

# *The* LONDON ADVOCATE

*Updating the London Criminal Courts Solicitors' Association*

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# EDITORIAL

Following the decision to extend associate membership to all fee earners working in Criminal departments in Criminal law firms, the Association has welcomed its first associate members: legal executives, trainee solicitors and paralegals. I hope these new members enjoy this issue of the Advocate – and many to come.

Our new readers will note that the interview slot in this issue features the chair of the Solicitors' Association of Higher Court Advocates, who responds to the criticisms levelled at solicitor advocates referred to in this editorial column in January.

Younger members and associate members may also be interested to read, in this issue, that pupil barristers are not by any means immune from the chill wind resulting from lack of financial provision for Criminal lawyers – both solicitors and members of the Bar.

During the last month, members of the LCCSA committee have met the Criminal Bar Association in a

pleasant social gathering. Solicitors and barristers have their differences as to how the limited resources available should be divided between those working as Criminal lawyers in legal aid. But we do have a common cause: as things are developing, the next generation of defence lawyers – solicitor and barrister – is being starved out of its profession.

It may well be that, one day, some member of the government may face a criminal allegation – I know not what. They may well apply for legal aid, which (following current consultations) will then be means-tested in all courts. They will be refused (particularly bearing in mind the costs of their secondary housing). They may pay privately but, should they be acquitted, will only be able to claim their costs from central funds at legal aid rates. Will there be complaints of unfairness? Perhaps – but the most worrying question is whether there will be any experienced Criminal lawyers left to represent them.

– Malcolm Duxbury  
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## NOTICES

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### ■ COMMITTEE MEETINGS

These take place on Monday evenings. The dates are: 20 April, 11 May, 8 June, 13 July, 14 September and 12 October.

All meetings take place at 6.30pm at the offices of Kingsley Napley.

All members are welcome to attend.

### ■ ANNUAL DINNER

Next year's annual dinner will take place on 3 July, at The Brewery, Chiswell Street EC1.

### ■ EUROPEAN CONFERENCE

This will be held in Berlin, from 2 – 4 October.

### ■ AGM

The Association's annual general meeting will take place on 9 November.

This year, there is a new venue: Browns Courtrooms, at 82-84 St Martin's Lane, WC2.

## NEWS

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### Associate membership

As reported in the last issue of the Advocate, the LCCSA is extending its associate membership to include all fee earners working in a criminal department in a criminal law firm. This includes legal executives, trainee solicitors, paralegals and in-house counsel.

Associate membership will cost £50 per year and those who join will receive the following:

- discounted rates to attend all LCCSA training sessions;
- a free copy of the Advocate every two months;
- free LCCSA police station identification card;
- a discounted rate to obtain police station/court duty accreditation;
- an invitation to participate on sub-committees in responding to consultations in law reform; and
- regular email updates and alerts about forthcoming events.

Associate membership will not give the right to vote on association matters or to sit on the London Criminal Courts Solicitors' Association committee.

### Laptops in prison

There have been some difficulties in applying for an "Access to Justice" laptop at HMP Belmarsh. Any member experiencing problems should contact the Association.

### Mental health assessments

Practitioners providing advice in the police station who are concerned about the mental health of their clients, should be aware of a recent recommendation made by the north London coroner.

This recommendation is important for those dealing with those who are or who may be at high risk of suicide or self harm. It concerns the proper assessment of these clients – even when they have been assessed by the FME.

Following an inquest in 2008, Coroner Andrew Walker said: "Where it is brought to the attention of the custody officer by any person that a detained person is or may be at high risk of suicide or self harm, the custody officer must call the relevant emergency mental health team for a full mental health assessment to be undertaken, even if a forensic medical examiner has purported to carry out such an examination.

"In circumstances where a welfare plan is necessary, steps are to be taken to ensure that:

- I. a proper multidisciplinary approach is taken;
- II. the welfare plan is in writing and is flexible enough to manage changes in the welfare needs of the subject of the welfare plan;
- III. an individual with appropriate training is nominated to supervise and manage the welfare needs of the subject of the welfare plan."

For further information, please contact Guy Bastable at BCL Burton Copeland ([gbastable@bcl.com](mailto:gbastable@bcl.com)).

### FME contract

Members may have noticed media reports of an ongoing dispute about new contractual arrangements for forensic medical examiners (FMEs) at police stations. There are concerns, not only about financial matters, but also to do with professional questions such as the ownership of a doctor's notes.

There are already reports of a shortage of FMEs, resulting in delay or even suspects being bailed without interview.

It has been reported that, faced with a potential shortfall in the availability of FMEs, the police have



been using agency staff. These people may not all be fully qualified, or have specific training for work in the police station environment; and many will lack experience.

Most solicitors will have personal experience of occasions when their own view differed from that of the FME as to, say, a suspect's fitness for interview. The current use of staff who may be unsuitable prompts further questions about the correctness of assessments and gives rise to the possibility of a challenge as to the admissibility of an interview in an appropriate case.

What should you do in the police station to ascertain the status of the FME dealing with your client or if you have concerns as to the FME at the police station in a particular case?

The LCCSA advises as follows:

- (1) Ask the custody sergeant if the doctor currently on call is a regular FME or an agency doctor.
- (2) If the FME is an agency doctor, ask the doctor directly for confirmation of their qualifications and experience of custody work.
- (3) Make a full note of the custody sergeant's reply, the doctor's details and any information obtained from the doctor.
- (4) Make a full note of any concerns you may have as to the doctor's assessment and/or treatment of your client.

Members are reminded that, if they are unhappy with the FME who has dealt with their client, they may still ask for the detainee's doctor of choice to see them in custody (providing the twin obstacles of finding a doctor able and willing to attend and securing funding for the visit are overcome).

The Association will report back to members when the contract is resolved or when more information is available. In the meantime, members who experience difficulties are invited to contact the Association.

## Youth conference

The Youth Justice Board is holding a series of day-long events on good practice in the youth courts. These conferences, which are funded jointly by the YJB and the Courts' Service, will provide briefings on the way that programmes such as "Simple, Speedy, Summary" affect youth cases. Invitations are being issued to magistrates, district judges, youth offending teams and both prosecution and defence lawyers.

The London event will take place 23 March 2009. CPD points will be available for those attending.

Those who wish to take part should email [info@key-note.co.uk](mailto:info@key-note.co.uk) or fax 0116 232 2057. Places are limited.

## Advocates' graduated fees

Members may be interested in Laurence Kench's view on claiming for inclusive standard appearances.

Court determining officers are commonly interpreting the regulations on the basis that four standard appearances are included in the basic fee for pleas of guilty and for cracked trials, as well as for trials.

The regulations (schedule 1 part 4 para 8 – see Archbold supplement page 448) stipulate: "except as provided under this part, all work undertaken ... is included... (c) whether the case is a cracked trial, guilty plea or trial."

Laurence Kench points out that the following paragraph 9 provides: "the fee for the PCMH and up to four standard appearances... is included in the basic fee (b) specified in para 5"...for which the assisted person is tried..."

Paragraph 5 only covers fees for trials (pleas and cracked trials being covered by paragraph 7).

Laurence argues that the reference to matters for which the assisted person "is tried" and to the fees in paragraph 5 is unequivocal and that the proper interpretation of the provisions is that, apart from the hearing at which a guilty plea is entered or when the trial otherwise cracks, all other appearances attract an additional fee of at least £100. He is currently in dispute with two courts over this issue and it seems that determining officers have been instructed to treat guilty pleas/cracked trials in the same way as trials.

Any member with any relevant experience of trying to claim these fees is invited to contact Laurence Kench at [laskench@hotmail.com](mailto:laskench@hotmail.com)

## Quality assurance for advocates

A quality assurance scheme for advocates is currently undergoing a pilot, with some elements taking place at Inner London Crown Court. The pilot also involves the Crown Courts at Birmingham, Cardiff, Newport and Winchester.

The Legal Services Commission and Ministry of Justice have spent two years developing the scheme and have been assisted by an advisory body which includes members of the legal professions. Their stated aim is to "ensure public confidence in publicly funded criminal defence advocates."

Solicitors and barristers who undertake criminal legal aid work have been invited to take part in the pilot. Judges are involved in some aspects of the pilot



evaluations – hence the need for some of the lawyers participating to be appearing in trials at Inner London at least once during the pilot period.

Solicitors and barristers who do not appear in Inner London can also participate in the pilot but they will be required to attend an assessment centre.

A number of different assessment methods will be tested, including multiple choice tests, portfolio examination, simulated advocacy, and pilot evaluations by the judiciary. Various combinations will be tried, with the aim of finding a system which gives a reliable result while keeping assessment to a minimum. This system will then be proposed in a document for public consultation about the final scheme.

The pilot began in February and is expected to run for approximately six months. The assessments will be carried out in four stages, with each stage relating to the type of work an advocate is likely to be doing at one of four levels of competence.

Any member who is interested in taking part should email [qaa@legalservices.gov.uk](mailto:qaa@legalservices.gov.uk) or contact Sinead Reynolds on 020 7783 7421.

## Court news

### Inner London

The court is the venue for the quality assurance for advocates pilot described above.

There are continued discussions at Inner London about the ineffective trial rate. Whereas the target for ineffective trials, set by the Courts' Service, is 14%, Inner London has failed to meet this throughout this financial year and the figure for the year to date stands at 20.4%.

The main reason appears to be non-appearance – by defendants and prosecution witnesses – and over-listing. Although the court holds “tracker and case progression” meetings with the CPS and the police, the rate remains stubbornly high.

As part of a new strategy, there have been “post mortem” meetings to discuss the cases which have been ineffective each month. As a result, police and

prosecution are reviewing arrangements for their meetings with each other and they will then meet the court's case progression team. And the court is reviewing its listing arrangements for the warned list and PCMHs on cases from Stratford magistrates' court.

### Central Criminal Court

The user meeting heard that proper time estimates of trials are not being given by either defence or prosecution lawyers.

The Witness Service reported assisting in only one per cent of defence cases; defence lawyers were reminded that the service is not only for prosecution witnesses.

Legal visits at the court in the morning and over lunch are now on a timed booked basis, between 9.30am and 10am and between 1.25pm and 2pm. Any comments on this system should be made to the users' committee and will be passed on to SERCO.

Every court at the Old Bailey now has a video link facility. Lawyers wishing to view the state-of-the-art equipment at HMP Belmarsh should contact Andrew Keenan at [law@andrewkeenan.co.uk](mailto:law@andrewkeenan.co.uk). Dummy listings to enable conferences to take place at court are not encouraged. It is usually possible to arrange prison visits on an emergency basis.

Members are reminded that any papers left in court at the end of a case are likely to be collected up and destroyed.

Solicitors and barristers should not use the solicitors' room for conferences.

## Law reform and other consultations

The Association has responded to consultation papers on means testing in the Crown Court, on the recovery of solicitors' defence costs and on very high cost cases.

The LCCSA is grateful to Greg Powell, Peter Binning and Jim Meyer for their work on these three responses.

# PRESIDENT'S REPORT

### Virtual courts

Since the turn of the year, I have been heavily involved with the ongoing plans for the introduction of virtual courts. These will be piloted in Camberwell Green and will see many defendants making their first appearance at the magistrates' court by way of video

link from the police station. I have attended meetings with all the “stakeholders”, including the police, CPS, the probation service, HMCS, MOJ and the LSC.

This pilot takes us some way beyond the use of video links for what are basically administrative hearings. First appearance virtual courts will involve



advice being given as to plea (and venue), mitigation for sentence and bail applications. Although there may be potential benefits for a few defendants, it is clear that this scheme is driven by a desire to save money by reducing the need for prisoner transport. I do not see how it can improve the overall quality of the system and no one can adequately explain how a solicitor can choose between being with the client to take instructions properly or being present in court for advocacy. The quality of communication with the court will almost certainly suffer – but this is no doubt one matter that the post pilot evaluation will study closely. The plan is to extend the system across the country and, unless the pilot determines otherwise, in nearly all types of case.

### **FME contract**

I have been in discussion with doctors concerning the new FME contract. Many existing FMEs have chosen not to sign the contract – leaving a shortage of cover in police stations. There have already been delays in dealing with suspects and some have been bailed pre-interview where no FME was available at all. There are also concerns over inexperienced or even insufficiently qualified medical staff being used in custody suites.

Making accurate and informed judgments as to the fitness of a suspect for interview is a difficult and vital task. Our clients often have mental health problems, may be of limited intelligence and/or are drug dependent and, as members will know, these problems do not always present themselves in an initial

discussion, even with a more experienced FME. It is therefore of paramount importance that the person who has to make this judgment is suitably qualified, trained and experienced. I must leave it to the doctors' associations to deal with issue of clinical decisions made by FMEs and the dangers that could result from any error. As to legal implications for solicitors, in cases where a solicitor's view of the health of the client differs from that of the FME, it has historically proved difficult to mount successful arguments to exclude any interview from later proceedings, or to avoid an adverse inference being drawn where advice to a client to exercise their right to silence is significantly based on the solicitor's concerns over the client's health. If such circumstances arise in the future, the solicitor will want to know the status and experience of the FME attending. There are a number of issues of common concern to doctors and lawyers and we are looking at the possibility of setting up a joint training event.

### **The Bar**

By the time this issue arrives, a long overdue meeting between the LCCSA committee and the Criminal Bar Association will have taken place and I will also have met with Stephen Leslie QC, leader of the South Eastern Circuit. Although the two sides of the profession are in some respects more divided than ever, there are many areas where we can and should be working together and I hope that these meetings will mark the start of a more positive joint approach whenever this is possible.

## INTERVIEW WITH THE CHAIR OF SAHCA

*Tim Lawson-Cruttenden is chair of the Solicitors' Association of Higher Court Advocates*

**Q:** Are you happy with the way in which solicitors obtain the right to address higher courts? Would you like to see a system of accreditation?

**A:** After training, solicitors can appear after they've been admitted three years. This is totally different from the Bar: once barristers have completed their pupillage, they can appear in any court. The situation discriminates against solicitors in a way that I find disappointing. Solicitors who have been formally trained in advocacy should be given rights of audience when admitted. I'm not very keen on accreditation; if

we're in a competitive market, the clients will decide who appears in court and in what cases.

**Q:** Would you like to comment on the quality assurance for advocates pilot, currently taking place at Inner London Crown Court?

**A:** This is a scheme to test whether solicitor advocates as well as barristers can be graded between one and four to assess fee levels in public funded work. One of the venues is Inner London and solicitor advocates practicing at that court can apply. Independent assessment will be carried out by Cardiff Law School and we await the result of this pilot. (As for other types of work, my attitude is more laissez faire. I think



that, if you're a good advocate, you'll get work and if you're bad, you won't.)

**Q:** What is the ideal way for advocates to learn their profession?

**A:** When you start, you should go to a firm where a lot of advocacy is being conducted. In my own career, I've been quite fortunate in that, since 1979, the year I was admitted, I've appeared in court. When I first was admitted, I was working for Lewis and Dick, a small firm with a mixed practice, but I managed to build up quite a lot of legal aid criminal work because I was living in a hostel where you were given half board at a very reasonable price if you worked some evenings and weekends in a youth club, which was in Bermondsey. Many of our members were regularly arrested by the police. I appeared in the magistrates' court and also if the matter was referred to the Crown Court for sentence, as well as in appeals to the Crown Court.

**Q:** How confident are you about the standard of advocacy among your members?

**A:** Solicitors seem to be an easy target for judges and for the Bar. I find it rather distasteful. Last year, when Tim Dutton was chairman of the Bar, he made disparaging remarks about solicitor advocacy and I wrote a letter to The Times about it. I suppose we are a very broad organisation but, at the top end, we've got some very good – and extremely experienced – advocates. I've seen some pretty terrible barristers in my time in the courts.

**Q:** Is there any need for the Bar?

**A:** I'm in the business of representing my clients in a committed and skilful way and I don't think you need to be a specialist advocate to do that – you have to have good advocacy skills – so if my view prevails, then the Bar will start to get a lot smaller.

I think there's always going to be a specialist Bar. On bigger cases, I tend to use leading counsel because the cases I do are quite complicated.

The system of appointing QCs is very strange. About 10% of the Bar are silks but there are only about a dozen solicitor QCs. It should be more equal across the board. If you're known to be a successful barrister in your field, you can apply for and get silk but there are literally hundreds of successful solicitors, equally senior, who get passed over. This needs to be changed.

**Q:** Is SAHCA primarily a training organisation?

**A:** This is my second year as chair and training is what I want to major on. I'm a home-grown advocate in the sense that I started off the day I was admitted and I've just given it a bash. I'm quite keen to train my members and to give them some idea of the mistakes

I've made and how to avoid them.

Jo Cooper does much of our Criminal training. He's done a number of war criminal tribunals in The Hague; he's very experienced and approachable. We're currently running two advocacy training days in Conway Hall. In September, we shall offer a training weekend at my old Cambridge college, Sidney Sussex. We do a series of workshops on costs and we have a summer conference and party at Clifford Chance.

I also think that basic fellowship is important. I'm quite keen to foster events where we can meet, talk and share experiences.

**Q:** Does SAHCA have a representative role?

**A:** We're currently asking for a place on the Law Society council on the basis that we've now got 1,500 members. We respond to consultation papers. We've met with the Law Society about VHCC and we continue to work on that. I'm going along to the MoJ study day on the judiciary for the 21st century.

**Q:** What are your other aims for the Association?

**A:** I'm encouraging our regional representatives to collect a body of individuals around them and maybe have one or two meetings a year when people can get to know each other. If you are a young advocate, you do need mentoring. I'm keen to see if we can run seminars in Manchester, Birmingham, York or Leeds. We've run our last two conferences in London and I'm insisting that, for this year's conference, we go to either Birmingham or Manchester.

**Q:** What is your professional history?

**A:** After my time at Lewis and Dick, I went to a small firm, Compton Carr, where there was copyright and intellectual property work. We represented Johnny Rotten, the Sex Pistols and the Clash. I picked up the rough end of the practice, the fights and the drug busts in the magistrates' courts.

Then I went to Dawson Cornwell – now a major family law firm – and was a partner there for about 15 years, doing their civil litigation and civil advocacy.

I founded Lawson-Cruttenden & Co in January 1996. What happened was that, the first time I used my higher rights of audience, in 1995, was in the Court of Appeal, in *Burris v Azadani*. The case came up from Wandsworth County Court. I summonsed the defendant for contempt; we went up to the Court of Appeal; and when we came out I reckon we had created the common law tort of harassment.

I wrote a number of papers – in the Family Law Journal, the Solicitors' Journal and the NLJ – on the law of harassment, as well as an article in the Independent. I co-drafted the Stalking Bill 1996 and the Opposition amendments to the Protection from



Harassment Act 1997. I then co-authored two Blackstone guides to the law of harassment and so I managed to develop my practice from there really.

**Q:** Did you always want to be a lawyer?

**A:** Yes. I read History and Law at Cambridge before going to the College of Law. I did my gap year in the army, which was a very formative time. During my first vac from Cambridge, I served in Northern Ireland. I act for the Blues & Royals now, doing pro bono consultations for the soldiers who are prepared to turn me out on a horse for rides in the morning.

I was a territorial soldier for 22 years and ended up commanding an armoured car squadron. I learned a lot about maps. The cases I do now often need skilful map marking. When I represented Oxford University in the case involving animal rights protests, I devised a

scheme whereby the research laboratory was protected by a geographically identifiable exclusion zone, taking in key junction points and potentially vulnerable land.

**Q:** What other personal interests do you have?

**A:** I take my dog to work with me every day. I used to run marathons but I've got a bad hip now. I played my last game of rugby three years ago. I play a bit of squash still.

I'm interested in forming views and opinions. I must have published a good 150 papers on the law of harassment in its different forms. And I write one or two letters in *The Times* each year.

I do a lot of work in the church as well, as a counsellor at Holy Trinity Brompton. I don't watch TV, I don't sit in a soft chair and I bicycle to work every day. I'm married and I've got two children who are 21 and 18; one's at university and the other's about to go.

## THE PUPIL BARRISTER

**W**hen I was leaving court yesterday, my client threw a fifty pound note into my handbag. The Crown had just offered no evidence; after careful examination of the papers, it became clear the case could never have been properly prosecuted.

Clutching the sides of my handbag I stared intently at the fifty. I imagined the possibilities. An almond croissant. A night out on Saturday. A paid utility bill. Most irresistible, maybe two or even three days of travel money. Consumed by temptation, the magistrates' court foyer vanished behind me and was replaced by a Tolkein-esque forest. As my eyes filled with a malevolent light and my hair streamed behind me, I whispered, "Ah! The one true note. You would give it to me freely? It is true, my heart has long desired this..."

Needless to say, I passed the test and graciously explained to Frodo Baggins, sorry, my client, that I couldn't take it.

### Minimum wage

Were I to have accepted the money, my brief fee would have increased by around 50%. But, even without accepting the unofficial uplift, this was a comparatively good day at the magistrates' court. Memorable low points have included a first appearance for a client who was not quite mad enough to be taken out of the criminal justice system but still thought that wilfully throwing up in his hands

was acceptable behaviour. (Note to self, when your client has recently been a psychiatric inpatient, don't go and see them in the cells.) Six hours later, he was just about fit and clean enough to give proper instructions. My brief fee that day was £60, which is the going rate. Take off around 10% for clerk's fees, 22% tax, £20 for travel, and a modest amount for sustenance, you are left with around £3.50 an hour.

Whilst the vomiting is not typical, the money is. Yet there are junior barristers who earn much less and I'm very lucky not to have practised from any set of chambers which agrees to pupils being paid £30 a brief. When you apply the maths to that kind of sum, it is clearly more profitable to stay at home – meaning that we have effectively regressed to a time when it was normal to buy your pupillage.

Junior barristers are poor – shock! I know, it's hardly headline news. And of course the reduction in our fees reflects the reduction in solicitors' fees. The difficulty is that the system is inherently divisive and pupil and very junior barristers are at the bottom of the heap. The less money you get, the less money we get. All of us were warned before we started that the legally aided criminal bar was no place to earn a living nowadays and that we would find civil law interesting after a while. But, as all criminal law practitioners know, if it's criminal you want to do, then nothing is going to change your mind. That said, none of us were prepared for how bad things were going to be. And things seem to be worsening as I type.



## Mystery

Practising at the criminal bar was once a gentleman's hobby (let's all hope that things don't get that bad again) and talk of the money one would get paid was unseemly. Some of the old-school mentality persists. As a baby barrister, what and how you get paid is shrouded in mystery. You attend a magistrates' court one day and, on another day, a cheque appears. The relationship in time between the two events is impossible to discern.

The way that your instructing solicitors get paid seems too obscure to even think about. The more curious could take a look at the LSC website, but that too is impossible for the novice to navigate. This lack of knowledge can be a potential cause of discontent between solicitors and barristers. Before getting on our feet, my batch of pupils was given a breakdown by one of our instructing solicitors as to what was paid for what at the magistrates' court. All of a sudden, the advice from junior members of chambers to avoid cracking trials at all costs made sense.

## Ground zero

Low fees are bad enough, but no fees are not unusual. And the government and the LSC know that both

barristers and solicitors will do unpaid work. For instance, a contested extradition will always require the drafting of a skeleton argument and a certificate for counsel is rarely granted. The upshot is that, for most contested extradition hearings, there is a minimum half a day's extra work that nobody will get paid for. Yet the work always gets done – and everyone knows that it will, regardless of the fact that the brief fee remains the same.

The proper representation of defendants is resting heavily on both solicitors' and barristers' goodwill and sense of professional responsibility. But goodwill only gets you so far and certainly won't pay the rent. There is a generation of young barristers who are committed to defence work, but, with earnings skirting around the minimum wage and tens of thousands of pounds of debt weighing on their shoulders, may be forced to leave the profession.

And that would be a great shame. Not just because of the time and money we have and continue to put into the job, but because, quite simply, we love it. I didn't take the fifty pound note from my client, but I made some money and I won my case. As job satisfaction goes, that can't be beaten.

– Helen Lyle

# STOCKWELL

*"Stockwell"*

*The death of Jean Charles de Menezes*  
ITV1, 21 January

The TV drama, "Stockwell", recently screened on ITV, was a dramatic reconstruction of the events that led to the shooting of Jean Charles de Menezes by the Metropolitan Police. As the solicitor for the De Menezes family, I have, over the last three and a half years, watched the piecemeal emergence of evidence surrounding the circumstances leading to the shooting, from the misleading initial news stories, to the disclosure by the body responsible for investigating the incident, the Independent Police Complaints Commission. Following this, we heard live evidence from witnesses giving evidence in the unusual prosecution of the Office of the Commissioner of the Police, under health and safety legislation, and then finally, as lawyers advising the family, we received full disclosure and were able to

cross examine witnesses at the 12-week inquest held at the Oval cricket ground.

## Not the inquest story

It would be difficult to dramatise this story without conveying the shocking and nail-biting unfolding of events that led to the tragic shooting of an innocent man, and certainly "Stockwell" portrayed the tension and ultimate horror of this true life story. It was also a very accurate portrayal, remaining faithful to the evidence as it has emerged from the IPCC investigation and witness evidence given at the health and safety trial. However, although the programme was screened after the inquest, it had been largely researched, scripted and filmed before the inquest had taken place or concluded.

The story was therefore essentially the one played before the Old Bailey jury in the health and safety trial which focused on the failings of the police that put, not only Jean Charles' life at risk, but also that of the general public. Thus the failings of the police



that were examined were as much about the risks to the public created by the police failing to put precautions in place to stop a potential suicide bomber from entering the public transport system, as it was about the misidentification leading to the fatal shooting of an innocent man.

### Missing evidence

As a consequence, some highly significant evidence that emerged through the inquest process was not aired. For example, the programme showed that the surveillance team based their identification on a fairly poor photograph taken from Hussain Osman's gym card. Yet it did not emerge, until the inquest, that, among the items found in Osman's discarded rucksack, were some much clearer "wedding photos" of Osman which, had they been made available to surveillance officers, would have significantly reduced the possibility of misidentification.

Furthermore, had the police been quicker in linking up the identifying documents found in Osman's rucksack, they might have realised that they already had him under surveillance (with a bank of much better photographs), or, had they obtained his driving licence sooner, they would have had images and information that would almost certainly have excluded Jean Charles.

### Firearms team

The inquest also explored, in much greater detail, the final minutes before the fatal shooting and revealed that, in fact, there was a firearms team present by Stockwell tube station that could have assisted in preventing Jean Charles from entering the tube. Or, had the command team in the control centre been more decisive, they could have responded to the offer by the surveillance team to stop Jean Charles before he entered.

There are, of course, many other stories you could explore in a drama about the shooting of Jean Charles de Menezes, like the introduction of a poorly thought-through "shoot to kill" policy that had been brought in without political scrutiny, or the attempt by Sir Ian Blair to exclude the IPCC from the investigation and the apparent misleading information given by the police to the public after the shooting. However, in a one hour TV drama, "Stockwell" managed to sketch out most of the key elements of the series of tragic errors, indecision and miscommunication that represents one of the darkest episodes in the recent history of the Metropolitan Police.

– Harriet Wistrich,  
Birnberg Peirce & Partners

## BOOK REVIEW

### Criminal Justice and Immigration Act 2008 – A Guide to the New Law

Angela Burns and Nikki Walsh  
Law Society Publishing £44.95

The Criminal Justice and Immigration Act 2008 – A Guide to the New Law purports, according to its back cover, to be a "thorough yet concise guide" to the new provisions that are inevitably going to affect most criminal practitioners.

Having been asked to review the book, I was a little sceptical of this description, it weighing in at 450 pages. It was with some relief then that I realised that appendix 1, comprising a copy of the Act itself, was responsible for half of its weight.

Optimistic that this guide was going to be so comprehensive that I would not have to study the appendix too thoroughly, I was not disappointed. The body of the book itself is easy to use and is helpfully divided into chapters relating to different areas of the

law, rather than strictly following the order of the Act itself. There are therefore chapters relating to, among others, new offences, policing, youth disposals, adult disposals and civil disposals. Each chapter sets out the current provisions, the reforms and when each particular reform will come into force. For those who, like me, were not entirely sure of all of the current provisions in any event, this is a particularly welcome format, saving unnecessary angst and frantic page-turning just before a hearing starts.

It is therefore a useful, if not necessary, guide to yet more legislative changes in the criminal legal world (immigration appears to play very little part in the new Act, save to create a new "special immigration status" for foreign criminals). And, fortunately, it is not so heavy that it can't be taken to court – in fact, I have now been carrying it around for the past couple of weeks!

– Melanie Stooks  
McCormacks



# TRAINING SCHEDULE 2009

| <b>Date</b>  | <b>Title</b>   | <b>Tutor</b>                     |
|--------------|--|----------------------------------|
| 11 February  | Police Station Solicitor Update I  | Colin Beaumont                   |
| 19 February  | Course for Paralegals  | Ray Shaw                         |
| 26 February  | Police Station Solicitor Update II   | Colin Beaumont                   |
| 4 March      | Practical Advocacy in the Magistrates' Court – bail                        | Naomi Redhouse<br>Teresa Brennan |
| 11 March     | Practical Advocacy in the Magistrates' Court – mitigation                  | Naomi Redhouse<br>Teresa Brennan |
| 22 April     | Principle and Techniques of Making an Effective Submission                 | Karen Hammond                    |
| 7 May        | Criminal Law Update I  | David Ormerod                    |
| 13 May       | Criminal Law Update II   | David Ormerod                    |
| 10 June      | Witness Handling Part I. Principles and Techniques of Examination in Chief | Karen Hammond                    |
| 11 June      | Witness Handling Part II. Principles and Techniques of Cross-Examination   | Karen Hammond                    |
| 17 September | Your First Days in the Magistrates' Court                                  | Paul Harris<br>Stephen Dawson    |
| 29 September | Youth Court Law and Practice Part I  | Naomi Redhouse                   |
| 6 October    | Youth Court Law and Practice Part II                                       | Naomi Redhouse                   |
| 15 October   | Criminal Law Update I  | David Ormerod                    |
| 22 October   | Criminal Law Update II   | David Ormerod                    |
| 29 October   | Costs Update   | Colin Beaumont                   |



## TORTUOUS TEST

**R**angzieb Ahmed was recently convicted of terrorist offences following a trial in which the judge ruled that Pakistani interrogators had removed three fingernails only after his meeting with MI5 – so that must be all right then.

It must have been a fun section 78 PACE application.

“No sir, all three fingernails were securely attached to your client when I questioned him. He readily admitted being in Al Qaeda. Why didn’t I tape record the interview? Sir, you have to understand that Pakistan is a third world country; the interview room only had one electric socket and your client was already wired to that. Besides, my Pakistani colleagues told me that any screaming causes the microphone to feed back.”

Flushed by this UK success and following Barack Obama’s promise to ensure that the inmates of Guantanamo Bay have a fair trial, the USA government has started to prosecute them at Camberwell Green.

There have been a few set-backs. One SERCO van sank just off Iceland; and the district attorney has struggled with the concept of primary disclosure. So far, he has managed: “Primarily, we are not going to disclose that...”

On the positive side, district judges have granted defence applications to remove the shackles, ball and chain in the dock.

The main difficulty has been the grant of legal aid. Whilst the court readily concedes the “interests of justice” test, the LSC has been proving difficult on the means test – as the following transcript of a phone call to the Liverpool office makes clear.

**Heartless Minion:** There isn’t a National Insurance number...

**Solicitor:** His claim has sort of lapsed.

**HM:** What is his status in the country?

**Solicitor:** Oh, kind of reluctant.

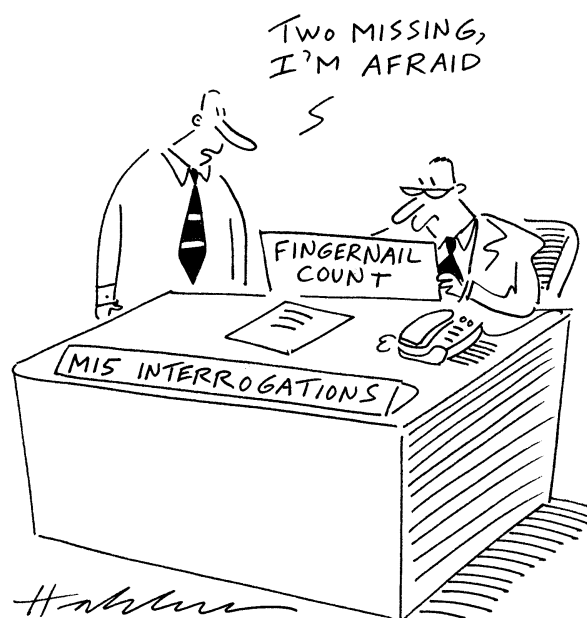
**HM:** I see he has a partner. Why hasn’t she signed the CDS15?

**Solicitor:** She was deported back to Kabul – or at least

that was he thinks he was told; it’s sort of difficult to hear when they are playing “Metallica” at 120 decibels.

**HM:** Partner’s national insurance number? Can she fax it over to you?

**Solicitor:** She doesn’t have a number; women don’t work much in Afghanistan. It is a career choice of wife or widow.



**HM:** And I see there are children but he has not mentioned child benefit?

**Solicitor:** All grown up; he’s been detained for five years.

**HM:** No income disclosed at all; that flags up as a high fraud risk I’m afraid. He must be living on something. Does he withdraw any savings?

**Solicitor:** (gritting teeth) He possesses his holy book and his underpants. The orange boiler-suit is on loan.

**HM:** He sounds self employed. We are going to need a self-assessment tax return. If he was previously in the USA, then we will need the American form as well.

**Solicitor:** (blood pressure rising) He hasn’t exactly been in the USA, more like Cuba.

**HM:** It’s got to be one or the other. Which was it?

**Solicitor:** (giving up) Several international jurists have failed to determine that one; I’ll have get back to you on that.

– Bruce Reid

The bimonthly London Advocate is the newsletter of the LCCSA

It is free for all members and associate members