

# *The* LONDON ADVOCATE

*Updating the London Criminal Courts Solicitors' Association*

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NUMBER 38 **AUGUST 2006**



## EDITORIAL

With the arrival of the Carter review and three further publications – the DCA's *Legal Aid; a Sustainable Future*, the LSC's annual report and a paper from the Lord Chancellor, *Criminal Justice: Simple, Speedy, Summary* – it is now possible to gain a fuller picture of the government's agenda for the future of legally aided work in criminal practice. This issue looks at that agenda, with contributions from Robert Berg (see page 5) and Greg Powell (page 7). It is hoped that readers' gloom may be alleviated by Paul Harris' somewhat cynical vision of what is to come in *Criminal Legal Aid: The Future* on page 10.

Despite concerns for the future, the Association's life goes on: this issue looks back at the summer dinner and forward to the European conference in Mallorca.

LCCSA training gets into gear again for the autumn. Hard-working members of the Association have been making thorough and thought-provoking contributions in response to the never-ending flow of government consultation papers. Any member who would like to play a part in this task should contact the president, Linda Woolley, or Tom Epps, who leads the Association's law reform subcommittee.

*The Advocate's* readers will note that this edition is arriving slightly later than usual. This lateness comes with apologies and also with the explanation that the newsletter's editor, Morag Rea, has found her other commitments so onerous that she has had to bring her stint to an end. Morag has put in tremendous efforts for more than six years: editing this newsletter takes up a great deal of time and is a lot of hard work; the Association offers Morag heartfelt thanks for doing the job with such efficiency and style over a very long period.

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determined

#### LCCSA WEBSITE

www.lccsa.org.uk



## NOTICES

### ■ COMMITTEE MEETINGS

Committee meetings will be held on the following dates, all of which are Mondays. The meetings start at 6.30pm and will take place at the offices of Kingsley Napley.

The dates are 11 September, 16 October and 11 December.

Members are reminded that everyone is welcome to attend.

### ■ EUROPEAN CONFERENCE

The European conference will take place in Palma, Mallorca, from 6 – 8 October 2006.

The speaker will be the forensic expert, Professor Allan Jamieson.

### ■ AGM

The AGM, followed by a dinner, will take place at the Law Society on 13 November 2006.

### ■ WINTER DINNER

The Savoy has been booked for a winter dinner on 9 February 2007.

## NEWS

### Prison visits

Southwark Crown Court users' committee has been reminded that anyone having difficulty obtaining prison visits should seek to make use of the video links provided at magistrates' courts.

The clerk at City of London magistrates' court has suggested that solicitors may wish to make use of the video link at City of London court; arrangements should be made through the listing officer.

### Transferring legal aid

Southwark Crown Court users' committee also heard His Honour Judge Rivlin comment that the number of applications to transfer legal aid had now reached "crisis point". While the judge accepted that many of these applications were without merit, he voiced concern about how many defendants, both in custody and on bail, were claiming to have had little or no contact with their solicitors.

Judge Rivlin requested that, when a complaint of this sort was made, the solicitor involved should provide a chronological account of all contact with the client.

The judge feared that a certain amount of "poaching" might be going on; if any is detected, he will unhesitatingly report solicitors to the Law Society.

### New Homicide Act

The LCCSA has responded to the Law Commission's consultation paper, A New Homicide Act for England and Wales. In summary, the LCCSA response is as follows:

The government is proposing to increase dramatically the number of offences which may be described as murder by relabelling many of the current manslaughter offences as offences of "second degree" murder.

The LCCSA is strongly against the government's proposal. The degree of culpability required to be found guilty of manslaughter is significantly less than that required for murder. The offence of lower culpability should not now attract the label of "murder".

The LCCSA is also opposed to the government's overzealous attempts to codify criminal law. Such codification cannot hope to contain the vast breadth of human activity and culpability contained within the existing common law.

In its response, the LCCSA explains why the government should not reduce the sentence level for those who are convicted of "first degree" murder (those who intended to kill) or those convicted of manslaughter. The Association takes the view that a sentence of life imprisonment reflects the gravity of a conviction for "first degree" murder. For manslaughter, a sentence of life imprisonment should always be an option but its use restricted to only the most serious cases.

The government has questioned whether the defence of duress should be a potential defence to an allegation of murder. Historically, this has not been the case but the time has now come for the defence to be allowed. It is irrational for it to apply to almost every criminal offence except murder.

This response was drafted by Linda Woolley (Kingsley Napley), Tom Epps (Russell Jones and Walker), Janice Brown (Howell Emery Halil), Hilary Bradfield (Crown Prosecution Service) and Judy Teplitzki (Burton Copeland).

The full text of the Association's response is available on the LCCSA website at: <http://www.lccsa.org.uk/index2.asp?ItemID=2796&pcid=16&cid=18&mid=1&mid2=13&incid=53&archive=yes>



## Bail Act offences

The Association has responded to the Sentencing Advisory Panel's consultation paper on Bail Act offences.

In summary, the LCCSA welcomes guidelines for sentencing on such offences, as this will help to end the considerable discrepancies in sentencing between different courts and encourage transparency and certainty in the treatment of offenders.

In summary, the LCCSA's responses to the specific questions raised in the paper are as follows:

The Association:

- (1) agrees that the main objective of sentencing should be punishment;
- (2) agrees that sentences should serve as deterrents – failure to sentence does not encourage others to take court appearances seriously;
- (3) agrees that the main harm caused by any failure to attend is the resulting delay and undermining of public confidence;
- (4) agrees that there is no difference between failure to attend a police station and failure to attend a court, but it feels that differences may exist between sections 6(1) and 6(2), for example in the case of reasonable excuse (not to attend) followed by deliberate flouting;
- (5) agrees that the approach to sentencing should be based on the impact of the failure to attend and the culpability of the offender (the Association does not support a distinction between the weight given to either of these considerations – to ensure fairness, there should be a balance between the two);
- (6) agrees that, where a sentence is passed by the Crown Court, this should take place at the first possible opportunity; but the sentence should not be affected by the outcome of the trial for the principal offence;
- (7) does not recognise any circumstances where sentencing should be delayed, except for a situation where further mitigating points are likely to emerge;
- (8) asserts that the principal offence should be viewed separately; but it is concerned about circumstances where a case is discontinued and the defendant is still given a significant penalty or custodial sentence; and
- (9) accepts that there are circumstances in which a custodial sentence is appropriate but suggests that fines are more appropriate for section 6(2) offences.

This response was drafted by Margaret Gordon (Christian Khan) and Hilary Bradfield (Crown Prosecution Service).

The full text of the Association's response is available on the LCCSA website at: <http://www.lccsa.org.uk/index2.asp?ItemID=2779&pcid=16&cid=18&mid=1&mid2=13&incid=53&archive=yes>

## Young black people in CJS

The Association has responded to the Home Affairs Committee inquiry into young black people in the criminal justice system.

The Home Affairs Committee has not requested responses to specific questions and has not referred to any statistical analysis to support its view that young black people are over-represented in the criminal justice system. As a result, the response of the Association is wide-ranging and limited to the views of the subcommittee.

In summary, the key points of the response are as follows. The Association:

- (1) suggests that the current application of "stop and search" procedures by the police is likely to lead to over-representation of young black people in the criminal justice system;
- (2) suggests that there are numerous socio-economic influences which have a significant bearing on the vast majority of defendants and that these need to be addressed by the government;
- (3) does not doubt that the reforms proposed by Lord Carter will have a damaging effect on the numbers of ethnic minority lawyers within the criminal justice system – this may further increase feelings of disenfranchisement among young black people.

This response was drafted by Tom Epps (Russell Jones and Walker), Sundeep Bhatia (Brent Law Practice), Melanie Stooks (Reynolds Dawson) and Fiona Dunkley (Fisher Meredith).

The full text of the Association's response is available on the LCCSA website at <http://www.lccsa.org.uk/index2.asp?ItemID=3061&pcid=16&cid=18&mid=1&mid2=13&incid=53&archive=yes>

## PRESIDENT'S REPORT

Once again, the period since publication of the last edition of *The Advocate* has been dominated by the Carter Review of legal aid. Robert Berg and Greg Powell (who, with Robert Brown, continues to work hard on this issue) have written pieces for this edition on the Carter Review and how the LCCSA is responding to it. At the time of writing this article, late July, we have already had an initial, and we hope constructive, meeting with the legal aid minister, Vera Baird. We had an honest and



wide-ranging discussion and the minister said that she hoped it would be the first of many opportunities to meet. The LCCSA's remuneration committee will be busy throughout the summer responding to the consultation that has emerged from Carter. We shall also be giving evidence to the inquiry established by the Constitutional Affairs Committee into the impact of the implementation of the review.

### Law reform

The Association's law reform subcommittee, led by Tom Epps, has responded to three more consultations, including the major Law Commission consultation on homicide, as well as the Sentencing Advisory Panel's consultation on Bail Act offences and the Home Affairs Committee's consultation on young black people in the criminal justice system. We have now been asked by the Law Commission to assist them by dealing with some further issues raised by the initial homicide consultation. Summaries of the responses given by the LCCSA and credits to the participants, who spend a huge amount of time on them, appear separately in this edition.

As ever, we need more help in the work we do. If you are interested please call me – 0207 814 1224 – or Tom Epps – 0207 837 2808 – to volunteer. Alternatively, keep an eye on the LCCSA website ([www.lccsa.org.uk](http://www.lccsa.org.uk)) and on your email. We now circulate forthcoming consultations (and the responses we make) to our members by email; we also put them on the website.

### Summer dinner

The summer dinner at the Grosvenor House on 7 July was attended by nearly 1,000 members and guests as well as a distinguished top table which included the legal aid minister, the senior district judge, the senior presiding judge of England and Wales, the Recorder of London, the Common Serjeant, and the chairmen of the Law Commission, of the Bar Council and of the CLSA.

The dinner fell on the first anniversary of the 7 July 2005 London bombings and Colin Reynolds gave a moving tribute to his colleague, Fiona Stevenson, a member of the Association, who died in those bombings.

We were generously supported once again by Sweet & Maxwell and by new sponsors, Barclays. Huge thanks go to our immediate past president, Angela Campbell, for securing these sponsorships and for developing the LCCSA's relations with our sponsors.

The only disappointing aspect of the evening was the lack of courtesy shown by a small but vocal element of the audience during Sir David Calvert-Smith's speech. I have apologised to him on behalf of the Association.

The committee is now looking at how we best ensure such behaviour is not repeated in future years. It does our Association and its work no good at all when our members/guests behave with such crass rudeness and discourtesy. Such behaviour is particularly upsetting and frustrating at a time when the committee has worked so hard on behalf of its members to raise the profile and influence of the Association.

### Congratulations

Congratulations to June Venters QC, a former president of the Association, for her great achievement in taking silk this year. Congratulations are also due to Ken Sheraton on his appointment to the district bench.

### The Advocate

Morag Rea has bowed to the weight of her many other commitments and come to the end of a long period as the editor of this newsletter. Morag has done this job for six years with efficiency and flair; I offer her our sincere thanks for all her efforts.

### ...And finally, the annual conference

The annual conference this year is in, sunny (we hope) Palma de Mallorca. It's from Friday 6 October to Sunday 8 October. Our speaker is the forensic expert Professor Allan Jamieson, who is both highly knowledgeable and hugely entertaining.

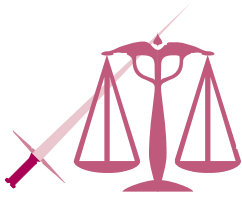
– Linda Woolley, Kingsley Napley

## CARTER REPORT

In the early 1990s, firms representing legally aided clients in all fields were encouraged to apply for an LSC franchise, the object being to enhance standards, not only of representation, but also of administration, financial control and efficiency. Gradually, the award of an LSC contract became compulsory for firms wishing to offer publicly funded representation.

Franchises and contracts were monitored by audits to ensure standards of service and the introduction of contracts brought significant financial incentives which greatly aided financial forecasting and cash-flow. Contracted practices spent considerable sums of money in putting the required systems into place to demonstrate their systems and structures.

For the last 14 years, the profession has shown its acceptance of a regime based on efficiency and cost-effectiveness; it has submitted to rigorous audits and financial controls (ie clawbacks if average billing did not equal actual payments received in a given period);



and has accepted criteria for the instruction of counsel and experts. The majority of practices willingly embraced the standards imposed by the LSC.

The government has not increased the rates paid across the board for criminal legal aid work for approximately eight years but, during that period, expenses have risen considerably. The fact that so many legally aided practices remain in business is a tribute to the resourcefulness and management skills of their partners and staff.

To throw away all that has been achieved – and investments of sums which are the equivalent of what to a large corporation would be many millions of pounds – following one review of service providers is unfair, fails to recognise recent achievements and lacks managerial insight. There is a sense of betrayal – hardly surprising in view of the total lack of financial incentives and long-term security offered by the Carter report.

### The market place

In common with modern day parlance and business practice, the report places great emphasis on the market evolving to set levels of fees and numbers of suppliers. But Criminal legal aid practices are already in a very tough market place. Gone are the days when the self-respecting criminal relied on his solicitor to employ a shrewd and eloquent barrister and then refrain from further input into case preparation. The modern day practice only succeeds by providing a first class service. The number of suppliers vying for work ensures competition and provision of the highest quality of service – word of shoddy representation soon spreads and firms which do not provide good representation do not survive. Firms whose standards slip may, in the short term, survive on duty scheme work but will not evolve into real players and reap the increased rewards which come with more serious, higher cost, cases.

To create a market place based on so many cases per firm, bulk contracting and efficiency savings is totally unrealistic. A false market will result, with contracts awarded to firms with a “stack ’em high and sell ’em cheap” approach. Representation approached on a cost based analysis can only result in employing less experienced or unqualified fee-earners, cutting corners, reducing professional standards, and exposing clients to the risk of miscarriages of justice.

Whilst the report emphasises tough quality controls, experience has shown that LSC auditors may have expertise in general management but lack the legal knowledge to make meaningful criticisms or provide constructive guidance on legal issues.

### Cost savings

The greatest areas of concern appear to be about travel and waiting time. Could it be the case that, if travel and

waiting time were cut out altogether or substantially reduced, the required savings would be accomplished without a radical overhaul of the whole system? Is the idea of fixed fees really based on a determination to cut out claims for travel and waiting ?

Some realities must be addressed. The need to travel and wait are integral to the nature of the job. An advocate must travel to court; a solicitor must travel to the prison where the defendant is awaiting trial or to the police station where an interview is to take place.

A few examples of travel and waiting times being beyond the control of the practitioner: we wait –

- (1) for police interviews to start, even after assurances that the police will be ready to roll as soon as the solicitor arrives at the station;
- (2) at police stations for a decision from the CPS;
- (3) at police stations for searches to be completed even when a start time is given by the officer;
- (4) in court for a case to be called because, except in the cases of contested matters, all cases are listed at one time;
- (5) for a client to be brought to a legal visit in prison;
- (6) while security procedures take place in prisons;
- (7) for court interview rooms to be free for conferences with clients in custody; and
- (8) for the CPS to bring a file to court.

If travel and waiting are unavoidable, it is unfair to be penalised for the costs which are involved.

### Meeting increased workloads

Workloads have increased as a result of legislation and changes in the criminal justice system. The Home Secretary has recently described his department as “unfit for purpose”. Could this be because it is simply unable to cope with the plethora of legislation which it has to administer? Legislation must be administered effectively if it is to achieve its purposes. If it is not put into practice properly, the law becomes meaningless and is simple lip service to the media hype which drew attention to the problem in the first place.

Once a new law enters the statute book, it must be enforced and lawyers must ensure that the courts dispense justice in accordance with that law. If lawyers are not adequately familiar with new laws and if they do not challenge, when appropriate, its interpretation, then they are failing in their role in a democratic society governed by the rule of law. If we do not rise to this challenge, we lose, not only our *raison d’être*, but also our role within the administration of justice; for example, if lawyers had not advised challenges to the law that authorised the government to detain people without trial, this unpalatable power would still be enforced.

It is disappointing, therefore, that nowhere does the Carter report acknowledge the wider and increased



role of lawyers necessitated by the numerous reforms to the criminal justice system in the last 10 years.

Numerous changes to the law have caused the workload to increase significantly – and the time and resources required to service that workload have increased. The legal profession is not responsible for these “cost driving” changes and it is only reasonable that some recognition and indeed financial reward is made available to compensate for the increase in everyday work in this increasingly complex and professionally challenging legal environment. Would Lord Carter, the Lord Chancellor and his ministers please acknowledge that some allowance must be made for the increased workload triggered by radical changes in the administration of criminal justice?

### Larger firms: more efficient?

The model employed by Lord Carter illustrates that a larger firm employing, say, 40 fee-earners, is a more cost-effective, efficient and profitable entity than a firm employing, say, 10 fee-earners.

He sets out facts and figures to arrive at this conclusion but he has failed to take into account matters which allow for increased overheads or fluctuations in cash-flow. The model may reflect a given set of circumstances at a particular time but all financial entities are vulnerable to unknown events, changes in market conditions and shifts in international trends and government policies.

I believe that what is behind this argument (and indeed the report does not disguise this) is that a smaller number of firms are cheaper to control and administer. Effectively, the whole rationale of reducing the number of practices in the marketplace is driven by bureaucratic costs; it is not influenced by the likely quality of service offered to clients.

Whilst an administrative body is necessary, surely that body should be slimmed down to ensure that mainline resources are directed to service providers, rather than to managerial expenses? Unbudgeted increases in expenditure by the NHS have been caused by failure to do this and there now appears to be a move to slim down NHS bureaucracy to ensure that more money is directed to patient care.

### Conclusion

Dickens said, “The law, like the Ritz Hotel, is open to everybody”. If the reforms set out by Lord Carter are put into effect, I believe the law will indeed become as accessible as the Ritz.

Criminal defence practitioners have shown, for 14 years, that they are able to adapt, work efficiently and not necessarily prioritise the rewards that they receive.

For many reasons there is a disproportionate amount of criminal activity in this country. It is being

countered by laws which some would consider draconian. They must be balanced by the fair administration of justice and the active participation of lawyers who have the incentive to play their part effectively, on behalf of their clients. Whilst complacency and rigid adherence to outmoded practices are not conducive to the delivery of a first rate system of criminal justice in a free society, neither is the provision of services based on a rigid model designed simply with the goal of saving money.

– Robert Berg, *Janes Solicitors*

## CARTER / LORD CHANCELLOR

The Carter report was published on 13 July 2006. Simultaneously, the Department of Constitutional Affairs (DCA) published a consultation paper entitled *Legal Aid; a Sustainable Future* which is a document jointly prepared with the LSC. The Legal Services Commission annual report for 2005-6 was made available on 20 July and the Lord Chancellor then published a report called *Criminal Justice: Simple, Speedy, Summary*, which sets out a number of proposals for accomplishing those “three S” objectives. These documents need to be read collectively to understand the agenda, the practical proposals for change and the degree of political commitment.

### Carter and police stations

There are three elements to the proposals: price, volume and size.

Instead of being paid by the hour, with different rates for travel, waiting and attendance, and different rates for own solicitor and duty solicitor work in and out of hours, it is proposed that there should be a consolidation so that a single fixed price would be paid for each police station case.

The proposal is to introduce fixed prices from April 2007. The fixed price for London would be £313 per case (which we assume includes VAT and disbursements); this represents about £260 per case in net profit costs.

There are proposals to construct new areas for contracted work. The general idea is that police station/duty solicitor areas should be redefined to produce a larger volume of work for smaller numbers of suppliers. This process of redefinition of areas is to



be accomplished in time for new working arrangements to be in place by October 2007.

The recommendation is that, by no later than January 2007, the LSC should consult and introduce a fundamental change in the allocation of duty solicitor slots. They should be allocated to firms in proportion to the volume of work undertaken between July 05 and July 06 rather than allocated to named solicitors.

This is accompanied by a recommendation that the distinction between duty solicitors, accredited reps, and any solicitor with the police station qualification should be eliminated. Probationary representatives would still be limited to non-indictable offences but otherwise all qualifications would be equal.

If this change is implemented, duty solicitor work would no longer be a route to work in the police station. What would count would be the existing volume of work which a firm had.

### Minimum size

The present suggestion about minimum size to be allowed to remain in business appears to be a contract of £50,000, or 200 cases. It is not entirely clear if minimum size is related to the totality of "take" from all legal aid criminal work or simply lower-end work.

It is also suggested that there should be four to six suppliers for each police station area. This assumes an ability for each supplier to do about 16% or 17% of the work in an area. These figures are much higher than the current volumes that firms have and it is not clear how this proposal would work in London.

### Client choice

In this quasi-monopolistic system, client choice would be constrained. A firm would only be able to undertake 20% of its total contract in the form of own-client work arising from outside its contracted areas. In other words, if a firm had a contract for 1,000 cases, it would only be able to undertake 200 cases from outside its contracted areas.

A firm could, of course, undertake own-client work in its contracted area as part of its contract and this would not count as part of its 20%.

It is also proposed that, in October 2007, CDS Direct should be extended so that all legally aided clients would firstly have to receive advice from a CDS Direct telephone service; all clients would then be allocated to solicitors by that telephone service.

It is recommended that the performance standards which say that 80% of police station work and 50% of magistrates' court work should be carried out in-house ought to be introduced and enforced.

It is also recommended that there should be a moratorium on new duty solicitor slots except in response to need and duty solicitors who have done no

duty work in the last 12 months should be removed from the rotas. It is proposed that these changes should be introduced in January 2007.

### Magistrates' courts

Despite widespread recognition that the standard fee system in the magistrates' court has worked well, the proposal is to introduce new lower standard and higher standard fees which contain "rolled up" elements for travel and waiting.

So far as court duty solicitors are concerned, rotas would be taken over by firms in relation to their past volume of work. In this context, duty solicitor work would still have some value.

It is further proposed that magistrates' court work should be moved to a graduated fee system from April 2008, with fixed fees for this work.

### Price competitive tendering

It is proposed that this should be introduced in 2009 / 2010.

### Lord Chancellor's paper

The Lord Chancellor's paper, Criminal Justice: Simple, Speedy, Summary, proposes an improvement in the speed and effectiveness of the magistrates' courts.

It proposes:

- (1) that there should be "next day justice", with some offences brought to court within 24-72 hours, eg shop theft, domestic violence and breach of court orders;
- (2) to implement live links between the police station and the court for guilty pleas to be dealt with "at charge" for low-level offences;
- (3) to reduce the number of hearings from between five and six down to one for guilty pleas and down to two for contested cases;
- (4) that simple cases should take six weeks from charge to disposal.

In the Crown Court, it proposes:

- (1) to eliminate "mention" hearings;
- (2) that the majority of cases should be commenced and dealt with within 16 weeks.

To understand government thinking, it is important to note the following quotation from the paper:

"A telephone-based triage system would ensure that face-to-face advice in the police station is available only where absolutely necessary, and would also divert cases to specialist high cost cases providers as appropriate."

It is also proposed that peer review should be developed for advocacy.

There is a proposal that, in 2009, when price competition sets costs, there should be a single payment made to a named representative of a defence team in a Crown Court case.

The paper argues that, to remain profitable,



practitioners would need to drive cases forward to the earliest appropriate conclusion, and says that peer review would ensure that the quality of advice and standard of advocacy would not be damaged in the inappropriate pursuit of higher profit margins.

It says that, in relation to very high cost cases, the judiciary must take a major management role.

The paper sets out the view that there is often a serious risk of conflict of interest where a firm of solicitors acts for a number of defendants in conspiracy cases. It proposes that the judiciary should be given new powers to order a change in defence representation where this is in the interest of moving the trial to a just outcome. When this happened, the defendant would have a set period in which to make a choice as to preferred replacement.

The paper says that more could be done to make defence teams state their intended lines of defence at an early stage in the defence case statement. In particular, "it may be possible to limit the work paid for under a case contract to the lines of argument and investigation outlined in the defence case statement and to manage carefully any new lines of enquiry... This would compel defence teams to make a clear statement of their intended case at an early stage."

– Greg Powell, Powell, Spencer and Partners

## MEN (& WOMEN) BEHAVING BADLY

This piece was prompted by a letter of concern which I wrote to the Association following the Grosvenor House dinner. I have been attending the dinners for many years; my first memories are of its being at the Savoy. The Association was then very small (about 250 or so members); the original aim of the dinner was to provide an opportunity for London solicitors to entertain the stipes. Even as late as the seventies, solicitors (particularly those in crime), were thought to be a little below stairs, and this was a chance to raise their profile.

Over the years, the occasion has grown in size and has changed in other ways. In recent years it has come to be known as the "touts" ball. I never quite understood who was supposed to be doing the touting, but assumed the reference was to the Bar. However, as it is the solicitors who shell out quite generously to

entertain the Bar at their tables, the jibe appears misdirected. Perhaps the label is one which is in fact applied by the disappointed barristers who don't secure an invitation.

Of course, the other big change in the last couple of years has been that stipes are now not formally entertained at Grosvenor House by the Association. Sensibly, that evening has been moved to a biannual event, in the more intimate surroundings of the Savoy. However, many judges are still invited to the dinner by members.

The dinner, like LCCSA itself, has been a runaway success over the last few years. It is a landmark in the legal calendar, a great opportunity for firms to entertain their staff, their friends and colleagues at the Bar, and some judges. It is moving towards looking more like a ball than a legal dinner. Some of us are concerned by this drift but the truth is that it is popular and well attended, and therefore seems to suit the membership.

One thing, however, is not working well and that is the conduct at the tables during the keynote speech. The letter I wrote to the Association expressed my grave concern about the treatment of speakers. I am a long-standing friend and honorary member of the Association and I feel strongly that there should never again be a situation such as occurred this year. The Association invited Sir David Calvert-Smith to give the keynote address. He graciously agreed, and as a regular attendee, he would have known what a challenge it is. Anyone agreeing to make the speech is signing up to a great deal of thought, sweat and preparation and is generously giving that time and effort to the Association and its guests. Sir David has experience of every aspect of the legal landscape. He had prepared an important and interesting "state of the nation" address which deserved our undivided and respectful attention.

As those present will know, Sir David was subjected to a barrage of drunken noise; despite efforts to quieten the tables, a good proportion of those who were present continued to talk loudly among themselves while the speaker struggled through. The whole episode was unprofessional and highly embarrassing, and, in my view, did the Association a great deal of damage.

The problem is simply drink. It is quite clear that, by the end of the dinner, many in the room are beyond the point of being able to control themselves and are certainly in no condition to listen to a thoughtful legal speech.

Although this year was the worst I have encountered, the problem is not new and I believe has been ignored for too long. I have therefore urged the Association not to ask any more senior judges or lawyers to speak after this dinner.



What are the alternatives? We know that the “Gilly Gray” type of speech – a series of wonderful jokes and stories – will work, but Gilly Grays are few and far between. A professional paid speaker would offer a similar service and would “hold” a boozy audience, but this option would move so far from the legal dinner model that it may be defeating the entire object of the exercise.

I am told that in Holland speeches are made at the beginning of a dinner before the drinking begins; this would be novel and could work. Otherwise, it may be best to abandon the keynote speech altogether, have a short morale boosting speech from the current President, and leave it at that.

The decision is one for the committee, assisted by sensible representations from the membership. I know that the committee would value responses from members to this piece to enable its members to find a way to ensure that the success of the dinner continues but to guard against any possibility of the good name of the Association being brought into disrepute as a result of boorish behaviour.

– Stephen Dawson, district judge (magistrates' courts)

## CRIMINAL LEGAL AID: THE FUTURE

The year is 2008, and the senior partner at Carter and Co sits at his desk surrounded by files. Big Boss Carter picks up his phone and asks for one of his employees, Bruce, to be sent through.

Bruce knocks at the door and walks in enthusiastically.

“How long have you been with us now, Bruce?” asks Carter.

“About six months, mate. Started my year off in Feb, worked at your umbrella organisation, the supermarket, El Cheapo’s, and then here.”

“Oh yes, what were you doing at El Cheapo’s?”

“Fish counter.”

“And how much legal experience have you got? I forget.”

“Well I did a week at the local court back in Oz when I was 18 and of course I have been running a few of your cases here.”

“Well,” says Carter, “I have a nice one here for you to prepare. I want you to read it and go and see him.

It’s a murder. Read some of the papers and get some instructions from him.”

“Great!” says Bruce, “Thanks so much.”

He goes to leave and as he pulls open the door, Carter gestures to him.

“Oh, he may have mental health problems. If it takes too long to get anything out of him, send it to the outfit down the road.”

Bruce disappears armed with the file. A second later, Carter’s phone rings and it’s Bruce again.

“Mr Carter, what does ‘indictment’ mean?”

Big Boss Carter walked into the staff room of the office. He could hear the tills of the adjoining El Cheapo’s store as he studied the chart on the wall which recorded the current star-employee-of-the-month at Carter and Co: it was young Jim, who had represented nine defendants at the police station in four hours – tremendous – three thefts, four burglaries, a conspiracy to defraud and a gangland killing.

He looked down the chart: Tessa might have to leave – five days at Paddington on a terrorist case which went nowhere and then three days with a youth arrested for rape – a case which was also dropped.

He opened the door into the main staff room. It was a very large room with about 40 desks and those at the desks rose and greeted the Big Boss.

It was good to be in practice.

– Paul Harris, Edward Fail, Bradshaw and Waterson

## BOOK REVIEW

### The trial, a history from Socrates to OJ Simpson

Sadakat Kadri

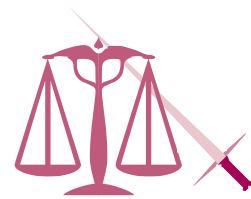
Perennial

£9.39

By barrister and travel writer Sadakat Kadri, this is a thorough and well researched examination of the trial process, written in prose which combines the journalistic and barristerial with the scatological.

It has been described by *The Observer* as a “timely book” and it does provide a historical, philosophical and political perspective on the criminal justice system within which we work now.

The book examines the development of the trial process and its relationship with justice and fairness, which provides a context for current issues of torture and detention without trial. It traces the evolution of separation of powers and how the elusive objective



trial process should exist as a measure of the society it serves.

Examples abound of trials conducted by those with vested interests – whether religious, royal, political or financial – but lacking any semblance of justice or fairness. Descriptions of the inquisitions, trial by ordeal and witch trials are colourful and well researched.

At a time when the right to a trial by jury is under threat, Kadri's description of the trial of Quakers William Penn and William Meade is essential reading. This trial led to juries being described by Blackstone, one hundred years later, as the "sacred bulwark" of the nation's liberties.

The book reminds the reader of the responsibility each professional participant has in the court process: the police to investigate, the prosecution to prosecute assiduously and within the law, the defence to represent their client fearlessly, and an independent judge to rule impartially. Kadri's message is that each party to the process must act with humility and without self-interest, endeavouring to be part of a trial which is fair. Many themes in his book could well be the subjects of books in their own right, for example, the feminist criminological perspective on the treatment of women from the witch trials at Salem to James I's pre-trial questioning of the North Berwick midwives.

Another theme is the concept of justice being seen to be done, the role of media coverage and the televised trial. Kadri demonstrates the fascination of the public with the course of criminal justice from Tyburn gallows to early court reporting, which was at the same time gratuitously graphic and conscious of the salacious and fairly reprehensible lust its readers had for details of sordid evidence. This progression is traced to the televised trial of OJ Simpson and how this has affected the jury and the community from which the offence arose.

There is a list of suggested further reading from the author at the back of the book and recommendations for films for those of us who question why we do this job, in the face of legislative heavy handedness and a constant struggle with administration and funding.

– Morag Rea, Byrne and Partners

## TRAINING

Please make an advance note of the training courses planned for autumn 2006. Leaflets with fuller details will follow.

– Hilary Riddle, training administrator

## TRAINING SCHEDULE

Date	Title <i>Trainer</i>	Venue
28/9/06	Higher Rights of Audience <i>Jo Cooper</i>	O'Keeffe Solicitors
Autumn 06	Update on Carter <i>Rob Brown</i>	Irwin Mitchell
5/10/06	Criminal Law Update 1 <i>Andrew Keogh</i>	O'Keeffe Solicitors
12/10/06	Criminal Law Update 2 <i>Andrew Keogh</i>	O'Keeffe Solicitors
October 06	Allocation <i>Lizzie Hogben</i>	O'Keeffe Solicitors
2/11/06	Abuse of Process <i>Owen Davies QC</i>	Garden Court Chambers
23/11/06	What's New in the Magistrates' Court – a District Judge's Perspective <i>John Zani</i>	O'Keeffe Solicitors
30/11/06	Youth Court Update <i>Naomi Redhouse</i>	O'Keeffe Solicitors
7/12/06	Billing for Beginners – repeated from December 2005 <i>Colin Beaumont</i>	O'Keeffe Solicitors

- This is the newsletter of ALL members of the LCCSA
- ALL members are welcome to attend the Association's committee meetings
- Posts on the committee are open to ALL members

