this Newsletter has two separate "breakout rooms" - one covering my financial services compliance work and the other dispute resolution. Unusually, this year, some parts of each section should be more accessible to readers without an interest in the subject-matter.



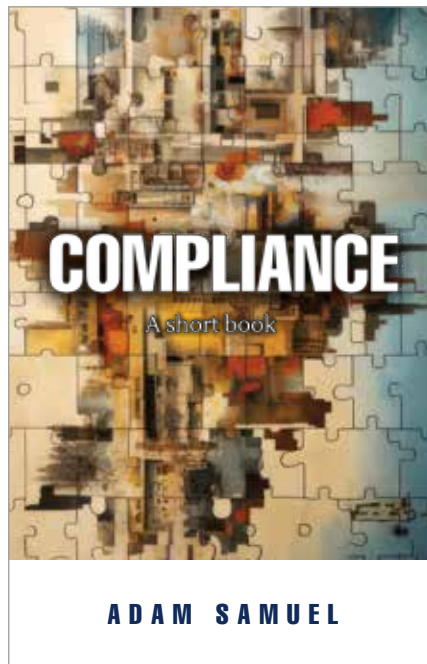
## A SHORT BOOK

**2**023 was the year when I wrote a short book. I first met Debbie (“Debs”) Jenkins and her brother, Joe Gregory when I was looking for someone to design my first website in the late 1990s. I loved working with them. After a while, they both moved away from websites into marketing and then publishing. In 2023, Debs launched a series of webinars on writing which emphasised, as her own book does, the need to stop writing books that people do not read. This resonated with me for a few reasons.

After the second edition of my book on financial services complaints came out, I promised myself that I would never write a “big book” again. The experience of losing an editor with a year to go to publishing and then being mishandled as an author by a faceless disinterested publisher scarred me. Moreover, people who read my arbitration output may have noticed that with age has come conciseness. Although I can still produce a 300- footnote chapter, I am not driven to do that anymore.

I arranged a chat with Debs. She asked me to think of five possible subjects. I came up with compliance, financial promotions, product governance, complaints and making sense of the New York Arbitration Convention. She wanted the one from which further books could spring. I selected Compliance. It is unquestionably the most difficult topic of the five but the next three can easily spring from it.

Since 1991, I have helped and trained people in compliance departments to improve standards and witnessed the effects of plenty of poor work by such departments. However, I have never actually worked formally in Compliance, so that my book was always going to represent an outsider’s view.



Lessons from the financial services industry often apply with equal force outside it. So, this is not just a book about investments and insurance. My short book could hopefully help in the development of a thoughtful approach to Compliance that applies as much to factories, hospitals and charities as it does to a building society. Compliance operates in broadly the same way regardless of the country. So, with any luck, readers from all over the world will enjoy it.

The 20,000-word limit never posed a problem. Writer’s block did. Debs in her webinar and what she calls “cohort” approach to publishing suggested sharing concerns about writing with other people doing the same thing. To me, though, writing has always been a very private activity. I did not stop writing;

my progress just slowed to a snail’s pace.

I shared the problem with Malachy McClelland who knows more about how I work than most and was incredibly supportive. My other walking companion, Karyl Nairn, cracked the problem. She explained that since I lived my life by song lyrics, I should find a line for each subject on my book outline or as many as possible. With a nudge from Debs, this turned into a LinkedIn post in which a number of my connections, at least one of whom remembers me writing my first book 1989, threw in their “lyrical” contributions. I killed my writer’s block by sharing the problem, telling the public what I was doing and reciting a spate of Tom Waits song lyrics.

Debs has some appropriately rigid ideas about how to produce books. She insisted on peer reviews of the first draft. Up popped Sandy Hoyland, a woman who I think I have met twice. She did an entirely constructive hatchet job on the first draft. Her former colleague, Mathew Priestley, who had never met me before and my old client, publisher and sometime sparring partner, Daryl Peagram, both produced their own quite different but equally helpful critiques. Malachy just found a string of things that needed tightening up. Debs’ editor, Lisa de Caux, then put me through my paces while I reminded her why she gave up accountancy.

In the meantime, Debs’ brother Joe, despite the fact that he runs a competitor publisher generously designed the cover. The book will be available in February on Amazon and from me directly. My good friend and customer, the European Institute of Management and Finance, has already kindly allowed me to do two webinars to go with my normal training work for it, to promote the book.

# OTHER FINANCIAL SERVICES STUFF



**M**any other financial services work this year has taken its usual form of training, consulting and writing. However, the big news here has nothing to do with that. I have become a member of the Upper Tribunal. This judges challenges to the financial regulators' decisions. It is only a part-time role and involves being a technical expert who sits with a judge and another similar specialist. This became official when I attended the induction session and found a modest payment in my bank account from the Department of Justice, presumably for attending. I have not actually heard any cases or even know when I will. This all, though, along with my security pass, represents a start. It will also explain why I have kept quiet recently in my writing about the Upper Tribunal's decisions in financial services cases!

The training side of my business which held up surprisingly well during the pandemic, struggled in 2023. There appear to have been two key reasons for this.

First, uncertainty about whether people will be working from home or in the office seems to have made firms hesitant to book face-to-face courses. I have been running public events of this type for Corporate Training Partnerships (CTP) for some years.

We thought that everyone was becoming tired of learning on Zoom. However, in-person events proved extremely difficult to sell. When people attended them, feedback delivered both privately and online ranged from positive to ecstatic. Participants enjoy the chance both to meet each other and pick the trainer's brains during intervals. For all its advantages, remote training does not offer that. Unfortunately, the people who actually attend do not usually make the bookings.

This uncertainty is very harsh for CTP. Under Andrew Hilton's and Suzanne Ash's

**Although I started my career in financial services by handling investment and life assurance complaints, I have always enjoyed being versatile.**

leadership, it embraced remote training far more effectively at the start of the pandemic than anyone else. It deserves the industry's support in the coming year.

The second problem appears to stem from something that ought to promote my type of training: the Consumer Duty. In the first part of 2023 and at the end of 2022, I did quite a bit of training and some consulting in this area. Basically, in its great new project, the Financial Conduct Authority extended the product governance regime, created in Europe on the basis of earlier UK guidance, across all regulated sectors that deal with retail customers. It did the same for the value-for-money rules it had introduced for general insurance at the end of the Brexit transitional period. Otherwise, the regulator's new material on communications just reinforced existing financial promotions and other communication rules in that area by stating what should have been obvious in the past. The customer services provisions which round everything off state for the first time the need to treat existing customers as well as new ones and insist on an adequate standard of support.

The regulator has poured out a huge volume of material on all this. Its focus, though, has been on project plans and the completion of value-for-money assessments by its deadline, now passed (or perhaps missed) of 31 July 2023. Unfortunately, plans do not actually deliver customer outcomes and the assessments have no mathematical

## FINANCIAL SERVICES CONTD.



or scientific value since they compare apples (the price) with pears (a benefit). Many people have lost sight of the original point behind the idea that firms have to deliver reasonable value. This was to stop firms offering products that clearly offered poor value for money.

Once firms made it to the 31st July deadline, UK interest in customer-facing training dropped off spectacularly as businesses struggled to make their projects look compliant. 2024 could be the year when the regulator starts to focus on whether firms are actually delivering better products, communications and service. This could bring about a revival in customer-facing training.

Some of the most enjoyable sessions I have run remotely this past year have involved participants in a variety of interesting locations in both Europe and the USA. Participants in California and Berlin waxing lyrical about the UK DISP (complaint) rules can warm the heart of even this cynic. I also ended the year with fun in-house courses on product governance (face-to-face) for a motor insurer and, an old favourite of mine, promotions for a building society.

Brexit has made training in Cyprus problematic. I continue to do remote sessions, mainly on complaint handling, promotions and appropriateness testing for EIMF, in Nicosia. At some point, particularly when the UK weather is miserable, it would be good to

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test the business visa system and see if we can go back to running in-person courses. In the meantime, I find it fun if weird to start a course at 7AM London time and finish at 1PM or, for half-days, 10.40AM. In any event, the pleasure of spending time with Panayiotis Marinou, Theodora Kyriakidou and (mainly now during his London visits) Marios Sciathas makes up for some disturbed sleep patterns.

Most consulting work this year seemed to be of the "Houston, we have a problem" variety, mixed in with helping smaller firms handle complaints. In both situations, one can try to put an interpretation on facts but changing what has happened lies outside my competence. One long-time customer has engaged me to do a bi-monthly meeting with its promising compliance officer. This allows us

to discuss issues that affect the business away from the individuals involved in carrying it on. My resulting report to the CEO ensures that any views we express remain safely recorded and could end up as an interesting casebook.

As a new departure I designed an anti-money-laundering and financial crime and sanctions busting procedure for a business not involved in financial services.

This year, apart from "the short book", my writing has had two main strands. I keep updated large chunks of Butterworths Financial Regulation Service's commentaries. Sometimes, this involves adding whole new parts when the regulator doubles the length of a rulebook. It did that in late November with the Environmental, Social and Governance (ESG) sourcebook. I do this all for the unfailingly polite and efficient Sarah Hanson whom I once met about 15 years ago and whom I would almost certainly not recognize in the street. I see much more of Esther Martin, who for 14 years has edited my ten columns a year in Compliance Monitor. (I previously did the same for six years for her predecessor, Timon Molloy.) Occasionally, I slip in a piece about UK complaint handling into my bi-monthly articles for US dispute resolution journal, Alternatives, as an attempt to integrate into the overall transatlantic discussion of dispute resolution what is probably still the most numerous type of disputes in the UK.

**T**here are three aspects to what I do when it comes to disputes. In the last year, I decided nine World Intellectual Property Organization (WIPO) domain-name cases, bringing the total to 187 since I joined the panel in 2005. I continue to teach my LLM course on comparative commercial arbitration at the University of Westminster. This year, I probably published as many articles in this area as I have, since the late 1980s.

At the start of November, it was lovely to return to the WIPO Annual Panelist Meeting in Geneva for the first time since before the pandemic. I take peculiar pride in never having had one of my decisions discussed at one of these sessions. Judging is not about making big statements unless they are needed to resolve something.

I enjoyed meeting the WIPO Center's team, with whom panelists can correspond for years on cases without really knowing. To newer staff, I spent quite a bit of time, recommending the best Geneva guidebook (*Secret Geneva*), not to mention the immortal *Switzerland for Beginners* by George Mikes. Occasionally, my efforts to stay in touch with the Center staff pay off splendidly. On my second Geneva trip in November, I found myself being shown into the World Trade Organization building by Rodolfo Rivas with whom, and with whose wife, Serah Mati, I used to work on domain name cases when they worked at WIPO.

Another pleasure of these Panelists' meetings is seeing fellow decision-makers who have been turning up at these occasions since at least 2005. Mathias Lilleengen who worked at the Center in 2004 when I took the WIPO domain name training course and nursed me through my first years on the Panel, told me that he was due back in Geneva four weeks later for the Court of Arbitration for Sport (CAS) Panelists seminar. That was my next overseas trip too.

As Mathieu Reeb, who runs the Court of Arbitration, explained, obtaining a first appointment remains the biggest headache for all new arbitrators. At the new panelists session at the start of the seminar, Haris Azmat a lawyer from Lahore, Pakistan, sat next to me, perhaps recognizing a fellow lost soul. We became "seminar buddies", writing fairly hilarious notes about arbitration and cricket to



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each other as a way of not saying inappropriate things too loudly. I was very mindful of Denis Thatcher's famous advice: "it is better to keep your mouth shut and be thought a fool than open it and remove all doubt". At one point, Haris just turned round to me and said: "We should be on a panel together, probably about cricket." I could not disagree.

Eventually, I spotted a discussion to which I could contribute on the Swiss review of arbitration awards, the European Court of Human Rights and arbitration and sports disputes. I have published on all three subjects although never at the same time! Perhaps, 2024 is the year for that.

As things proceeded, more familiar faces or at least name badges came into view. I last saw Herman Verbist about 20 years ago, dodging an official conference dinner in Prague to go with me and Fernando Mantilla to the black puppet theatre. Luigi Fumagalli, who spent six months at the Institute where

I worked in the late 1980s emerged out of the darkness of one coffee break. At the end of the official dinner, I came out of the hotel lift to find myself in a conversation involving the French Cour de cassation judge, Dominique Hascher, who owned up to having a copy of my 1989 arbitration book in his office, and Jalal El-Ahdab, about whose father's treatise on Arab Arbitration Law I had not been entirely kind in a 1989 review! My coffee break comment to the English solicitor, Steve Sampson, that I came from Elton John's birthplace drew from him: "I used to deliver his newspaper". He grew up a street and a half away from me in the wonderfully-named "Love Lane".

This year represented my 13th year of teaching at the University of Westminster under the watchful eye of masterful teacher and delightful office-sharer, Richard Earle. One day, I will accidentally on-purpose record one of our conversations and just write it up for publication. We often see arbitration problems from quite different angles which adds to our students' insights. This year, we combined to fox the University hierarchy and return my course to having one in-class test ("exams" to most people) which represents 70% of the grade. This should provide some protection against students cheating.

John Somers who teaches town planning at the University asked the law school for

## DISPUTE RESOLUTION CONTD.



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resolution literature has largely steered clear of land usage issues for the very good reason that the subject is ferociously complex. One-size-fits-all answers do not work here.

The need for versatility when handling disputes has become something of a theme of many of my contributions to CPR's Alternatives. The editor, Russ Bleemer, allows me to range from arbitration history and study methods to the creation and resolution of family rows and university disputes.

Russ helped me to create a largely accidental trilogy of related arbitration articles at the end of this year. For him, I wrote what I know about SEEE v Yugoslavia, the greatest pathological arbitration case of the 20th century which concerns the construction of a railway in North Macedonia where the trains "still run", if only once a day since October 2023.

In 1989-1990, while doing an LLM in Banking Law at Boston University, I worked as Rusty Park's research assistant there. Arbitration International, from which he retired as editor this year, asked my friend and walking companion Karyl Nairn to write something for an issue in Rusty's honour. She roped me in and we decided to unpick Rusty's 1980s arbitration debate with his former flatmate, colleague and co-author, Jan Paulsson, about the delocalisation of arbitration. The SEEE case is all part of that story.

Finally, the Swiss Yearbook of International Law put out the paper that I delivered at last year's 40th Anniversary Conference of my old employer, the Swiss Institute of Comparative Law. This tried to answer the question of whether my old friend, the late great Claude Reymond was right to predict the development of a "common law" of arbitration in the preface he wrote to my 1989 book on jurisdictional problems in that area.

volunteers to speak at his Built Environment Law Mini-Conference at the end of October. I volunteered to do something on dispute resolution and, a beer later, found myself as the conference's first speaker. He also, separately, gave me a much-needed seminar on town planning. Happily, I always try to stay for the whole day of any conference at which I speak. This shows respect for

the other presenters and can be extremely enlightening. As a result, my paper – which should appear in Alternatives later this year – has ended up covering (section 106) agreements between developers and planning authorities, issues with redevelopment plans and even the problems of District 6 in Cape Town (from which the apartheid regime cleared its inhabitants in the 1960s). The dispute





## AND FINALLY...

**W**riting this has reminded me how packed and varied 2023 has been for me. It could never have happened safely without many of the people mentioned here and others too numerous to list. Bruce Clark still regrets his advice to me in 1997 that my business would not fail and comes into London to enjoy coffee and cinnamon buns with me at Fitzrovia's Scandinavian Kitchen. Malachy McClelland and I have shared stories, problems and worries throughout this and many other years. Chris Hamblin still edits this newsletter in exchange for a largely unpaid

debt of fish n' chips. Richard Herman has been designing this for 22 years and for the last decade, has tolerated my insistence on limiting the images to photographs either taken by me or of me.

Be safe and stay in touch