

CHARONREPORTS

1/29 March 2010

CHARONREPORTS
An occasional series
of reports by blogger
Charon QC on law,
the universe and other
matters which occur
to him - possibly with
a bit of legal education
thrown in.



He had too much time on his hands so he filled it!

By Charon QC

It was a *Damascus* moment the other night, several glasses in to a fine Rioja when I thought it might be useful put together my own newsletter containing selected blog posts and a few other oddities of the human condition to save you having to scroll endlessly through my blog should you wish to catch up on matters which I have written about in a quick and easy format.

Also, as I do not take significant advertising on my blog, I plan to invite publishers, law firms, chambers, bookshops et al to sponsor the reports which will enable me to develop (and pay for) the FREE resources on Insite Law for law students and others. I want to expand the range and attract good authors who, and this is only fair, will

expect some form of financial reward.

Insite Law has been going for just over two years and during that time has built up a substantial readership - for the daily news, comment and nonsense from my blog and, most notably from the existing range of FREE textbooks, lectures and analysis designed primarily for law students but used, increasingly, by practitioners to keep up to date. The free resources are at an early stage but I hope, through Insite Law, to build up coverage for 15-20 major law subject areas. [Have a look at the existing range](#) - we have made a good start. My own [Law of Contract text, lecture podcasts and Q&A analyses](#) will give you an idea of where I plan to go

with this. I am delighted that [Wildy & Sons](#), [Lexis_Nexis](#), [Lawtel](#), [Westlaw](#), [Cellmark](#), [The College of Law](#), [BPP Law School](#), [City University Law School](#), [Cassons for Counsel](#) and others have helped to provide these free resources by advertising on Insite Law

I am a strong believer in the 'Free legal Web' concept being promoted by Nick Holmes of [Infolaw](#) and others. We can do our modest bit by developing good quality materials for students and interested practitioners and members of the public.

Wildy & Sons Ltd
LAW BOOKSELLERS SINCE 1830

Justice on the cheap it looks bleak

Paul Mendelle QC, Chairman of the Criminal Bar Association, said today in *The Times* that there are not too many barristers, there are too many laws and that Jack Straw's plan to cut legal aid by 18% would lead to members of the Criminal bar earning less than a car mechanic. He went on to say that unless barristers are paid more we are going to end up with a second tier service and injustice – which will cost a lot more in the long term. His letter, as one would expect from an advocate, is tightly drawn and makes a number of 'politically persuasive' points. It is worth reading.

At first blush, this view is not going to elicit any sympathy whatsoever from members of the public. I could add that some members of the public would be more than happy to have cheaper, or even better – no trials, 'bang villains up' in a prison with no TV and no amenities and 'throw away the key' – but that would be facile.

Or is it? The fact of the matter is that criminal law is in the public sector domain, paid for by tax payers – and the legal sector will be subject to the same cuts as the rest of the tax payer funded economy in the coming years. While it is certainly true that a number of leading QCs have managed to relieve the tax payer of £0.5 – 1 million for criminal law work – they are a very small majority – a minority Jack Straw is quite happy to brief about for political election advantage. Frankly, The Tories are even quieter about their plans for Law than they are on the economy – but I can't see a Tory government rushing to do anything other than provide more and cheaper prison places and cut the costs of banging the villains up in the first place. I have seen nothing from Conservative CCHQ or Mr Grieve to persuade me otherwise.

While there will be some 'villains' or those charged with serious criminal

offences who are able to pay to hire the 'best briefs' – they are not, in the criminal sector, in the majority. Big business will always pay lawyers more for advice – but even they are now railing against some of the fees charged by the big City firms. Family lawyers specialising in the rarified atmosphere of relieving popular music stars and footballers of large fees for advising them on the 'financial arrangements' following divorce, enjoy lavish fees compared to family lawyers dealing at the lower end of the economic pyramid – it was ever thus. The market rules – but you don't always get what you pay for, simply because of the professionalism of the lawyers involved in tax payer funded criminal law who provide a high quality service and advice for little money. It is right that Mr Mendelle raises these issues but, I suspect, until the country is out of the financial 'merde', barristers, as with others, will just have to wait in line for the good times to return... unless they wish to retrain as plumbers and car mechanics or become Unite sponsored British Airways cabin crew and go into far more lucrative sectors.

I did enjoy this passage from Mr Mendelle's letter to the Times...

There aren't too many barristers but there certainly are too many laws. Too many ill-considered and appallingly drafted laws are passed, as one bloated Bill after another is extruded from the sausage factory that Parliament has become. It is not barristers who drive up the cost of legal aid but the increases in the numbers of those prosecuted and jailed, a good few for crimes that never existed until this Government created them."

He's probably right – but, in these difficult days at least there are more crimes for people to commit. What would we do if villains and NuLabour criminals didn't oblige by breaking the law? If you are a student thinking of a career in the criminal law field – you now know what the score is. Cabin doors to manual?

The College of Law
of England and Wales

Westlaw.UK

magazine
INSITE LAW
DAILY ONLINE LAW NEWS AND LAW BLOGS

The City Law School
CITY UNIVERSITY LONDON

LAWTEL

Cassons for Counsel
Specialists in accountancy, tax & financial
planning solutions for barristers.
Call us on 0945 337 9409

BPP
LAW SCHOOL
Preparing you for practice

The WLR Daily

LexisNexis

infolaw

NEW LAW
JOURNAL

LEGAL
TECHNOLOGY
INSIDER

Postcard from the Staterooms papal bull edition

28th March 2010

Dear Reader,

While I will, of course, be doing my annual 'Urbi et Orbi' blog post next weekend, it being Easter... it would be most remiss of me not to note, at the very least, the Pope's 'difficulties with assorted and sundry sodomists or should that be sodomites..or buggerers, even? They appear to be popping up, if you forgive the rather grisly metaphor, all over the place.

The Observer notes: "The head of the Catholic church is bracing himself for a new round of allegations by victims of paedophile priests — in Italy"



I feel confident that the Pope will get to the bottom of it eventually....so moving on...



As the election draws closer the main political parties are revving up. The latest [Tory attack posters](#) are rather good – featuring a grinning Gordon Brown with various captions about plundering pensions and letting criminals out early etc etc and, inevitably, there will be many parodies...

The Labour Party, taking time out from consulting their 'Masters' at Unite, is losing no time [in briefing about Osborne being immature and shrill.](#)

I've just had an email from David Cameron.... I claim no special favour here. I registered as Charon QC to receive emails from *WebCameron* some time ago and still they come. I always look forward to them.... I read it with a glass of wine over lunch on Sunday

Dear Charon,

This week Labour showed us they simply have nothing left to offer. We had a completely empty Budget followed by five empty pledges. With each day that passes the choice at this election becomes even more stark and clear: five more years of Gordon Brown's tired government making things worse or ...with the Conservatives. (I removed the word *change* just before 'with the conservatives'. It read much better that way.)

An excellent article by David Blackburn in *The Spectator* caught my eye.

The most corrupt parliament ever?

Blackburn draws attention to the Sunday Times coverage of yet another MP using his 'experience' to charge consultancy fees, plus 'expenses' (naturally)... and ends with this wonderful thought...

"It's nothing short of miraculous that the 50 percent tax rate got through this parliament of multi-millionaires. And who knows, perhaps a tax scandal is in the offing?"

This affair runs too deep for politics to be absolved by an election. George III's rotten parliaments take some beating, but this current parliament contends for the dubious accolade of 'most corrupt parliament ever'. As in 1832, reform is essential."

Postcard from the Staterooms papal bull edition....

I was a bit over refreshed on Twitter t'other evening and thought that I might create yet another 'brother' or 'cousin'. Cardinal Charoni di Tempranillo, my 'spiritual' cousin, is flying over from the Vatican next week. I have warned him to warn the Pope that if he needs an English lawyer the fees will crucify him. Charoni is coming over to 'consult', visit a lap dancing club with his City lawyers, and do a few exorcisms. He is doing a special offer... *Buy one exorcism, get one free.* I thought the 'Reverend Charon' would be appropriate and found some suitable quotations to reflect the mores and issues of our times....



Well... there we are...another week has gone by. Easter next weekend and we can enjoy the spectacle of lots of frustrated motorists sitting in long queues on motorways in the bad weather. The papers report that 50,000 motorists will break down in their cars... or should that be... the cars will break down?

Have a good week. I return on the morrow with some sensible law news.... and, no doubt, reports of some other nonsense from the political world.

Best, as ever

Charon



Latest Accountancy, finance and taxation information from Cassons

Welcome to Cassons

We have been advising barristers across the country for over 40 years. To find out how we can help you, please call us or visit www.cassonsforcounsel.co.uk

Cassons' Budget briefing for barristers

Was Alistair Darling's Budget speech really a Budget speech or pre-electioneering politics? As always, the small print in the Budget press releases will contain the detail. But there are few new announcements to impact on barristers.... [Read](#)

Will my pupillage awards be taxed?

There are differences in the tax treatments of pupillage awards from Inns as opposed to those from Chambers. [Read here](#) for more details.

HMRC clampdown on barristers!

A specialist unit has been set up by HMRC to conduct investigations into barristers' tax affairs. [See here](#) for the areas in which they are most likely to be investigating.

Law Review Habemus Papam: of planet sized brains and other matters

The legal sector is, perhaps, more prone to puffery and self aggrandisement than other sectors - and certainly a quick glance at the style of Chambers & Partners 'puffs' about members of the Bar makes interesting reading. I selected a number of QCs at random from chambers websites in the almost certain knowledge that they would include these 'glowing references' for very few to see - who, after all, hangs out at chambers websites while surfing on the net?

Typical of the genre are the following - I have deleted the names to protect the innocent.

- [X's] style inspires confidence, and he is adept at identifying winning arguments' (Chambers & Partners, 2010)
- 'Sources underline his credentials as a "clever, persuasive advocate with real gravitas' (Chambers & Partners, 2010)
- 'Never fails to make an impression'; 'highly imaginative and engaging advocate'; 'thoroughness and ability to spot angles in a case that others will miss'; 'bedazzled by him'; 'skill at crafting a case such that you get the result you want' (Chambers & Partners, 2009)
- 'unique amongst barristers in the way he presents his case.' An 'accomplished, brave and innovative advocate'; 'has a strong, clear view on things and a deliberate way of moving through his argument which ensures all his points get made to the judiciary'; 'he speaks a language we understand.' (Chambers & Partners, 2008)



” Lord Falconer of Thoroton, the former Lord Chancellor, said: “We were very keen to open up the Supreme Court beyond simply the Court of Appeal judges. If he [Sumption] was the best man for the job, that he did not come from the usual pool should not have been a reason for rejecting him.”

Times

- a “combination of intellectual brilliance and unrivalled experience”, “one of the few at the Bar who can genuinely make a complete difference when you are having your last roll of the dice” (Chambers & Partners, 2009)
- ‘known to really get his teeth into the big cases.’” (Chambers guide 2008)

All good stuff – and, I suspect, pretty harmless. We all like to have our backs slapped from time to time and why not get another lawyer to write to a directory and do so...after all, one good turn deserves another. I looked at over 200 of these ‘puffs’ (30-40 barristers) – all remarkably similar, almost as if there was a database of ‘puffs’ from which to choose five for each reference!

After 30 years teaching law, observing lawyers and commenting on law, I have come to the conclusion that while law is ‘difficult’ and requires a reasonable intelligence, it does not require a brain the size of a planet to make a reasonably good living or do a competent piece of work. I may well get lynched by the ‘brothers-in-law’ for saying this – but the truth of the matter is that law is a construct of the judiciary and those tasked with inventing new laws – the politician – which may well

explain why so many of our new laws are so badly framed, allowing, of course, lawyers further opportunity to ‘dazzle each other with their ‘brilliance’.

The analysis and intelligence required of lawyers is not so demanding as required by practitioners and academics in, say, the field of medical, engineering or even planetary science – or mathematics. There is a finite number of laws; many now conveniently placed on databases by Lexis-Nexis, Westlaw and Lawtel et al, a body of caselaw – much of it also online and that covers the research side. The clever bit is not, of course, telling the client what the law is so they may avoid breaking it or losing a civil action (although, they say, that much law as practised is for exactly that) – but in constructing ‘instruments’ to ‘avoid’ the law (or tax) or to lace it with ‘zones of uncertainty’, ‘poison pills’, ‘shark repellent’ to deter the other side from testing the matter in court. Even so – this skill is not comparable, say, to that of the inventors of all the modern drugs, developments in medical science, aircraft, iphones, the internet etc etc which allow us to live a 21st century, as opposed to a 13th Century, life.

Continued...

So where is this all leading?

Habemus Papam! (“We Have a Pope!”) or, to be more accurate, we have a new Supreme Court Judge – finally...after an almost absurd, but very English, period of legal history where anger, vituperation, jealousy, back slapping, duplicity, whispering and indecision baffled some, amused others, and led to the elevation to judicial pinnaclehood of Lord Justice Dyson.

The Times provides the soothing balm before injecting the more spicy stuff...

“His promotion will be welcomed widely. He is both popular and talented, a public lawyer by background with ability and a humane touch. It will be welcomed, too, for marking an end to an unseemly fiasco that exposed the workings of senior judicial appointments in an unedifying light.”

I have no doubt that Sir John Dyson will be a good supreme court justice. There is little point in speculating.

Objective analysis of his judgments (Now they are no longer in the House of Lords, I assume they don’t make speeches any more? Presumably Sir John won’t get a peerage?) will reveal all – and, fortunately, there is an excellent website where this objective and useful analysis is being done:

[UKSC | Blog](#)

The rest of The Times story is devoted, of course, to the rather shoddy way Jonathan Sumption QC was treated by the ‘powers that be’. ([Times coverage](#))

[The Times notes, wryly:](#) “As disclosed in *Supreme Ambition, Jealousy and Outrage*, Jonathan Sumption, QC, the original favourite, withdrew his application after opposition from senior judges. There was furious resistance to the notion that Sumption, who had not sat as a judge full-time, should leapfrog others who had.



Yet the Constitutional Reform Act 2005 had expressly provided for this possibility and the advertisement for the post stated that lawyers of 15 years’ experience could apply.”

This raises two issues: first, that Sir John Dyson, however qualified, may not have been the best choice and (b) it dilutes the intention behind the new statutory regime that it was not necessarily going to be the case that Mr Justice Buggins would get his turn and that we would seek the very best from The Bar, the profession generally, or academe. Other Supreme Courts around the world have benefited from a greater pool, a more diverse approach – why not the Supreme Court of the United Kingdom?

The Times states: *“Judges and lawyers remain deeply divided over the issue. A top commercial silk said he thought that Sumption had been ‘appallingly treated’, adding, ‘his appointment would have been a one-off. What this has done has effectively blocked the possibility of a top silk joining the Supreme Court for a generation so our highest court has been deprived not just of his but of other talent.’”*

Inevitably, and one can’t blame the ‘top silk’ – given the secretive ‘ways and means’ which seems to still operate in the higher reaches of the ‘law’ – the top silk chose to speak anonymously, off the record on even such an uncontroversial point! To that extent – one is tempted to disregard ‘top silk’s’ views completely because if he hasn’t the balls to go on record, why should we even consider his thoughts and views? I suppose old habits die hard – but there again, I don’t have to worry as I seek no preferment, reward or honour from anyone, so, within the law, I can

say what I like without fear of favour (sic)!

At least an old friend of mine, Jonathan Goldberg QC (though I do not agree with his view on this), did have the *cojones* to come out and say, with typical bluntness...as reported in the Times: “*But many judges privately take the view of Jonathan Goldberg, QC, who dismissed the idea of such appointments as “all very silly” and “typical new Labour spin”, adding: “It is perfectly obvious that the only person possessing the incredibly refined skills required of a top-tier judge will have been an experienced judge already.”*”

This, of course, has all been very disappointing for the architect of the new Supreme Court regime... Charlie Falconer who, as Lord Chancellor is alleged to have designed the entire edifice with Tony Blair while smoking a cigar, drinking a whisky and scribbling on the back of a fag packet

The Times reports: “Lord Falconer of Thoroton, the former Lord Chancellor, said: “We were very keen to open up the Supreme Court beyond simply the Court of Appeal judges. If he [Sumption] was the best man for the job, that he did not come from the usual pool should not have been a reason for rejecting him.”

Lord Goldsmith, the former Attorney-General, said: “Jonathan is an excellent advocate and an excellent lawyer. As a matter of principle, other countries have benefited from occasionally taking into their supreme courts some outstanding lawyers who have not come directly from the ranks of the judiciary.” The principle was a positive: to ensure the “widest choice, so as to have the best possible candidate”; it would be wrong to say such a candidate could never be appointed.

magazine
INSITE LAW
DAILY ONLINE LAW NEWS AND LAW BLOGS

The legal profession's perfect storm the future considered

Edward Fennell, in an interesting article in *The Times*, asks: Is the recession just a blip for law firms and can we expect to return to business as usual once the Government has sorted out the public finances? Or are we on the verge of epochal change? The stimulating report just out from Eversheds — *Law Firm of the 21st Century: the Clients' Revolution* — which I refer to in my *In the City* diary column this week, suggests that it is very much the latter.

For UK lawyers there is the much discussed perfect storm of the conflux of four drivers of systemic change — the Legal Services Act, globalisation, technology and the increasing power of in-house general counsel (GC), which will affect the profession whether working in the high street or on Cheapside. The Eversheds report attempts to analyse which of the four factors will be the most significant and, based on opinion surveys of law firm partners and GCs, suggests that globalisation (closely followed by the increasing status of GCs) will be most influential.....

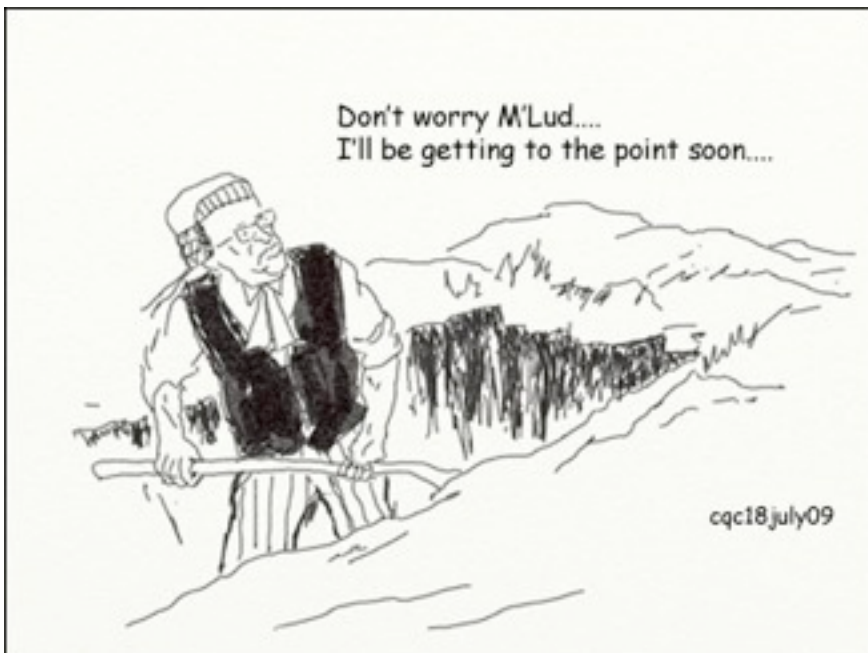
The increasing power of General Counsel - a lawyer known formerly by the far less glamorous term 'In-house lawyer' — has been driven, to a great extent, by the credit-crunch with large corporates seeking more 'bang for their buck' and is closely related to the issue



of value billing or the more traditional form of hourly billing. Fennel notes “The reason that in-house lawyers are gaining higher status is because the most senior executives have realised just how important legal issues have become to the successful management of businesses. They are no longer hygiene issues but, as the growth in the importance of intellectual property demonstrates, they are now fundamental to business performance”

I touched on some of these issues when I interviewed a well known General Counsel, Tom Kilroy - Misys plc, Executive Vice President, General Counsel and Company Secretary – for my series of Inside Track podcasts with the College of Law. [You may find it interesting to listen to the podcast?](#) Tom gives a fascinating insight into the role of the GC.

If you haven't listened to it before, you may also find my podcast With Richard Susskind of interest in terms of the future of the legal profession. Professor Richard Susskind paints a vivid picture of the way the legal profession is likely to develop, based on his research and his best-selling book *The End of Lawyers?* [Listen to the podcast.](#)



If you would like to sponsor the Free resource project a few words about it....

Hopefully, this first test edition will give you a feel for the style and layout. I have a subscriber base of approximately 19400 readers who have signed up for the 'newswire' at Insite Law and a substantial web traffic and pageviews on both Insite Law and Charon - well into six figures and more monthly.

As I have no Murdoch style plans to make Insite Law or Charon available via a 'Paywall' - the magazine, blog, newswires and these special reports will always be free to view - and will continue even if this plan of mine turns out to be a fiasco and I get no more sponsors!

I am keen to develop the Free resource project and if you would like to help *and* promote your own interests and services on Insite Law or on these Charon Reports (likely to be two monthly, possibly more) I would like to hear from you. It is not expensive... I can assure you of that.

CHARONREPORTS

The Staterooms
London
SW11

[Email Charon](#)



CHARONREPORTS
is published by
Mike Semple
Piggot, the author
of the Charon QC
blawg...copyright
and as many other
rights as I can grab
are, of course, all
mine