The Circuiteer

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News from the South Eastern Circuit

Issue 36 | Spring 2013

INSIDE THE CIRCUITEER...

EBSWORTH LECTURE: GETTING IT RIGHT FIRST TIME

by The Rt. Hon. Lord Justice Hughes 6

LEADER'S COLUMN

BY SARAH FORSHAW QC

I don't tweet. I have long since learnt that my knee-jerk reactions are best left un-published. That means I have a lot to say now. I would one day like the opportunity to write a light-hearted, up-beat Leader's Column – at least before my term is over. But that day has not yet arrived. It is unlikely that it will.

It has been a fraught seven months as Leader. Timetables have been announced that impact upon the publicly funded criminal bar first and foremost. Circuiteers will, I hope, forgive me if I concentrate upon them.

QASA

30.9.13 – 10.1.14
QASA registration period Western and Midland Circuits

10.3.14 – 13.6.14
QASA registration South Eastern Circuit

30.6.14 – 3.10.14
QASA registration Northern, North Eastern and Wales Circuits.

PCT

April 2013
Consultation on further reforms to Legal Aid, including Price Competitive Tendering

Autumn 2013
Tender opens in Competition areas.

Autumn 2014
First contracts go 'live'.

There are fundamental flaws with QASA in its current form. They include the following:

1. The scheme does not provide a sufficiently exacting measure of 'quality'. What it does is assess a minimum standard of competence.

2. 'Plea only advocates' are permitted under QASA to represent a client charged with serious offences at a level beyond that advocate's experience, provided the lay client pleads guilty.

3. Silks are included in the Scheme at the same level as Grade 4 advocates. Although they may call themselves 'Grade 4 QCs', the assessment route is exactly the same as for juniors. To equate Silks with the Grade 4 advocate will erode the overall quality of the bar.

It ought to be seen in the light of the Lord Chancellor's speech in January of this year, when he said 'The question is, can we really afford so often to use people who are paid such an additional higher rate compared with somebody who's nearly as experienced, who's a seriously competent barrister, who will become a QC one day if they choose to do so.'

Leaving to one side for a moment the fact that the Secretary of State for Justice was apparently misinformed about the rates of pay for Silks, what he is doing is advocating employing cheaper barristers for the most serious and complex cases. The growing (and sometimes disastrous) use of juniors to prosecute very serious cases is just an example of how misconceived that notion is. I continue to gather evidence of those serious cases across our Circuit (a concern I raised with the DPP as soon as I came into office in September of last year) in which the Crown Prosecution Service have under-instructed in order to save costs. This policy has sometimes had real consequences that have the greatest effect on the victims of crime. It is also a false economy.

On 30th January 2013, Lord Judge gave evidence in the House of Lords to this effect:


Sarah Forshaw QC

I continue to gather evidence of those serious cases across our Circuit in which the Crown Prosecution Service have under-instructed in order to save costs.

"I must add that I share the concern that the Crown Prosecution Service is not briefing leading counsel when the CPS should be…. The point about Queen's Counsel is that the man or woman who takes silk has established that he or she is of the quality to be at the very front of the profession. The best counsel will do the case quickly. The best counsel will tell the judge what the points are clearly and, therefore, a trial that might take 10 days may take seven, so we save money there. That is what you pay for that higher standard."

The LCJ has unrivalled experience of the criminal justice system and has filled the highest judicial position in the land with great distinction. It is unfortunate that the

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Secretary of State for Justice and his civil service team appear to pay little attention to his carefully considered views based on a lifetime in the law. We all recognise the government has a right and duty to seek economies across all publicly funded areas. But it would be a mistake to keep focussing that search on an already crippled criminal justice system.

Is there any connection between QASA and PCT? At the time of writing, we do not know the shape of the proposal for PCT. What I do believe is this: Price Competitive Tendering is likely to signal the end of the publicly funded independent referral Bar. It will dismantle overnight a Criminal Justice System that had shaped itself over hundreds of years into a system attracting international acclaim. The aim of the Government is to save as much money as possible and those tendering will bid at the lowest level that they feel they can. Their aim will then be to make the maximum profit. The advocate, once selected by an instructing solicitor for quality amid fierce peer competition for a case that paid the same regardless, will be replaced by the advocate who simply charges himself out for the least money. The judiciary would no longer be able to rely on the integrity and independence of the advocate appearing in front of them. Inevitably standards will be lowered. Miscarriages of justice will follow. The appeal and re-trial rate will soar. So too will the true cost. As Lord Hughes put it in his excellent Ebsworth lecture hosted by our Circuit: "And, because it is no good forgetting that money is in very short supply and that there is no natural right to a dole-out from the taxpayer's limited funds, it is essential to understand that good advocates save money. A bad advocate costs a huge amount; trials take too long, and things go wrong which require appeals to people like me (not one but 3 of us) to put right."

Some might say that the way to reassure the unsuspecting public that they would be properly represented under a system driven by the lowest bidder is to have in place a minimum grading scheme that provides the cheap advocate with a 'competence' badge.

In short – QASA will do very nicely.

The Ministry of Justice will protest that quality will be an important benchmark in their selection criteria. It is worth remembering their last disastrous foray into contracting in the justice system. The department was repeatedly warned that the quality of services would be sacrificed when it outsourced the contract for providing court interpreters to ALS. It ignored those warnings and pressed ahead regardless. If those in government were prepared to carry out a proper audit, they would find that that contract, which they boasted would save money, has not done so in practice and has caused countless interruptions to the running of the courts.

The Bar has nothing to fear from an assessment scheme that truly weeds out the poor advocates. But should we voluntarily register for a QASA Scheme that does not genuinely promote quality and is not in the public interest? No.

The Bar has nothing to fear from an assessment scheme that truly weeds out the poor advocates. But should we voluntarily register for a QASA Scheme that does not genuinely promote quality and is not in the public interest? No. Plea only advocates will be used to undertake cases beyond their expertise. Grade 4 advocates will be used when the case clearly requires a Silk. They are, after all, cheaper in the short term. Standards will plummet.

And if QASA is a means of validating PCT then it is to be resisted at all costs. For PCT is the real enemy for the criminal justice system.

Even if PCT is proposed in restricted form, it would be naïve to assume that it will not have a devastating effect on the CJS.

What are we to do about it? The easy answer is for quality practitioners to diversify or to focus solely on privately paid criminal cases for those able to afford their services. To turn their backs on publicly funded crime and guard their own bank balances while our criminal justice system is dismantled. It would lead to a two-tier system of justice. The most vulnerable in our society will have to rely on the new breed of work-a-day advocate. The wealthy will be properly represented. That is not a legacy I am prepared to leave behind when, in ten years' time, we are asked what we did to fight for a system that has worked so well.

THE GOOD NEWS

The right thing to do is to take a stand – a unified stand. And, amidst the anger and the frustration that currently permeates the Bar, there is some good news. It is this: we have never been so unified. Different Leaders at the Bar may take different approaches but we all share the same goal. No staged introduction of measures that we all know are wrong should be permitted to interfere with that unity across all Circuits. There is an old Kenyan saying: "Sticks in a bundle are unbreakable." Adversity breeds cohesion. And with cohesion comes strength. I sense that the collegiate mentality of the Bar is at the highest point ever.

There have been some highs over the winter. The Ebsworth Lecture, 'Getting it Right First Time', was delivered by Lord Justice Hughes just 24 hours after we learned that he had been appointed to the Supreme Court. It was a privilege to be able to announce the good news that evening. His speech was brilliant. It can be read on the SEC website.

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The officers of the Family Law Bar Association were kind enough to invite me to their annual dinner in Middle Temple Hall in March. The mood was upbeat and unbowed, despite the fact that those doing publicly funded work face a 10% cut and that, from 1st April 2013 public funding will only be available in private law children cases if there are allegations of domestic violence, supported by independent evidence.

We should be proud that the Bar Council has produced a leaflet to help those litigants in person from whom legal aid has been removed. It should be more widely recognised that the response of those in our profession from whom their own area of publicly funded practice has been withdrawn, is to try to help the public by drafting such a document for free. The MoJ will shortly realize that the huge increase in 'DIY litigants' will prove more costly than they had bargained for. Just as the MoJ appears to dismiss the concerns of the LCJ, so too it has failed to heed those of Lord Neuberger, the President of the Supreme Court.

The expense incurred by the LSB on a paper drafted by two professors, dubiously qualified to suggest that the cab rank rule was unnecessary and obsolete, was demonstrated to be wholly wasteful when the document was met by the towering dignity and unmistakeable authority of Sir Sydney Kentridge QC, who drafted the Bar Council's response. What a joy it was to read.

"They do not see the Bar as an honourable profession whose members generally obey the ethical rules of their profession, and who do not seek to evade them. Indeed, throughout the Report one finds not merely hostility to the rule but hostility to the Bar and sneers at its ethical pretensions."

PEOPLE NEWS

The latest round of CPS grading has just been completed. My thanks to Alison Saunders CBE for continuing to invite contribution at panel selection from the self-employed bar. We owe a debt of gratitude to those Circuit Silks who have again given up their time for free to help with the process.

They do not see the Bar as an honourable profession whose members generally obey the ethical rules of their profession, and who do not seek to evade. Indeed, throughout the report, one finds not merely hostility to the rule but hostility to the Bar and sneers at its ethical pretensions.

More good news by way of appointments. Our very own Brian Barker QC takes over from HHJ Peter Beaumont QC as Recorder of London. The Lord Chief Justice descended upon Court One at the Bailey twice in quick succession to mark both retirement and appointment.

HHJ Alistair McCreath was appointed Recorder of Westminster at Southwark Crown Court last December. He has quickly become a very popular addition to the Circuit.

HHJ Nick Hilliard QC, our past Leader and now Resident Judge at Woolwich Crown Court, acquires another title. The Royal Borough of Greenwich has appointed him The Honorary Recorder of Greenwich. Our warmest congratulations to him. And of course our new Circuit Silks of whom we should be rightly proud.

Our Annual Dinner is to be held on 5 July 2013. It will be heavily subsidised by the Circuit in what are difficult times. It will be an opportunity to come together en masse. This year I have invited the other five Circuit Leaders. The Guest Speaker will not disappoint. It promises to be quite an event. Don't miss out.

And finally, my thanks to all those who have given up their free time to help me with the myriad of issues we are dealing with. The 'volunteers' who don't hold it against me that I gaily press-gang them, the long-suffering who put up with my 'Can I just run the latest issue past you?' and the wise who oh so gently put me right when I get it wrong. With your help we will ensure this Circuit is a force to be reckoned with.

I well understand the despair and the anger on this Circuit. There will come a point where we need to stand up and defend not just our own profession but the Rule of Law in this country. As individuals, the populist approach is to 'go down fighting'. I have no intention of doing that. We need cool heads, unity and a proper strategy to fight in a way that best ensures we succeed. Whatever the consultation paper brings our way, we will meet with well-reasoned, informed responses. But if we are ignored and the Ministry of Justice is resolved to act in a way that destroys our justice system, those in government will discover that we are no longer the Paper Tigers we once were. There is more at stake than financial survival.

Sarah Forshaw QC

SOUTH EASTERN CIRCUIT LECTURES AVAILABLE TO BUY

NAME OF LECTURE	DATE	CPD	£	NO.
Dame Ann Ebsworth Eighth Memorial Lecture – 'Getting it Right First Time' – The Rt. Hon. Lord Justice Hughes	27 Feb 2013	1.5	£15	
So it is all sorted now? An examination of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and other Sentencing Developments – Robert Banks	28 Jan 2013	1	£10	
CPS Rape List Accredited Sexual Offences Training – HHJ Browne, Alison Levitt QC, CPS, Felicity Gerry and Professor Penny Cooper, Kingston University	24 Nov 2012	4.5	£25	
To Apply to Upgrade or Not? CPS Panel Advocates – Get The Inside Track – Alison Saunders, Chief Crown Prosecutor and Simon Clements, CPS	6 Nov 2012	1.5	£15	
How to Apply: The Art of Applying for CPS Upgrade / QASA / Judicial Appointment – The Honourable Mr Justice Bean, JAC Judicial Commissioner and Simon Clements, CPS	18 June 2012	1	£10	
Dame Ann Ebsworth Seventh Memorial Lecture – 'Looking the Other Way – Have Judges Abandoned the Advocates?' – The Rt. Hon. Lord Justice Moses	13 Feb 2012	1	£10	
CPS Paperless Prosecutions Lecture: 'Digital Criminal Justice System' – Members of the CPS	26 Jan 2012	1	£10	
Mediation: What, When, Where and How – Philip Bartle QC	15 Nov 2011	1	£10	
Professional Disciplinary Work – Martin Forde QC	18 July 2011	1	£10	
Planning for the Future – Peter Lodder QC	24 Feb 2011	1	£10	
Dame Ann Ebsworth Sixth Memorial Lecture – Vive la Différence: Common Law, Constitution, Convention and Judicial Review in Ireland, 1167 – 2011, A (largely) shared history – Mr Justice Hardiman	8 Feb 2011	1	£10	
Keeping Alive the Art of Advocacy at the Family Law Bar – Mr Justice Mostyn	22 Nov 2010	1.5	£15	
Prosecution and Defence Advocates – Are they that different? – David Perry QC	28 Sept 2010	1.5	£15	
Nuts and Bolts of Trial Advocacy – Andrew Hochhauser QC	23 March 2010	1.5	£15	
Dame Ann Ebsworth Fifth Memorial Lecture – "Libel Tourism" – Lord Hoffmann	2 Feb 2010	1	£10	
The Art of Advocacy in Public Law – Dinah Rose QC	14 Jan 2010	1.5	£15	
Appellant Advocacy "How is he so good?" – Jonathan Sumption QC	29 Sept 2009	1.5	£15	
Coping with the difficult "bits" of advocacy – Michael Mansfield QC	3 June 2009	1.5	£15	
Dame Ann Ebsworth Fourth Memoria l Lecture "I beg your Pardon" – The Rt. Hon. the Lord Bingham of Cornhill	9 Feb 2009	1	£10	
Dame Ann Ebsworth Third Memorial Lecture – Judging Under a Bill of Rights: A Different View – The Honourable Antonin Scalia, Associate Justice of the Supreme Court of the USA	5 Feb 2008	1	£10	
Dame Ann Ebsworth Second Memorial Lecture – Judging Under a Bill of Rights – The Honourable Mr Justice Louis Harms	24 Jan 2007	1.5	£15	
The Honourable Mr Justice Michael Kirby AC CMG	21 Feb 2006	1.5	£15	
The South Eastern Circuit Bar Mess series of lectures on "The Art of Advocacy"	2003	8	£15	

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EIGHTH ANNUAL EBSWORTH LECTURE

LORD JUSTICE HUGHES

"GETTING IT RIGHT FIRST TIME"

BY BEN HOLT

Those who attended the Eighth Annual Ebsworth Lecture were fortunate indeed. This was Lord Justice Hughes' first public engagement since the announcement twenty-four hours earlier that he had been elevated to the Supreme Court. As of 9th April, it will be Lord Hughes. This, after being a member of the Court of Appeal since 2006 and, more latterly, vice-president of the Criminal Division. In introducing the evening's speaker to the audience the Leader of the Circuit, Sarah Forshaw QC, compared him to the late Dame Ebsworth as being a fair and polite tribunal. The point was made, from the advocate's point of view, how an inspirational Judge who is courteous to counsel ensures that the system works best by providing counsel an arena in which they feel able to thrive.

It was, therefore, refreshing to hear the same sentiment expressed from a Judge of such standing and experience. The title chosen by Lord Hughes, as he soon will be, was "Getting it Right First Time". The overall point was a simple one in many respects: the country's legal system does not hinge on the cases that reach the higher Courts in which the likes of our speaker sit. Rather, it is dependent upon proceedings being right in the lower courts; in essence, there being no need for an appeal. In spite of the Ministry of Justice's dream scenario, "litigation-lite" was not a viable option: there would always be factual differences that required litigation. However, "appeal-lite" was a possibility that could be achieved by ensuring that hearings in the lower Courts were conducted in a proper and fair manner. The judiciary relied upon the advocates to ensure that the right outcome was achieved first time.

> *Lord Hughes was unsure as to whether he admitted the evidence so that he could rule it useless in his judgment or excluded it for precisely the same reasons."*

During the course of the lecture, Lord Hughes spoke of potential alternatives and modification to the system currently in place in the United Kingdom. There were two distinct areas considered: further use of scientific evidence in criminal and civil Courts and the different systems and procedures adopted in Courts throughout Europe.

To the science first. Our speaker examined how advances in science could make the role of the advocate and, to a certain degree, the Judge redundant. At the heart of this was the development of an FMRI scan. Whereas an MRI scan looks at the brain in still images, this technique was able to consider moving images and, thus, how blood flows through the brain. By doing this, there is potential scope for an observer to conclude when a witness is lying or telling the truth. Just as, apparently, it is possible to spot differences in the brain's functionality when a rapper is "free-styling" versus singing pre-scripted lyrics.

The improvements on a basic polygraph test are obvious; this method simply relies upon physical changes occurring to the witness when answering questions. To emphasise the futility of the latter technique Lord Hughes told of a family case over which he had presided where one party had sought the admission of such evidence. The claimant had been accused of abusing his children. His account was not without its difficulties: various versions of his story had been given to different people and, in any event, they had been contradicted by more reliable and independent witnesses.

The polygraph "expert" gave his qualifications and experience: gained at a University in Southern America unknown to the omniscient Google search engine. The report went on to deal with the examination, the questions asked and the answers given. Surprisingly, all questions had been agreed with the witness prior to the polygraph test and were as follows:

Q: What is your name, A: Mr X;

Q: How many children have you got, A: 5;

Q: What are their names, A: Daisy, Sally, Tom, Alex, Jonathan;

Q: Have you ever abused them, A: No.

The expert concluded that he could "confirm that Mr X was telling the truth about all matters."

Lord Hughes was unsure as to whether he admitted the evidence so that he could rule it useless in his judgement or excluded it for precisely the same reason.

However, it would seem that the time has not yet arrived for trial by men in white coats. For example, an FMRI would be of negligible assistance in a case where the issue was identification. The brain patterns appear to be identical in a witness who has actually seen a suspect before as if they believe that they might have seen that person before. And so, for the time being at least, the jury's role as fact finders in criminal trials is here to stay.

So, what of the jury system? How does it compare to that of continental Europe?

In recent weeks many column inches have been filled with articles considering the apparent injustice of our adversarial system and how it can impact upon victims and witnesses of crime. A system that can be seen to benefit the strong advocate or the rich defendant. A system that places great weight upon pre-trial procedures and investigations.

The starting point was that a plea of guilty did not exist. It was for the State, in all cases, to prove a man's guilt

This contrasts to the system deployed in, for example, France. The model there is descended from Napoleonic times and is a cumulative process: the investigation is rolled up into part of the trial process. It is never-ending. Such evidence as there is at the start of the trial is condensed and placed into a dossier under the close supervision of the Public Prosecutor and the Judge. If the details of a potential witness emerge mid-way through the hearing, an adjournment is granted, a statement taken and then that too will be considered by the tribunal: whether that is a Judge alone, or sitting with Lay Magistrates.

There is a close liaison between the tribunal and the Public Prosecutor throughout the proceedings in order they, together, can get to the truth of an allegation. Lord Hughes gave an example of a rape trial heard in Western Europe to demonstrate the different procedure. The starting point was that a plea of guilty did not exist. It was for the State, in all cases, to prove a man's guilt. A sobering thought, one might think, when compared to the Early Guilty Plea schemes now implemented throughout London Courts. The first person to give evidence: the

defendant. The first person to ask questions of him: the Judge. This, it was observed, makes the notion of not giving evidence or remaining silent at trial a harder option. So it was that the defendant gave his account to the Judge. One question was posed to him by the Public Prosecutor; none were asked by defence counsel. And his evidence was concluded, for now. He can then be called upon at any time to answer further questions that may arise.

The complainant gave evidence. She was not long into her account when the senses of the Public Prosecutor detected alcohol on her breath, "been drinking, madame?" he asked. "Only one or two vodkas, I am nervous", the witness replied. This led to an ultimately unsuccessful application by the defence for her evidence to be deemed inadmissible. The case went on. Another prosecution witness who was not as forthcoming with an account to the Court as he had been to the Police when providing a statement was threatened with a charge of "failing to report a rape" by the Public Prosecutor should he continue to fail to come up to proof. There is no sense that the witness is "their witness" to be protected.

One can see from this case the clear role of the Public Prosecutor in the case. His impartiality extending to lodging appeals on behalf of convicted defendants, even if such a course is not advised by their own legal team. He is assisted with his role by the Judge; they work in tandem. They come from a similar demographic and share similar training. This is a direct contrast to the defence advocate who, although a graduate, has different training and is often mistrusted by the Court and public alike.

However, the system generally favoured in continental Europe and that of our own have been converging and, in some circumstances, actually going away from each other again in differing directions. For example, there have been changes in respect to how hearsay evidence is dealt with. As late as the 1950s, English courts refused entirely any notion of such evidence being admissible. The simple business record needed to be proved. At the same time, Europe was "immune" to the hearsay issue. All of the material was within the dossier for the fact-finding tribunal to consider. In Italy, for example, it was felt that a Judge would be "unconstitutionally hamstrung" by refusing to consider hearsay when looking for the truth.

Gradually, however, European criminal justice systems have grown to dislike and distrust hearsay; at the same time as legislation in England and Wales has pointed in the opposite direction. Such differences result in the judgments in the recent cases of al-Khawaja and Horncastle; a conflict that has clearly not been resolved as yet.

Lord Hughes considered our own system and the relationship between the Judge and the advocate. As readily as the concerned counsel might question the clerks as to the make-up of their tribunal at the Court of Appeal (as foreshadowed in her introduction by Sarah Forshaw QC), so it was that the tribunal would enquire as to who was appearing before them. The reliance placed on an advocate by the Judge could not be overemphasised. The advocate needs to be selected on their expertise and suitability; not who they work for or whether they had contrived to buy the work.

The advocates's prime duty, no matter how they came upon the brief, is to the Court. We, as lawyers working with the publicly funded criminal justice system, have no right to endless payments from the public purse.

Advocates needed to be balanced between the two sides of a criminal trial: a scenario best achieved by prosecuting one day and defending the next. This enabled a mutual respect to build between counsel who could understand the various difficulties and issues that their opponent might be experiencing.

It is on this system of respect and pride that the profession is built upon. Without these key ingredients, the system is broken. Any advocate has the ability to derail a trial in a similar fashion to the prop forward in the scrum in a game of rugby; with a similar chance of being detected. The advocate should be a "batsman that walks". The trial setting was not a game in which one side was free to try and get away with as much as they could, where justice became the victim.

The advocate's prime duty, no matter how they came upon the brief, is to the Court. We, as lawyers working with the publicly funded criminal justice system, have no right to endless payments from the public purse. The good advocate can save money by getting it right first time. This is also achieved by acting in a fair, balanced manner.

By behaving in such a manner, the number of costly appeals could be kept to a minimum. This is not the position in Europe, where the "right of appeal" is something barely even spoken of. Appeals are as of right. Regional appeal Courts in Europe can run with up to a six-year backlog of cases. These appeals would invariably take the form of complete re-hearings. A defendant would, owing to the delay in his case reaching the appeal stage, invariably be granted bail pending the appeal. He had, therefore, nothing to lose by pursuing this avenue.

Lord Hughes expressed concern about the increase in the number of applications for leave to appeal in this jurisdiction. "Speculative trawls" through the evidence by another advocate instructed after an unsuccessful trial that exposed a minor hitch in the trial process at first instance were resulting in unnecessary applications being submitted. All of these, of course, then needed considering by the single Judge. In all likelihood, time and money could be saved by the newly-instructed advocate contacting original trial counsel to discuss the point raised.

Our speaker displayed thinly veiled contempt for this sharp practise and the precious time of the High Court Judges that it wasted. Is it that the standard of the advocate conducting the trials falling or is this just a passing fashion? The former situation would be worrying; especially bearing in mind that the Judge is so reliant upon the advocate to ensure that a fair result is achieved "first time". And this does not appear as if it is about to change anytime soon.

Ben Holt is a barrister at 5 King's Bench Walk

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CALLING ALL JUNIOR (CRIMINAL) BARRISTERS

TWO TO SEVEN YEARS' CALL

THE SOUTH EASTERN CIRCUIT FLORIDA CRIMINAL LAW ADVOCAY COURSE

Held at the University of Florida, Gainesville

4 August – 9 August 2013

There are four scholarships available and the above course is open to all junior (criminal) barristers, two to seven years' Call.

Course fees and accommodation will be provided.

Candidates will be required to make and pay for their own travel arrangements. Applicants must be members of the South Eastern Circuit (application for membership may be made at the same time).

Previous courses have attracted 25 CPD hours.

Closing date for applications: 23 May 2013.

For further information and selection criteria, visit: www.southeastcircuit.org.uk

LAWYERS FOR PALESTINIAN HUMAN RIGHTS

BY TAREQ SHROUROU

The intractable question of Palestine/Israel is one of the great issues of our time. Lawyers for Palestinian Human Rights (LPHR) takes the view that at its heart lies fundamental principles of human rights, human dignity and the rule of law. And in its resolution we have the aspiration that justice principles of freedom, accountability and equality shall take primacy.

LEGAL CONTEXT

LPHR approaches the question of Palestine/Israel primarily from a rule of law and human rights perspective. It is therefore necessary to situate it into its legal context, including applicable international law and Israeli law. This context is structured by three basic legal facts.

First, the Palestinian people have the right to self-determination, with all the attendant consequences this entails under the relevant principles and instruments of international law.

Second, the West Bank, including East Jerusalem and the Gaza Strip remain under belligerent occupation. As a consequence, Israel's annexation of East Jerusalem is unlawful and is not recognised by the international community. The occupied status of the West Bank was confirmed by the International Court of Justice in the Wall advisory opinion. And Israel's 'disengagement' from the Gaza Strip did not constitute the end of occupation because, despite the redeployment of its military ground forces from Gaza, it retains and exercises effective control over the territory. In all of the Occupied Palestinian Territory (OPT), Palestinians are therefore 'protected persons' under the terms of the Fourth Geneva Convention – namely, they are persons who 'find themselves, in the case of a conflict or occupation, in the hands of a Party to the conflict of occupation, of which they are not nationals'.

Third, the prolonged length of Israel's occupation has not altered Israel's obligations as an Occupying Power as set forth in the Fourth Geneva Convention and the Hague Regulations. Israel must therefore abide by the relevant rules of international humanitarian law in its administration of the OPT; further supplemented by international human rights law.

In the light of this normative framework, Israel's administration of the OPT has been found by numerous independent legal experts and reports to systematically violate international law. A recent example is the strikingly stark concluding observations of the United Nations Committee on the Elimination of Racial Discrimination, in its report dated 9 March 2012:

The Committee is extremely concerned at the consequences of policies and practices which amount to de facto segregation, such as the implementation by the State party in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities grouped in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is particularly appalled at the hermetic character of the separation of two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services and water resources. Such separation is concretized by the implementation of a complex combination of movement restrictions consisting of the Wall, roadblocks, the obligation to use separate roads and a permit regime that only impacts the Palestinian population (Article 3 of the Convention).

To advocate for the full implementation of these progressive principles is to push the horizon towards a transcendent future for both Palestinians and Israelis; a future compatible with substantive peace, justice and human rights.

ABOUT LPHR

LPHR is a UK registered charity which has been founded to work towards the objective of protecting and promoting Palestinian human rights, with a special focus on Palestinians living under Israeli occupation in the West Bank (including East Jerusalem) and Gaza Strip. We seek to pursue our goals through public advocacy, education and awareness raising, lobbying and litigation. And where possible, we seek to take our lead from, and coordinate our work with lawyers and human rights organisations in the region.

We have a distinguished board of trustees including Sir Geoffrey Bindman QC, Professor Bill Bowring, Michael Mansfield QC and – the first Chair and Co-Founder of LPHR – Daniel Machover; plus a thriving Executive Committee of qualified and trainee lawyers who meet regularly throughout the year. We further have a growing membership – predominantly lawyers and law students – many of whom have expressed their willingness to voluntarily support our work in accordance with our aims.

Following our charity launch in October 2011 we have organised a compelling public

events programme. This has included the enormous privilege of hosting a range of distinguished Palestinian human rights defenders who have spoken with resonance on the fragmentation of Palestinian life under the duress of a deeply entrenched and corrosive occupation. Indeed, throughout our events, regressive themes such as control, separation, and discrimination have strikingly recurred to underscore a critical point: the issue of Palestine/Israel can only be sufficiently and properly understood when viewed fundamentally as a major human rights problem.

While it is essential to provide increased visibility to the impermissible human rights landscape for Palestinians living in the OPT and Israel, we also take the view that we must equally strive to always go beyond education of the 'facts on the ground' to advocacy of an alternative just and moral vision based on the primacy of fundamental human rights and rule of law principles. To advocate for the full implementation of these progressive principles is to push the horizon towards a transcendent future for both Palestinians and Israelis; a future compatible with substantive peace, justice and human rights.

MAJOR-MATCHED FUNDRAISING INITIATIVE FOR LPHR PROJECTS

Following a consultation in 2012 with lawyers and NGOs in the Occupied Palestinian Territory and Israel, we have approved projects in principle which require essential funding. In this context we are grateful to have received a very generous matching proposal from an individual donor whom will double any fundraising donation up to a cap of £5,000. We have therefore commenced a major fundraising drive to raise £5,000, which with the effect of the 'matched-funding times two' proposal, will provide £15,000 (excluding gift aid) to be allocated specifically for the following projects to commence this year.

Challenging Corporate Complicity Project

This involves recruiting one expert in the field of corporate complicity on a short term contract to prepare with the help of LPHR volunteers to write a comprehensive complaint about at least one UK multinational company for submission to the UK National Contact Point under the OECD guidelines for multinational companies. The complaint will concern one or more companies against whom there is evidence of complicity with Israeli violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory.

Internship & Human Rights Assistance Project

This involves giving part-subsidized opportunities to UK lawyers/ law students to go to the Occupied Palestinian Territory for 3 months (or more) to conduct legal research on human rights issues affecting Palestinians or to carry out fieldwork or casework under supervision. This project would include recruiting, training, briefing and mentoring interns. Interns would be asked to produce reports, and upon completing their internship would be invited as speakers at LPHR's public seminars and events. This project will start with the Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ), but can be extended to other organisations.

Public Education & Human Rights Advocacy Project

Our public events programme – normally hosted by Garden Court Chambers – is a core component of our education work. We have Bar Standards Board CPD accreditation for our events, but now require one-off funding to seek Solicitors' Regulation Authority CPD accreditation. The human rights advocacy component of our work includes correspondence with the Foreign Office and other parties, letters and articles for newspapers and online publications, and invitations to speak at meetings and university seminars.

Palestinians in Syria Research Project

Using recruited volunteers from our membership to produce reports and engage in education and advocacy on the rights and circumstances of the vulnerable Palestinian population of Syria during the ongoing conflict there.

For anyone willing to provide funding pursuant to the matching proposal highlighted above, we would be glad to provide further details of any or all of these projects, with a detailed budget, and to provide any form of reporting so to assure that funds are being used appropriately. We are focused on making a serious contribution to alleviating the deplorable human rights situation for Palestinians, and would be immensely grateful for any assistance that can be provided to support us in translating our aims into effective and concrete action.

GET IN TOUCH

There is huge scope for LPHR to become an effective voice in the international human rights sector, as the situation for Palestinians within and outside the Occupied Palestinian Territory continues to deteriorate.

Please feel welcome to contact us at contact@lphr.org.uk if you are interested in becoming actively involved with LPHR, either through becoming a member or a donor of LPHR. For further information on our work during the inaugural year of our charity, you can request the attached annual report and accounts, and please visit our website at www.lphr.org.uk.

Tareq Shrourou is the Director of Lawyers for Palestinian Human Rights

INTERVIEW WITH MR. JUSTICE SINGH

BY FIONA JACKSON

On 1 January 2013 Mr. Justice Singh took up his latest appointment as a Presiding Judge of the South Eastern Circuit. Called to the Bar in 1989 and taking Silk in 2002, he practised from 4-5 Gray's Inn Square in Administrative and Public law, Human Rights and Civil Liberties, Employment and other civil litigation, and in 2000 was a founder member of Matrix Chambers before becoming a High Court Judge of the Queen's Bench Division in 2011. Fiona Jackson went to meet our youngest High Court Judge during his recent sitting at the Central Criminal Court to find out more about him and the work of the Presiders.

Are there aspects of your new role as a Presiding Judge that you particularly enjoy?

I am really enjoying this new role, and for four reasons in particular.

The first one is sitting in Crown Courts around the Circuit, including at the Old Bailey, because Presiding Judges try some of the most serious cases on Circuit and those cases are obviously interesting, and potentially high-profile.

Secondly, in my management role, I enjoy going around the Circuit to meet judges in the courts. At the moment my particular responsibility is for the civil courts, so I tend to meet civil Circuit Judges and District Judges in the county courts to learn about issues arising in their courts that require my assistance and management.

The third aspect I enjoy is what might loosely be called "career development of judges" because we have an opportunity to comment on potential appointees, including on Recorders and Deputy Judges. Our legal system depends to a large extent on the use of part-time judges, who sit for a relatively short time each year but who are an absolutely crucial part of the judiciary.

In connection with that, the fourth aspect is our training of judges on the Circuit, in particular the Recorders through the sentencing seminars. Some Recorders will never want to be full-time judges, but some do and it's enjoyable to see people who are starting out in judicial office. I think it is little known how much training there is for judges in this country, and I personally would want to pay tribute to the Judicial College.

How much use did you make of judicial training opportunities when you were a Recorder and Deputy High Court Judge?

I definitely found judicial training useful when I was at the Bar, and I certainly benefitted from it: I first became a Recorder and Deputy some 10 years ago so I did a lot of sitting before I was appointed to the Bench full-time, and both the induction training and the continuing training are generally acclaimed to be excellent.

I remember doing the seminar on Serious Sex cases as a Recorder, and that is an indication of how useful it is to undertake different training opportunities before you become a full-time High Court judge as there is still a step change up. We generally do murder cases but at the moment I am trying a very serious rape case, and there are some judges appointed who have not previously sat on one of those so the step change would be even greater. If you go straight from trying Class 3 cases to Class 1, it can be difficult whereas I had a more phased progression.

I would encourage Recorders and Deputies to take whatever training opportunities are available. Firstly I would encourage them to sit at least their minimum allowance, and more if they can achieve it. I put myself forward for every possible authorisation and course I could because I knew that one day I wanted to be a High Court judge, and if you're serious about wanting to do that job, you should try to be as experienced as possible.

One of the reasons I wanted to be a High Court judge is the variety of the work: when I was a law student, I didn't go into the law


Mr. Justice Rabinder Singh

to do a particular type of law. The other attraction of the job is that we sit on a lot of civil and criminal appeals, and the Divisional Court is especially interesting because we hear both criminal cases and civil cases that usually consider technical legal issues: when you sit as part of a panel and work as a team, the collective knowledge and experience is much greater than the sum of its parts.

Are there aspects of modern advocacy that you see and that you would wish to discourage?

I think this country is well served by the high quality of our advocates and I want at the outset to pay tribute to that. I have appeared in courts elsewhere in Europe and I have also visited a number of common law jurisdictions worldwide, and I hear that comment from judges who sit there: the advocates in this jurisdiction still command huge respect around the world.

There are a couple of negative things that I personally would remark about: on the civil side in particular, there is and has been for many years a tendency to have more and more prolix skeleton arguments. As we have moved in civil work to a more written-based system, although not exclusively, the skeleton argument has assumed a greater importance as a tool of advocacy, but it has become longer and more complex. Many are highly fleshed creatures, meaning that sometimes there is insufficient time at the oral hearing to go through a skeleton argument and do it justice, so the message I always try to convey is that brevity is a virtue, and being able to explain your points in a shorter rather than longer way is likely to be more fruitful.

On the criminal side I tend to find that criminal advocates are much more aware of that point, but in the criminal courts our advocates sometimes appear to have lost the art of cross-examination. I have heard the Lord Chief Justice comment that sometimes cross-examination appears to be no more than the making of statements and where the shorthand writer in the transcript has been kind enough at the end of the statement to put a question mark!

What challenges lie ahead for our Presiding Judges?

In the four-year term that I shall be a Presider the legal system is facing a combination of large changes, and so we're all going to have a responsibility to meet those challenges as effectively as possible.

The first challenge is the continuing pressure on public finances, which is well-known and clearly has an impact on the administration of the Courts and Tribunals Service.

The second is the changes to legal aid, both those which have already been implemented and which may yet come in future including, for example, the impact of the likely increase in litigants in person and the consequent demands that are place on the judiciary.

The third big challenge is the effect of the Jackson reforms on costs in civil cases, and the fourth on this Circuit in particular is the restructuring of the civil courts and the family court.

Each of these are big changes, but taken together that's a major set of reforms happening during my term of office, so what I would hope to do is make a contribution to ensure that the administration of justice on the Circuit is as efficient as possible.

Do you think the role of a Circuit Bar Mess is still as important to today's barrister practising on the SEC?

Personally, I do. The SEC faces a difficulty that the other Circuits do not – I have sat on most of the other Circuits, and I've enjoyed that particularly because of the collegiality of the Circuit Bar with its Mess Dinners and events. The SEC suffers from the obvious problem that London is right in the middle of it, and so we are less naturally a Circuit in the way that Wales, for example, is with a long history of people practising from local chambers in their local courts.

The SEC does still have a collegiate feel though with its significant educational and social events, and as an institution the Presiding Judges find it very important. If the Presiders have a useful role to play, it might be to provide a unifying influence and I am very happy to travel to different local Bar Messes to meet members of the Bar and judiciary. I've certainly found it helpful when I've been invited to take part in events and, when we are doing longer trials of a month or more out on Circuit, I know it would be much appreciated to have an opportunity at a more social function to meet the local Bar and judiciary and learn of their issues and concerns.

By way of example, I am going to the Central London Bar Mess dinner in May, even though I will be sitting in Maidstone, because I feel it is important for me to be there. In addition, every time I have sat on other Circuits, I have tended to visit the local university and we usually bill the event as "A conversation with Mr Justice

Singh". It seems to go down well because local practitioners, judges, students and academics come and it helps to dispel some of the mystique surrounding the Bench. I am presently the youngest High Court judge and in contemporary times it is unusual to be appointed under the age of 50, but our society has been changing since I was born in the 1960's and I suspect that has an impact on the changing nature of our judiciary. Today's new High Court judge might therefore be different from previous ones.

It's sometimes said that the Circuit Bar Mess does not do much for civil barristers; do you agree from your experience in practice?

As someone who was generally a Circuiteer practising all over the SEC, travelling to many different types of courts, on occasion it was difficult to connect with the concept of local Bar Messes. Any possible perception of disconnect with civil practitioners should be addressed by Bar Messes, and if a Presider can assist with that in any part of the Circuit, I would want to encourage that trend.

In my experience the profession has become more specialised and therefore potentially divisive, but I felt as a barrister that we were one profession and I could not agree more with the SEC Leaders' efforts to promote that through educational events. I think there is much to be said for civil practitioners, for example, attending either criminal courts or seminars and conferences on advocacy and observing how criminal advocacy is done.

In a different context, if administrative law practitioners could observe how appeals are conducted on points of law in the Court of Appeal's Criminal Division, I think their eyes would be opened. It goes back to to my point about prolixity: in the CACD, the appeals are usually short and in my experience the advocates know how to focus on their best point and do so quickly, even though what they are doing is not all that different from what civil practitioners are doing down the corridor in the Administrative Court.

If civil practitioners want to apply for a High Court appointment in the Queen's Bench Division, sitting in crime as a Recorder is almost essential: the majority of our work is sitting in criminal trials and in the CACD. The High Court Bench does a bit of everything in the QBD; it does not mean we are generalists, but versatile specialists.

Would you encourage students to come to the Bar now?

On the face of it there would appear to be no rational reason to become a barrister because times are hard and becoming harder. It's very difficult to obtain a pupillage, establish a practice and make a living, but if you asked me if there is anything else I would ever have wanted to do, I can't think of anything more worthwhile than what I did as a barrister.

I hope the highest quality students will continue to come to the Bar because it is an extremely important job in which to serve the public. I hope in practice that I lived up to the traditions of the Bar to be fearless and independent. I worked on cases for the government and also did high-profile cases against them – that is a very unique feature of our system. In most countries around the world, the lawyers who represent the government are employed by them. I do not wish to criticise those systems, but this country has over the centuries nurtured a fearless and independent Bar that is important to the rule of law.

The subsidiary reason for encouraging students to come to the Bar is that many, although by no means all, judges particularly at the higher levels still tend to be appointed from the independent Bar. The maintenance of a high-quality independent Bar, who will serve the public as the judges of the future, is imperative.

Fiona Jackson is a barrister at 33 Chancery Lane

SEC

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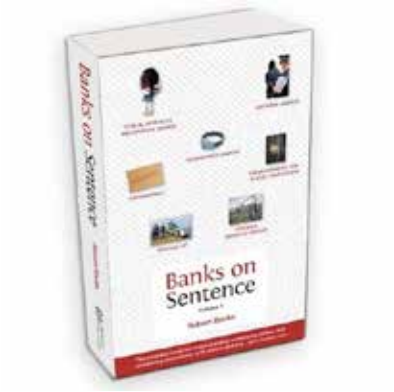
ROBERT BANKS, AN EXAMINATION OF LASPO 2012 AND OTHER SENTENCING DEVELOPMENTS

BY BARNABY HONE

On 28 January 2013 Robert Banks, the author Banks on Sentence, gave an authorities overview of the developments in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LAPSO") and its related developments. The Lecture is part of the on-going education program provided by the circuit. There will be further lectures this year covering the areas of disclosure and the prosecution of rape trials. As anyone who has tried to grapple with this latest piece of legislation will be aware, straightforward, concise, and workable, are not words which can be applied to LAPSO. The effect of the Act will be wide ranging, certainly on the scale of the Criminal Justice Act 2003. I am afraid it is not in the scope of this article either to cover all the developments in LAPSO or the complete contents of the Lecture, given with Roberts's customary knowledge and precision, but hopefully this article can give an overview of a number of salient points which every practitioner needs to be aware of.

It was pointed out that it is ironic that the initial aim of LAPSO was to simplify the sentencing practices of the courts in all matters. In the white paper preceding the Act it was stated that the aim of the legislation was to simplify the law and remove any hindrance from the court in passing fair and appropriate sentences. Unluckily the Act does not do this, it consists of 154 sections, with 93 sections on sentencing, 27 schedules, 5 commencement orders, and one explanatory note. The lay out of the Act is not particular clear, which though not a surprise, does not



help the situation. It is also notable what is not included in the Act. The most high profile exclusion, after much discussion in parliament and the press, is the lack of a 50% discount for an early guilty plea.

An example of the confusion LAPSO brings is the inclusion of appropriate sentences, rather than minimum sentencing. This seems to be a change in language though the Judge does have the option of not imposing the appropriate sentence if the particular circumstances of the case would cause the sentence to be unjust.

One of the most important changes in the act is the change in extended sentences, which are the replacement to IPP's, and though some of the main problems with IPP have been abolished the sentencing Judge still does not have complete discretion. New lists of offences have been included in the Act, which significantly extend the offences covered, but there are some interesting anomalies with offences on which offenders can receive extend sentences. Burglary and Blackmail being two offences which are not included in the list, though using a spring gun is. There is also an anomaly that an extended sentence cannot be given to a defendant who has received the maximum sentence, so if two defendants are charged with the same offence, one pleads and one fights, they could in theory end up with the same sentence if the one who has pleaded has his sentence extended, while the one who was found guilty after trial receives the maximum sentence.

In relation to youth courts there are four main changes. In relation to Youth Rehabilitation Orders there are changes in in the curfew and mental health treatment requirements and the maximum fine for breaching the order is now £2,500. In relation to Referral Orders a Youth Court or other Magistrates' Court need not impose a Referral Order when the court proposes to impose a conditional discharge. In relation to Detention and Training Orders section 80 makes changes to the penalties that can be imposed for breaches and procedural changes to breaches of Detention and Training Order licences. Fourth, Rehabilitation periods for young offenders were also increased so that a young offender will not have to declare their convictions as a youth, though the periods of time do vary depending on the offence.

Furthermore, in the very detailed lecture hand out Robert highlighted a number of areas, which he also expanded on in the lecture, where LAPSO has amended previous legislation. In reference to IPP's s.123 abolishes IPP's, DPP's, and extended sentences under CJA 2003 for any

conviction after the 3rd December 2012. New extended sentences have now been put in place. Automatic Life sentences will be imposed for a list of offences set out in the Act. The Act makes a series of changes to the powers to fine, including unlimited fines in the Magistrates' Court for either way offences or Level 5 offences. In regards time spent on remanded in custody. For determinate sentences the days spent in custody and the half discount for time on a tag and a curfew are deducted administratively. It appears that the old system still applies to life sentences. Section 189 enables suspended sentences of 2 years' custody to be made and enables a suspended sentence to be made without any requirements. Sections 70-77 make changes to a number of the statutory requirements that can be imposed.

The most high profile exclusion, after much discussion in parliament and the press, is the lack of a 50% discount for an early guilt plea.

Section 143 creates a new offence of causing serious injury by dangerous driving. The offence becomes Road Traffic Act 1988 s 1A. The offence is an either way offence and the maximum penalty is 5 years. The offence carries obligatory disqualification of at least 2 years and obligatory disqualification until a test is passed. Section 142 creates two new offences of 'Threatening with an offensive weapon in a public place' and 'threatening with a blade or point or offensive weapon in a public place or school premises'. Both offences require an immediate risk of serious physical harm. Section 63 of LAPSO provides that the court 'must consider making a compensation order where it is empowered to do so'. This is only a change of emphasis as there was a requirement before to make a compensation order where possible. In relation to the rehabilitation of offenders Act 1974, LAPSO amends the Act so that offences which receive 48 months imprisonment are excluded from rehabilitation rather than those with a 30 months sentence at present. There are also a mass of further changes to the 1974 Act. No commencement order relating to these have been made. There is also no rehabilitation period for certain immigration decisions and other immigration matters. LAPSO also adds hostility and abuse to transgender victims as aggravating factor.

This was a very useful lecture which gave a level of insight into this large piece of legislation which all criminal practitioners will come across in the course of their practices. It will be interesting to see how the legislation is interprets and develops over the coming years. This article only scratches the surface of the information contained in the lecture. If anybody missed this lecture and wishes to watch it, or was there and wishes to see it again, it is available from the circuit. Please contact Natasha Foy if you wish to buy a copy.

Barnaby Hone is a Barrister at One Paper Buildings and Junior of the SEC

RESTAURANT REVIEW: BRIXTON

BY TETTEH TURKSON

This is a review for our austerity times. Grand dinners festooned with Michelin stars are now very much the exception. So where do you go now? I would guess that Brixton doesn't spring to mind for many. Well when you've finished your unpaid conference in HMP Brixton I'd advise that you tarry a while for dinner. You even have options.

There are two truly excellent restaurants on Acre Lane. Dining at Upstairs at 89b Acre Lane (the entrance is on Branksome Road) is a little like going round to a friend's flat for dinner. In fact the restaurant was once a derelict flat above owners Philippe Castaing and Stephanie Mercier's coffee shop and whilst it's now very smart it still feels like flat, partly due to the fireplaces burning actual (smoke free) coal. It reminds me Richard Corrigan's old place, The Lindsay House, except more bohemian. The food is "modern European" perhaps a little more than the "British with French technique" that is so ubiquitous. Martyn Reynolds, the chef, spent time at the 3 Michelin starred La Pergola in Rome, as well as Aubergine and Seven Park Place.

Upstairs's austerity rating is not that high – at £29 for 2 courses, £36 for 3 it cannot really be claimed to be cheap – but it is good value for what it is: high quality ingredients cooked to perfection and in orthodox but delicious combinations. I wish I'd taken notes at my last dinner there so that I could do it full justice but on the last occasion I went there 8 of us dined and not a single person was less than complimentary about a single one of the 32 dishes we had between us. It is worth a visit on any occasion, but the special offer tasting menu of 6 courses for £40 is exceptional value, particularly with matching wines for a total of only £55.

A little further down at 192 Acre Lane, but with one foot in Barcelona is La Boqueria. It was winner of Time Out's 'Best New Cheap Eats' Award 2012, which makes it sound rather less than it is. It provides comfortably the best tapas food I've ever had in Britain. When one looks at the menu it doesn't look particularly cheap with prices at about £5-8 yet somehow every time I have visited I have come out thinking that the bill ought to have been 50% higher. By some alchemy my group of very hungry and extremely thirsty people managed to eat to bursting and drink a lot more than was good for us and still come out at under £50 a head including service. The food is of high quality as well. One is always suspicious of a standard menu that does not appear to change from week to week and that is perhaps the one failing, however the specials on the blackboard are where one finds the real treats. I could happily have eaten my own body weight of the suckling pick croquetas that were a special last time I visited. The chorizo with cider, although not a special is nevertheless delicious: chunky pieces of pork heavy laden with paprika. One of the marks of a good restaurant is to make me want to order a lot of vegetables. It takes an excellent one to make me like spinach which is even slightly creamed. Boqueria not only manages this but had me telling my friends that they shouldn't miss that or the aubergine cannelloni.

Perhaps the most significant change to Brixton's restaurant scene has been the development of the covered markets. When a friend first mentioned Brixton Village I thought that the estate agents had finally taken leave of their senses. What I hadn't realised was that off the main street the council had facilitated the development of what was once Granville arcade and renamed it Brixton Village. I guess the name was chosen to evoke the eclectic nature of what is available. There are second hand clothes shops, African fabric shops, a sweet shop, a gluten free cake shop, at least one fishmonger and a lot of restaurants. It is not for everyone. The facilities are pretty basic. A paid unisex toilet block has now replaced the frankly horrible public toilet they used to have upstairs, but it isn't big enough and it is isn't cleaned as often as one would like late at night. The other covered market, Market Row (sometimes referred to as Brixton Market), has a similar problem with at lest a few of the restaurants sharing toilets. They both also tend to have cheap furnishings crammed as close together as is possible which tend to the rickety and often seating spreads into the walkways. There was a problem with the temperature as some of the walkway seating was freezing, but most now have heaters. If you are looking for a quiet romantic dinner I certainly wouldn't recommend it. However if you are looking for a bit of fun and variety then you will certainly get that.

I have certainly not eaten in every restaurant in Brixton Village. I have heard good things about the Thai restaurant KaoSarn, but bad things about Mama Lan's dumpling house. The Brazilian Restaurant looks pretty interesting and the Agile Rabbit enticing. Etta's Fish restaurant tends to be pretty empty and having eaten there I can see why. It's not that it's actively bad. It's just that the cooking is imprecise, the combinations uninspiring and the variety pretty limited.

So where should you eat? Honest Burgers seems to be surfing the current "posh burger" fashion that has hit London. Every chip and burger lover should pay a visit. I cannot vouch for the branch that has opened in Soho but the Brixton original is superb. The rosemary salt on the chips is a masterstroke I haven't seen elsewhere. At £8 for a Stilton cheeseburger and chips it isn't so much more than Burger King but the quality is several levels above. The beef burger is made from free-ranging cattle raised on the Yorkshire Moors and provided by The Ginger Pig. It tastes every bit as good as that sounds with all the texture you expect from a genuine minced meat rather than the pallid, thin offerings one gets from the mass market.

A more refined menu than the humble burger can be found in Cornercopia. It models itself as a tiny restaurant – it has about 20 seats at most – and new kind of corner shop built on ultra-local produce. It boasts that elderflowers are foraged from Rush Common, which is almost opposite the prison. That's all well and good to those who care about such things – of which I confess I am one – but what sustains it is that the chef Ian Riley knows what he is doing. There are some beautiful combinations which manage to be both robust and delicate. For the purposes of this article I have looked at the February menu and see a spicy breaded pigeon breast and pickled pear starter which is making me salivate. It is typical of the sort of thing one expects from Cornercopia. I am long overdue a return.

Market Row has two standout restaurants among about a half dozen. The old stager of Franco Manca was for a long time a legend I had long heard about but never managed to visit. Friends were uncontrollably enthusiastic about it, but annoyingly the restaurant was not open in the evenings. It is probably the best known of the restaurants on Market Row (also known as Brixton Market nowadays). It is reputed to have brought the use of sourdough in pizzas to London. As well as balancing the sweetness in the pizza it has the effect of retaining more moisture in the crust, making the brittle crusts one finds elsewhere even more like the travesty they are. The secret again is the use of quality ingredients.

In contrast, The Salon – part owned by a member of the bar – is a newcomer to Market Row. It is a bit of a part timer, only open for dinner on Thursday, Friday and Saturday. It is to be found upstairs at Cannon and Cannon's relatively recently opened shop on Market Row and seems a vehicle to show off their wares as much as anything else. The kitchen had a major overhaul not long after the shop's opening so that rather than finger food a full 5-course menu is served at a very reasonable £29. The crispy mutton with mint sauce I had in February was one of the nicest things I had ever tasted. They also introduced me to fresh curd served simply with sourdough bread and a little quince jam; utterly delicious.

These restaurants are all pretty local to me so maybe I am a little biased but Brixton is becoming extremely interesting as a food area. Maybe it will finally shake the stigma of the riots and prison and if it does not actually provoke a trip south of the river, maybe you might stop off from the prison or take the short journey from the south London courts.

Tetteh Turkson is a barrister at 23 Essex Street

The Paris Bar Exchange 2013

(Sponsored by the Pegasus Trust)

An exchange programme for barristers of all four Inns of Court who have been in practice for up to 5 years. It offers the opportunity to spend the month of September doing a stage in Paris. *Avocat* members of the Paris Bar of similar seniority spend the month of July doing a stage in London. The Bar of Paris with the Paris Bar School (EFB) offers the following stage to up to four Barristers:

- An introductory seminar and other activities at the EFB
- A stage in an Avocat's office, preferably specialising in the Barrister's field of practice
- Attendance at hearings of both interlocutory injunction applications and criminal proceedings
- Visits to the Palais de Justice, an administrative tribunal or the Conseil d'Etat with some marshalling
- Meetings between young Avocats and Barristers and a reception
- Conducting a mock trial in the Palais de Justice in French before French judges

Candidates for the exchange programme (who must speak fluent French) should apply not later than Friday 17 May 2013 by Lettre de motivation in French with CV (in French & English) and financial budget to:

His Honour Michael Brooke QC,
c/o Eamonn O'Reilly
Treasury Building
London EC4Y 7HL
Tel: 0207 797 8210 Fax: 0207 797 8212
Email: pegasus@innertemple.org.uk

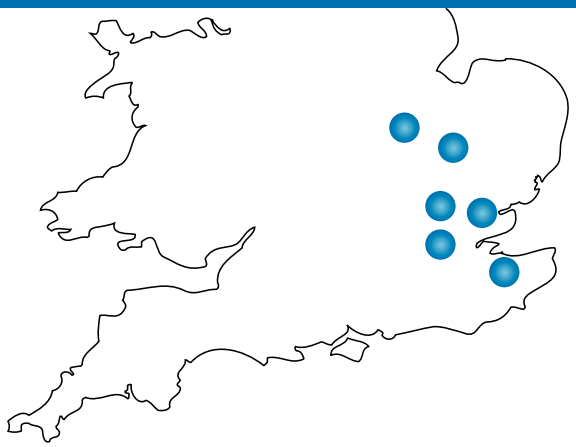
Interviews will take place in the Inner Temple within a week of the closing date.

While candidates will be responsible for their own travel, keep and accommodation, a lump sum of £750 towards costs will be payable by the Pegasus Trust. Successful completion of the exchange programme will entitle participants to 10 CPD points.

The exchanges have been a great success, both in Paris and London, since 1999.

Vive l'Entente cordiale!

BAR MESS REPORTS



CENTRAL LONDON

'It's all go at Woolwich. We reported in the last Circuiteer the appointment of HHJ Hilliard QC as resident judge. But a few months into the job and we hear he is to be appointed Recorder of Greenwich at the end of March. Our heartiest congratulations.

As an aside, he has got off to a cracking start by, among other things, overseeing the introduction of the early guilty plea scheme. There was a good turnout to the introduction in December and early figures are encouraging.

We are also delighted to welcome HHJ 'Tommy' Tomlinson to Woolwich after three years in Birmingham. Clearly Plumstead's allure proved irresistible and for that we are glad.

Blackfriars crown court is holding its Spring drinks party on 18th April so roll up, roll up.

Otherwise, on all other fronts, things remain relatively quiet.

P.S. Congratulations also to our esteemed head Rosina Cottage QC on her first week sitting as a Recorder. At Woolwich of course.'

Central Lines

SUSSEX

We are seeing some major changes taking place in respect of the judiciary in Sussex.

Having said goodbye to His Honour Judge Hollis earlier this month, we have been informed of the imminent departures of both Her Honour Judge Coates and His Honour Judge Brown.

Judge Hollis' judicial career started in Sussex sitting as a District Judge in Eastbourne. He was soon to be made up to Circuit Judge and regularly sat in Hastings and Brighton County Courts. Judge Hollis said he preferred civil law, but he became well known for his great sense of humility and sensitivity in complex Care Cases. Although retiring from the Bench, Judge Hollis is planning to extend his career into the area of civil mediation.

After 21 years as a Circuit Judge the former bus and taxi driver His Honour Judge Richard Brown DL has decided to hang up his wig. Judge Brown had various jobs, including the Merchant Navy, bus driving and taxi driving, between leaving school at 16 and starting on a law degree at age 23. He was called to the Bar in 1972 and practised in Sussex until being appointed to the full time Bench in 1992. He became Resident Judge at Lewes in 1996 and was upgraded to Senior Circuit Judge in 2007. In 2008 he was made the first Honorary Recorder of Brighton & Hove. He has been a Deputy Lieutenant of the County of East Sussex since 2004.

In his email announcing his intention to retire at the end of June 2013, Judge Brown said that he had had 21 wonderful years as a Judge and that he felt that his "sell by date" had been reached and it was time to give somebody else the opportunity of leading the team at Lewes. He was also concerned that there were so many high quality prospective new judges in the pipeline who would not get an appointment if Judges like him continued to "bed block".

He praised the quality of his team of Judges, and his loyal and hardworking staff. He described the Sussex Bar as great advocates and great friends.

He said that he could honestly say that he had enjoyed every working day of his "legal" life and he said that he couldn't have asked for anything more from his legal career."

Her Honour Judge Suzanne Coates has also announced her retirement from the Bench this coming August. Judge Coates was appointed in 1998, having practiced as a barrister for much of her career in Sussex. Judge Coates became the Designated Family Judge at the Brighton Family Centre and is well known not only for the huge work load she managed but more importantly for the considerable skill and expertise she brought to the Bench. We all wish Judge Coates a happy retirement sailing off the shores of Gibraltar with her husband Judge John Tanzer.

The departure of three such highly regarded senior judges who have brought so much to the Sussex Bar Mess will be a sad loss to the profession.

We await news of the replacements for all three judges but it has to be said they will be a hard act to follow!

Tim Bergin

KENT

As the snows of winter melt and the crocuses and daffodils burst through with their message of new beginnings and hope, thoughts turn to the imminent AGM and the changing of the guard at the Mess; on behalf of the Kent regulars I'd like to thank Richard Barraclough QC, John O'Higgins and Paul Tapsell for their three years' service and we look forward to a host of volunteers vying for the roles of Chair, Senior and Junior of the Mess.

Looking back; in November we had the Annual Dinner at the Crypt. Sir David Penry-Davey giving a suitably uplifting and positive address, encouraging the Mess to endure the present difficulties, Barraclough gave a moving speech declaring his love for all and sundry and Tapsell thanked those individuals who still insist on paying their subs in the sum of one guinea. The following day, a number of still slightly-befuddled individuals attended the Canterbury Court Lock-in (raising over £1,500 for Victim Support), appearing in various guises in a range of displays of sentencing and the art of trial advocacy; particular thanks must go to Philip Sinclair and Tom Stern for their performances prosecuting and defending Romeo; the defendant's enthusiastic celebrations upon his acquittal were typical of many of the individuals who have walked out of Court 6 after a trial without a stain on their name!

In February we said farewell to Michael O'Sullivan after ten years' sitting in Canterbury. The tributes from the Bench and Bar made reference to his good humour, excellent judgment, love of rugby and propensity to injure himself in all manner of ways; there's nothing I can usefully add to that summary of the man! We wish him a long and happy retirement.

The works at Maidstone should, by the time you read this, be completed; I understand that apart from a few "Captain Oates"-incidents, most of the staff survived the experience and hope to have thawed out by June. It's just as well the plans for paperless prosecutions haven't come to fruition otherwise there wouldn't have been anything to burn during the cold weather!

As for the future (in addition to the excitement of the AGM!); there will be the annual Kent Bar Mess v Court Cavaliers cricket match at the end of May and there may even be a Mess Garden Party in the Summer; watch out for posters in the Mess and yet more emails from the (new) Junior!

Ian Victa

THAMES VALLEY

Amongst all the doom and gloom in the Thames Valley this Spring – the increased caseloads for our in-house Advocates, the ups and downs of the EGP scheme, the threat of QASA and BVT/OCOF looming – we celebrate the incredible 26 years His Honour Judge Compston spent on the bench. HHJ Compston, or 'Compo' as he was fondly known, retired from his judicial duties on 25 January 2013. Impossible to sum up the Compo legacy in words, he will be sorely missed in both the family and criminal courts in Oxford (and most acutely from the dock!). We all wish him a long, happy and well-deserved retirement and look forward to raising a glass to him on Saturday 18 May 2013 at his retirement dinner at the Ashmolean Museum in Oxford.

Jane Brady

ESSEX

A superb Mess dinner at the palatial Savile Club in Mayfair on 23 November 2012 seems a long way back now, given a ghastly run of awful news since. The original draft of this bulletin had to be discarded when we were rocked by four deaths, in as many weeks, among our close family in the Essex Courts. These included the shocking double loss, within hours of each other, of Judge Peter Fenn and his wife Maxine.

Both in terms of his Essex pedigree and generally, Peter was a thoroughbred. He was raised in Thorpe Bay and educated locally. Called in 1979, after Oxford and pupillage under David Calvert Smith (as he then was) Peter became a specialist criminal barrister with East Anglian Chambers and then 18 Red Lion Court. After just two years as a Recorder (often sitting in Basildon and Southend), he was appointed in 2005 to the Circuit Bench, based at Chelmsford. Highly regarded as he had been as an advocate, Peter took to judicial appointment like an elegant swan to water. In 2000, in his mid-forties, Peter had married Maxine, a local CPS worker ten years his junior. Nine blissful years followed, with the fulsome pursuit of new joint interests including wide ranging international travel. In 2009 disaster struck when Peter was diagnosed with prostate cancer. He battled stoically against the advancing illness but it took an unshakeable hold. As transport became problematic, he transferred from our patch to Ipswich, closer to the couple's home. With his trademark steadfast resolve, he managed to keep sitting there until late last year, never complaining as the cancer wracked his weakening body. In the days before his death on 15th March, Peter calmly observed: "I have done more than most. I have loved and been loved. I have good friends and my only wish is that I could spend more time with those who I will leave behind."

Unknown to Peter, his beloved Maxine died just a few hours before him, at their home. Stunned colleagues gathered to hear moving tributes paid at Essex Courts on Monday 18 March: by HHJ David Turner QC and Gareth Hughes at Chelmsford; HHJ John Lodge and Simon Spence QC at Basildon. A fuller obituary, penned by Peter's very close friend and colleague Martyn Levett, can be read on the 18 Red Lion Court website.

Our other bereavements involve two long-serving and much loved members of Crown Court staff: Lyn Saunders who served at Chelmsford for more than two decades and Sally Aksoy who was a Southend/Basildon usher for 8 years. At the point of her retirement a couple of years ago Lyn was an usher, but she will be best remembered as the welcoming face of Chelmsford at Reception. She was besotted with all things elephant and her cubby-hole was densely populated with cuddly toy manifestations which, like their owner, softened the harshness of the Crown Court building. Lyn was one of life's innocents, to the extent that she was blissfully unaware of the double entendre of her famous tannoy announcement: "would counsel floating in Seaman please report to the List Office." Lyn remained in close contact with her Court friends and their regular get-togethers were a source of mutual pleasure which will, like the dear lady herself, be very sadly missed.

Her passing was marked by a touching personal appreciation in Court by HHJ Christopher Ball QC.

Sally Aksoy went about her duties in an unobtrusive but extremely effective way. A former costumier with English National Opera, when Sally spotted a damaged judicial robe her instinctive reaction was summarily to effect an expert repair. She faced cancer with the same no-nonsense practicality, to such an extent that even local Bar regulars remained unaware that she was ill. A memorial ceremony in a packed Court One at Basildon, a couple of days after Sally's death, was rendered heartbreakingly poignant by the attendance of her 14 year old son Tom, for whom she had in recent times been a single parent. Sally would have turned fifty this September and had booked a birthday trip north in search of the aurora borealis. Tom is now determined to fulfil that ambition on his mum's behalf. HHJ Lodge presided over the second valediction of a desperately sad week, lightened by the consignment of his favourite West Ham pencil case to the waste bin as a mark of respect to Sally, a Chelsea fan. Moving tributes included a speech by His Honour Philip Clegg, the 'grandfather' of Basildon Crown Court, who occupied a seat in counsel's row for the first time in a quarter of a century.

We send our deepest condolences to the loved ones of our four friends.

These grievous losses were preceded by a departure of an altogether different flavour when HHJ Rodger Hayward Smith QC retired on 22nd February. A packed Court, including the visiting Mr Justice Fulford, gave a jolly send-off to mark 32 years of judicial service (from appointment as Assistant Recorder in 1981) culminating in more than a decade ("the icing on the cake") as a Circuit Judge in Chelmsford. From audio equipment ordinarily reserved for playing tedious interviews and distressing 999 calls, the 1901 march 'Blaze Away' rang out as entrance music – an allusion to the Judge's reputation for outspoken candour on the bench.

With a further theatrical flourish, Resident Judge Charlie Gratwicke produced the Union Flag and announced a special dispensation for it to be flown above the Court, for the first time in twenty years, to honour "a man of courage, compassion, honesty and justice."

Anthony Kirk QC, a former colleague at 1 King's Bench Walk, spoke of the Judge's pioneering work and publications in family law. He was joined by other old friends from their set, including the Judge's former clerk. Susan Murphy, Chelmsford Crown Court 'Delivery Manager' (frankly, not nomenclature of which His Honour would approve), lived up to the title by giving an emotional farewell expressing the best wishes of the staff. On behalf of the Mess, appreciation was voiced of the Judge's pragmatism, his sensitivity and his expressive countenance – particularly "the judicial eyebrows, that most effective barometer of how your case was going". The assurance was given that "the respect and esteem in which Your Honour has been held over all those years will be matched only by the true warmth and affection with which you'll be remembered."

A Bar Mess Dinner in HHJ Hayward-Smith's honour is set for Friday 17 May at Gray's Inn – details from our Junior, Sasha Bailey – sbailey@2pumpcourt.co.uk

Finally, our late congratulations to 'Billericay Dickie' for securing his berth in the Lilac Lifeboat. We now understand all the desk-clearing that was going on last year.

Joking aside, competition for judicial appointment has never been tougher and we are delighted for our recent Leader. Sad as we are to see our man taken out of Essex, this is very much Harrow's gain.

Southend Pierre

If you wish to contribute any material to the next issue of The Circuiteer, please contact:

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Middle Temple Hall

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The Circuit will be subsidising the cost of this event

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