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The Times

February 21, 2006

## Who do you turn to in times of trouble?

BY DOMINIC CARMAN

**The Criminal Bar is expecting change — the Lord Chancellor has told them to. What do the Old Defenders make of things?**

"THERE is a growing hostility to lawyers in society. We need to change the way law is done in Britain," Lord Falconer of Thoroton, the Lord Chancellor, said recently.

Targeting the £2 billion legal aid budget, the Criminal Bar is in his sights: "A smaller and smaller number of very big criminal cases are absorbing much too much money, taking money from normal criminal cases and civil legal aid. We need much more aggressive case management by judges. I don't think cases in practically any instance should last more than three months."

Lord Falconer points to criminal barristers making a fortune from the public purse. Yet isolated examples such as Jim Sturman, QC — paid £1.2 million in legal aid last year for representing Harold Shipman's family at an inquest — are untypical. Of the 11,818 practising barristers listed by the Bar Council of England and Wales (double the number 20 years ago), roughly half do crime. Many struggle to survive. The fortunate few at the other end of the telescope focus mostly on privately paid work, not legal aid.

So who are the modern-day heirs to Marshall Hall, Birkett and Hastings? The considerable experience of Roy Amlot, QC, Stephen Batten, QC, Julian Bevan, QC, and William Clegg, QC, commands widespread praise. There are other big-beast QCs such as Geoffrey Robertson, Edward Fitzgerald, Ben Emmerson, Courtenay Griffiths, Chris Sallon, Michael Wolkind — and many more.

Among the younger silks John Kelsey Fry, Clare Montgomery and Alex Cameron stand out. But when it comes to defending big-time fraudsters, errant millionaires and the odd politician-turned-perjurer, it's senior silks in their late fifties and early sixties who come out top of the charts. The legal equivalent of Jagger, Richards and McCartney are Langdale, Lawson and Purnell.

Today's great criminal advocates are more conversational than their predecessors. The art of advocacy, and in particular, the nature of forensic eloquence, has moved on, as Edmund Lawson, QC, explains: "The approach has changed fundamentally since I started 35 years ago. I initially thought



The modern-day heirs to Marshall Hall, Birkett and Hastings? From top to bottom: Nicholas Purnell, QC, Edmund Lawson, QC, and Tim Langdale, QC (ALL PICTURES BY ANDRE CAMARA)

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advocacy training was daft. But I was converted. There are very few natural advocates like Tony Scrivener, just as comfortable in the House of Lords as talking to a defendant in Brixton prison.

Most of us have to learn about being direct, getting to the point. You also have to be able to go off piste and react in cross-examination to what is being said. I still can't deliver a speech that's written. It lacks spontaneity."



Co-author of the 2003 Peat Report that examined alleged misconduct within the Prince of Wales's household, Lawson has successfully defended cases brought by the Serious Fraud Office — including Blue Arrow and Ian Maxwell, son of the disgraced tycoon Robert. He argues that "in many prosecutions the issues are not properly analysed or identified. The SFO doesn't pay for the best available prosecutors. They don't invest enough in the process." He is against judge-only trials: "It's fed by a populist government, a tabloid line that rotten jurors are made up of the unemployed and unemployable who don't understand complex trials. It's plain wrong."

In November 2002 he successfully defended Henry Sweetbaum, the former chief executive officer of Wickes, who was charged with fraudulent trading. After the not-guilty verdict, in a ten-month, £40 million trial, Lawson joined Sweetbaum and the jury for a celebratory drink: "All of them were in jobs — mainly civil servants. It became obvious that they'd understood and really enjoyed the case."

There is arguably no greater tribute to an advocate's ability than to be chosen by his peers as the barrister that they would most like to represent them if they were in trouble. In an anonymous straw poll of criminal silks, that honour falls to Nicholas Purnell, QC. As former Treasury Counsel, he confesses to "overcomplicating the prosecution of Blue Arrow". He no longer prosecutes.



A self-avowed traditionalist, he remarks that the SFO paid him more per hour in 1991-92 than it is authorised to pay in 2006: "The resources now put into prosecutions are inadequate and the barristers involved are often obsessed with building up the billable hours. They don't get the right people for the cases of the highest profile."

"Defending is a reactive process. The prosecution have all the trump cards at the beginning. However, there's no substitute for experience. I find it very exciting. But it soon won't be. We have the highest-quality advocacy in the world — far higher than Europe or the US. Can we afford it? The Treasury seems determined to create a Crown Prosecution Service with 5,000 lawyers and a Legal Defence Service with 5,000 lawyers so that it can cost out legal services. A real understanding develops only if you have both prosecuted and defended."

Purnell, who defended two Guinness appeals — Advertisement — and Lord Archer of Weston-super-Mare in his perjury trial, anticipates problems: "A salaried lawyer is simply not under the same pressure to perform. Unless advocacy is constantly practised you lose your edge. Advocacy is a genuine dialogue — developing a corridor where the witness is responding to you. When you're defending, clients don't want you to be laid-back — their life's on the line. Very long cases become a crusade. You have a client who develops a psychological dependency on you because you stand between him and the

prosecuting authorities.”

Like Lawson, who anticipates “a unified profession within 15 years”, Purnell, a former chairman of the Criminal Bar Association, predicts a gloomy future: “When my son asked about becoming a barrister I advised him not to do crime because the Criminal Bar has no future for those starting in it.”

In his fortieth year at the Bar, Tim Langdale, QC, believes that whatever the future may hold, the Bar has already changed for the better: “The pomposity and stuffiness has almost completely gone.” Another former Treasury Counsel, he has continued in silk both to prosecute and defend. In his view, “a successful prosecutor must have an innate sense of a fairness. You should never be over-enthusiastic or over-do it. A good defence advocate can go after an over-zealous prosecutor who goes in too strong. I love being in cases where you think your advocacy has made a difference, but there are very few of them. Most cases win or lose themselves.”

“I always find in making defence speeches that it’s best to cut, cut, cut. A hundred points will occur to a lawyer. But you realise with experience — sometimes on your feet — don’t bother. Keep it simple. It helps with a jury to say ‘I’ve got ten points to make’. It engages their attention and focuses the advocate. I find it difficult listening to anyone for more than 45 minutes. You have to bear that in mind when thinking of juries.

It’s very healthy to have juries — if your case is evidentially sound, they have no reluctance to convict.” He cites as an example the DNA evidence in his 2002 prosecution of Roy Whiting, murderer of Sarah Payne.

Langdale does a good job in deflating the perceived pomposity of his profession: “In the end, the job of a criminal barrister is a bit like the News of the Screws (the *News of the World*). All human life is there — and I rather like that.”

#### **OTHER CRIMINAL QCs WHO MAKE THE HOT LIST**

**Anthony Arlidge:** Prosecuted Jeremy Bamber for multiple murders. Successfully defended in several fraud cases: Blue Arrow, Marconi and Butte Mining.

**Jonathan Caplan:** Represented Ernest Saunders, the former chairman of Guinness, and more recently, the Versailles Group. Will be prosecuting Izodia fraud for the Serious Fraud Office in September.

**Richard Ferguson:** Turned 70, still defending. Prominent trials: Rosemary West, Nicholas Van Hoogstraten and Patrick Magee, the Brighton bomber. Booked up until March 2007.

**Alun Jones:** Successfully defended Kevin Maxwell and the boxing promoter Frank Warren. Currently representing three bankers facing extradition to the US in the Enron fraud.

**Michael Mansfield:** Radical defender of the Guildford Four, Birmingham Six. Claims 95 per cent legal aid work, but more recent clients include Michael Barrymore and Mohamed Al Fayed.

**Anthony Scrivener:** Also 70, “very much in harness”. Scriv has more than 40 murder trials under his belt. Earned the first £1 million brief in 1986 defending a Hong Kong partner of Price Waterhouse.

#### **NEXT WEEK: THE YOUNG PRETENDERS**



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