THE LONDON ADVOCATE

THE NEWSLETTER OF THE LONDON CRIMINAL COURTS SOLICITORS' ASSOCIATION

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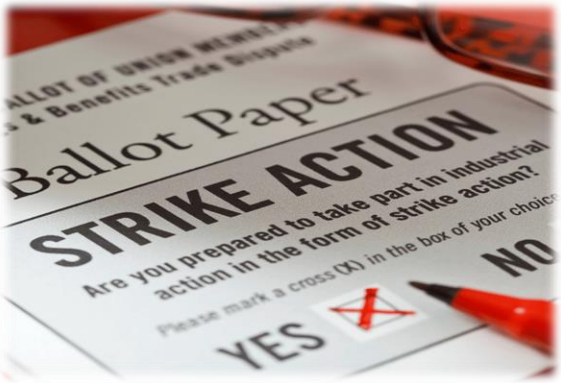
The results of the CBA ballot on the Ministry of Justice's offer will be known by the time this issue is circulated to members. Full details of the offer, strikingly, have not been made public, although a clue that it does not provide equal treatment for solicitors is given by the Law Society's unprecedented warning that it may advise members no longer to undertake criminal defence work.

The offer to the CBA, somewhat prematurely and crassly trailed by the MoJ as a "deal" that had been "agreed", appears to meet a number of the CBA's demands and provides the prospect of the Crown Courts starting to operate properly (ahem) for the first time in many months. As one might expect, "criminal justice Twitter" has been alive with expressions of opinion from articulate voices both in favour and against accepting the offer. Even recognising that the balance of online views may not be an accurate reflection of attitudes on the ground, the decision to accept or reject the offer will have undoubtedly been a difficult one.



There is unanimity, however (both among barristers and across the two branches of the profession), that no criminal lawyer relishes withdrawing their labour. First and foremost, we are driven by a belief in the importance of justice. Anything that frustrates justice being delivered effectively is invidious, and accordingly an end to the current CBA action is welcome. But (there's always a but), implicit to that welcome should be an expectation and requirement that the offer on the table will vitiate – in the short, medium and long term – any need to take action again.

One of the key recommendations in CLAR is the establishment of an Advisory Board on criminal legal aid, to keep the operation of the legal aid system under review and to make recommendations to government. Although Sir Christopher Bellamy was at pains to make clear that he did not see *"the Advisory Board as a 'pay review body' of the kind that exists in some other public sectors"*, he did recognise that *"issues of provider remuneration may well arise"*. Practitioners, quite naturally, embraced the idea of future-proofing any government response to CLAR, a sentiment that has become all the stronger given the effect rapidly rising inflation will have on any eventual increase in rates. The CBA accordingly made the establishment of a proper pay review body one of their key demands. Without the prospect of some mechanism for future upward adjustments, one can all too easily anticipate the continuing (and accelerating) exodus of lawyers from crime to areas of practice in which they can actually make a living. It appears that the MoJ offer includes an Advisory Board, but that the proposed constitution and remit of the body may leave a good deal to be desired; most worryingly, the terms of reference contain no reference to "pay".

Although it is uncomfortable to be in ignorance of proposals that – if enacted – will have a dramatic and direct impact on our own work, and while on any view any increase to legal aid rates should apply across the board (as envisaged by Sir Christopher), it is nevertheless an admirable achievement by the CBA's negotiating team to extract from the MoJ an offer which merits being put to its members.

Both sides of the profession have learnt from many years' bitter experience to be sceptical of government's good faith in such negotiations, and we can only hope that those who voted scrutinised the offer closely, considering its long-term as well as its immediate effect.

In due course we will discover what is proposed for that aspect of criminal legal aid that most affects solicitors. As our President set out in his message on 29th September: "[i]t is essential parity, at the least, is applied to Litigator Fees. If this does not happen, we will not hesitate to take appropriate action."

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Turning to the contents of this issue, we have a double bill from David Corker: two articles which address important considerations on the impact of exercising the right to silence (both in respect of adverse inferences but also other consequences for later cross examination). Fionnuala Ratcliffe of Transform Justice looks at how we might improve our practice (and by extension the reputation of the profession) by sharpening our focus on client feedback. Bruce Reid returns to his usual home after the last issue's polemic.

As ever, readers are warmly invited to submit content for publication. Meanwhile I hope you enjoy edition 101.

Ed Smyth, Editor

(esmyth@kingsleynapley.co.uk)

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LCCSA NEWS

CLSA CONFERENCE, 14th October

The CLSA Conference and AGM will take place at the Mary Ward Conference Centre, London on Friday 14th October. LCCSA Members are invited to attend at a discounted rate of £45 (via a promo code on the member area of the LCCSA website).

"We are in a generational challenge to save Legal Aid and save access to justice against a backdrop of ever falling numbers of solicitors, firms, and barristers, and so it is only right that we get together and have our say, discuss current events and work together to put legal aid on a sustainable footing. Only together can we achieve this."

Confirmed speakers:

Lord Justice Edis -Deputy Senior Presiding Judge of England and Wales

Richard Atkinson – Deputy Vice President elect of The Law Society

Daniel Bonich – CLSA Chair

Richard Miller – The Law Society

Simon Pottinger – JRS Consultants

Hesham Puri – President of the LCCSA

Jo Sidhu KC – Criminal Bar Association

SAVE THE DATE: LCCSA AGM, 14th November

This year's AGM – always an enjoyable event - will be held at Frederick's in Islington on Monday 14th November. Next year's President and Committee will be formally elected (on which note, please send any proposals for new committee members to Sara Boxer, admin@lccsa.org.uk), the guest speaker is TBC and tickets will be available shortly.

SENTENCING COUNCIL CONSULTATION ON TOTALITY

The Council is consulting on proposed changes to the Totality guideline.

The guideline sets out the approach for sentencing an offender for more than one offence or where the offender is already serving a sentence. Used alongside the relevant offence-specific guidelines or the General guideline, it provides sentencers with a framework for reaching a sentence that is just and proportionate to the offending as a whole.

The existing Totality guideline came into effect in June 2012. The Council is proposing a series of changes in response to research conducted with sentencers in 2021.

The consultation is open until 7 December 2022.

SONIA SIMS

As announced to members on 23rd September, the former Senior District Judge at Thames and Stratford, Sonia Sims, has died.

It was with great sadness that I learnt that Sonia Sims had died last week. Association member Barbara Hecht (of Hecht Montgomery) wrote the following fond tribute:

"I first met Sonia through the LCCSA and for members who go back to the 1990s, she will be remembered as a real supporter of the LCCSA, joining in and contributing to social events and importantly the weekend conferences abroad that took place every Autumn.

Sonia, like may others on our weekend trips away, outside of benefiting from the excellent CPD (!) took advantage of the great shopping and eating opportunities – stuck in my mind, in particular, are visits to Brussels and Bologna. She was great company.

Sonia was admitted as a Solicitor in 1987. She practiced in criminal law working for Whitelock & Storr in Southampton Row followed by Traymans in Stoke Newington and was a very successful and astute lawyer in private practice. She was good friends with many within this association, including, now retired, District Judge Alison Rose, District Judge Tan Ikram, District Judge

Susan Green, Ria Kudrati, Robert Brown, Mark Haslam and many more past presidents and long-standing members of the Association, far too many to mention.

She was appointed as a Deputy District Judge (Magistrates' courts) in 1998 and a District Judge (Magistrates' courts) in 2002. Her decisions were well articulated and even as a Deputy she was unsuccessfully judicially reviewed, her judgment in 2003 being upheld by the High Court as totally reasonable!

She always kept in touch with the Association and was their guest at many dinners. She enjoyed, as many of us did, the 'touts balls' that took place at the Grosvenor House Hotel annually where counsel and solicitors enjoyed the camaraderie that exists between the two branches of the profession. She was the special guest of one of our past presidents, Angela Campbell to one of the most glam LCCSA dinners in 2005.

Sonia was a Judge throughout the significant changes that procedure and practice threw at all practising crime over the years. Her judicial career included sitting when there were all night sittings in Bow Street Magistrates Court in 2011 and she also had a family ticket, presiding sensitively over care and private law cases.

She completed much of her judicial career in Stratford Magistrates Court presiding over some famous cases, such as in 2016 Tamara Ecclestone's husband Jay Rutland over allegations of assisting a fugitive. She moved to Devon for the last few years and was a popular, fair and very hard-working Judge..

Sonia retired only in January 2022 and so it is very sad, that she could not enjoy her retirement with her husband Alan, which she had very much been looking forward to.

I'm sure she now rests in peace and my thoughts are with all those she cherished and has now left behind."

The Association sends its deepest condolences to her family and friends.

COMMITTEE MEETINGS

The LCCSA committee meets on the second Monday of each month at 6:00pm. All members are welcome to attend (in person at the offices of Kingsley Napley, 20 Bonhill St, EC2A 4DN or remotely) and if you wish to participate please contact the editor or Sara Boxer (admin@lccsa.org.uk).

AND FINALLY…

Not directly LCCSA-related, but it would be remiss not to mention the hard work of former President Greg Foxsmith as a central player in The Jack Leslie Campaign. Greg has played a central role (with other benighted Plymouth Argyle fans) to honour an historically important player:

Leslie was almost certainly the first black captain of a professional football team, and the first black player to be selected for England (only, controversially, to be deselected before his first match). A statue of Leslie is to be unveiled at Plymouth's Home Park on 7th October.

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ARTICLES

EXERCISING YOUR RIGHT TO SILENCE: WHAT DOES THIS MEAN FOR YOUR DEFENCE?

In the first of two articles David Corker, founding partner of Corker Binning, analyses an important recent Court of Appeal case on adverse inferences.

The judgment of the Court of Appeal in R v Harewood and Rehman [2021] EWCA Crim 1936 concerns s34 CJPOA 1994. The relevant wording of s.34 permits an adverse inference by a jury to be drawn if "on being questioned under caution" the defendant fails to mention a fact relied on in his defence and is "a fact which, in the circumstances existing at the time, the accused could reasonably have been expected to mention when so questioned." It is an important judgment because it widens the circumstances when a judge can direct a jury that it can draw such an inference when an accused has exercised their right to silence in an interview under caution (IUC).

The two appellants were arrested on suspicion of murder. In the usual way the police prior to their respective IUC's had provided to their solicitors pre interview disclosure. The appellants reacted by submitting "pre prepared" statements and remaining silent during their ensuing questioning. In his statement, H asserted that he had acted in self-defence. R contended that he had no memory of the incident because he had been beaten unconscious. At their trial both H and R testified in their defences. Whilst neither of their accounts contradicted their antecedent prepared statements they mentioned and relied upon a plethora of details for the first time. During their cross-examinations the prosecutor identified six contentions or aspects of their testimonies that were novel, points that were as conceded by the defence. It was then suggested to them that this sextet was all lies. This of course was denied.

How silence in an interview under caution was used by the prosecutor

What was significant about these cross-examinations was that the prosecutor, whilst making this suggestion, did not adduce any passage from the interview transcripts where he contended there was an obvious opportunity to mention any of those six contentions. The line of attack eschewed citation and reliance on them. Its aim was to establish simply that based on the pre interview disclosure and what the accused had testified to, it was obvious that they could easily and reasonably have mentioned those contentions during their respective interviews.

At the close of the evidence the prosecutor asked the Judge to permit the jury to draw an adverse inference in relation to the sextet; that as none was mentioned at interview, the jury could decide for themselves whether they were recent fabrications. The defence opposed this application. It submitted that such an inference only becomes permissible if it has been proven by the prosecution that in the circumstances appertaining to these interview's that it was reasonable for the accused to have mentioned the sextet. Here, no probative evidence had been adduced to show that a relevant question had been posed. There was nothing about how matters were put or represented to either accused during their questioning. Secondly, the fact that the interviews had each lasted about 90 minutes was not any basis for inferring that they had had an ample opportunity to mention any of the sextet or that it would have become clear to them that they were important things to mention. As a consequence of the style of "broad brush" cross examination, there was an evidential void which precluded the jury from considering whether the accused's silence was unreasonable.

The Judge however ruled in favour of the prosecution. She held that the prosecution's cross examination was sufficient to establish either that questions which would have elicited answers concerning the sextet must have been asked, or that had they opted to answer questions, whatever they were, the accused would have mentioned the sextet because it was central to the core interview disclosure to what the police were then investigating. Thus, the jury should be permitted to consider whether or not to draw an adverse inference from their facts in interview which they later relied upon at trial

Both accused were convicted, and their main ground of appeal was that the Judge was wrong to have allowed the jury an opportunity to draw the inference.

Why the appeal under section34 was dismissed by the judge

The Court dismissed both appeals. The fact that the transcripts of the interviews had not been adduced did not vitiate the drawing of a s34 inference because "there is no requirement that the unmentioned fact must be one about which the accused has specifically been asked a question. The language of the statute does not impose such a requirement and the test is simply whether in the face of the questioning the fact is one which the defendant could reasonably have been expected to mention."

The Court then held that it would be reasonable for a jury to draw an adverse inference based on factors that might have nothing to do with what the defendant had been asked about during their interview; "the circumstances which the jury are to take into account in determining whether the accused could reasonably have been expected to mention the fact in question will include what it knows about the length of the questioning, and the relative significance or importance of the fact in question to the matters about which the accused is being interviewed; and its relative significance or importance to any answers he does give in interview or to the contents of any prepared statement which he has given…If the facts which the accused failed to mention are central to this account at trial, the jury may more readily conclude that he could reasonably be expected to have mentioned them in interview, whether or not they were the subject of particular questioning."

Why the accused decision to not fully answer questions can be held against them

This authority contains a number of important and from a defence perspective, disturbing, albeit overlapping implications as follows;

1. It increases the pressure on a suspect to answer questions during their IUC. Correspondingly it eases the pressure on the investigator to disclose the reasons for their suspicions both before and during the interview. For example, the investigator's pre interview disclosure is believed to be misleadingly incomplete is probably not a justification for the suspect's silence or failure to mention a fact they later seek to rely on at trial, if they had an exculpatory explanation to give or a fact to mention. Issues which used to amount to a reasonable excuse such as whether at the time of the interview there did not appear to be a case to answer, are relegated.
2. As a prosecutor, whilst cross-examining an accused about the fact that they did not answer questions during their IUC, is no longer required to adduce evidence of what questions were actually asked or what words were actually used. It increases the danger of deeming silence of itself to be sufficient for the drawing of an adverse inference. It makes it more incumbent on the defence to explain why in the then circumstances prevailing at the time of the interview, a refusal to co-operate was reasonable.
3. A pre prepared statement as an alternative to orally answering questions now seems an even less attractive option. One which is merely or virtually a bare denial will serve no useful purpose and will be used to highlight the obduracy of the client. One which contains a lot more information is perilous because if it transpires when the client testifies that it was significantly incomplete then as the Court emphasises, the unmentioned facts in such a statement will require a justification in order to avoid an adverse inference.

This case underlines the importance of giving the right advice at the pre interview stage. Whilst it does not upset the law that an accused cannot be convicted solely on the basis of an s34 adverse inference, it facilitates an invitation by the prosecution to a jury to hold the accused's decision not to fully answer questions against them.

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DOES THE ACCUSED HAVE THE RIGHT TO KNOW WHAT MATERIALS THEY WILL BE CROSS-EXAMINED WITH PRIOR TO TRIAL?

In this article, David Corker examines an unsuccessful appeal against the trial judge's decision to allow the prosecution to adduce new evidence after it had closed its case, and how a defendant's conduct in interview may influence such decisions.

In R v Xavier Edwards [2022] EWCA 1204, the Court of Appeal considered whether the prosecution has an obligation to disclose all its evidence prior to an accused deciding whether or not to testify at trial. In other words, this appeal concerned whether an accused has a right to know when deciding whether or not to testify what material they may be cross-examined about by the prosecutor or whether it is fair for her/him to be taken by surprise or "ambushed".

How an inconsistent statement can be used by the prosecution

Edwards was tried for supply of drugs offences. When interviewed by the police he submitted a brief simple denial prepared statement and had answered all their questions with "no comment". At trial he decided to testify and gave exculpatory explanations for the first time. One of them was that he was long term unemployed and had no income. When he was cross examined, he was shown an application form that he had completed in order to obtain insurance for a Mercedes car that he had been driving immediately prior to his arrest. He had declared there that he was an accountant. The form was a prior inconsistent statement adduced by the prosecutor in order to undermine the appellant's credibility.

The form was admissible in evidence and the issue that fell for consideration was whether the trial judge should have directed the prosecution not to adduce it because it had not been served as evidence by them in advance of the trial or even cited during its case. It was contended on appeal that the judge had erred because it was unfair to the defence to have allowed the insurance form to be submitted after the prosecution had closed its case.

Why the judge's discretion was in favour of the prosecution

The judgment of the Court in this case is another example of its tendency not to interfere with the exercise of a trial judge's discretion in favour of the prosecution, provided no injustice is caused. The Court's statutory function is to determine whether the conviction appealed against is unsafe and its contemporary approach is to prefer substance over form.

Here the Court was satisfied that what happened to the accused was not unjust. Firstly, because the document

had been approved by him. Presumably the Court thought that was significant because it inferred that the defendant may not have been taken by surprise.

How materials can be used to disprove credibility in court

Furthermore, it had been disclosed to the defence as an item of unused material. Secondly, its omission from the prosecution's evidence served as part of its case was not wrong because the form had been adduced not to directly prove E's guilt, but to impugn his credibility or show that he had a propensity to lie.

Whilst the Court was justified to dismiss this appeal for these reasons, there is one aspect of its reasoning that causes concern – the obligation on the prosecution to disclose its evidence prior to trial may be satisfied by it instead serving the evidence as unused material for later possible conversion into evidence. It would have been better and fairer for the Court not to have treated the fact that the insurance form was technically available to the defence amongst unused material as a part justification for its subsequent sudden adduction as evidence.

Finally, the case is also an example of potential prejudice to the defence caused by the exercise of the accused's right to silence during police questioning. Here the prosecution did not know in advance of trial what the appellant would contend when he chooses (as he might not have done) to give evidence in his defence. An application to admit additional evidence for the purpose of cross examination of the accused, e.g. a previously innocuous document has become suddenly lethal because of what they testified, is much more difficult for a trial judge to refuse than one made where it could be submitted by the defence that the prosecution was on notice prior to the trial.

David Corker has a formidable reputation as a criminal and regulatory litigator. He specialises in acting for clients implicated in criminal or regulatory investigations, many of them international. He has many years' experience of fraud, corruption cases and cartel investigations and also maintains a thriving general criminal practice.

https://corkerbinning.com/people/david-corker/

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SHOULD LAWYERS PAY MORE ATTENTION TO CLIENT FEEDBACK?

In an article first published in September 2022 *in the Reshaping Legal Services* blog, Fionnuala Ratcliffe, Research and Policy Lead at Transform Justice, emphasises how client feedback has an important part to play in how criminal lawyers can improve both their service and public perception.

The impact of good or bad criminal legal representation can be life-changing. Defendants can end up entering the wrong plea, getting convicted when they were innocent or receiving a much more punitive sentence than their offence merited.

Our **research** into the quality of criminal legal services found it to be a mixed bag. We asked criminal defendants about their experiences. Some spoke well of lawyers who communicated with them regularly and proactively, and gave clear advice about options:

"Mine messages me on Facebook, 'you've got to do this…let me know you're reading my messages. Let me know what date you've got to go back *to the police station'"*

"My solicitor gave me things to think about so I can make that decision. He advised me what the best option is, but it was still left for me to tell him whether I want to go guilty or not guilty." (defendant)

But we heard negative experiences too, which do not seem to have been addressed. In new **research** by the charity Revolving Doors, criminal court defendants reported changes in assigned solicitors, irregular and/or impersonal communication, and legal representatives not answering questions or taking the time to explain what was happening:

"It felt like they had more important things to worry about. Brushing *me off when I did ask questions. Told me to send things across and we will deal with it, but they didn't do so."*

It's not a surprise that the quality of criminal legal services is variable. Competition doesn't work to drive up quality, because defendants rarely have the necessary information at hand to judge the quality of different firms – it's a "blind choice", as one defendant told us. It's also difficult to switch lawyer if you're unhappy; some defendants don't even realise that switching lawyer is possible.

The long-term trend to lower criminal legal aid fees has also made it harder for firms to do a good job for their clients. Jonathan Black, president of the London Criminal Courts Solicitors' Association at the time, said in our report's afterword that current criminal legal aid rates were *"becoming unfeasible for firms who pride themselves on high quality provision*", leading to the rise of *"firms which put profit before those they represent."* Sir Christopher Bellamy's recent review of criminal legal aid found rates were about one third less than they were 13 years ago. These significant funding issues have only partly been addressed through

recent government proposals for criminal legal aid fee uplifts.

What else would lead to better quality provision and stronger confidence in legal services?

One solution is to encourage legal representatives to give greater credence to client feedback. Firms providing criminal legal aid are required to have in place a way to gather and analyse client feedback. But this often just amounts to a text message sent to clients at the end of their case, generating very few responses which lawyers don't pay much attention to: "*It's about the most meaningless form you've ever come across."* (defence lawyer)

Lawyers worry that defendants' feedback would be entirely coloured by the outcome of their case: *"nearly all of [the* responses*] are outcome-driven rather than reflective in terms of the quality of the service. You know, I got off: good, I went to prison: bad. I really don't see anyone within the criminal justice system reflecting on the quality of service that they're provided and giving objective and articulate feedback."* (defence lawyer)

But recent LSB **research** says otherwise, concluding that *"in the end, people's experiences depend less on the result, and more on how legal professionals respond to their vulnerability"*. It's possible that some feedback might be biased but many defendants understand that the lawyer has limited ability to influence the outcome of each case. Anyway, feedback can be gathered from many quarters, not just clients.

Research shows professionals best develop through getting and reflecting on regular feedback. If we want to improve the quality of legal services and to strengthen confidence in the legal system, the client's perspective shouldn't be overlooked.

Fionnuala Ratcliffe is a freelance researcher and facilitator. She spent five years as a consultant specialising in public and community engagement and later worked on policy and communications for the Restorative Justice Council. Fionnuala has worked with Transform Justice since 2018. She volunteers for the charity Circles South East.

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BRUCE REID

"TREASON IS AN OUTDATED CONCEPT AND SHOULD BE REPLACED WITH AN OFFENCE MORE SUITED TO THE 21ST CENTURY."

Court 3 at the Old Bailey is rammed. The reporters' bench is packed; the cameras rolling on 'breaking news' outside.

HHJ Cocklecarrot – Are you confident that you can undertake a case of this importance Mr Mansfield? A Crown Court trial of the utmost gravity? A week into a complex case of national interest, full of protracted Legal Argument and now the Defence Silk's got dengue fever and the Crown's Counsel seems to have fallen down a manhole, according to this sick note. Few Solicitor Advocates would be instructed for this…

Felix Mansfield – Save me, My Lord. I would never undertake a case above my competence: I regularly appeared at Quarter Sessions. Besides I have known Mr Lizard for many years, I first represented him when he was charged with larceny on his tenth birthday.

Larry Lizard (From the dock) – Felix is my man! He's the Godfather to least three of my grandchildren."

HHJ – And Ms Stoat, you are, with the greatest respect, not the most experienced member of the CPS?

Selina Stoat (Proudly) - Only 3rd six, Your Honour, but three assault emergency worker convictions since the ink dried on my call last week.

HHJ Cocklecarrot (Sighs) - The reality is there is no-one else with the strike on, is there? This case is due to last 3 more weeks with several novel points of law that I can see…although neither of you seem to have grasped that…

Felix Mansfield – No way, HHJ! Selina and I will have the Jury out by day three. No bewigged blether for us. Even if Your Honour takes a day to sum up, you should be able to make the Cotswolds by Friday.

HHJ Cocklecarrot (Perking up) – Hmmm…Let us proceed, then; before the Jury are sworn perhaps we can consider the skeleton arguments. I see that there are two charges; should we be considering severance? They don't seem remotely related. Mr Lizard is found by PC Dormouse, after Sergeant Ferret sees someone with a placard displaying the words "Big Deal! Granny dies! All shops closed. 'Strictly' cancelled' Why, Why, Why???" That's the Treason charge…

Larry Lizard – Mistaken ID! I just snatched it from him to hit him with! Insulting Her Late Maj he was! Any true-born son of England would have beaten him to a

pulp and I was half-way there. I should have a medal! Serving the Queen, not serving time!

HHJ Cocklecarrot - … and then he commits the offence of Arson at Her Majesty's Dockyards?

Selina Stoat – Same victim Your Honour!

Felix Mansfield – Normally I'd object but I have a Camberwell Duty Rota at the weekend and this has got to finish by then, no-one left to cover it. Trying the charges together saves time and the Page Count doubles up nicely into a tidy profit – no objection to that.

HHJ Cocklecarrot – Well, so be it…although this carries Life Imprisonment so we had better be careful; got to keep the Court of Appeal off it. What's the Arson about?"

Larry Lizard – Trumped up, Your Honour. I was drinking in Deptford; a half-empty bottle of Wray and Nephew Overproof, a lighted ciggie and the waste bin just went up…just a bit near the ship, that's all…

HHJ Cocklecarrot – Be quiet in the dock! Ms Stoat, isn't this overcharging? Admittedly, the 'Golden Hinde' is a bit crispy about the edges, but NATO hardly depends on it to face off Vladimir Putin does it?

Selina Stoat – Been reviewed when charged, My Lord, I can't drop it now."

Larry Lizard – The deck will swab up nicely, Your Honour, mostly smoke damage! Barely singed the King of Spain's beard!

HHJ Cocklecarrot (Ploughing on) - "Let's consider the skeleton arguments, Mr Mansfield. I see that you have withdrawn Gregory Grouse-Pheasant KC's 21 pages of, I have to say, extremely well-considered defence argument, for a scruffy half page of A4…Pithy style, at least…

Felix Mansfield – Brevity is all, My Lord. With Your Lordship's leave:

"Sir Francis Drake was a Privateer

Or maybe he was a buccaneer

Certainly not no officeer

Of the Queens Navy.

So it's plain to see

That the Golden Hinde

Weren't no ship of the line.

And so;

Ergo

(A touch of Latin, My Lord)

Lazzer the Liz can't be guilty as is

Charged with this

In-cen-di-ar-y"

HHJ Cocklecarrot – More accessible than Sir Gregory's, I must admit. A certain contemporary lilt. Is that what they call 'Urban'?

No medieval texts to pore over? A complete absence of vellum parchment? Or dusty, leather-bound 'Someone's Bench Something-Or-Other' misfiled on library shelves like I suffered at Balliol?

(After an enjoyable hour of reference to a passing schoolchild's GCSE History notes, HHJ Cocklecarrot rejects Selina's 'formidably persuasive, but ultimately unconvincing' counter argument that as the Virgin Queen trousered the profits and knighted Sir Francis, then the ship must have been hers.

"An early, if not the first known, example of the Corporate Veil that the Crown cannot circumvent" - Cocklecarrot HHJ - R v. Lizard (Larry) 2022 – 1st instance.)

HHJ Cocklecarrot – Still, if the Monarch is going to give evidence that it's her ship, can't really say it's not can we? Better call the first witness. Who is it (peers over glasses at his papers)? Elisabeth Windsor Saxe-Coburg……..?

Selina Stoat – My Lord, the Crown have witness difficulties.

HHJ Cocklecoaarot– "I can see that…Agreed section 9, Mr Mansfield?...Surely?...You are not going to take that point, are you?.....(Silence from the Defence)……Oh, dear, I see that you are……."

Felix Mansfield (Not for nothing is Felix known as the 'Cats Whiskers of Camberwell') - Not served in time, is it? And if My Lord does allow it we are going to have to go back to all that vellum…let alone the law of dying declarations, res gestae, a long detour into the Law of Succession, a couple of medieval Treaties. Besides, King Charles III has a few dates to avoid..etc. etc"

HHJ Cocklecarrot – (Getting into the swing of Magistrate's Court Advocacy.) Don't need to bother the Jury on that one then, do we?

"Voices from the Jury Room - now uplifted in song - "Show me the way to go home……")

HHJ Cocklecarrot - On with the Treason!

……

PS Fergus Ferret (in Chief to Selina) – Yes Miss, I recognise that placard, shocked me to the core. (Voice lowered to a sepulchral note) Her Majesty not yet cold in her grave, the crowd angry. If I hadn't arrested and knocked it from his hand there would have been a riot. As it was, he got away from me.

Selina Stoat – Do you see that person in court today?

PS Ferret – No Madam.

Selina Stoat – That's not him in the dock?

PS Ferret – No Madam, that's Larry Lizard, the Godfather to my youngest.

(The departure board at Paddington flashes before His Lordship's eyes. Winking seductively.)

PS Ferret – But I did see him yesterday, wearing a wig and gown, he was. Gregory Something double-barrelled. Thought it was a bit strange that the Defendant was togged up like that, but it is the Bailey isn't it? They do things differently here…

HHJ Cocklecarrot – I can tell you he's not here today, Officer…(Ominously and angrily thinking of three weeks of vellum and dusty tomes……..) But he soon will be……

Usher! Tell the Jury they can go back to handling their stolen goods, they are discharged. And tell them not to drive disqualified on the way home.

Jury Room (In Excelsis) - I'm tired and I want to go to bed……

(Later that afternoon: HHJ Cocklecarrot eases back as the train pull out of Paddington. He ticks the boxes on Felix's application for Silk and Selina's Mention in CPS Despatches and cautiously sipped at the double Wray and Nephew. Thank God no-one was allowed to smoke…)

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