The Circuiteer

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News from the South Eastern Circuit

Issue 38 | Spring 2014

INSIDE THE CIRCUITEER...

CIRCUIT LEADERS' DINNER

Back row: (l to r) HHJ Hilliard QC, Sir Michael Wright, S Leslie QC, R Seabrook QC, S Hockman QC, D Spens QC
Front row: (l to r): HHJ Lawson QC, Sir John Alliott, S Forshaw QC, Penry-Davey J

LEADER'S COLUMN


Sarah Forshaw QC

BY SARAH FORSHAW QC

My father was in bomb disposal. He was a very wise man, I think. He was brave but shrewd. I would ask him how he did his job. He would tell me that one needs to second-guess the enemy, spot the booby traps, fasten on a strategy and ensure that the course you take minimises the risk of damage. That way you stay alive. Not for him the mad, heroic dash into the unknown.

My father survived every bomb he tackled and died of natural causes many years later.

Over the last year the independent criminal Bar has had to pick its way through a minefield. More important even than the survival of this generation is the preservation of a criminal bar for the future – a cadre of specialist advocates whose integrity and independence is fundamental to the quality of our adversarial criminal justice system. My own view is that the Bar has handled the devices we have encountered with courage and intelligence. Never before have we faced such a threat. Never before have we achieved so much.

Let me dwell for a moment on the bombs we have successfully defused:

1 One Case One Fee. The Justice Secretary was keen to implement it. It would have destroyed the criminal bar. The Justice Secretary was persuaded to shelve it.

2 Fee cuts. Let me set out the accurate figures. Since 2007 (Lord Carter's evidence-based review of fees), and as of 2013, AGFS fees had already been cut by 21% in cash terms equating to 37% in real terms. If the further cuts envisaged in the Government's response to the Consultation Paper had been imposed in July 2014, those figures would have become 26% and 41% respectively. Because fees do not increase with inflation (in stark contrast to almost all other expenditures of government and the private sector) there will be further real savings to the MOJ in the fixed cost per case of approximately 2% per annum going forward. Meanwhile the cuts imposed between 2010 and 2013 are still working their way through the system and more VHCC cases have been transferred to AGFS. In short, the MOJ's intended savings targets will already be met without further unnecessary cuts that have brought the system to tipping point.
We urged the MOJ to halt the fee cuts pending consideration of the true figures and the reviews by Sir Bill Jeffrey and Sir Brian Leveson. They flatly refused. I said in my last column in October 2013 that we would not back down. We did not.
Finally, on 27 March 2014, the MOJ changed its mind. The Justice Secretary agreed to suspend the cuts until after both reviews and, importantly, until after the next general election and to reconsider the need for those cuts 'with an open mind'.

I do not understand why some label what has happened as 'a deal'. I was there. It was not a deal. The Ministry agreed to our demands. There is now to be a period of constructive discussion, during the course of which active protests and the 'No Returns' policy will be suspended. The MOJ knows that it can no longer simply 'consult' with its fingers in its ears.

This is the very beginning of the fight. Not the end.

I am often asked about two things: (1) What about dual contracts for solicitors? (2) What about the 30% cut to VHCCs? Let me answer them here.

The Leaders of the Bar cannot take it upon themselves to negotiate on behalf of the separate arrangements made for solicitors. We are not privy to those discussions and for the Bar to take direct action on their behalf is, frankly, illogical. I deprecate the one deal with the MOJ that was done (by the Law Society in the name of its members) when cuts and contracting arrangements were agreed. We shall continue to support small and medium-sized firms of solicitors and to make representations to the MOJ about their position.

Like my fellow Circuit Leaders and the leaders of the Bar Council and the CBA, I stand by what was said in the 27 March announcement about VHCCs, i.e.:

- "Whilst it is an individual choice for any barrister as to what work they choose to do, there is no objection, in principle to barristers undertaking VHCCs.

- There is no reason why barristers who want to work on VHCCs should not do so."

In other words, there is no "boycott" of VHCCs, official or unofficial. Whether barristers are prepared to work at the new rates is a matter for them, and I do not seek to influence their decision. My comments below should be read in that light.

I have personally expressed the view to the Justice Secretary and to the MOJ officials at our last two meetings that no member of the independent Bar (or no one of any calibre) is likely to accept a VHCC case at the new rates, regardless of any perceived 'leader-led policy'. A senior junior on £199.50 a day (with two hours' prep each night included) in some of the most serious and complicated cases? It was, and remains, a matter of individual choice. That position has not changed simply because the MOJ has halted AGFS cuts. A senior civil servant indicated to me that the calibre of counsel was not a matter of concern; getting the cases covered – by anyone - was. Oh dear.

I do not understand why some label what has happened as a 'deal'. I was there. It was not a deal. The Ministry agreed to our demands.

It is, in my view, the very best example of how excessive fee cuts damage the system and prove a false economy when the MOJ is forced to try to revive an expensive failure like the Public Defender Service to cover those cases. As for quality, it is worth mentioning that many of those first rate solicitors' firms who undertake VHCC work have shown

that they will put the need to secure proper representation for clients whose liberty is at stake above self-interest. Many of them have declined to instruct PDS advocates, despite extraordinary pressure from the Legal Aid Agency to do so.

I have asked for transparency of disclosure in relation to the overall cost of the PDS recruitment drive (not just the salaries, but the pensions, expenses etc.). In March, the Justice Secretary informed the Leaders that he had 'no plans' to further expand the PDS. That, notwithstanding my warning at above. We will of course take him at his word.

Meanwhile, at the time of writing, we await the outcome of the application to stay in the first of the big seven pending VHCCs. Alex Cameron QC, acting pro bono for the unrepresented defendants, will be arguing that the state has failed to provide adequate representation to allow a trial to take place.

On 26 March I held a meeting of South Eastern Circuit Heads of Chambers and committee members to discuss with them the position that had been reached with the MOJ. Sixty-four attended. All attendees were unanimously in support of what had been achieved. Nobody could have anticipated last year that we would ever be listened to. It is a victory for common sense.

I take this opportunity to pay tribute to all those who have worked so hard to get us where we are. I know that individual members of this Circuit have made professional and financial sacrifices. The Chair of the Bar, who has an encyclopedic knowledge of the figures, has fought tirelessly, hand in hand with the CBA. And my fellow Circuit Leaders do more, often behind the scenes, than you could possibly know.

ONE BAR

The Special Bar Associations who do not rely upon public funding could have sat quiet over the Legal Aid proposals. They did not. One name in particular deserves a special mention: Timothy Fancourt QC, Chairman of the Chancery Bar. He it was who agreed to draft the letter to the Justice Secretary from those not directly affected by cuts to public funding, explaining the potential impact on international investment in our legal services.

We are truly One Bar. The non-criminal Bar, who have perhaps been less involved with the Circuits over the years, are returning to the Circuit's folds. It is a rapprochement that I welcome with open arms. The separate Special Bar Associations are of course very important in each area of practice. But the Circuits unite the whole Bar.

Please contact me with any horror stories about unrepresented litigants, refusals of legal aid for judicial review and the rise of the unqualified, unregulated 'Mackenzie Friend' or the law student drafted in to help, particularly with divorce cases. The LASPO changes are about to be reviewed by The Justice Committee. I am keeping a close eye on it.

Meanwhile, I understand plans continue for the UK Global Legal Summit to celebrate the 800th anniversary of the Magna Carta in February 2015. The Magna Carta established the principle that the individual should be entitled to defend himself against the arbitrary powers of the State. It underpins the Rule of Law. I can well understand why the Ministry of Justice would wish to glory in our Rule of Law. Our reputation for justice is the reason that our legal services industry contributes something over 2% of the GDP and £4bn in invisible exports. What I cannot understand is how that same government department can, in all conscience (or even simply in logic and common sense) treat our domestic Rule of Law with such contempt. We await developments.

THE NEXT FIGHT

It seems to me that the Bar has rested on its laurels a little since 2008, when we lost exclusive rights in the higher courts. It is time to start thinking big. We cannot put the clock back to undo what has been done. But it is not too late to start taking control of the market place. We chose this branch of the profession in order to specialise in the art of advocacy. We alone have a system of pupillage and of training and education that uniquely qualifies us for that art and sets us apart. We should be concentrating on honing that system. Most members of the public still don't even know the difference between a barrister and a solicitor. We have an opportunity to provide ourselves with a kite mark. We then inform the public; on a grand scale. If I have learnt one thing during the recent troubles, it is that the Circuit Leaders' decision to engage additional pro-active public relations assistance was a good one.

On the same topic, the South Eastern Circuit's Advanced International Advocacy Course at Keble College, Oxford, takes place from 25-30 August 2014. It is regarded as the Gold Standard round the world. Never mind the 43 hours of CPD, attendance will improve your advocacy skills immeasurably. Scholarships are available from the Inns.

Our education events over the winter months has been impressive. Jonathon Laidlaw QC with PII and RIPA, 'Fragile witness: Handle with Care', the Sexual Offences Course in Chelmsford and 'Recent Inquests'.

Florida Civil is upon us and Florida Crime applications open shortly.

You will all know by now of the review to be led by HH Geoffrey Rivlin QC to consider the future role of barristers within the CJS. The terms of reference are very wide indeed. It is an excellent initiative. The Circuit Leaders were asked to provide three representatives. The South East has selected a senior junior with his finger on the pulse: Jonathan Polnay. I will be working closely with him.

THE LEADER'S DIARY

Where do I start since I last wrote this column?! I have been in and out of the House of Commons so often that the security staff now recognise me, done more than my four (courteous but frank) rounds with the Justice Secretary and the civil servants at the MoJ, steeled myself for live TV appearances to support the campaign, hosted a splendid Ebsworth evening at which we were privileged to hear from one of the eight US Supreme Court Justices, Stephen Breyer, attended an excellent FBA dinner, briefed a growing number of journalists about legal aid, met with lots of initials - the LCJ, the LAA, the BSB, the DPP and the AG - and aged significantly. There is more. But there is also the Editor's word count to honour.

Summer on the South Eastern Circuit is ahead. Enjoy.

Sarah Forshaw QC

EBSWORTH LECTURE, JUDICIAL INDEPENDENCE, JUSTICE BREYER

BY OLIVER DOHERTY

Dame Ann Ebsworth died young in 2002 at only 64. She was the first woman to be appointed directly to the Queen's Bench Division of the High Court. Those who knew her describe her personally as warm and humorous whilst having a professional reputation for being scrupulously fair but exacting in her standards. She demanded very high standards from those at the Bar who appeared before her. She had been a formidable criminal advocate and expected advocates to adhere to her own standards demonstrating dedication, commitment and thorough preparation.

During her career Dame Ann Ebsworth experience a lack of diversity in our profession. She faced snobbery and sexism at times throughout her career. She did not however believe in affirmative action, believing instead that quality would inevitably shine through.

To the benefit of our profession and society she believed in the importance of law and had a deep sense of justice. To the benefit of our circuit she was dedicated to the SEC Committee and gave up much time to teach advocacy to the younger generation.

The Ebsworth lecture is an annual opportunity for the Bar and Bench to gather together to remember Ann Ebsworth and to hear from an eminent speaker on an enlightening topic. This lecture had always demonstrated the mutual respect and closeness between the Judiciary and the Bar.

At a time when the criminal Bar is under pressure, Ann Ebsworth's memory reminds us of much of that which is held dear in our profession – tradition, progress, diversity, strong advocacy, thorough preparation, dedication, selfless commitment and respect for our important profession.

The South Eastern Circuit was honoured this year to have Justice Stephen Breyer of the US Supreme Court as out guest to deliver the lecture.

Justice Breyer was appointed to the US Supreme Court by President Bill Clinton in 1994. His judicial reputation comes from his pragmatist, liberal approach. He sits on the opposite side from, for example, Justice Scalia's black letter, textual approach to judging hard cases. Perhaps his liberalism is in keeping with his birthplace in San Francisco. A Californian, he was educated at Stanford before Magdalen College Oxford and Harvard Law School.

The question posed by Justice Breyer in his fascinating lecture was 'Why do the American people follow 9 judges whose task it is to interpret the constitution?'. He spoke passionately of the US Constitution as a living, document to be interpreted with an eye on history yet an understanding of the present.

The lecture repeated the importance of Custom, Habit, Education and History in underpinning respect for the decisions of the US Supreme Court. People are not made to follow the court's decision, but they do so because they respect the Court, even when they disagree with its decision.

Justice Breyer's thesis seemed to be that it was the importance of history, not legal doctrine that led any nation to follow the rule of law.

In recent years a number of the decisions of the court have proved extremely unpopular with large numbers of Americans. The decision to protect a woman's decision to have an abortion in the early stags of

Justice Breyer

pregnancy and prayer in school are just two examples. The Justices of the US Supreme Court have been divided just as society divided. Despite protests however Americans have by and large adhered to the decision of the court

American public officials and American public have come, over time, to accept, as legitimate not only the court's decisions but its interpretation of the Constitution.

Justice Breyer illustrated his thesis by reference to a number of important decision of the US Supreme Court. He mentioned Marbury v Madison (1803) in which Chief Justice John Marshall established the courts authority to invalidate laws in conflict with the constitution. In doing so he was writing the theory of judicial review into law. This came at a time when US federal power weak.

He went on to discuss case of the Cherokee Indians who in the 1830s sued the state to protect their legal rights to their ancestral lands in North Georgia. The US Supreme Court held in the Cherokee's favour. However, President Andrew Jackson undermined the court's decision and effectively oversaw the ethnic cleansing of 45,000 American Indians. At this stage in its development the US Supreme Court could not rely as it does today on the President, Congress, the states and the public enforcing, supporting and following a truly unpopular decision.

The case of Brown v Board of Education was another dramatic example. A more developed United States of America faced the challenge of racial segregation in its public schools. The Supreme Court having ruled that black children were entitled to be educated in public schools, President Eisenhower deployed the 101st Airborne Division to enforce decision of the court. This made for tension and dramatic pictures as this esteemed military unit escorted children into class at Little Rock, Arkansas. The civil rights movement was only in its infancy when this happened. This decision, Justice Breyer argued, helped to begin the process of integration and societal change, which is still ongoing.

The final case Justice Breyer reflected on was that of Bush v Gore in 2000. We all remember this controversial presidential election case. Al Gore had won the popular vote but in litigation which reached Supreme Court, George Bush Jnr secured Florida's disputed electoral college votes and became President.

Juxtaposed with our thoughts of George Bush, Justice Breyer went on to look back further and to quote Rudyard Kipling.

"At Runnymede, at Runnymede,
Your rights were won at Runnymede!
No freeman shall be fined or bound,
Or dispossessed of freehold ground,
Except by lawful judgment found
And passed upon him by his peers.
Forget not, after all these years,
The Charter Signed at Runnymede."

Justice Breyer argues that everyone in the world wants the rule of law. People can learn from events such as occurred in Little Rock as well what occurred some 800 years ago at Runnymeade. Non-lawyers, he says, need to be convinced of the importance of following the law as well as knowing enough about its history to hold it in esteem. Justice Breyer encouraged the audience to go and talk to people about law. The law, he highlighted, is humane, decent, civilized. The opposite of arbitrary.

At the conclusion of his lecture Justice Breyer fielded some superb questions from an esteemed audience containing very many members of our own Supreme Court along with other very senior members of the judiciary. We were also joined by Sir Sydney Kentridge QC and a number of advocates of various levels of call.

The Chairman of the Bar, Nick Lavender QC, asked for the US perspective on the reliance of the judicial system on the skills of advocates and individual's access to justice. Justice Breyer unsurprisingly perhaps stated his view that Judges are completely dependent on the Bar. He said that the provision of 'legal assistance' varies enormously in the USA. Their 6th Amendment says that a citizen cannot be imprisoned without a lawyer. Market conditions mean that how much one gets paid effects the quality of the lawyer. The US Supreme Court, he said, sees some horrendous mistakes and it is unquestionably best to give good counsel the first time. In commenting on our system Justice Breyer remarked "You have something very precious. Try to keep it".

In response to a question about capital sentences in the USA, Justice Breyer mentioned again the route of appeal due to 'inadequate assistance of counsel', again by recourse to US citizen's 6th Amendment rights. He noted that unsafe convictions are 'usually' taken care of in state courts. The Federal court can intervene where habeas corpus is raised. 'I hope they are all caught', he said, 'but my heart tells me that they are not'.

We were honoured to host Justice Breyer. His focus on history and the centrality in a developed society of the Rule of Law made many of us resolve to do as he suggested and go and attempt to educate non-lawyers (perhaps including the Lord Chancellor) about why we all do what we do.

Oliver Doherty is a barrister at Furnival Chambers and Junior of the SEC

SOUTH EASTERN CIRCUIT LECTURES AVAILABLE TO BUY

NAME OF LECTURE	DATE	CPD	£	NO.
Dame Ann Ebsworth Ninth Memorial Lecture – 'Judicial Independence' – The Honourable Stephen Breyer, Associate Justice of the Supreme Court of the USA	5 February 2014	1.5	£15	
'Recent Inquests: Meeting the Public Interest' - Hugo Keith QC	4 December 2013	1.5	£15	
CPS Rape List Accredited Sexual Offences Training – HHJ Lucraft QC, Patricia Lynch QC, Sara Walker, CPS Cambridge, Bernard Richmond QC and Professor Penny Cooper, Kingston University	19 October 2013	5	£25	
'Fragile Witnesses: Handle With Care'. A Seminar focusing on the cross-examination of vulnerable witnesses (children, sex cases, Asperger's and adult vulnerable witnesses) - HHJ Cutts QC, Sarah Forshaw QC, Eleanor Laws QC and Dr Adrian Cree	30 September 2013	2	£20	
'Public Interest Immunity and RIPA 2000 – What You Need to Know to Prosecute and Defend' Jonathan Laidlaw QC	9 September 2013	1.5	£15	
Partial Defences to Murder: Practical and Forensic Strategy – Dr Adrian Cree, Consultant Forensic Physiatrist	18 July 2013	1.5	£15	
Dame Ann Ebsworth Eighth Memorial Lecture – 'Getting it Right First Time' – The Rt. Hon. Lord Justice Hughes	27 February 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 January 2013	1.5	£15	
CPS Rape List Accredited Sexual Offences Training – HHJ Browne, Alison Levitt QC, CPS, Felicity Gerry and Professor Penny Cooper, Kingston University	24 November 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 November 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 February 2012	1	£10	
CPS Paperless Prosecutions Lecture: 'Digital Criminal Justice System' – Members of the CPS	26 January 2012	1	£10	
Mediation: What, When, Where and How – Philip Bartle QC	15 November 2011	1	£10	
Professional Disciplinary Work – Martin Forde QC	18 July 2011	1	£10	
Planning for the Future – Peter Lodder QC	24 February 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 February 2011	1	£10	
Keeping Alive the Art of Advocacy at the Family Law Bar – Mr Justice Mostyn	22 November 2010	1.5	£15	
Prosecution and Defence Advocates – Are they that different? – David Perry QC	28 September 2010	1.5	£15	
Nuts and Bolts of Trial Advocacy – Andrew Hochhauser QC	23 March 2010	1.5	£15	
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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 February 2008	1	£10	
Dame Ann Ebsworth Second Memorial Lecture – Judging Under a Bill of Rights – The Honourable Mr Justice Louis Harms	24 January 2007	1.5	£15	
Dame Ann Ebsworth Inaugural Memorial Lecture – Appellate Advocacy – New Challenges – The Honourable Mr Justice Michael Kirby AC CMG	21 February 2006	1.5	£15	
The South Eastern Circuit Bar Mess series of lectures on "The Art of Advocacy"	2003	8	£30	

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CIRCUIT LEADERS' DINNER

FRIDAY 25 OCTOBER 2013

The Leslie Tartan, back by popular demand…

YOUR CIRCUIT. YOUR VOICE.

HUGO KEITH QC ON INQUESTS

BY OLIVER DOHERTY

On 6 December 2013 the SEC education programme held a lecture *Recent Inquests* – Meeting The Public Interest delivered by Hugo Keith QC.

Hugo was introduced as the nation's best and most respected inquest lawyer. It was said that there is nothing he does not know about coronial law or procedure. Those attending Middle Temple to hear him were reminded of his involvement as Counsel to the Coroner at the 7/7 Inquest, his involvement in the inquest into the death of Alexander Litvinenko and his role, ongoing on the date of the fascinating lecture, as Counsel for the Metropolitan Police commissioner in the Duggan inquest.

Experienced practitioners in this area of law as well as many keen to discover more about the law on investigations and inquests heard how the law and practice in this area has been substantially modified by the *Coroners and Justices Act* 2009, most of which came into force in July 2013.

The approach of the evening was an educational reminder of the handful of the key reforms, what the process of an inquest sets out to achieve and how well it achieves those aims.

HISTORY

The role of the Coroner is an ancient one originating in September 1194. In 1215 coronial law is noted in Magna Carta. The duties of early coroners included investigating any aspect of daily life, which may have some benefit to the Crown. Finding a body (often Norman) would give rise to a duty to inform the local coroner (if sudden and unnatural). Areas of investigation included suicide (self murder), investigated so that Crown could take the deceased's chattels, wrecks at sea, fires (fatal and non fatal) and the discovery of buried treasure.

The Coroner's role adapted over the centuries and remained concerned with homicide, infanticide, suicide and all types of unnatural death,

In the nineteenth century major changes occurred and Hugo described this as a new lease of life for the investigation of death. In 1836 the first *Births and Deaths Registration Act* was introduced. After a cholera epidemic and the proliferation of poisons there was much public concern that deaths had been going unreported. The *Coroners Act* 1887 followed and was largely replicated in the consolidating 1988 Act.

The lecture looked at the restrictive remit of the Coroner and the prohibition on findings which appear to determine any issue of criminal or civil liability. Often participants seek more, and the question was posed how inquests will survive and how they can maintain their current prominent place in the public interest.

After a cholera epidemic and the proliferation of poisons, there much public concern that deaths had been going unreported.

The numerous reviews of coronial law in recent history were examined. Reviews including the Shipman Inquiry and the Home Office review of 2004 have called for reform for some time. Common recommendations have been the introduction of the role of the Chief Coroner, the need to be more sensitive to needs of the bereaved, better medical scrutiny and an amendment of right to appeal. Also proposed repeatedly has been a general modernization including a national jurisdiction rather than antiquated geographical restrictions.

Ministry of Justice annual statistics from 2013 revealed a disparity between the huge number of inquests, 450 of which were with a jury, serviced by no more than 100 full time coroners who are themselves reliant on local funding.

REFORM

The 2009 Act has changed the system. The Lord Chancellor must now consent to the appointment of a coroner. Schedule 3 has tightened coroner's required qualifications - all must now be legally qualified.

The most radical aspect of the 2009 reforms has been the long anticipated post of Chief Coroner for England and Wales. The introduction of a new appellate remedy was a radical provision which fell at the final hurdle. The only route to challenge a decision remains an application to the High Court for a quashing of verdict and a new inquest or by way of a judicial review.

The broad structure of inquest is maintained with some very positive features introduced - a general duty to disclose, a statutory power to summons witnesses, the widening under Rule 23 of the circumstances in which you can call documentary evidence and a duty to record proceedings.

Under current rules an inquest must be finished within 6 months. Any investigations which take longer than a year now have to be notified to the Chief Coroner. This is a welcome check on this often slow jurisdiction.

The purpose remains unchanged - Who, how, when and where the deceased came by their death and particulars required to be registered concerning the death. The outcome of the inquest however changes from a verdict to 'conclusions'.

Section 5(2) introduces a statutory trigger for whether to hold an Article 2 inquest, with the addition of the query 'in what circumstances' the death occurred. Hugo, citing with


Hugo Keith QC

obvious approval the full and fearless approach by Hallett LJ in the (non Article 2) 7/7 Inquest queried what practical difference it really makes whether an inquest is deemed to be a *Middleton* inquest or not.

Section 7 of the new Act provides that there must be a jury in certain circumstances. It reverses the presumption so that an inquest must be without a jury unless limited circumstances apply.

Whilst the vast majority of inquests pass under the public radar, a vital public interest is provided by inquests and he welcomes the reforms.

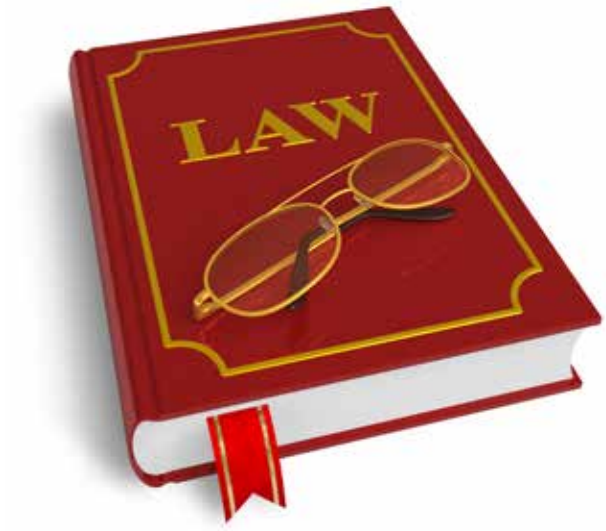
Hugo concluded by reflecting on the amended system. The overall principles remain happily unchanged he said. Whilst the vast majority of inquests pass under the public radar, a vital public interest is provided for by inquests and he welcomes the reforms.

We were left with three points to watch for to keep an eye out for whether the aims of the reformed system are met:

1. **DISCLOSURE.** Whether or not an inquest can meet the expectations of a family with regard to disclosure. The new Part 3 inquest rules give a general rule of disclosure. The Coroner must provide copies of relevant docs to an interested person on request, subject to restrictions. (RIPA, PII, Copyright). This must be imposed and followed through.
2. **PUBLIC SCRUTINY.** The public belief in the efficacy of the process is crucial. The 7/7, Princess Diana and De Menezes inquests have shown that there is a huge public interest in police intelligence and planning, state secrecy (real or imagined) and national intelligence. Hugo questioned whether the process going forward is equipped to deal with difficulties of the discretionary balancing exercise of PII and the challenges of RIPA. Rule 17 (now 11) – makes plain that all hearings must be in public. Openness is at the heart of the Coroner's task. There may, we were warned, be a move for closed material proceeding in civil proceedings to filter into the arena of inquests.
3. **FUNDING.** There is no general right to funding for interested parties unless a significant public interest can be shown. This is and remains a challenge to participation and it would be foolhardy to think that funding is going to get easier.

We are very grateful to yet another formidable speaker for this excellent evening.

Oliver Doherty is a barrister at Furnival Chambers and Junior of the SEC



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YOUR CIRCUIT.
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THE SOUTH EASTERN CIRCUIT

CPS Rape List Accredited Sexual Offences Training

Saturday 14 June 2014, 1pm until 5:30pm
The Bar Council offices, London

Speakers include:
HH Judge Patricia Lees,
Hugh Davies OBE, QC, Patricia Lynch QC
and Eleanor Laws QC

5 Hours CPD applied for

You must be a member of the South Eastern Circuit to attend this course, (application for membership may be made at the same time).
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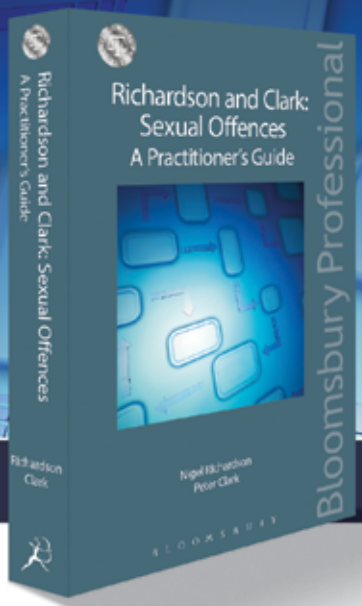
Richardson and Clark: Sexual Offences – A Practitioner's Guide



Nigel Richardson & Peter Clark

Richardson and Clark: Sexual Offences – A Practitioner's Guide is the brand new practical guide to the law relating to sexual offences. It gives practitioners the ability to respond quickly, particularly on arrest and questioning of the accused and during the preparation of the case, and provides in-depth advice for the entire trial process.

In-depth information, designed for quick access

Richardson and Clark: Sexual Offences covers the 70+ different sexual offences currently on the statute books, from obvious offences such as rape or sexual touching, to more arcane matters like voyeurism or breach of a position of trust. It also covers the range of offences relating to images, pornography and prostitution and provides advice on historic offences which may still be charged today.

All this information is predominantly provided in tabular form such as charts and flow diagrams to allow quick access during crucial and time-sensititve situations.

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- Guidance on Sexual Offence Prevention Orders

Legislation

Richardson and Clark: Sexual Offences covers:

- Sexual Offences Act 2003
- Sexual Offences Act 1956
- Indecency with Children Act 1960
- Protection of Children Act 1978
- Criminal Justice Act 1988
- Criminal Justice and Immigration Act 2008
- Youth Justice and Criminal Evidence Act 1999
- Coroners and Justice Act 2009
- Criminal Procedure and Investigations Act 1996
- Criminal Procedure Rules
- Definitive Sentencing Guidelines for Sexual Offences (effective from 1st April 2014)
- Key case law

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LACKING EMPATHY: ASPERGER SYNDROME AND THE CRIMINAL JUSTICE SYSTEM

BY PENNY COOPER

Imagine this fictional scenario:

It is lunchtime on a school day and a teenager, let's call him Jonathan, who is well-built and over 6 feet tall is walking down the high street in his local town. He sees a group of boys he knows from school by the clock tower; they call him over. They chat for a short while and Jonathan agrees to do what they ask. He goes into the catalogue shop across the street and, without making eye contact with anyone, collects all the customer pens, about 50 in total. Jonathan leaves the shop without buying anything. He gives the pens to one of the boys waiting outside for him, they laugh and quickly disperse. The shop assistant calls the police. The teenager, now on his own again, is by the clock tower when the police arrive and is identified by the shop assistant with the aid of the CCTV footage. He is approached by the officer who asks him, "What is your name?" The officer finds his answer unhelpful and rude. Jonathan is arrested on suspicion of theft at which point he becomes upset. As he is being handcuffed his elbow strikes the police officer in the nose. Back at the police station he is found to have glass marbles inside a sock tied with string in his rucksack.

He is charged with theft, assaulting a police officer and possession of an offensive weapon.

Guilty as charged? If we know that Jonathan has Asperger Syndrome, an 'autism spectrum disorder', should our perspective shift?

Asperger Syndrome in brief

Asperger Syndrome may be present in about 1 in 250 people in the general population however, unlike classic autism, very few people heard about it until the 1990s. Some seventy years ago scientists were observing and recording characteristics in children that would eventually become known as Asperger Syndrome. Hans Asperger was one of these scientists. His work was translated into English by Lorna Wing in 1981 and Uta Frith published a book called *Asperger Syndrome* in 1991.

People with this form of autism have difficulties socializing and communicating. They are often described as lacking empathy and tend to be socially gauche or immature. People with Asperger Syndrome pay particular attention to detail and they find unexpected change difficulty to manage. Unlike classic autism they have at least normal IQ. A person with Asperger Syndrome is likely to have a special, narrow interest which they can talk about in impressively technical (possibly boring) detail. Note though that having an extensive vocabulary is not the same as being adept at communication. Their expressions may appear at times to be stilted, formal or pedantic in nature, they may have difficulties with 'volume control' (speaking too loudly or too softly) and may display what look like inappropriate facial expressions. The brains of people with Asperger Syndrome have developed differently and as such they are not 'neuro-typical'; they usually display both disability and exceptional intellect.

Asperger Syndrome seems to be more prevalent in boys than in girls, at a ratio of about nine boys for every girl, although evidence is emerging of an under diagnosis in girls. It is estimated that at present only about 50% of children who have Asperger Syndrome are being detected and diagnosed. There will be adults who have Asperger Syndrome who have not been diagnosed; awareness and understanding was extremely poor until recently so, generally speaking, the older you are the less chance your condition will have been recognised and diagnosed. By way of example, Gary McKinnon who hacked into the Pentagon computer (and made no attempt to disguise that fact) was spared extradition after the world's leading experts diagnosed his Asperger Syndrome. He was 42.

Asperger Syndrome is a lifelong biological condition but symptoms can be managed. Whilst a diagnosis can help some access the services they need, some adults with Asperger Syndrome do not want or need a diagnosis because they have found a niche where they fit in and where they feel they are thriving. However this would not preclude them from facing extraordinary difficulties in a new and unpredictable situation - including being arrested for the first time or being cross-examined in court.

What happened to Jonathan?

Jonathan has Asperger Syndrome. To understand why he behaved as he did, it is


Penny Cooper

necessary to understand how his condition affects him.

Like most people with Asperger Syndrome Jonathan is happy in the predictable and familiar environment of home where his parents and siblings make allowances for his quirky ways. They know to forewarn him of changes in routine, to avoid cooking certain foods which have smells that upset him, that he eats with his own special fork, that he needs to check his collection of precisely 1,057 marbles before he goes to sleep at night and much else. They have come to know when a stress induced 'meltdown' is about to occur and they take action to deal with his anxiety such as using distractions to calm him. His meltdowns have become less frequent as he has got older but they can still occur when he is extremely stressed, for example when people around him are arguing.

At eight years old he had a Statement of Special Educational Needs (SEN) for 'social, emotional and behavioural difficulties' and had a teaching assistant to support him at primary school. He sometimes called out in class to correct the teacher when she got her facts wrong. When the teacher said, "Are you trying to tell me how to do my job?!" he answered "Yes", to the amusement of the class. He did not intend to be rude, nor did he realise how it made his teacher feel. He was just telling the truth and could not understand why telling the truth was the wrong thing to do. It was an example of his 'lack of empathy'. Apart from his exceptional knowledge of science and history facts, Jonathan was also known for his social awkwardness and naivety. He could be easily tricked by other children for their own amusement: "See if you can throw your shoe onto the school roof." He did.

Mainstream secondary school was very different. The constantly changing activities (classrooms and teachers) were impossible for him to cope with. His anxiety levels increased dramatically as well as his self-calming humming and hand-flapping. He became the target of bullies. He began to distrust the teachers and the students and eventually he was permanently excluded for arguing and being disruptive (school exclusions are disproportionately applied to SEN pupils, many of whom are disabled). The LEA was unable to find a place for Jonathan in a suitable special school so his mother reluctantly chose to home-school him.

On the day of his arrest Jonathan had gone to town to buy some lunch for himself and his mother. His mother does not usually allow him out to the shops on his own but he had insisted that it was time she let him have some independence. The boys hanging round at the clock tower recognised him from school and called him over. Jonathan was keen to make friends. People with Asperger Syndrome often crave friendship but find it very hard to make friends. The boys told him that to impress them he should bring them all the pens from the catalogue shop. Jonathan got the pens, handed them over and thought he had made friends. He could not tell the boys were smiling because they had duped him. Jonathan took them at their word when they said, "Wait here." He could not interpret their smirks. The police soon arrived.

Police and the suspect with Asperger Syndrome

Officer: "What is your name?"

Jonathan: "I was baptised Jonathan Michael Robert O'Neill but you can call me Johnnie. What are you doing here?"

Like many people with autism Jonathan has difficulty making and maintaining eye contact so he was not looking at the officer when he said this. He answered literally and fully with unnecessary detail, apparently talking at the officer. He appeared blunt, even rude, though he did not mean to. Even though he saw her enter the catalogue shop, talk to a member of staff and then come straight over to him Jonathan could not intuit that she had come to question him or infer what might happen next.

Officer: "I was about to ask you the same thing."

The officer made a statement but implied a question. Jonathan, lacking 'theory of mind', did not recognise it as a question or realise the officer wanted to know what he is doing. He understands things literally.

Jonathan: "That's a coincidence."

Officer: "Well?"

Jonathan: "Very well thank you, and how are you?"

He is still not looking at the officer – making eye contact with a person who is talking to you is a rule that he has be taught but one which he finds almost impossible to do especially when he is thinking about what to say next. Most people instinctively pick up rules of social interaction but Jonathan has had to try to learn these. He approaches situations logically based on what he has been taught. If a person asks you if you are well you say, "Very well, thank you" and then ask them. As far as the officer is concerned,

Jonathan has 'failed the attitude test' and the officer concludes he is likely to be more cooperative if he is questioned back at the station.

Officer: "I'm arresting you on suspicion of theft."

She places her hand on his arm, as is her standard practice to indicate the arrest but another symptom of his Asperger Syndrome is his hypersensitivity to touch. She cautions him. The words are a muddle to Jonathan. His language processing problems are exacerbated when he is stressed. He hears the word 'arrest' and is now extremely anxious as he has never been arrested before; in fact he has never been in trouble with the police. He finds it impossible to string a sentence together and loudly yells, "No!" startling passers-by. The officer radios for backup. The hissing noise of the radio startles Jonathan further and he covers his ears. She tries to put on the handcuff but he twists away and involuntarily elbows the police officer, who is shorter than he is, and gives her a bloody nose. The sock that the police later find in his rucksack contains his collection of his special marbles. He always carries around his favourite ten marbles for comfort.

Unless already knowledgeable about Asperger Syndrome, the police officer would not have recognised the signs of Jonathan's autism. The brief interaction with him might not trigger warning bells. Asperger Syndrome is often referred to as a hidden disability. Could Jonathan have told her he has Asperger Syndrome? The National Autistic Society provides information cards (the size of business cards) that say, "This person has Asperger Syndrome" and highlight the communication and anxiety issues. Even if Jonathan had carried the cards, when would have been the time to get them out? At least one police force in England is trialling a voluntary autism registration system which would flag up a witness's or suspect's condition. Of course this depends on a person knowing about their condition and agreeing to be recorded on the police database as autistic.

When Jonathan is taken to the police station, adaptations to take into account his disability are unlikely unless he or his mother say that he has Aspergers Syndrome (that is if they know) or his vulnerability is spotted by the custody sergeant/ FME/ appropriate adult/ legal adviser who then request a clinical assessment.

The Advocate's Gateway

Prosecutions

Jonathan thought it was okay to take the pens because they are 'free', he involuntarily reacted to being touched by the officer and the marbles in the sock were there because of his obsession. Is a prosecution justified? The prosecutor would have to be satisfied that the case passes the CPS's two stage evidential and public interest test.

Strictly speaking Jonathan might not have defences in law but the evidential stage of the test requires the prosecutor to 'consider what the defence case may be, and how it is likely to affect the prospects of conviction' [4.4, Code for Crown Prosecutors]. Would magistrates find him guilty? Would a jury?

Even if the CPS considers that the first stage of the test is met is the second stage? 'In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest' [4.7]. Para 4.12 (b) includes:

Prosecutors should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.

Clearly a decision to prosecute should be made in light of all the relevant facts including a defendant's disability, if he has one. In Jonathan's case (as in a real life instance) the test being applied properly is dependent upon the prosecutor having an understanding of Asperger Syndrome and how it affects the accused. Having Asperger Syndrome does not necessarily mean that person is not guilty or not culpable, but it might.

Another important related issue is the effect of being in custody on the defendant's mental health. Depression and obsessive compulsive disorder are just two of

number psychiatric conditions known to be associated with autism. People with Asperger Syndrome can suffer terribly in jail because of their sensory hypersensitivity to sounds and smells, difficulty coping with the social demands of sharing cells etc.

Advocates at trial

In preparation for trial, courts must take 'every reasonable step' to facilitate the participation of witnesses and defendants (Criminal Procedure Rule 3.8(4) (a) and (b) and also see R v Dixon [2013] EWCA Crim 465). The judge is in charge of the adjustments and the judge must take an active role in ensuring that the defendant can participate effectively.

Using its inherent jurisdiction the court may grant the defendant the equivalent of some of the special measures that are available for witnesses (*R v Camberwell Green Youth Court* [2005] UKHL 4) including the use of an intermediary (*C v Sevenoaks Youth Court* [2009] EWHC 3088 (Admin) and *R (on the application of AS) v Great Yarmouth Youth Court* [2011] EWHC 2059 (Admin)).

The best advice on necessary adjustments for this particular defendant can be obtained from an intermediary who might, for instance, suggest the use of timelines, symbols, stress toys etc. The intermediary should be on hand at trial to facilitate complete, accurate and coherent communication. If it is not possible to have an intermediary at trial, the judge will have to be more interventionist than otherwise, as was the case in R v Cox [2012] EWCA Crim 549. Ground rules hearings, first introduced almost a decade ago for witnesses through registered intermediary training and practice, are now required when a defendant is vulnerable, even if there is no intermediary (*Criminal Practice Directions* [2013] EWCA Crim 1631, 3E to 3G).

The ground rules hearing should address the correct approach to cross-examination. The Advocacy Training Council's landmark report *Raising the Bar* (2011) pointed out:

> *such surveys as Measuring Up (NSPCC/ Nuffield Foundation) focus exclusively on the experience of prosecution witnesses, rather than a combination of those participants and child defendants… there is no difference between the approach of defence counsel, and that of the prosecution advocate challenging the account given by a child defendant.*

Nor is this a problem that is restricted to children. The correct approach to cross-examination of adults must be considered. At the ground rules hearing the judge with trial counsel (and the intermediary if there is one) should discuss what will and will not be allowed in cross-examination. This could include the restricting the duration of cross-examination (*R v B (Ejaz)* [2005] EWCA Crim 805), agreeing breaks, the language to be used in cross-examination (e.g. avoiding idioms when questioning those with autism), the pace of questioning etc. Further information on ground rules, intermediaries, vulnerable witnesses and defendants is available at www.theadvocatesgateway.org

Intermediaries report ground rules hearings are often too 'last minute' to permit advocates time to go away and prepare their questions. Ground rules are often broken. If the judge does not intervene to stop ground rules breaches, counsel must. In one case the cross-examination of a young woman with Asperger Syndrome lasted all week partly on account of counsel's overcomplicated questions. More than once there was assurance to the witness that the next day would be the last day, but it wasn't. By the end of the week the witness had become so anxious that she had a 'meltdown' and needed a very long break before continuing.

> *Another important related issue is the effect of being in custody on the defendant's mental health.*

Advocates must ensure that witnesses are properly prepared (as distinct from 'coached' which of course is not allowed, *R v Momodou and Limani* (2005) EWCA Crim 177). It is particularly helpful for the defendant (or witness) with Asperger Syndrome to visit the court before the trial.

The intermediary should plan the pre-trial visit with the defence team and also accompany the defendant. The defence team will need to map out a bespoke witness familiarisation session (since the Witness Service doesn't do this for defendants). It should normally include agreeing with the court staff a time when the defendant, without being rushed, can try out the witness box, get used to hearing the sound of his own voice from there and understanding who will be where and doing what when he gives evidence. The environment can exacerbate the condition - an unfamiliar courtroom is likely to increase anxiety and reduce the defendant's ability to understand what is going on. If panic sets in the defendant might have a 'meltdown'. If the defendant's use of the live-link is being considered, he or she should have an opportunity to have a practice session (*Criminal Practice Directions* 2013, 3 G.2 to 4). Putting the defendant with Asperger Syndrome in the crucible of adversarial cross-examination runs counter to his or her need for calmness and predictability, therefore proper witness preparation is of the utmost importance.

Summary

People with Asperger Syndrome are sometimes referred to as having no empathy. Ironically perhaps, empathy is what is required from the criminal justice system. Police, lawyers and judges must know when to request an assessment of the defendant so that the investigation, charging decision and court hearings take into account this serious, lifelong disability. Awareness and understanding of Asperger Syndrome and how it affects the real life 'Jonathans' is necessary in order to ensure each case is dealt with fairly at every stage.

Further reading: Tony Attwood, The *Complete Guide to Asperger Syndrome* (Jessica Kingsley Publishers 2007, 2008) and Simon Baron-Cohen, *Autism and Asperger Syndrome* (Oxford University Press 2008)

Professor Penny Cooper is a barrister and Chair of The Advocate's Gateway

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JONATHAN LAIDLAW QC ON PII AND RIPA

BY BEN HOLT

Having practised for many years as Senior Treasury Counsel there could be few advocates better placed than Jonathan Laidlaw QC to deliver a lecture entitled Public Interest Immunity and RIPA 2000 – What You Need To Know To Prosecute and Defend. The talk was timed to coincide with the CPS opening applications for advocates to either become graded or to upgrade their existing grading. As Sarah Forshaw QC, introducing, highlighted: those who have been required to fill out the requisite form for CPS grading will be only too aware that the box entitled "PII and disclosure" can be one of the more challenging to fill.

The lecture was divided into two parts: dealing first with the disclosure regime and then Public Interest Immunity Hearings and how these interchanged. This was followed by a debrief on the Regulation of Investigatory Powers Act 2000 (RIPA).

The starting point for the prosecutor wishing to discharge their duty of disclosure was the defence statement. Without this, it was impossible for the advocate to determine what the issues were likely to be in the case and, therefore, what material might meet the disclosure test. This indeed is an approach that the CPS encourages their advocates to take when confronted with deficient defence statements. A proactive approach is expected from early on. The requirement of a defence statement is not triggered by service of an entire case; rather by purported compliance with section 3 of the Criminal Procedure and Investigations Act 1996 (CPIA).

Such a robust approach would assist in the long-term by flagging potential issues up in advance; something that is likely to attract judicial approval. It was important to note, however, that inadequate disclosure from the defence did not negate the requirement for the prosecutor to continually review disclosure.

The area of Public Interest Immunity hearing was introduced by reference to H v C and a quote from Lord Bingham. Those in attendance were able to benefit from the speaker's clear knowledge and experience in this area. Advice was given about material deemed too sensitive for scheduling on the MG6 schedules. This would often come from the Security Services, both at home and overseas.

This world of disclosure took one out of the CPS and into the realms of Ministerial Certificates. Although a potentially complex area where the advocate needed to exercise judgement, that is precisely what they should do. The advocate should not, as might have been the case prior to H v C, adopt a default stance to take a tranche of material to the trial judge and ask for rulings upon it. Material neutral or damaging to the defendant should not now be brought to the judge's attention; only material about which there is a genuinely borderline decision to take in respect of disclosure.

It was important to note, however, that inadequate disclosure from the defence did not negate the requirement from the prosecutor to continually review disclosure.

Even in those circumstances, the prosecutor needs to take the initial decision in relation to whether is disclosable under section 3 CPIA. The judge's approval might then be sought in respect of any redaction that is required.

The complex topics and ideas being spoken about were made all the more comprehensible by examples from cases where various situations had arisen. Helpfully for those of us dealing with complex disclosure and PII issues for the first time there was a list of tips given that can be followed in every case that will assist the advocate when making difficult judgement calls.

The sage words of advice that can be taken away by all is to make careful and detailed notes of every decision that had been taken. Such decisions could easily come back to haunt an advocate in the future. It might be the case that the reviewing lawyer/disclosure officer might no longer be available for assistance. The advocate would, therefore, have only their recollection to rely upon. And so, a detailed record of everything is absolutely essential.

The importance disclosure to the integrity and fairness of a criminal trial is obvious. Wherever the prosecutor felt that the disclosure test was met, disclosure in some form (be it redacted or summarised) was required, even if this went against the views of the police and Reviewing Lawyer.

The ideas of RIPA were briefly dealt with towards the end of the talk. It was reassuring to hear someone of the experience of the speaker to describe this Act as "enormously difficult to understand". It carries with it, of course, the added pressure for those ignorant of its strict requirements and rules that by asking inappropriate questions in court of witnesses in relation to intercepts and the like that the advocate, themselves, can be breaking the law.

A hugely insightful and useful talk that was interesting to all who attended. Our sincere thanks to Jonathan for giving up his time to deliver this lecture to members of the SEC.

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

RESTAURANT REVIEW: SKETCH

BY TETTEH TURKSON

Maybe it was the cessation in hostilities but I had decided that the occasion of JC's 35th birthday was the time to re-open my wallet. Be warned. This is not a review of a restaurant which is anything other than a rare treat - save, perhaps, for those members of the circuit who don't rely on any public funding. I picked sketch on no real basis other than the fact the Lecture Room and Library has a brace of Michelin stars and whilst that may not be an unfailing guide to quality it seemed a pretty good start.

The next stage was pretty impressive too. I think for the first time ever I want to say something about the booking process. It seemed about as relaxed as it is possible to be. A very nice lady asked in which restaurant I wished to book a table and then told me that we had the table in the Lecture Room and Library for as much time as we wanted in the evening sitting - no turning of tables there - but that they would expect us for dinner at 8.30pm.

As it happened we were an hour early. The door at 9 Conduit Street was opened by a bowler-hatted doorman, very much in the traditional mode. However the real greeters are the slick young things clad in black once you get through the door. We were rather surprisingly told that our table was ready when we were but that we were welcome to start with cocktails in The Parlour.

The Parlour is odd. Almost as odd as the toilets. If I had done rather more investigation into sketch before we went I would perhaps have expected it. After all the promotion on the website says:

"The triple dream of launching a centre, a "lieu" or destination place, for food, art and music has been realised by Mourad "Momo" Mazouz and his team of chefs and designers over two expansive floors of a converted 18th century building in Conduit Street, Mayfair, London."

I think that would probably have put me off. The art in the Parlour consists mainly of animal headed people, although there was a caged video of a butterfly and a bust with a video of an eye which I quite liked. If the pretensions of the website had not put me off then that might just have caused me to turn tail. To have done so would have been my loss because the food itself was spectacularly good.

Let's get the cost out of the way. It was eye watering. As usual we went for the tasting menu. This was comparatively good value, despite being £95 a head, because the starters and mains on the a la carte menu were about £45 a piece. They did explain that this was because each dish was comprised of 5 elements of the main ingredient separately treated and cooked. I dread to think how much chef labour goes into doing that. I was frankly sceptical that it justified the price so went for the safety of the full-blooded tasting menu, scoffing briefly at the suggestion that we might consider the vegetarian one.

On to the food. I have a confession. I normally take half decent notes whilst eating at a restaurant I intend to review. My notes for sketch are, well, pretty sketchy. The Editor keeps telling me to take photographs and I did mean to, but as soon as the dishes were presented they were devoured. So I'm sorry. I genuinely don't think I can do it justice. It was one of the best meals I've ever had. Probably in the top 3 or 4. Every single dish was fantastic. I can't recall a single misplaced element. The only thing I can be negative about is the weight of one of the forks - unusually light, particularly in comparison to the knife. As complaints go, that's feeble.

First course was pigeon. It was just wonderful. It melted in the mouth in a way I was not aware was possible. It was described as carpaccio but it was not as thinly sliced as that implies to me, making it a great deal more hearty and substantial. Paris mushroom salad was in fact a delicious mushroom tuille. The other accompaniments - shallot marmalade, apple, pumpkin with cinnamon and cumin - make the dish sound sweet and uncomfortably rich but was not at all. Somehow the pigeon shone through all in perfect balance with whichever combination of elements one chose.

Scallops next. This dish was described as having 2 different elements of curry but I have to say that you would be hard pressed to isolate that flavour. The dominant flavours were the scallops and the watercress puree. I suppose that one

could say that some of the descriptions of the dishes on the menu were slightly misleading as to the actual taste.

By the end of the morel ravioli, which came next, I was singing songs to the loveliness of the meal. That dish was an exquisite combination of earthiness with a little sweetness from the turnip consomme and prawns.

First course was pigeon. It was just wonderful. It melted in the mouth in a way I was not aware was possible.

By then I had relaxed into the warm embrace of the chef and assumed that whatever the sea urchin bisque that was coming next tasted like, it was going to be excellent. It was. It did not have the sweetness of other bisques, which meant that it accompanied the cured sea bream and smoked haddock rather better.

Cucumber jelly was a quick palette cleanser before the lamb. The rhubarb and mango and lime produced a flavour strangely, but not unattractively, reminiscent of prawn cocktail in its sweetness and sharpness and spice.

The dishes had come thick and fast. It wasn't that we were ever rushed but when we finished one the next came without delay. They must have been paying attention to the speed because they next asked us if we wished to have a break for a little while. JC and I have had a lot of tasting menus and never been asked that before and it was a really nice touch.

Lamb with sweetbreads was perfect. It even came with some fresh vegetables, which are so often forgotten in tasting menus. My first review for The Circuiteer included a description of some aubergine caviar at Jaan. It was horrible. It basically tasted of salt. I remembered that when I saw that the lamb was going to have aubergine caviar with black garlic as an accompaniment. Where Jaan provided a swamp of salty horror, sketch gave us a daub of something velvety smooth with a hint of sweetness.

When I read that we were finishing with Pierre Gagnaire's Grand Dessert, which was a combination of 5 desserts I assumed that that would be where the meal would fall down. Not because of Pierre Gagnaire, the chef who is the creative force behind the menu - after all he's got about a thousand Michelin stars and other awards to his name. It was really down to prejudice - most swish restaurants don't manage to have good desserts. Combining 5 desserts didn't sound like a great plan either. Actually it was not really a combination of 5 at all but just 5 desserts, in two tranches, a concept that I embraced a lot more enthusiastically. As with all the dishes, they were beautifully presented. Just to run through them quickly. Pink grapefruit granita pierced orange with sweet red pepper was refreshing. Sweet peppers turn out to be actually sweet enough to go in dessert, which was a bit of a surprise. So was the avocado in the next dessert with pomegranate, sable biscuit and apple puree. The next was a chocolate dessert the name of which I didn't catch through my grin. I think it was a clementine and chocolate parfait. I certainly heard the name of the next which is Death by Chocolate with a prune confit. Finally we had lemon sponge, sugar crisp with kiwi fruit and banana.

Any two of those desserts probably would have been enough to feel like one had had a proper finish to the meal. However we were not uncomfortably full at the end, and they were so lovely I was sad when I finished the last.

Cost	**£95 per head for the tasting menu**
Verdict	**Spectacular**

Tetteh Turkson is a barrister at 23 Essex Street

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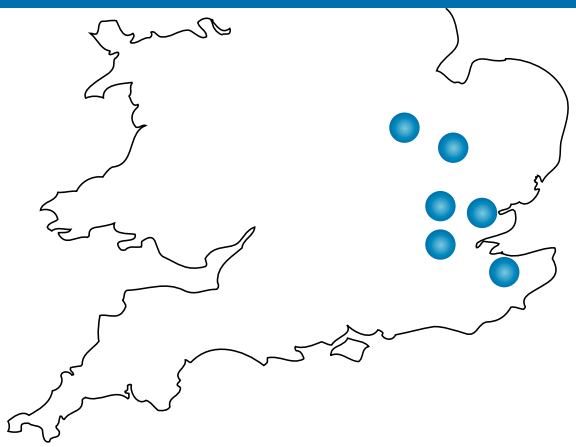

SUSSEX

We received the very sad news that Retired Judge Rolf Hammerton passed away on the 18 January of this year. Judge Hammerton was very well known to all those who practiced in the civil courts of Sussex in the 80's and 90's. He was one of the first judges I appeared before having just qualified and I was struck by his sense of serenity and humanity. He was a pleasure to appear and always treated counsel with utmost respect. However, he may well be best remembered for the very sensitive and empathetic way he would direct his attention to parents when delivered judgment in harrowing care cases.

In retirement, Judge Hammerton was often seen at the Sussex Bar Mess summer garden parties and it was always a pleasure to spend some time in his company.

He was also chairman of the Stanmer House Preservation Trust and a Patron of the Martlets Hospice, in Hove.

Judge Hammerton's funeral was held on the 14 February 2014 in Hove and was well attended.

Our thoughts are with his family at this sad time.

Tim Bergin

KENT

The Kent Bar Mess is particularly active, both professionally and socially. A highly successful annual dinner was held in November at the Merchant Taylors' Hall, which was well attended by both Bar and Bench, including the Presiding and Resident Judges. HHJ Richard Scarratt, Oliver Saxby QC (Mess Chairman) and Louise Oakley (Mess Junior) spoke entertainingly after dinner.

The Mess has been involved in supporting the action taken by the Bar in order to protest at the Government's intransigence over legal aid fees. Both 'Days of Action' held so far have demonstrated complete solidarity, with Maidstone and Canterbury Crown Courts at a virtual standstill. Favourable local media coverage was obtained, including interviews given by Oliver Saxby QC.

The harsh January weather saw Maidstone Crown Court hit by flooding and unable to use the custody area. This was followed by a programme of overdue refurbishment to some areas resulting in some Court closures.

Regular liaison is being maintained between the Bar, the Judiciary, solicitors and other Court users to try to improve case management and listing.

There have been significant attempts to engage local MPs in the work of the Bar and the Kent Courts. All Kent MPs were invited to an event at Maidstone Crown Court in January. Some attended which provided an opportunity for dialogue as to the concerns which are currently felt over the major issues affecting the Bar. It is hoped that this contact can be developed in order to try to establish open channels of communication.

Informal lunch events are planned for both Maidstone (11 April) and Canterbury (9 May) Courts to which the Judges have been invited. There will be two cricket matches in the summer, one organised by HHJ Gower QC between a Kent and Sussex Bar team and the Gentlemen of Lewes on Sunday 18 May at Lewes and another (evening) match against the Kent Cavaliers at Lenham which is being organised by Paul Tapsell (Becket Chambers).

This year's dinner will be held on Friday 29 November, at which HHJ Williams (Resident Judge for Canterbury) will speak.

The Mess was saddened by the retirement of HHJ Charles Byers this month. After a notable judicial career in London, including as Resident Judge at Woolwich, he rapidly became a very popular fixture at Maidstone. The Mess wishes him well for the future in his retirement.

Applications to join the Mess are encouraged from all members of the Bar who practise in Kent and should be directed to the Junior, Louise Oakley at 2, Bedford Row LOakley@2BedfordRow.co.uk .

'Invicta'

THAMES VALLEY

On 6 January, the Bar Mess joined others in protest outside Oxford Crown Court. We did not wear wigs or gowns, neither did we carry expensive handbags. Looking like a convention of Funeral Directors, our "message" was read by Nick Syfret QC to the assembled press. The only addition made to the script was to add the word "solicitors" to where it said "barristers" - this was sensible as the fight includes both sides of the profession as evidenced by the solicitors who had attended to lend support. Thanks to Nick we had much favourable publicity across Thames Valley.

On 7 March, the Mess turned out to take part in the Day of Action. Our own Junior, Jane Brady, managed to grab Maxine Peake of Silk fame as she walked past and have a photograph with Jennifer Edwards, Trudi Yeatman and Jo Durber, which reached Twitter and The Lawyer within minutes. A further photo of us on the march managed to find its way onto the Guardian website; there's profile-raising for you by TVBM members! I, on the other hand, was trying to avoid being photographed in front of the Socialist Workers banner… Again, Thames Valley solicitors joined us in making our protest.

By the time this goes to press, the Bar Mess will have had an informal drinks reception on 4 April, to say farewell to HHJ Zoe Smith who is stepping down after doing her terms of office as Resident Judge at Reading. She will be sorely missed, however rumour has it that she will be sitting at Oxford, no doubt to the delight of all court staff and advocates there. The new Resident Judge is to be HHJ Cutts; whilst at Aylesbury, HHJ Sheridan has now become the Resident Judge.

The Mess will be holding a retirement dinner in the autumn for HHJ Corrie and HHJ Mowat.

Kate Mallison

ESSEX

Odd years indicate an Essex location for the annual Bar Mess Dinner. Sasha took us back to Brentwood, revisiting a venue used some time ago. The difference this time was that the hotel (though not, mercifully, our dining room) was being shared with a wedding 'do'. The local stags all bore a remarkable resemblance to the Mitchell brothers in Eastenders. Late in the evening there was a tricky moment in the communal bar that had colleagues weighing to a nicety the amount of force that might be reasonable if things took a turn for the worse, but charm eventually prevailed.

Guest of Honour was Judge Karen Walden-Smith, who is moving on from Chelmsford, destined for even higher things (is't possible?) as a Specialist Circuit Judge in Chancery. She recalled fondly her time with us and reminisced about her thwarted expectations when first stepping into the unfamiliar criminal arena: "I was picturing TV's Silk and Rupert Penry-Jones; instead I got Karl Volz." Quite how that could have caused disappointment rather than delight, Her Honour didn't explain.

Seizing the gap left by KWS' departure, Judge John Dodd has wangled a return to his spiritual home at Chelmsford. He recently presided over the trial of a retired schoolmaster who claimed that his repeated application of a carpet slipper to the bottom of a teenage girl during private tuition was not sexual but merely a "motivational tool". He had the good sense to be represented by our doyenne, Patricia Lynch QC, so naturally he was acquitted, on that count at least. It was suggested by a robing room wag that the sentencing range would have been between one hundred lines and six of the best.

Judge Gordon 'Jumbo' Rice died on 19 January, aged 86. He was an Essex legend. Those of us too young for direct experience were nonetheless bottle-fed apocryphal Jumbo stories: the witness quizzed as to why she had dyed her roots black; the plump caseworker referred to as "the well-nourished young man behind counsel". As the eulogy by His Honour Gerald Gordon had to acknowledge, Jumbo's approach to what would nowadays be termed political correctness was somewhat idiosyncratic. We can say with considerable confidence that we shall not see his like again.

Judge Rice was a local man, educated at Westcliff School before Brasnose College, Oxford. His well-attended funeral was held at St Clements Church, Leigh-on-Sea, where he had been baptised. Before coming to the Bar, he taught locally: his charges apparently included our fondly remembered colleague John Butcher. A fellow student assisted the minister in the funeral service. Also well represented were former (but not as distant in time as might be presumed) cricketing teammates who added to the fund of humorous stories shared at the reception.

His local credentials left Jumbo well placed to form a view about Canvey Island: he famously detested everything to do with the place. The funeral coincided with the height of this winter's devastating weather and, for a moment, it looked as though an exceptionally high tide might actually do to Canvey what Jumbo had always fervently wished upon it.

Though fearsome (one of our present judges recalls "one read the papers five times before appearing before him"), Jumbo's passion for justice is fondly remembered. There were common themes to the many tributes: "… a truly unique Judge with a great sense of humour and a keen sense of the ridiculous... the driest sense of humour but the biggest heart of any Judge in Essex of his time… larger than life - usually got it right: a Judge can do no more."

Southend Pierre

CENTRAL CRIMINAL COURT

Spring is in the air at the Old Bailey! On 17 April, the annual spring clean of the robing rooms was undertaken by the Bailey's cleaning department. Anything that was not removed by then, and was not nailed down, was thrown away, including gowns, Archbolds and papers. Last year this was a most productive exercise, generating an array of old books, even older briefs and expensive luggage.

The Common Serjeant, who started last May and bears an uncanny resemblance to a former non-tartan wearing Leader of the Circuit, is now well ensconced and enhancing the efficient working of the court.

On a sad note, we will be bidding farewell to the Recorder of London, HHJ Barker QC, later this year. At least this will provide an opportunity at some future date for the Mess to follow up the tremendous dinner that was given to, belatedly, mark the retirement of his predecessor, HHJ Peter Beaumont CBE QC, which was held at the Middle Temple in November. This well attended gathering was pleased to hear the retired Recorder's strong support for the publically funded and independent Bar, and he was very pleased to receive a photograph of his team from his last Recorder's Cricket Match, a copy of which now adorns the wall of the Mess.

The Mess exists for the sustenance of its members, but is used by anyone appearing as an advocate in the building. Whilst we always try to be welcoming to visitors, we will be better able to do so if those who use the Mess regularly actually sign up for membership, and thus contributed financially to the Mess' running costs. If you are not yet a member but should be, please complete a membership form or contact the Junior.

Duncan Atkinson

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

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ANNUAL DINNER 2014

Middle Temple Hall

Friday 27 June 2014 at 7:00 for 7:30pm

Guest of Honour: **Sir Sydney Kentridge QC**

Judges/Silks	£80
Juniors	£45
Under 7 years' Call	£35
Dress Code	Black Tie

The Circuit will be subsidising the cost of this event

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