

Law

The great debate: judging the best of the mighty orators

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Dominic Carman asks three barristers whose talents in court earn them not only admiration but also millions of pounds in fees what they really think of one another's skills

FOR more than a decade, the names Grabiner, Pollock and Sumption have dominated the Commercial Bar. They may not share the mutual antipathy of Pompey, Crassus or Caesar, but this legal triumvirate approaches courtroom battles with the natural genius, clear judgment and indomitable energy of a brilliant Roman general.

The three men have very different backgrounds. Jonathan Sumption, QC, 56, is an Old Etonian who gave up being an Oxford history don 30 years ago. He remains a successful historian, writing two lengthy volumes on the Hundred Years War in his spare time. Two more are planned.

The product of East End Jewish immigrants, Lord Grabiner, QC, 62, is an LSE graduate who attended the 1968 Grosvenor Square riots. Now a Labour peer, he is chairman of Arcadia plc and also of the LSE governors.

Gordon Pollock, QC, also 62, declines a *Who's Who* listing: "I don't like the thought of people being able to look me up," he reveals. A Cambridge graduate, born in London, raised in South Africa and Canada, he lives in Oundle, Northamptonshire, rides motorbikes and stays at the Garrick when in town.

Their spectacular success — often crudely benchmarked by reported annual earnings of more than £3 million each — is perhaps best measured by the advocates themselves. Rivals they may be; but they are ready to acknowledge each other's talents.

"Gordon has wonderful chutzpah," Sumption says. "He is an incredibly eloquent and extremely effective street-fighter with a tremendous talent for making impossible cases sound plausible."

It is a view confirmed by Grabiner. "Gordon is big, noisy, clever and very aggressive. He's prepared to argue things that others are not. He's a very strong believer in representing his client to the nth degree. He will go as hard as he possibly can within the confines of what's acceptable. Meanwhile, he pretends to be asleep while you are making your submissions, calculated to make the judge think what you are saying is irrelevant."

Pollock strokes his beard, adopting a friendly chuckle: "It works both ways. You may find a judge who has heard of your reputation and thinks: 'I'm not going to let him get away with that here.' They can be quite unpleasant. Sometimes, a reputation isn't really true."

Pollock has been engaged for nearly two years leading a claim on behalf of the BCCI liquidators against the Bank of England. His opening argument lasted a record 80 days: "I did a lot of preparation and then just got on with it."

Beyond the £3 million brief fee (another record) Pollock says there were other benefits. "It has been a privilege to see the detail of how these things operate in a public context — and I've learnt to touch type."

He regards Sumption as "remarkably clever" and acknowledges that "appearing against him is always a challenge. He comes up with imaginative ways of looking at problems, often ones that you hadn't anticipated. He always has a clear strategic view — the enviable facility to have it all mapped out in advance.

"In one recent Lords' case, I finished my argument and Jonathan immediately got up to reply using typed notes. Amazing —

absolutely on the point. He said: 'I knew what you were going to say so I wrote my reply in advance.' I could never do that — such impressive anticipation."

Grabiner agrees. "Jonathan's exceedingly clever — in some ways, the cleverest man at the Bar. Fantastic command of language, a wonderful vocabulary. Great advocate. He's ideal in the Court of Appeal or House of Lords arguing *recherché* points of law. That's his forte."

Sumption agrees that his level of advocacy is a highly cerebral one. "Most of my work is in the appellate courts. It's an interesting intellectual exercise debating points of policy with highly intelligent people under ground rules which prevent you from evading the issue as one might over a dinner table." It was an approach he used to good effect in 2003 representing the Government at the Hutton Inquiry into the death of Dr David Kelly.

And what of Grabiner? In Sumption's view, Grabiner "is extremely good at bringing out the underlying commercial policy merits of his case. He takes a broad view and always makes it sound attractive."

Pollock, who recently lost to Grabiner, is, understandably, more circumspect: "Tony has substantial self-confidence. He manages to put his arguments in a low-key, very persuasive, reasonable manner. We've only done one recent case against each other — not something I want to discuss."

That case, in November 2002, was a multimillion-pound ownership dispute between Ecuadorian businessmen concerning Fruit Shippers Ltd. During the trial, Pollock accused the judge, Mr Justice Langley of "making a stupid comment". Grabiner responded by saying: "This is a scandalous and wholly unjustified observation."

After losing the case, Pollock was further criticised by the judge for "the nature of his cross-examination" and "using no restraint".

Grabiner says: "What my clients want is a practical, realistic analysis of their problems — not just a legalistic approach. Good barristers must have a commercial approach. In court, I keep it simple, trying to reduce often complicated problems to simple propositions. That is the key to good advocacy.

"I spend a lot of time in pre-trial preparation trying to do precisely that."

Grabiner often advised Robert Maxwell and later Rupert Murdoch, successfully representing him against the unions after the move to Wapping: "Murdoch is astute, very clever and always listens to my advice, whereas Maxwell always argued, thinking he was as good a lawyer as a businessman. But, although he was extremely overbearing, I liked Robert. He sacked me then rehired me. It was a good lesson. No one has ever really fazed me since. More recently, I've enjoyed working with the entrepreneur Philip Green."

With more than a century at the Bar among them, each retains a remarkable appetite for work. In Sumption's view, "There's not much law in this job. It's obvious what the law is once you've worked out the facts. But being a barrister is so much fun; there's so much variety. You never know what's coming next."

Grabiner enthuses: "The greatest job in the world is the one you love and being a barrister is fantastic."

Pollock concurs: "The Bar is wonderful. It's much nicer working for yourself than in a large firm. I want to go on for as long as I can."

WHAT THE TOP THREE ARE UP TO AT THE MOMENT

GORDON POLLOCK, QC

Because of the continuing BCCI/Bank of England case, Pollock is not accepting any bookings at the moment. It is not known when this case will end.

JONATHAN SUMPTION, QC

1 Hong Kong appeal, relating to a hotel construction contract dispute for the Golden Bridge Hotel. Listed for next month.

2 Acting for Hammonds solicitors (defendants) who are being sued by the Football League following the fallout of the ITV Digital deal. Listed for February 2006.

LORD GRABINER, QC

1 Representing the Financial Services Authority over alleged manipulation of the share price of Royal Dutch Shell plc.

2 Representing Abbot Pharmaceuticals in the Court of Appeal concerning royalty payments relating to the trademark drug, Humira. Listed for this month.

3 Representing Sir Tom Hunter in a shareholder dispute following the collapse of Gadget Shop. Listed for this month.

4 Representing Apple Computer against Apple Corp (originally owned by the Beatles) for use of the apple trademark. Listed for