

The LONDON ADVOCATE

Updating the London Criminal Courts Solicitors' Association

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EDITORIAL

An open letter

Dear Prime Minister

I write to you as a lawyer who is paid out of the public purse, as mentioned in the recent speech of the Secretary of State for Justice.

I accept that “there is certainly nothing ordained by the Almighty which says that, of those paid for by the public purse, lawyers should be higher than other professions”. I’m sure you agree that this sentiment should also embrace Members of Parliament, ministers and Cabinet ministers.

As a Criminal legal aid lawyer, I have seen my pay system alter significantly downwards over the last few years. I am now paid a fixed fee per case for attending the magistrates' court and police stations, without a separate claim for travel and waiting. I am also paid a fixed fee for the preparation of all Crown Court work – with some variable factors, such as length of trial and page count.

I request the following:

- (1) Because I live in the London borough of Barnet and the courts and police stations I attend (including out of hours) are in Central London, in particular Westminster, I should like to purchase a second home in Westminster and would like a government subsidy to allow me to do so. I really do not mind whether this is a lump sum or paid annually.
- (2) Because, as you will appreciate, your government has produced a vast amount of new legislation over the past few years, I require the latest TV and internet equipment in order to keep up to date. (I assure you that I will not run up bills watching past episodes of Kavanagh QC or Judge John Deed.)

I look forward to hearing from you.

Yours faithfully,

Malcolm Duxbury

PS I enclose a sae, as I know things are a bit difficult at the moment.

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NOTICES

■ COMMITTEE MEETINGS

These take place on Monday evenings. The dates are:

- 11 May
- 8 June
- 13 July
- 14 September
- 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.

■ ONE DAY CONFERENCE

With the Criminal Law Solicitors' Association and the Legal Aid Practitioners' Group, the Association is holding a conference on 15 May, at Church House. Entitled "Sixty years of legal aid – a cause for celebration?", the conference will be addressed by representatives of government, the Law Society, the CLSA and LCCSA. Email sue@clsa.co.uk

NEWS

Virtual courts

On 12 May, this scheme, which will see many defendants making their first appearance at the magistrates' court by way of video link from the police station, will start to undergo a 12-month pilot programme: Charing Cross police station will be linked to Camberwell Green magistrates' court.

Other London sites will join the scheme over the next three months, with courts in Kent also taking part from June.

The LSC has amended the unified contract for all legal aid providers. Following a consultation process, the fee for attendance during office hours (9.30am to 5.30pm) is £200 plus VAT; the fee for attendance out of hours is £240 plus VAT.

If the case is not disposed of at the virtual court, then an application for a representation order should be made in the usual way, with the virtual court fee being rolled into the magistrates' court fee.

Evidential changes

Starting in the Thames court area, a new procedure is being introduced by the police when dealing with cases involving amphetamines, opiates and cocaine.

In the simplest of cases, a test will be conducted on these substances at the police station; where positive, the police will consider this to be sufficient evidence of an offence so that there can be an instant disposal, where appropriate.

To protect the accused, there is a procedure to be followed in the event of a dispute; this may be invoked at the police station or later at court.

Funding prison law work

On 24 March, LCCSA executive officer, Greg Powell, addressed the Association of Prison Lawyers, which was holding a meeting at Doughty Street Chambers to discuss the LSC's consultation paper on the future funding of prison law work.

The LSC's key proposals are:

- the introduction of "matter starts" (ie restricting the number of cases which each provider can undertake);
- a revision of the "sufficient benefit test" (changing the wording of the "merits test" for entitlement to funding);
- a "supervisor standard" (introducing a minimum requirement of 350 hours prison law work a year);
- future "business delivery – phase 2" (alternative methods of delivering prison law services, eg advising via telephone, duty solicitor schemes in prisons and block contracting/tendering).

Greg pointed out some of the likely pitfalls facing prison lawyers in responding to the consultation and adapting to a fixed fee regime.

The feeling of the meeting was that, although there was need for a supervisor/quality standard, many felt extremely doubtful about the commitment of the LSC to quality of advice and representation, particularly as the proposed cuts were likely to drive down rather than improve standards.

There was concern about the fact that costs were heavily driven by other factors such as the introduction of new legislation; lawyers had no control over this and were simply responding to need.



It was felt that the proposal to scrap travel and waiting payments would affect the availability of legal advice in geographical areas in which provision was scarce.

Some of the proposals (eg for phone advice and for increased use of videolink facilities) had some support but it was agreed that there would be practical problems of which the LSC seemed to be unaware.

Members concerned may wish to contact Andrew Sperling of the Association of Prison Lawyers, whose website is: www.associationofprisonlawyers.co.uk

Higher court advocates

The Association has responded to the Solicitors' Regulatory Authority's proposal for the mandatory re-accreditation of solicitor advocates in the higher courts.

On behalf of the Association, Jonathan Black argued that the current rules regulating conduct provide a sufficient safeguard for the lay client. Given that there is now to be a quality assurance scheme for all advocates, no further regulation by the SRA is necessary – and may, indeed, mean an unnecessary obstacle to female advocates returning to practice after spending time with children.

Youth cautions

The LCCSA will be submitting a response to the consultation paper issued by the Ministry of Justice on the youth conditional caution code of practice for 16 and 17-year-olds.

This consultation will end on 25 May 2009 and asks whether the code of practice meets the needs of practitioners, victims and complainants. It also asks what changes need to be made in order that it can be successfully applied as a "third tier" to the reprimand and warning system that is already in place.

The Association's response will be drafted by Mel Stooks, Naomi Redhouse and Kate Anderson.

Mobile police units

A pilot programme, during which the police operate mobile police units (MPUs), will be run during May, possibly in Lambeth or Wimbledon.

MPUs are designed to deal with non-violent, low-grade crimes to reduce pressure on custody suites in police stations. They have been designed to be set up in large parks, such as Battersea, as well as to be used at large-scale events such as the Wimbledon tennis championships and, eventually, the 2012 Olympics.

The vehicle units are equipped with a front desk, holding and seating areas, and an interview room. There is 360-degree internal and external CCTV. The design includes access for the disabled.

Christina Warner, who inspected the units on behalf of the Association, was impressed with the environmentally friendly design and felt that this might be an inventive way of easing demands on the Met. But she comments that the public and defence solicitors may sometimes have difficulty finding the mobile units, which, she also feels, may attract unwanted attention from those seeking directions, looking for property or needing medical help.

Court news

Isleworth

The building work at Isleworth Crown Court is nearing completion; and it is hoped that the new courts will be operational by mid-summer.

Snaresbrook

Snaresbrook court users have been told that:

- (1) The resident judge requires all defence statements to be filed within the time limits. He will not allow them to be delayed until the plea and case management hearing. If there are particular reasons why they need to await the pcmh, applications should be made to the court.
- (2) Good notice must be given of bail variations, giving the police and CPS time to respond. The judge is also making it clear to both agencies that they must deal with such matters promptly.
- (3) The video link facilities at the court are being increased; but the court requires proper applications from the Crown when special measures are required, with the reasons why screens would not provide equal protection.
- (4) Because of pressures on the court, severance of a multi-count indictment is always a possibility – whatever the view of the Crown.
- (5) There have been particular problems about the quality of interpreters, with one or two people claiming qualifications they did not hold. Defence lawyers should exercise caution.
- (6) There is a substantial backlog of cases at Snaresbrook; some cases may be moved to provincial courts.

Southwark

During March, Southwark court took part in the first multi-agency criminal justice programme held in the Westminster area.

The programme is aimed at those young people not



in employment, education or training (sometimes known as NEETs); this group has a high chance of coming into contact with the criminal justice system, as victims, witnesses or suspects.

The two-day programme aimed to inform the young people about the criminal justice system and to explain how the various criminal justice agencies interlink and are often dependent on each other. It involved the police, CPS, the courts services, the prison service and Victim Support. Stop and search powers were

explained; the young people visited the courts, were given the opportunity to question a judge and a magistrate, and took part in a discussion on the gang, knife and gun culture.

More students came to the second day than attended the first, after hearing recommendations from others. Having earlier had difficulty in reaching the target group, those running the programme were pleased at their success in engaging with this section of the community.

PRESIDENT'S REPORT

Is this the end then? Only a few weeks ago, I had the pleasure of spending an evening with past presidents of the Association, at the Reform Club, courtesy of our host, ex-president HHJ Lawrence (retired). Senior solicitors, district and crown court judges – experienced, talented and committed solicitors all – spoke about the historic role of the Association and its future. Soon after, the LSC published their latest consultation (sic) on “best value tendering” (BVT), throwing into sharp relief the presidents’ conversations concerning the future of the criminal justice system and the contribution which solicitors can make.

BVT (better known as compulsory competitive tendering) will result in the death of the publicly funded independent defence solicitor and practice as we now know them. The response to the first consultation was so unanimously excoriating that it seemed the idea had been quietly shelved, to gather dust. In fact (along with the CLSA and LAPG), we felt encouraged to believe this. We know now that, while the representative organisations have, as ever, co-operated, in good faith, with the LSC over a range of projects, from VHCC discussions to the looming “virtual courts” programme, the LSC have been planning, in detail, the introduction of BVT.

A price war

Let us be clear. BVT/CCT foresees a future where firms bid each other down to gain market share; firms that lose this price war will go out of business, with no way back. As costs are driven ever further down, quality will inevitably fall, faster than it is already. (Note also the abandonment of any element of “London weighting.”)

Solicitors will have to keep track of large numbers of paralegals’ casework, rarely, if ever, seeing the client; it is hoped that the loss of experience and judgment on each case will not result in a miscarriage of justice. “Quality” will be assured via “peer review” – the fig leaf for the media. Think Haringey, passing

assessments with flying colours before the Baby P scandal; think how Stafford General hospital was meeting all its targets.

The historic test of a firm’s ability to do its job well has always been the firm’s reputation and the referral and repeat work which resulted from it. These plans remove the need for any reputation at all. In the long run, volume will be guaranteed to the few firms able and willing to adapt to this defence-lite version of criminal law.

Post the Clementi review, there may be non-solicitor owned businesses ready to extract a small profit from the system. If prisoner transport is attractive to such companies, why not defence law? Can it really be so much more complicated?

A lost culture

In this relentless effort to cut costs, the government seems happy to destroy the network of local firms, diverse establishments, many of which are long-established in their communities. With fewer and fewer firms, the whole concept of the client-solicitor relationship will be shattered.

In this rosy future, how long will it take to change entirely the work ethic culture of defence practice? Will tomorrow’s (few) lawyers and paralegals stay late in the office, going the famous “extra mile” for their client? With no additional income resulting from extra work, their time-recording manager will not thank them for doing so.

The judiciary know that good defence work involves dogged unwavering preparation by a committed solicitor. But the business-minded firm will not want such uneconomic lawyers – nor, indeed, the often difficult clients for whom these lawyers are prepared to do battle.

A two-tier, Americanised system comes ever closer. Our ability to offer all clients – regardless of income or the complexity of their case – fearless and independent defence is at terminal risk.



INTERVIEW WITH SAL CHAIR

Sundeep Bhatia is chair of the Society of Asian Lawyers

Q: When was the Society of Asian Lawyers formed and why is there a need for it?

A: SAL was formed in the early 1990s. It was a group of lawyers from all different backgrounds – barristers as well as solicitors – who wanted to join together for social reasons as well as campaigning reasons, campaigning for equality and being a voice to promote issues affecting Asian lawyers in this country. Everyone is welcome to join, as my predecessor, Sailesh Mehta, said, as long as they love curry. Predominantly, the society is geared around India, Pakistan and Bangladesh but anyone is welcome. There are Sikhs, Muslims, Hindus, Christians – I am a Sikh – it’s a broad church.

There is still not equality of opportunity for Asian lawyers. Things are much better than they were but there is still a long way to go; in March, there was a report from the Bar Council which highlighted the difference in earning between English and BME barristers. One can speculate about the reasons for this but there must be an element of less opportunity. Anecdotally, many solicitors from Asian backgrounds have difficulty securing training contracts or pupillages.

But it’s not just a question of saying, “everything is wrong”: at the SAL ball on 7 March, we had our awards ceremony which celebrated the contribution of Asian lawyers to the English legal system; these included a solicitor who is a trainee at Clifford Chance, Judge Abbas Mithani QC, Parosha Chandran, a human rights barrister, and Dr Mirza Ahmad who is head of Birmingham city council legal services.

We make sizeable contributions to charities; we supported the tsunami victims and the Burma earthquake victims. We support UNICEF and others. One of our members is involved in a charity in India whereby abandoned children can be taken to a refuge and looked after. Last year, we gave about £15,000 away.

Q: Why did SAL take part in the judicial review proceedings about the Carter reforms and do you believe that BME firms continue to be particularly threatened by government plans for legal aid reform?

A: In the JR proceedings, we were arguing that the LSC had not conducted a meaningful impact assessment on BME firms before it tried to march ahead with its plans. Matters settled and so it wasn’t fully argued but I think by raising such an action, we showed that people must take into consideration the needs of minority communities and the lawyers who

serve them before they try and steam-roller through any legal funding reforms.

I feel sure that the action we took slowed down, in a significant way, the introduction of tendering and the drive to put small firms out of business but I’m not sure, now, that PCT has been touched into the long grass. I have a feeling, particularly regarding what Jack Straw has said, that they are trying to push tendering through. I sincerely hope not because I believe that legal aid is almost mortally wounded as things are now. We’ll see what they plan and, if we feel that it is damaging to the fabric of the legal system and if it means that minority communities will no longer have solicitors who understand their cultures and languages, then obviously we’ll campaign vigorously against its introduction.

Q: What have you learned, personally, from your part in this campaign?

A: It was a brave decision when we went to court because, technically speaking, our homes were at risk; but, if you believe strongly in something and you have the ability and the drive and determination, you must take action to do what is right. I’ve been doing publicly funded legal aid law since 1994 and I believe in the value of what I do, in quality of service and I also believe that professionals, who have studied and sacrificed, have a right to a fair living. I am fearful for the effect on our clients if these ill-thought-out, penny-pinching measures continue to be rolled out. We’ll come very soon to a stage where there will be very few qualified solicitors attending police stations because the rates of pay are so poor. I sincerely hope I’m wrong but I fear that legal aid is going to become the cubbyhole of the incompetent and inexperienced.

Q: What other campaigns is SAL currently involved with?

A: Sailesh Mehta and I were part of the working group supporting Lord Ouseley’s report which looked into why BME firms seemed to be disproportionately targeted by the Solicitors’ Regulation Authority and set out reforms to avoid the perception that SRA is institutionally racist. I’m on the implementation group, monitoring the way the reforms are being introduced. SAL is proud to be part of the effort to try and create a regulator that is seen to be fair and proportionate. We’re seeking to educate members so they can avoid getting themselves into a situation where the SRA takes action against them. I asked the SRA to organise a seminar which was held in Dexter House; there were about 50 lawyers who were given instruction on the solicitors’



account rules and steps to take to avoid the SRA taking regulatory action by ensuring that their houses are in order. Education is better than intervention.

Q: How do you see the relationship between LCCSA and SAL?

A: The campaign with regard to the Lord Carter reforms showed how well we work together. I have a lot of friends I've met through the LCCSA that I have the utmost respect and admiration for. I would encourage anyone who is involved in criminal law work to join the LCCSA. It's useful for a number of reasons: contacts, the social factor and the courses I've been on were very good. And it's your opportunity to contribute something back. I was involved in two or three consultation papers on different aspects of law and, in this way, you stamp your mark on the legal system of the future. And it's important that LCCSA reflects our profession at large and BME solicitors should be members. I'm very proud to be a member.

Q: Tell me about your current practice.

A: Since January 2007, I have worked on my own, with a part-time secretary, in Beaumonde Law Practice. I practise civil law, employment law (30%-40% of my work), aspects of company law and immigration law. I'm also a consultant to a criminal law firm, Clive Gomes in Alperston, and I'm a solicitor advocate who enjoys Crown Court trials. I am also a trained mediator.

I've been on my own since 1999, when I set up Brent Law Practice and had seven and a half years running a successful legal aid criminal law practice. But my work on the Carter reforms showed me the way the wind was blowing and I decided I did not want my own criminal legal aid contract any longer and so at the end

of 2006, with my blessing, my staff passed on to another firm.

Q: What led you to become a lawyer?

A: I was at the King's School Rochester in Kent and I was initially in awe of my parents, who were both doctors; but when I had to rip apart frogs in Biology practicals, I decided medicine was not for me. I enjoyed literature and debating and I worked at a solicitors' office in the Medway towns during the school holidays. I greatly enjoyed that and decided to do a law degree. On qualification, I worked for Palmers solicitors in Basildon doing repossessions for the Woolwich Building Society and then for Gupta and Partners in Harrow, where I was chucked in the deep end at the magistrates' court. I remember appearing for a drunk driver early on and I was like a rabbit in the headlights. I thought I might sink but I started to swim. I kept at it, became a duty solicitor, rose to become head of the criminal law department and then helped them get the franchise for criminal legal aid. Then I thought, "Perhaps I can do this for myself."

Q: What is your personal background?

A: I've been married for eleven and a half years to Namita. She is my backbone and bedrock. She was the one who encouraged me to set up my own practice in 1999 and till 2006 she was my practice manager. Now we have a young family, twins of 17 and a half months, a son called Aneesh and my daughter's name is Sachi.

As for my other interests, I'm a huge Formula One fan – and my son already looks, fascinated, at the wheels of a car going by. I follow Manchester United. I love music of all sorts and have CDs coming out of every cupboard.

CRIMINAL LAW AND THE EUROPEAN UNION

Over the past five years, the inroads into the criminal justice sphere at a European level have been striking. Since the conclusions of the Tampere summit in 1999 identified a need for mutual recognition and co-operation in this area, and this has been cemented in the Hague programme (for 2005-2010), there has been a flurry of activity.

Arrest warrant

Many readers will be aware of the European arrest warrant (EAW), given its controversial intrusion into

domestic criminal practice through the abolition of dual criminality for 32 offences.

The EAW has now been in place for four years, and is described by the European Commission, in terms of implementation and usage, as a success. The current Czech presidency announced at the beginning of the year that a review will be undertaken into its effectiveness in practice. Certainly the absence of a public interest discretion for prosecutors in countries such as Poland has led to practitioners concluding that the original intention of creating a tool for prosecuting



serious crime is being abused. Justice has reviewed the EAW in the first volume of its 2009 Journal (yet to be published).

Numerous measures

In addition to the EAW, we have seen the adoption of counter-terrorism measures, information sharing, freezing of assets and confiscation orders. In November last year, the Council adopted wide-reaching framework decisions on the European evidence warrant, protection of personal data, combating racism and xenophobia, and recognition of judgments so that custodial and non-custodial sentences can be served in another member state. In February, the Council also adopted an instrument on judgments in absentia. Each of these will have to be implemented through domestic legislation over the next couple of years.

In schedule 15 to the Coroners and Justice bill, currently before the UK parliament, there is the framework decision on mutual recognition of criminal records, which was adopted by the Council of Ministers in August last year. It imposes a mandatory obligation upon tribunals to consider convictions from across the EU when adjudicating upon bail, bad character and sentence. The mechanism for this has not yet been finalised, with a computerised system being developed through a pilot project that will enable interconnectivity between domestic databases. Justice has briefed on the transposing UK legislation in schedule 15, as well as on the proposed amendments to the Extradition Act 2003 which are contained in the Policing and Crime bill. In both cases, we have expressed concern for the interests of justice and right to a fair hearing.

Proposals are currently being considered by the EU institutions for instruments on pre-trial supervision ("Euro-bail", which complements the EAW by allowing a person to remain in the executing state pending trial in the issuing state, thereby reducing the likelihood of remand in custody), conflicts of jurisdiction, e-justice, and – the most controversial – procedural safeguards for defendants in criminal proceedings.

Safeguards for defendants

The framework decision on procedural safeguards aimed to provide European-wide standards that should be guaranteed for all suspects of crime, such as the availability of a lawyer, interpreter, and information about the rights of a defendant in each member state. However, the Council failed to agree the standards that should be adopted in 2007.

As a result, the Commission assigned a number of studies to provide empirical evidence of the

differences in provision of defence safeguards across the member states. Its aim was to persuade the Council that the rights conferred by the ECHR are insufficient for the purposes of a pan-European criminal justice system and must be built upon with concrete, practical standards. The studies are in the process of reporting their findings – some final, others at an interim stage (as is the Effective Defence Rights Project, in which Justice is a partner). It is hoped that all the studies will provide evidence so that the Swedish presidency will be able to place the proposal back on the agenda in June, for adoption in the near future.

Way forward

The future of the EU is at a crossroads, with European parliament elections in June, appointment of Commissioners in November and decisions on the Lisbon Treaty stalled at member state level. In these circumstances, there is certainly an argument that little work should be carried out by the Commission until the way forward is known.

It is unclear what the driving force in parliament will be, though the parties' manifestos share common concerns for the economy, environment, and further integration. And there is still much uncertainty in the European Union, as we await decisions from various member states about putting the Treaty of Lisbon into effect. In keeping with this state of flux and the concluding year of the Hague programme, organisations agree that now is the time to reflect upon the numerous instruments that have been created in the area of criminal justice, and to review the impact of these instruments upon the areas of freedom, security and justice. There is a consensus amongst academics and practitioners that the mutual trust premise has not yet developed between member states. It seems that, although the European institutions are working towards an integrated system, until a real sense of mutual co-operation exists, practical use of these instruments will continue to be viewed with suspicion, and will be scrutinised carefully by the courts of the member states.

There is, therefore, much activity on the European stage in the area of criminal justice – far more than many practitioners may be aware of. Some instruments are needed; it may be argued that others confuse rather than assist. All the instruments proposed will influence domestic practice and, in their current form, hold the potential to increase prosecution of pan-European crime, while infringing the rule of law for the suspect who faces zealous intervention.

– Jodie Blackstock
Senior legal officer (EU) Justice



THE DEATH PENALTY PROJECT

For nearly 20 years, the Death Penalty Project has worked to promote and protect the human rights of those facing the death penalty. The organisation was formerly an activity of Simons Muirhead & Burton Solicitors, but, since 2006, it has been established in its own right as an independent NGO with a connected sister charity, the Death Penalty Project Charitable Trust.

The organisation's main objectives are:

- (1) to promote the restriction of the death penalty in line with international minimum legal requirements;
- (2) to uphold and develop human rights standards and the Criminal law;
- (3) to provide free and effective legal representation and assistance for those individuals who are facing the death penalty; and
- (4) to promote increased awareness and greater dialogue with key stakeholders on the death penalty.

Although the Death Penalty Project operates in all jurisdictions where the death penalty remains an enforceable punishment, our actions are concentrated in those countries which retain the Judicial Committee of the Privy Council in London and in other Commonwealth countries, principally in the Caribbean and Africa. Where the death penalty still exists, we try to ensure that the rights of the individuals are properly protected.

Legal teams

The executive directors are supported by teams who provide free advice and assistance to the project, including UK barristers providing pro bono legal advice and representation to prisoners under sentence of death and a panel of expert doctors including forensic psychiatrists, psychologists and pathologists, as well as academics, criminologists and researchers who provide free assistance to the organisation.

The continuing commitment to providing free legal representation to men and women on death row in these regions has been critical in identifying and redressing a significant number of miscarriages of justice, promoting minimum fair trial guarantees, and establishing violations of domestic and international human rights.

Results

Consequently, there are now far greater limitations on the circumstances in which the death penalty can be imposed or carried out on those convicted of murder.

Some of the landmark cases which have restricted the implementation of the death penalty include *Pratt & Morgan v AG of Jamaica* [1994] 2 AC 1, *Lewis v AG of Jamaica* [2001] 2 AC 50, *Reyes v the Queen* [2002] 2 AC 235, *The Queen v Hughes* [2002] 2 AC 259, *Fox v the Queen* [2002] 2 AC 284 and *Bowe & Davis v the Queen* [2006] 1 WLR 1623.

As a direct result of the work of the organisation, more than 50 death-row prisoners who failed to receive fair trials and were the victims of miscarriages of justice have had their convictions quashed; violations of international human rights law have been established in more than 40 complaints on behalf of indigent death-row prisoners in the Caribbean; and, the lives of over 500 men and women, who would otherwise would almost certainly have been executed, have been saved.

Local support

Alongside our activities representing individuals at risk of execution, we also provide expert support to local lawyers and human rights groups in bringing legal challenges to the application of the death penalty, with notable success in various jurisdictions. For example:

- The mandatory death penalty has now been removed in nine Caribbean countries.
- In 2007, the High Court of Malawi held that the imposition of the mandatory death penalty amounted to inhuman treatment and punishment (*Kafantayeni et al v AG* 46 ILM 564 (2007)).
- Advisory support continues in similar cases in Zambia, Ghana, Sierra Leone, Tanzania, Kenya and Nigeria.
- In 2007, the Inter-American Court of Human Rights, sitting in Costa Rica, ruled that the mandatory death sentence imposed on all those convicted of murder in Barbados violates the right to life (*Boyce et al v Barbados*, judgment of 20 November 2007).
- In January 2009, the Supreme Court of Uganda confirmed the decision of the Constitutional Court (2005) in declaring the mandatory death penalty and excessive delay on death row unconstitutional (*AG v Kigula and 417 others*).

We also seek to promote capacity building through the provision of interactive training, through dialogue and exchange with judges, and through developing and commissioning studies and research.

For instance, we are currently an active partner in a three-year project promoting reform of the death penalty in the People's Republic of China and, in



2009, we are looking to commence a new programme in Taiwan. The organisation has also recently conducted a series of training workshops on capital sentencing for both judges and lawyers in Uganda and Malawi and the Death Penalty Project's handbook, "A Guide to Sentencing in Capital Cases" by Edward Fitzgerald QC and Keir Starmer QC (2007) has been widely distributed throughout Africa and the Caribbean.

As long as the death penalty remains an enforceable

punishment for those found guilty of crimes, the Death Penalty Project will continue to provide free legal representation and assistance to individuals facing execution; and it will further maintain its commitment to human rights standards by promoting the restriction of the death penalty in line with international minimum legal requirements.

– *Saul Lehrfreund MBE and Parvais Jabbar*
Executive directors

LAW & ORDER UK

ITV1, starting Monday 23 February

"Challenging the very nature of the UK legal system". That is what the voiceover says at the beginning of the UK version of this very successful American television show; it certainly lives up to the description, as the legal system is of a very different nature to any I have experienced – although, for some in government, it may be the type of legal system that they aspire to.

The format is to deal with the links between investigators and the trial process so the first half of each programme deals with the discovery of the crime (generally violent deaths) whilst the second half continues once the lawyers have become involved. The main characters are two investigators and their tough but fair boss along with what appear to be two CPS advocates and their tough but fair boss.

The older investigator/advocate is world-weary with snappy one-liners in social commentary, whilst the younger investigator/advocate is bright-eyed, idealistic and with a sense of strong moral purpose. The latter is so strong in the junior advocate that, in one episode, following her being sexually assaulted by her gynaecologist but with no prosecution being brought, she returns to his office for a further examination, resulting in her filming the ensuing rape of herself. (Thankfully, becoming a victim of crime is not a

condition of becoming a prosecutor in the real world.)

Even allowing for poetic licence to attract viewers (and let's face it, hanging around waiting for a section 18 search to be completed or for the court to find the right file won't do that), it is so far removed from the criminal justice system that we all operate in as to be pretty pointless. Why, yet again, is there a programme showing defence solicitors in police interviews sitting idly by while juvenile and vulnerable suspects are inappropriately questioned, lectured at and generally told things by officers that are clearly wrong? The portrayal of trial advocates is equally flawed – observing psychiatric examinations of suspects and being present with the defence advocate and defendant whilst the latter is advised on his correct plea. The judge's role seems to be based more on Kavanagh QC than reality – allowing advocates to give expert evidence in relation to genetics and requesting a detailed oral basis of plea from a 13-year-old defendant on a murder charge!

I have been a fan of the US version but, unfortunately, the same cannot be said of Law & Order UK; it is so far-fetched as to have no real value, other than possibly to give some Home Secretary ideas as to how the system should be run to ensure that "justice" is achieved.

– *Michelle Crotty*
Revenue and Customs Prosecution

BOOK REVIEW

Prison Law

Margaret Obi, Law Society Publishing £49.95

The number of offenders being held in custody increases on a virtually daily basis. Our prisons are now full almost to capacity and there is little sign that the numbers will fall. Accordingly, solicitors are faced with requests for legal

advice about such diverse issues as appeals against conviction, appeals against sentence, parole board hearings, parole representations, early release, repatriation, adjudications and appeals, recategorisation and recalls on and breaches of prison licence.

This area of law is growing both in size and complexity. The courts are intervening more frequently



to deal with complaints arising out of the few courses and little treatment made available to ensure that an offender is rehabilitated and ready for release.

I can happily say that the Law Society has published an invaluable introductory guide, written by Margaret Obi, dealing with prison law issues. (Appeals against conviction and appeals against sentence are not covered). It starts logically with a list of acronyms and moves on to deal with almost every area of law with which a solicitor dealing with prison law should become familiar. Cases are correctly referred to and procedures explained in a lucid fashion. There are checklists and flowcharts – making the initial work much easier than would normally be the case. There is even a most useful guide to the arcane legal aid provisions covering funding for the provision of legal advice and representation. Most helpfully, this book sets out the law – statutory and regulatory – in an easy-to-follow format.

This book will be an invaluable addition to the library of any solicitors wishing to open a department dealing with prisoners who want legal advice and

wishing to advise and represent prisoners within the prison and disciplinary system.

However – and this is not intended to be a criticism of this admirable book – there really is no substitute for going back to original sources and especially the law reports. The case law is expanding at an ever-increasing rate as the courts tackle the under-funding of the prison system and the consequence that some prisoners remain in custody far longer than should be the case. This area of legal challenge, by way of judicial review of decisions, is outside the scope of this book and is an area crying out for a guide.

If there is any constructive criticism to be made, a very useful addition to the extensive list of addresses of public bodies at the end of this publication would have been a list of names, addresses and telephone numbers of all the prisons – but this really is nitpicking.

In conclusion, this is a very useful introduction to prison law and should be added to any law library.

– Julian Young
Julian Young & Co

TRAINING SCHEDULE 2009

Date	Title	Tutor / Venue
7 May	Criminal Law Update I	David Ormerod /Charter
13 May	Criminal Law Update II	David Ormerod /Charter
Possible dates in July /November	Death by Careless Driving and Update on Road Traffic Offences	David Sonn <i>This course not booked</i>
9 June	Human Rights, Secret Courts and Guantanamo Bay	
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
16 July	A refresher course and practical guide to defending sexual cases	Charter Chambers
10 September	A practical guide to appealing criminal cases	Charter Chambers
17 September	Your First Days in the Magistrates' Court	Paul Harris and Stephen Dawson/ HJ Allen
24 September	A guide to POCA, cash seizures and extradition	Charter Chambers
29 September	Youth Court Law & Practice Part I	Naomi Redhouse
6 October	Youth Court Law & 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



ABANDON HOPE

DJ Baldwin and I spend many Friday afternoons together. (It's probably something he did in a past life.) I like to think we get on very well, but Fridays are a problem for both of us. Last week, we stared at one another across the advocates' bench, the cartoon thought bubble above our heads screaming, "Why me?!?" At a time when most civilised people were opening the first bottle, we were still on the remand list. As the contract cleaner potted around us, the parade of loons, goons and buffoons from the cells seemed endless. I could see him thinking, "Why do we only get these people at Camberwell? This is Purgatory!"

He's right.

What he does not know is that Camberwell is a Gateway to Hell. They all come from cell 21. Years ago, when the police ran the gaolers, they would use cell 21 for the most bothersome defendants. Situated as it is, 20 yards away, down the end of an L-shaped corridor, the demented, drooling or defecating were less trouble – especially if you turned the cell alarm off.

This accumulation of human misery caused a psychic disturbance and a crack in the universe, a worm-hole to the Pit.

On Friday afternoons, at 4.30, when the gaolers open the wicket to cell 21, they can see disconsolate demons in SERCO uniforms, pitchforking souls into a fiery cauldron. Every so often, they miss and chuck them in here.

Only the magic combination of DJ Baldwin, myself and Friday opens this gateway. Look on a Wednesday, say, and you cannot find it; the gaolers do not have a key...

"Number 75 in your list," mumbles the list caller, thinking, "Wait a minute, there wasn't a number 75 a minute ago! Wait till I get hold of scheduling!" The court list smoulders ominously in his hands.

There is never a CPS file. But, by now, the CPS advocate is slumped, past caring with fatigue, dozing on

failed committal bundles. Only DJ Baldwin and I remain vertical. The legal advisor is checking the internet for tomorrow's football or a hot date. If the sad creature in the dock is capable of speech, then it's foreign and there is no interpreter. SERCO's officers pray that they never have to wrestle the smelly



apparition to the floor if bail is refused. They disinfect the handcuffs afterwards.

Men found masturbating in a phone box puffing on a crack pipe? Yep! Dancing a jig on a row of parked cars and then propositioning the arresting officer? Sure! Speaking Martian and persuaded into the dock only with an officer attached to each limb? We have had 'em in spades. (All the above were subsequently found not to be mentally ill on examination by the duty psychiatric team.)

Most are released on bail. With a bit of luck, they will abscond, but anyway the majority of them disappear into the ether at the front desk before the supervisor can sign them out. Only a faint smell of sulphur remains.

– Bruce Reid

The bimonthly London Advocate is the newsletter of the LCCSA

It is free for all members and associate members