



## Practice

David has practised exclusively as a criminal defence barrister for the 15 years since he was called to the Bar. Regularly instructed in all varieties of serious criminal cases he also has a particular expertise in appeal cases and frequently advises convicted prisoners and often appears in the Court of Appeal.

## Background

David studied law at Bristol Polytechnic before going to the University of Cambridge where he studied for his Masters in Criminology. While at University, David worked part-time in a mental health resource centre where he organised activities for those users living in the community. Having always been fascinated with all matters related to the criminal justice system, particularly the impact it has on the individuals who come into contact with it, David gained experience with a number of agencies as a volunteer before studying for the Bar. He worked for JUSTICE as a case worker examining possible miscarriage of justice cases before the CCRC had been set up. David worked for the Knightsbridge Crown Court Witness Service advising and supporting witnesses in Crown Court trials and he is still involved in helping to train new volunteers. He also worked in the Visitors' Centre at Feltham Young Offenders Institute with inmates and their families.

## Trials

David regularly defends in serious and complex cases including seven murders in the last two years. Other major cases he has been involved in include a large scale-cannabis cultivation conspiracy, conspiracy to facilitate illegal entry, money-laundering (currency exchange), one of the biggest harassment cases ever investigated and conspiracy to defraud (passports).

He has recently been instructed in a number of firearms cases and represented the first defendant in a multi-handed multi-million pound international revenue fraud at Southwark Crown Court in September. In May 2011, he was involved in the successful judicial review of the decision to extend custody time limits in that case. His client being released on bail after spending eight months in custody.

In the last 24 months David has appeared in the high-profile multi-handed murder case at the Central Criminal Court involving the murder of the manager at the Matalan Department Store in Hackney (where his client was not convicted of murder. For more information, [click here](#).

In September 2010 David's client was acquitted of murder after a third trial, an earlier conviction having been quashed by the Court of Appeal earlier in the year. At the trial David argued the law in relation to bad character and also cross-examined the prosecution's cell-site expert. For more information, [click here](#).

In the Summer 2010 David defended in an eight week multi-handed murder trial in Birmingham. For more information, [click here](#).

In the previous June David was leading junior in a three-handed, five week attempted murder at the Central Criminal Court and in the month before he successfully defended in a large-scale conspiracy to supply heroin case which involved complex evidential issues involving bad character (very old convictions

### Year of Call

1996

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### Education

LLB (Hons) and M.Phil in Criminology (Cantab)

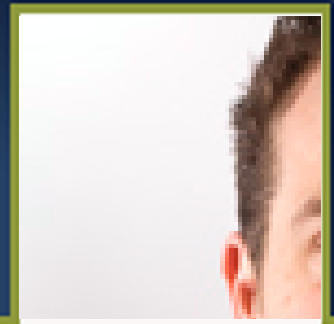
### Practice Areas:

David Emanuel is a member of the following Practice Areas:

- Courts Martial
- Crime
- Fraud and Regulatory Law
- International Advice and Litigation

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and previous acquittals) and cell-site analysis.

In 2009 David was led in three murders at the Central Criminal Court as well in a multi-million pound "boiler-room fraud" at Southwark CC. The trial lasted for eight weeks and concerned an allegation that investors were dishonestly induced into investing in worthless shares. The case was highly complex and involved the instruction of a forensic accountant.

In 2008 David was leading junior in a massive conspiracy to supply class A drugs which pleaded on the first day of trial, and was led in two high-profile shooting cases, an Operation Trident murder at the Central Criminal Court, and a conspiracy to murder at Reading. Both cases relied heavily on mobile phone cell-site evidence.

In 2006, David acted as junior for the second defendant in a nine-handed conspiracy to murder trial in Bristol which lasted five months. The case, which involved two high-profile shootings, was the largest investigation undertaken by Avon and Somerset police and centred to a large degree on cell-site evidence. David's client was acquitted of all counts.

## CCRC and Appeals

David regularly appears in the Court of Appeal and is instructed to conduct appeals (conviction and sentence) in cases he has not been involved in before.

He has a busy practice reviewing cases of prisoners who are seeking to make out of time appeals or applications to the CCRC.

In May 2011, David successfully appealed the convictions for sexual offences of an appellant who had been convicted at trial in 2009. His trial counsel and another law firm had both advised him that he had no grounds to appeal. David was sent the papers and advised that the direction on recent complaint evidence was deficient. The Single Judge granted leave to appeal and extended the time in which to appeal retrospectively. The Court of Appeal quashed the convictions and no retrial was sought by the Crown. The Appellant was released after spending over two years in prison.

David has successfully argued that sentences of imprisonment for public protection were wrongly imposed in two separate cases in 2011.

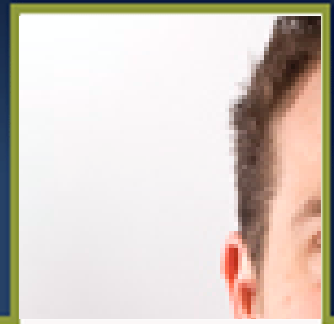
In June, in a case sent to David post-sentence, the Court of Appeal extended time to appeal by two years and quashed the indeterminate sentence passed in a robbery and GBH - substituting it with an extended sentence.

In March 2011, he successfully appealed the sentence of imprisonment for public protection in a case of attempted murder (by setting on fire) - the Court removed the IPP and reduced the notional determinate sentence from 30 years to 20 years.

In 2010 he appeared in the Court of Appeal in relation to three murders, two historic sexual abuse cases and one IPP sentence as well as an Attorney-General's Reference in a manslaughter.

In one of the murders the Court quashed the conviction and ordered a retrial. For more information, [click here](#).

David regularly advises convicted prisoners on the merits of making out of time applications for leave to appeal or applications to the Criminal Cases Review



Commission. This mainly involves convictions but recently David has been advising a number of prisoners in relation to sentences of imprisonment for public protection.

The review work entails a thorough consideration of the papers and can lead to the discovery of apparent irregularities in the trial process in cases where the individual has previously been advised no grounds to appeal existed.

This is an important area of David's practise which involves him scrutinising the trial process, previous counsel's conduct, the judge's summing up and considering the complaints and concerns of convicted defendants. David always advises fully on all points raised by concerned and convicted defendants and will give full and frank advice whether positive grounds exist or not.

In 2008, as a result of his reviews of two separate cases, one where the defendant was serving seven years for rape and the other where the defendant was serving three years for historic sex offences, David obtained extensions of time to appeal against the convictions. Both appeals were based on misdirections by the trial judges which were apparent from the transcripts of each summing up. In both cases trial counsel had advised that there were no arguable grounds of appeal. In both cases David successfully argued that the convictions were unsafe and no retrial should be ordered. Both appellants were released immediately.

In October 2007, David successfully appealed the imposition of a sentence of imprisonment for public protection in relation to a defendant who had pleaded guilty to grooming on the internet and sexual activity with a child. The Court of Appeal agreeing that the criteria for an IPP had not been met.

In 2007 David advised that grounds to appeal existed in relation to a murder conviction and as a direct result of the application to the CCRC drafted by him, the case was referred to the Court of Appeal. The full appeal was heard earlier this year.

In 2006 David's research led to two appeals against conviction in conspiracy to rob and murder cases. The basis of both CCRC referrals and subsequent appeals being the trial judges' misdirection to the jury on adverse inferences from silence.

In both cases David drafted applications to the European Court of Human Rights and judgements have recently been handed down.

In addition David has also judicially reviewed the CCRC in circumstances where they did not refer a case to the Court of Appeal.

David appeared in the Court of Appeal in June 2007 when his client and five other co-defendants had their sentences for a number of robberies on trains and canal towpaths referred by the Attorney General as unduly lenient. David's was the only client whose sentence was not increased. This is the leading case on sentencing for robberies carried out on the transport system.

David has a particular interest in the law in relation to the right to silence and has had articles published on the subject and has argued appeals based on misdirections in relation to this area on numerous occasions.

## Proceeds of Crime

David was recently led in lengthy confiscation proceedings where an order was made for just under one million pounds. The order was not paid in full and an



application was made on behalf of the defendant to vary the order. The application was contested by the Crown but after full argument the Court did vary the order, reducing the amount to be paid.

In 2009, David led in a post-conviction confiscation drugs case where the prosecution asserted a benefit under the Proceeds of Crime Act of £5m, and where it was being argued that the value of the matrimonial home should form part of the confiscation order. After lengthy submissions on behalf of his client the court finally made an order where it was held that the benefit amounted to no more than £4,000.

In 2008 David was instructed in forfeiture proceedings to represent an individual who had had £12,000 in cash seized from his house. The case involved extensive cross-examination of the police's financial investigator and resulted in all the cash being returned to David's client.

## Notable Cases

### ***R v AC* [2011] EWCA Crim 1430**

It is of fundamental importance that where there is evidence of recent complaint that the jury are given a direction that the complaint evidence does not come from any independent source. Conviction quashed. No retrial ordered.

### ***R (on the application of Arshad) v Southwark Crown Court* [2011] All ER (D) 31**

The Administrative Court, in allowing the claimant's application for judicial review, held that the judge's order extending the claimant's custody time limit would be quashed in circumstances where there had been delay in the production of evidence by the crown prosecution service contrary to an order of the court.

### ***R v Joseph and Others* [2011] EWCA Crim 894**

Where a defendant has a very low IQ it may not be appropriate to impose an IPP despite an assessment of dangerousness in circumstances where the individual may not be capable of completing educational and rehabilitative courses as he may end up stagnating in the system and never being released. IPP quashed.

### ***R v MW* [2008] EWCA Crim 3901**

Where a judge fails to give proper directions on good character, lies, and delay, and where a judge fails properly to sum up the defence case, the conviction cannot be regarded as safe.

### ***R v Wheeler* [2008] EWCA Crim. 688 (Criminal Law Week 08/15/2)**

Where a defendant, as part of his defence to a charge of rape, had relied on a number of factual assertions that were not in dispute, but which he had not mentioned prior to giving evidence, the judge had been incorrect to direct the jury, pursuant to section 34 of the Criminal Justice and Public Order Act 1994 that they could rely on his failure to mention those facts as capable of founding an inference of guilt.

### ***R v Barwell* [2007] EWCA Crim 2561**

A sentence of imprisonment for public protection was inappropriate where there was evidence to suggest that a defendant's repressed paedophilic tendencies could be controlled and minimised with effective treatment.



**Att.-Gen.'s References (Nos 24, 25, 26, 27, 28 and 29 of 2006) (*R v Artan and others*)** [2007] 151 S.J. 1299, C.A. Guidance on appropriate sentences for offenders committing robbery on the transport system.

***R v Boyle and Ford* [2006] 150 S.J. 1151 CA**

Effect of a fundamental misdirection in section 34 CJPOA 1994 cases on safety of conviction.

***R v Wingrove* [2006] 1 Cr.App.R.(S.) 232(41), C.A.**

Importance of credit for guilty plea in sexual offences cases.

***R v Gibson* [2004] 2 Cr. App. R. (S.) 451 (84), CA**

Where a legitimate expectation is given that a defendant will receive a drug treatment and testing order, it will be unjust to impose a mandatory minimum sentence of three years for domestic burglary under section 111 of the Powers of Criminal Courts (Sentencing) Act 2002.

***R v Birchall* [1999] Crim LR 311 CA**

The first domestic authority to recognise that a failure to give accurate directions in adverse inferences from silence cases could amount to a breach of Article 6 European Convention on Human Rights.

## Publications

*Legal advice to remain silent* [2004] 5 Archbold News 6 (co-author Anthony Jennings QC) (Updated June 2005)

*Adverse Inferences from Silence - an update* [2001] 9 Archbold News 6 (co-author Anthony Jennings QC)

Profile updated January 2012