

THE ASSOCIATION OF
WOMEN BARRISTERS

President: The Hon. Mrs. Justice Cox DBE

Summer 2011

Chairwoman's Message



Fiona Jackson

On behalf of the AWB, may I offer our congratulations to the 27 women who were appointed to the rank of Queen's Counsel on 7th April. We are particularly pleased that our former Chairwoman Kaly Kaul of 9-12 Bell Yard has been recognised with the award of Silk; and we wish Kaly and all of the new Queen's Counsel every success in the future.

This year marks the 20th anniversary of the founding of the AWB and we plan to commemorate this in particular at a Dinner in the House of Lords on Tuesday 4th October very kindly hosted by Lady Hale, our second Honorary President – further details of this momentous event will be circulated in due course but please put this date into your diary now because all members will be able to apply for tickets.

Your Committee has worked hard already in 2011 to commence a busy schedule of workshops to promote women at the Bar and support our members to achieve throughout their careers, including on 5th March our usual stall at the annual Pupillage Fair in Lincoln's Inn; on 14th March a workshop to encourage applications for Silk; and on 7th April repeating last year's popular Pupillage Advice Evening for students with tailored advice on applying for pupillage and individuals' draft application forms. We intend during the Summer to provide useful workshops on applying for judicial appointment and managing your careers and clerks effectively, and will hold as many events on the Circuits as possible. We have also responded to the recent BSB consultation on the Equality & Diversity Code, are re-launching our successful Mentoring Scheme and are actively supporting the concept of a Bar Nursery. Social events remain important and, building on our convivial Wine Tasting event in January, we plan a Summer Party for 30th June. Fuller details of many of these events appear elsewhere in this newsletter and we look forward to welcoming you to our future ones.

Please use our website www.womenbarristers.co.uk to obtain regular updates, and do not hesitate to get in touch with me or my fellow Committee members if you have ideas for events or want to assist directly in the AWB's work.

Editor's message

Welcome to a new edition of the newsletter. In this issue, one of our members, Olivia Harris, interviews one of the juniors involved in a recent case heard in the Supreme Court and decided by Baroness Hale. We also remember the late Ann Goddard, who was an example to many women at the Bar.



Janey Burton

Our series on pupillage ends with a visit to the 1970s – about 40 years ago, if you can believe it, and before some of our readers (and their Editor), were even thought of! Our correspondent is reluctant to give her name so as to give a true account - while much was good about her experience, some of the views expressed quite openly and naturally at that time can seem quite shocking to a younger ear.

This talk of pupillage is timely, as the 2011 pupillage hunt is now on! Poonam Pattni, one of our student members, gives us a snapshot of this daunting experience.

And we travel to the South African Bar, where a new correspondent, Roshnee Mansingh, talks about an action she is bringing to abolish silk there.

As ever, all comments and suggestions are welcome. I do hope you enjoy reading the newsletter, and would be delighted to hear from you on any aspect of it. It occurs to me that some feedback from members on the newsletter - in its current form - is definitely needed now. Our website is such a success, and all our news, and information about our events appear there. So, it seems to me that a separate publication, with articles commissioned specially for this newsletter, is no longer necessary. Instead, I propose new content (including any new articles) should appear directly on the website, with a periodic email to the membership including a link to the website which would alert members that new content has been posted. Event flyers or similar would be distributed to prospective members, and would of course show the website address, where joining details are always available.

I'd love to know your thoughts on this, and you can email me at awbeditor@googlemail.com

Janey Burton
Editor, Newsletter
AWBEditor@googlemail.com

Obituary - Ann Goddard (1936-2011)

Ann Goddard was a very senior member of 3 Temple Gardens when, back in 1979, I was offered a pupillage. In those days, senior women were few and far between and my mother was concerned that this was a proper, or indeed any, career for her daughter! Consequently, (and most embarrassingly) my mother met up with Ann to ask her advice. To her credit, Ann did not bat an eyelid, was helpful and reassuring and declared that - with hard work and application - any woman could do as well, if not better than, any man. Mother reassured, my career at the Bar began.

Whilst in chambers, Ann was an enormous help: unreservedly supporting, loyal and fair. Someone to look up to and admire; an excellent role model.

Three years later, in 1982, she took silk. At that time it was not only a fantastic achievement, but also somewhat of a rarity for a woman at the Bar. The fact that now, almost 30 years later, this is

no longer the case, is at least in part because of the support of women like Ann. Always approachable and encouraging, Ann led by example, working incredibly hard and becoming head of chambers in 1985. I clearly remember how unusual it was to have a female head of chambers, and how proud we were to have her at the helm. She remained in chambers until 1993; always supportive, always helpful; an excellent and generous mentor.

On the bench, Ann seemed to be at her best. Courteous, dignified, knowledgeable and above all fair. Whether as a barrister or a Judge, Ann was a support to women in the profession, and a perfect example of how hard work and commitment can bring success as well as high regard. I was pleased and proud to know her and grateful to have her assistance and support. She was a mentor, a role model and a true friend to women at the bar.

– Ann Cotcher QC

Silk Workshop

On 14th March the AWB held a workshop at the Bar Council's office to encourage women in particular to think of themselves positively as applicants for Silk and to give practical advice on making meritorious applications.

Over 40 women and (a few!) men from both the self-employed and employed Bar attended to hear Lord Carlile of the QC Appointments Panel give tips on filling out the application form and making the best of the interview process, followed by personal insights and advice from successful recent candidates from different practice areas – Naomi Ellenbogen (Littleton Chambers), Kaly Kaul QC (9-12 Bell Yard), Alison

Levitt QC (Principal Legal Adviser, CPS) and Jemima Stratford QC (Brick Court Chambers). After a Q&A session inspiring penetrating and incisive queries from the floor, many were able to stay behind to discuss particular issues further with the panel and Ann Hussey QC (1 Hare Court).

The AWB is very grateful indeed to our speakers and to the Bar Council's Equality and Diversity for providing the room and support; feedback

has been extremely positive – perhaps best summed up by one attendee who said “I thought the Silk workshop was first class. Fascinating insights, and great to hear from such brilliant but down-to-earth women.”

We are delighted to announce and very grateful to Eleanor Platt QC of 1 Garden Court who has kindly agreed to share with us her list of 'All Women Silks'. This notes the year of appointment and a few other biographical details. The Platt List can be accessed on our website, and if you have any updates for The Platt List, please email Platt@1gc.com.

Shown here (clockwise from top left): Lord Carlile, Jemima Stratford QC, Kaly Kaul QC, The Panel



LORD CARLILE
OF BERRIA QC





The Association of Women Barristers

Invites you to join it for

A SUMMER DRINKS PARTY

ON: 30th June 2011
AT : The Oak Room and Terrace, The Bar Council, 289-293 High Holborn, London WC1V 7HZ
FROM: 6.00pm-8.30pm
TICKETS: £10 for Student and Pupil Members
£15 Other Members and All Guests

To buy tickets, please send a cheque payable to "The Association of Women Barristers"
to Fiona Jackson at 33 Chancery Lane, London WC2A 1EN, DX 33 London Chancery Lane or contact
fj@33cllaw.com

Pupillage Clinic

Following 2010's very successful inaugural event, on 7th April the AWB held another Pupillage Clinic offering advice and tips on making successful applications for pupillage at the self-employed and employed Bar both within and outside the OLPAS scheme.

Over 50 student members took up our invitation to attend and hear tips and practical advice from a panel of speakers from different practice areas across the Bar, followed by the opportunity to have direct and individual feedback on their CVs and draft OLPAS forms.

Clare Reffin (One Essex Court) kindly returned to speak after her highly-regarded presentation last year, and was joined on the panel by Neelam Sarkaria (Head of the Criminal Justice Unit in the Crown Prosecution Service's Strategy and Policy Directorate), Alexia Power (Furnival Chambers) and Ruth Cabeza (Field Court Chambers). After

a useful Q&A session, the panellists' ranks were swelled by Maureen Heath, Ann Cotcher QC (Farringdon Chambers), John Black QC (18 Red Lion Court) and Emma Jones (a pupil at One Essex Court) to help critique the students' CVs.

Again, the AWB's enormous thanks are due again to all those who gave up their time to help, and especially Angela Campbell of the Bar Council's Equality & Diversity Unit who finally swept the last of us out of the door at 9.30pm still marking CVs! Perhaps not surprisingly, feedback from the students has been extremely positive, including this example: "I just wanted to thank you for the pupillage workshop last night, I think it's fantastic that so many senior barristers were willing to give up their time to help applicants like me. The talks were really informative and gave me an insight into the pupillage process that I have not had before."

Re the Case of ZH (Tanzania) v Secretary of State for the Home Department

*An interview with Benjamin Hawkin of
Mitre Court Buildings, Temple, a junior in the case*

In February of this year, the Supreme Court's Judgement was reported in the case of ZH (Tanzania) v Secretary of State for the Home Department. In March 2009, the Court of Appeal upheld a finding by the Asylum and Immigration Tribunal that the appellant Mother's two children (who were both British citizens) could reasonably be expected to follow her to Tanzania if she was removed there. The Mother appealed to the Supreme Court, arguing that insufficient weight was afforded to the welfare of children who would be affected by decisions to remove their parents from this country - especially those children who were British citizens. She said that the Article 8 rights of her children had been engaged by the case for her removal and that deciding that she should be removed would be incompatible with those rights.

The facts, briefly, were these; The Mother was a citizen of Tanzania who arrived in the UK in 1995. She made three unsuccessful claims for asylum in the ten years that followed, two of which were made using false identities. In 1998, she formed a relationship with a British citizen and they had two children, now aged 12 years and 9 years. The children had spent their whole lives in Britain with their Mother attending local schools and, although the parents separated in 2005, the children continued to have regular contact with their Father. The Father was diagnosed as HIV positive in 2007. At that stage, the Mother again made representations to the Secretary of State, which were accepted as a fresh claim but in any event rejected in 2008. On reconsideration by the Asylum and Immigration Tribunal it was held that the decision maker had made a material error of law in not having taken into account the rights of the children and how those rights might be affected by the removal of their mother. However, it was subsequently held that the Mother's removal would not represent such an interference with family life as it was thought that the children could reasonably be expected to follow their mother to Tanzania. The Court of Appeal then rejected the Mother's appeal, saying that the fact that the children had British citizenship should not be a 'trump card' preventing their mother's removal. They upheld the decision of the tribunal.

The Supreme Court allowed the appeal. The key issue to be decided was the weight that should be given to the best interests of the children in circumstances where their mother was facing potential removal back to Tanzania. The court has to consider when it would be appropriate for a non-citizen parent to be removed when the effect of that removal would be that their citizen children would also have to leave the country. It was held that 'the best interests of the child' broadly meant the well-being of the child. A variety of factors were listed which could have a bearing on decisions about whether to remove or deport a child's parent including the living arrangements of the child here and what they would be like in the other country, the level of the child's integration here and the strength of the child's

relationships with parents or other family members, which might be destroyed if the child was forced to move away. Citizenship, although not a 'trump card', was of particular importance in assessing the best interests of any child. When assessing proportionality under Article 8, the best interests of the child had to be a 'primary consideration' (i.e. they had to be considered first) but they could be outweighed by the cumulative effect of other relevant considerations.

Representing the Mother in this case were Manjit Gill QC and Benjamin Hawkin, instructed by Raffles Haig Solicitors. Representing the Secretary of State were Monica Carss-Frisk QC and Susan Chan, instructed by the Treasury Solicitor and for the Interveners were Joanna Dodson QC and Edward Nicholson, also instructed by Raffles Haig Solicitors.

What follows is an interview with Benjamin Hawkin about his impressions of the issues raised by ZH and about his experience of helping to conduct a case in the Supreme Court.

1. *Baroness Hale points out right at the beginning of her Judgment in ZH, that 'the over-arching issue in this case is the weight to be given to the best interests of the children who are affected by a decision to remove or deport one or both of their parents from this country.' This was an immigration case, but the 'best interests of the children' is a concept central to family law in this country as well. Did family law inform any of the Mother's arguments in ZH?*

Yes, very much so. We spent a lot of time looking at family law textbooks, academic articles and various international conference papers, to ensure that we were acquainted with the very latest thinking about the interests of the child; and to demonstrate how inadequately the Home Office and most Immigration Judges had tended to deal with this issue.

2. *What impact, if any, do you think ZH will have on UK family law? Are you often involved in immigration cases where there are concurrent family law proceedings?*

I would think it will have a considerable impact, and I am aware that a number of Local Authorities are currently considering how it will affect Social Services decision-making in cases involving or affecting children. Yes, I am often involved in immigration cases where there are parallel family proceedings, and am also asked to advise family solicitors on immigration issues that have arisen in family and children cases.

3. *Was the British Citizenship of the children in ZH ultimately a 'trump card' preventing the removal of their Mother?*

It was not a trump card per se (see Lady Hale, para 30), but it was nonetheless held to be a factor of very great importance, both intrinsically and in terms of its relevance to the question of the best interests of the child, and the overall proportionality of removal (see Lord Hope, para 41, and Lord Kerr, para 47)

4. *What had the Father's role been in the children's lives in ZH? Although he and ZH had separated in 2005, he continued to have regular contact with T and J, visiting them twice a month for 4-5 days at a time.*

5. *The Supreme Court echoed the Court of Appeal in considering that there was no rational basis for the Tribunal's assessment that there would 'not necessarily be any practical difficulties' with the children remaining here with their Father if their Mother was deported. How do you think the Judgment would have differed if residence with the Father here had been a viable option?*

That's a very interesting question. I would say that the outcome would have been the same though, because the children's relationship with their mother would have been severely affected, and this would clearly not have been in their best interests, and would have been a disproportionate result of the decision to remove their mother.

6. *Lord Hope, in the Judgment, highlights the tension that exists between trying to maintain a proper and efficient immigration system and the principle that, where children are involved, their best interests must be a primary consideration. Do you think that ZH brought this tension into sharper focus? Yes, much sharper, and rightly so. For too long in my experience, children have borne the brunt of protracted and clumsy decision-making by the Home Office and Immigration Judges – who have often failed to appreciate that disrupting young lives can have all kinds of serious effects. It is now clearly acknowledged that the children affected by removal or deportation decisions are human beings rather than baggage. So the true nature of decision-making in this area is apparent and must be confronted.*

7. *Did the case raise any controversy over issues of immigration control?*

Clearly ZH's "appalling" immigration history: why should she be allowed to stay after claiming asylum twice in false identities? Predictably, the Daily Mail did a very unsympathetic article about the case, which only demonstrated the importance of the Court's Judgment in the first place, in that it the journalist had failed to look at the case from the perspective of the children as individuals in their own right. Once the case is looked at from their point of view, the answer to the question is clear.

8. *Are there any hard and fast rules that can be taken from this case?*

Lord Kerr deliberately avoided the use of the word "presumption", but stated that what was determined to be in the child's best interests should "customarily dictate the outcome" of such cases (para 46).

9. *In ZH, the Mother's credibility was in issue. What had she done to discredit herself in the eyes of the court?*

See (7) above.

10. *What are your views about the weight that should be placed on these types of actions?*

Little if any weight in my view. The question must always be:

what is in the best interests of this child/ these children? And effectively punishing a child for their parent's conduct will very rarely be justified.

11. *How did you approach the fact that the Mother's 'family life' was created at a time when she was aware that her immigration status was uncertain?*

It was obviously a fact played up by the Home Office in the various appeals, but the Strasbourg jurisprudence now places less emphasis on this kind of feature, and more emphasis on the children that have been created as a result.

12. *What if there had been no children in ZH but the parents had been living together and in a loving, long-term relationship?*

Do you think some of the same considerations would apply as before? I would say yes, and the case law is going in that direction. In fact a case argued by a colleague, Simon Canter, in the Court of Appeal (MA (Pakistan) v SSHD [2010] Imm AR 195) involved a couple without children, and it succeeded.

13. *There's some reference in the Judgment to the fact that immigration authorities must be prepared at least to consider hearing directly from a child who wishes to express a view and is old enough to do so. Do you know how often this happens in practice?*

It never happened before, but I think it will happen much more now.

14. *What's your view about whether children should be able to speak directly to Judges?*

It happens in family law proceedings; I think it should be considered in immigration appeals which can have just as fundamental effect on how, and where, a child's life will turn out. I think it would be a tactical consideration in each case. As an advocate, I would first want to see a carefully-prepared statement from the child, and further evidence from family members, friends, teacher, social worker, doctor – perhaps even a child psychologist in some cases. Such evidence will be time-consuming to collect, but these are the things that thinking in terms of the child's best interests should bring to mind. I would then want to meet the child to see how they would fare in the hearing. I would also discuss matters with the Immigration Judge and the Home Office representative, and would be reluctant to agree to any cross-examination.

15. *What was your role in preparing for the case?*

I had done the two hearings in the Tribunal, and then the appeal to the Court of Appeal in March 2009, and knew as soon as they said we had lost, that I would be taking the case to the Supreme Court. I drafted the petition myself over the Christmas break, and after permission was granted in March 2010, I was led by Manjit Gill QC. As Junior Counsel I had to follow up the additional lines of argument opened up by my Leader, liaise with the other side's counsel, and ensure that the statement of facts and issues, appendix, written case, and authorities volumes, all went to the printer, and were filed and served in time. Unusually, this all had to be done in not much more than a month! During the hearing itself, I had to be ready to assist my

Leader with any point or reference at any time, as the arguments move around a lot at this stage.

16. *Had you ever appeared in the Supreme Court before?*
No.

17. *What was your experience of being involved in a case at that level?*

Firstly, just to do a case at that level is professionally rewarding in itself: you are involved in the making of new law, and it doesn't get better than that. Secondly, as the main work for the hearing had to be done in just over a month, I also learned that tremendous things can indeed be accomplished under pressure. Thirdly, it was particularly satisfying to me to have pushed the

case all the way up there, and have the Court give such a positive Judgment.

18. *What's the most important thing you've taken from the case of ZH?*

That as an advocate you must have confidence in your arguments, which comes from knowing the law as well as you can, and gauging where it is moving. So even if the Judge you're before today is against you, you may get a better reception higher up the system. Persevere and don't give up on a case unless you have absolutely no choice.

– Olivia Harris, *2 Pump Court, Temple, London*

== Pupillage in the Dark Ages (Well, Early 1970s) ==

When I read the accounts of contemporary pupillage I have to stop and pinch myself to check that it is not all a claret fuelled dream ie by a large glass or three of Chateau Fleet Street, as drunk in El Vinos (sitting at a table, NOT standing at the bar which we women were forbidden to do at that prehistoric time). (As you can tell this was before the days of Chardonnay, Jacob's Creek and the like as the "glass of house white" of the time was a sweet concoction called Blue Nun – that is if you were not offered a "Babycham"). An unrecognisable landscape as compared with the pupillages of today!

It is true that it was easier to get a pupillage – assuming you knew someone at the Bar to ask. There was no OLPAS, Non-OLPAS or any other formality, but a nicely written letter to the proposed pupil master whom you knew, or someone you knew knew (there were very nearly as few women at the Bar as women pupils) and there was certainly no paid pupillage, on the contrary pupils paid a fee of 100 guineas although this might sometimes be commuted to a case of wine or similar which (when champagne could be had for £3 a bottle was a significant reduction in cost). Unscrupulous pupil masters who could acquire a female pupil could then use this resource to aid immediate seduction of the aforesaid pupil.

My pupillage was not quite this startling, since it was in Chancery, in Old Square Lincolns Inn, a relatively sedate set where the intellect was the most astonishing element, if you discounted the fact that the building would have made Bob Cratchit feel at home: water ran down the inside of its venerable Victorian stone walls, the clerks room was heated by an open fire which the senior clerk could be seen lighting, or attempting to light, around 8am any weekday morning, although the room in which we had Chambers tea on arrival and again in the afternoon was not so cold that the chattering of teeth could be heard above the clink of cups and saucers as it had a powerful gas fire. The other astonishing thing about the building was that it had only "Gentlemen's Lavatories" and when one was duly labelled "Ladies" (after all we had typists as well as me, the sole female pupil, who might have been supposed to need such facilities) this notice was regularly taken down by those in the other sets in the building and re-colonised by their male

tenants.

There was of course no Pupillage Handbook nor checklist of tasks to be performed and signed off during either the first six months or indeed at any time during the 12 month pupillage required to be undertaken – although after 6 months we could practise as is the case today. As a result pupillage ranged between the two extremes of either a non-stop social occasion, punctuated by trips to court, coffee, drinks, dinners or Inn Balls, and of course the Bar Point to Point, or else a period of drudgery endlessly working on papers in a cold and unwelcoming pupil room – pupil masters did not on the whole have pupils sitting in their rooms in those days, although the advice in the then current edition of Glanville Williams' *Learning the Law* recommended that if possible a pupil should aim for a pupil master who would keep a pupil or pupils in his own room thus affording a better chance of reading all his papers and learning from all aspects of his practice. My pupillage was a mixture of these two extremes though but for the kindness of the senior members of Chambers I might have spent the whole 12 months working on papers in the draughty pupil room, as while I was one of 4 pupils – me and 3 men, including one who is now Mr Justice Charles who knew a great deal about the Law of Property including before 1925 – my pupil master was nearly always absent for one reason or another, so airily recommending me to "see if you can be of any help to X or Y if they are going to court", also left me plenty of work to do, usually about 2 dozen sets of papers of incredible difficulty which I presumed came from his own "too difficult" heap, and for which he was hoping for some draft to be produced and sent by post for his perusal that was either so mad or so creative that he might be inclined to send it out virtually unaltered, in the hope that it might be right, or at least more right than anything else that he could think of.

However I was quickly rescued from this lone existence, first by the pupil master of one of the others who took it upon himself to invite all of us to his practical advocacy sessions (which made sense since he clearly needed pairs of pupils in order to achieve the optimum value from these valuable practices) and then by the other occupants of the corridor, and from them I learned much more than a checklist would ever

have produced.

Immediately opposite the pupil room was that of the then quietly serious leading junior who became Lord Nicholls of Birkenhead, and from him I learned that it is never a matter of shame if you feel that you must check every authority on which you rely: it did not take long to realise that what was good enough for someone of this obvious intellect would also reduce the amount of parrot learning that was necessary and lead to the sort of systems management that made for an efficient practice in which one would be less likely to have to talk one's way out of embarrassing errors. He also recommended the Bible, King James version, as a good source of daily reading, whether for inspiration (or, as has often been said, for an answer to any question to which no other answer immediately comes to mind) or for an instant dose of the English language from the days of its greatest quality.

Also on the same corridor was the room of the most independent member of Chambers, a particularly clever Silk who became the late Lord Justice Dillon. From him I learned that there was absolutely no need to take any notice of water pouring down any part of the building, inside or out, and that the important thing was to work in a room which had been reduced, even if originally from unpromising material, to the maximum state of comfort and elegance. He had custom made bookshelves the inside of the shelves of which were painted in the dark green which is closest in colour to well conditioned green baize, against which his leather bound Law Reports looked very smart and his pictures and well polished antique furniture shone like jewels against an oriental carpet and heavy lined and interlined curtains, all supervised on installation by his wife who was a domestic economist and interior designer. From him I also learned that no matter how clever you are – which he was - or think you are, there is absolutely no excuse for becoming irritable with thick clients, as they are the clients and if they do not understand what their case is about you must just explain it all again without the slightest show of impatience.

However, the other great influence in this informal state of pupillage affairs was the late Lord Oliver of Aylmerton, who at that time was also a mere Chancery Silk, if that was (with the later Sir Brian Dillon) one of the two leading Chancery Silks, so that they were often against each other in high profile cases. Very shortly after the explanation, viz his wife's expertise in the matter of interior design, as to why his bookshelves had dark green painted shelves, Dillon QC duly turned up one morning in the pupil room with Oliver QC in tow to announce that they were off to dispute a little planning matter involving the location of a hotel at or near Heathrow Airport (the problem being that it was near rather than at, for which someone was going to have to pay substantial damages for having got the location wrong). Their purpose was to inquire what I had done in the absence of my pupil master, other than to read through 13 sets of papers of breathtaking difficulty (with or without finding any answers) to announce that they considered I ought to see the inside of a court where I would be likely to learn much more and to sweep me off to the determination of the commercial dispute they had mentioned. And from Oliver QC I learned that essential mix of finding the real point(s) in a case and deploying all the skills of advocacy in putting all that across,

rather than letting the tail wag the dog with any amount of only tangentially relevant intellect and recondite learning.

Thereafter I was regularly employed in the character of note taker for one or other of this talented pair, or for another member of Chambers who specialised in demolishing restraint of trade clauses in the petrol station wars which were then current, as a result of which, when my actual pupil master eventually returned to Chambers (almost at the expiry of my 12 months), perused the balance of what I had drafted in his absence, he immediately handed over another large pile of sets of papers and remarked "It is of course in the tradition of the Bar that other members of Chambers always help to keep the practice of any absent member going while he is unavoidably away, but I hope you will have learned enough from my fellow members to do these yourself, since it is obvious from those which were sent to me while I was away that you have been able to avail yourself of the assistance of some of the best brains in the Law at the present time..."

Too right. This style of pupillage was, in practice, based on the well established learning model known in industry as "Watch Nelly". Indeed if you cannot learn from seeing what a competent lawyer and advocate can do, and distill the essential skills from perusal of a few finalised opinions and pleadings, you are unlikely to learn from the mechanical aide memoire of a checklist. Moreover, it placed firmly on the pupil of that time the onus of being proactive and independent, rather than expecting spoon feeding. While it is true that today's pupil travels further to courts (because in the past the London based Bar did not travel nearly as far afield on nationwide briefs as they now do) and a post 2000 pupil incurs greater expense in living in London and earns less in real terms because of the challenges to public funding, the low key 1970s pupillage was every bit as valuable, even if it did not meet the Equality and Diversity elements of today's Code in offering pupillages in explicit open competition, as between potential pupils and as between Chambers offering in effect unpaid internships to the pupil barristers who needed to spend the requisite time in Chambers in order to qualify in return for which they did a lot of devilling work.

The Head of Chambers told me that they were delighted to have me as a pupil and I was welcome to learn anything they could show me but that I did realise didn't I that I would never get any real work, although there was always devilling to do if I wanted to do that...in fact as soon as I got a tenancy in my first set there was plenty of work as I had the good luck to be junior junior counsel in a team which could make use of my ability to speak, read and write French, for which they had a need in servicing a substantial portfolio of rich expatriate clients who lived on the French Riviera and referred all their complex trust and settlement work to London. But there again the senior clerk made clear that he felt the time was right for Chambers to have its "token woman" but that I did understand, didn't I, that when the work was distributed the three young men came first in the strictly cab-rank allocation as "of course they would have their careers to think about", and I "would be leaving soon to get married and have children" wouldn't I? The fact that I was already married and had three children had apparently escaped him.

This was actually such a good pupillage – when I had had some reservations as to whether I would be taken at all seriously and indeed whether I would get any useful experience or even a tenancy at the end of it – that the year had flashed by before I realised that I had missed out on all the riotous partying and “airport paperback” romance that everyone thought was obligatory in London immediately after the so called Swinging Sixties! And when I immediately obtained a tenancy, again in a leading set in Lincoln's Inn (and again being taken on with 3 men, with no other woman in sight!) I immediately also had work of my own, thus filling up the time that might then have been spent on a souped up social life! However while the dinners and garden parties, race meetings to watch the Chambers horse, day trips across the Channel to eat gorgeous French lunches in Boulogne continued to make the most of the prolific legal aid fees we had in those days, getting a practice together did take priority over the sort of liaisons that have appeared in the unlikely episodes of Judge John Deed.

– *Anonymous*

Stretching myself – the pupillage hunt (2011)

My yoga instructor sucks in a big lungful of air before exhaling a minor gale across the studio floor. I try to follow her sage advice and empty my mind. I breath in and out, I'm doing this, it's working...I'm relaxing...but slowly the slow thud of next door's hip-hop dance class seeps into my brain - Jenifer Lopez featuring Pitbull - and that inescapable question appears again: what experiences / skills gained do you believe will help you in your career as a barrister? 200 words.

Yes, it's that time of the year again. While all the little

children (and a few grown-ups too) are looking for their chocolate eggs we, the budding barristers, embark upon the most testing task yet: the pupillage hunt. Armed with laptops and a pupillage handbook we prepare for battle, some of us having just finished university, others the GDL/ BPTC, and many of us getting all the relevant legal experience under the sun because you never know, this year, it could be you.

The pupillage hunt, quite like the Bar itself, is very different from making an ordinary job application. It's quite like putting your best foot forward without ever knowing whether you're definitely right. I have found it a very personal process laden with a significant amount of individual scrutiny where, I've spent hours mulling over my experiences and achievements. Then, of course, the agonising negotiation over the contents of the application form begins; the choice of words and whether they actually mean what you want them to.

Recently I was given very good advice from one of my colleagues who succeeded in catching his pupillage last year: 'treat it like a skeleton argument' he said. Having had time to reflect over this I can't help thinking (insert Carrie Bradshaw pout) that how we articulate a case is similar to how we articulate ourselves. In a skeleton argument, you're thinking about knowing your case, indentifying your strengths and weakness, summarising effectively and most importantly getting it in on time!

Well, with that insight in mind, I embark on my first draft. Name? Address? School? CHECK! And now the tricky bit, the pupillage application questionnaire. Surely, it must be a skill in itself to write about mootng competitions while my neighbours next door are doing the lambada?

– *Poonam Pattni, student member*

Abolish Silk in South Africa

Roshnee Mansingh and a group of advocates at the South African Bar have launched court proceedings in South Africa, for a declaratory order that the President of the Republic of South Africa has no power in terms of the Constitution or other wise to confer the status of senior counsel on practising advocates. The application was launched in the North Gauteng High Court, Pretoria on 5 April 2011. The respondents are the President of the Republic of South Africa, Minister of Justice and Constitutional Development, General Council of the Bar of South Africa, Johannesburg Society of Advocates, Independent Association of Advocates of South Africa and Law Society of South Africa.

The group of advocates are opposed to the continued existence of the institution of silk in South Africa. In the words of the group spokesman, advocate Nazeer Cassim of the Johannesburg Bar, "...on a balance the institution of silk must go, it does not facilitate access to justice and has come to represent some of the pernicious evil features of our society, greed and elitism. It is divisive in its nature particularly in the manner it is applied and this divides the bars. It reduces the dignity of many of our colleagues to acquire this recognition to the extent of obsequious, if not grovelling, to the whims of those perceived to be in power. In classic James Bond's language,

silk status has come to represent 'a license to steal'.

The issue in the court application is a narrow one. Does the President's responsibility for "conferring honours" in s84 (2)(k) of the Constitution include the power to confer the status and title of senior counsel ("SC" or silk) on practising advocates. The applicant contends that this question must receive a negative answer. If that is so, it is the applicant's further contention that there is no other legal source for a power in the President to confer SC status.

The application raises a constitutional issue. By way of background, the applicant sets out that the group of advocates have also become increasingly concerned about the procedures and criteria applicable to the granting of silk. The group is of the view that the criteria are inherently vague and that professional distinctions drawn on vague criteria are inherently unfair. Furthermore, the group considers that satisfactory procedures for determining whether or not an advocate meets the criteria simply cannot be devised. In the result, some advocates are advantaged over others in their professional practices by the continued existence of silk. At the level of policy, the group considers that the institution should be abolished.

The group contends that silk is not an "honour" as

contemplated in s84(2)(k) and is not viewed as such by the President. Silk is not awarded for unique or distinguished service to the country. It is a certificate of professional excellence. In a fair system for the awarding of silk, any advocate with sufficient experience, competence and integrity is entitled to expect that he or she will be awarded the status of senior counsel. Given, the professional significance and advantages of holding the status, any system by which the status of silk were awarded arbitrarily rather than with reference to the objective standard of excellence would be wholly unacceptable in a constitutional state.

The character of silk as a certification of professional excellence rather than as an honour for service to the country is reflected in the fact that although the formal award is made by the President, he is almost wholly reliant on the advice and recommendation of the bar councils and Judge-President. That is wholly unlike the honour system made up of the various national orders in South Africa. The classification of silk as an "honour" is also entirely inconsistent with the fact that it is status sought on application by practising advocates.

In England the appointment of silk and the conferring of honours are among the common law prerogative powers of the Crown. In South Africa this was also the position until 1961. When South Africa became a Republic in 1961, s7(3) of the Constitution of the Republic of South Africa Act 32 of 1961 conferred on the State President certain specific powers that were formerly prerogative powers of the Crown. Among these was the power to confer honours. No mention was made of s7(3) of the power to appoint advocates as silks. However, s7(4) provided that the State President had, in addition, "such powers and functions as were immediately prior to the commencement of this Act possessed by the Queen by way of prerogative."

Sections 6(3) and 6(4) of the Constitution of the Republic of South Africa Act 110 of 1983 contained virtually identical provisions to those of the ss7(3) and 7(4) of the 1961 Constitution. These provisions of the 1961 and 1983 Constitutions implied that these were prerogative powers in addition to those listed in ss7(3) and 6(3) respectively. The preservation of these residual prerogative powers made it unnecessary, in the period from 1961 to 1994, to categorise the power to confer silk; if (as the applicant contends) the said power did not form part of the power to confer honours, it was nevertheless preserved by the residual prerogative powers.

The interim Constitution (the Constitution of the Republic of South Africa Act 200 of 1993), which came into force on 27 April 1994 established the President as the head of state

and as head of the executive. As head of state, the President had the powers and functions listed in s82(1). Certain of these powers were copied from s7(3) of the 1983 Constitution, including the power "to confer honours" (s82(1)(e)). However, there was no preservation of the residual prerogative powers covered by ss6(4) and 7(4) of the 1961 and 1983 Constitutions. There was also no mention in s82(1) of the 1993 Constitution of the power to confer senior counsel status.

The final Constitution (Constitution of the Republic of South Africa, 1996) follows a similar pattern. Section 84(2) provides that the President is responsible for various listed matters, one of which is "conferring honours" (s84(2)(k)). There is no preservation of residual prerogative powers and there is no mention of the power to confer senior counsel status.

For all the reasons stated, the applicant contends that the appointment of practising advocates as senior counsel does not amount to the conferring of an honour within the meaning of s84(2)(k). There is no other legislative source for the power in the President to appoint practising advocates as senior counsel. Since all executive power, including that of the President, has to be located in the Constitution, it follows that the President has no power to appoint practising advocates as senior counsel.

The applicant submits that she is entitled to the declaratory order sought. If the applicant is entitled to the said declaratory relief, this would imply that all awards made since the advent of the interim Constitution on 27 April 1994 have been unlawful. It does not follow that such awards should be set aside, as the applicant does not seek such relief in the proceedings. If the declaratory relief is granted, it will be necessary for the authorities and the profession to engage with each other as to an appropriate way forward. The applicant and the group would in this event seek to persuade the GCB and its constituent members to agree that historic holders of the SC status should no longer be permitted to use this designation as a working title.

The group also considers, based on an opinion from advocate Owen Rogers, of the Cape Bar, that the involvement of the bars in the silk process violates or may violate s4(1) of the Competition Act 89 of 1998. The group may thus in due course lodge a complaint with the Competition Commission. However, this step would be unnecessary if the President does not have the power to confer silk.

*– Roshnee Mansingh, advocate Johannesburg Bar and
barrister Bar of England and Wales.
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**THE VIEWS EXPRESSED HERE ARE THOSE OF OUR CONTRIBUTORS
AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE AWB.**

SUMMER DRINKS PARTY

The AWB is holding its Summer Drinks Party on 30th June 2011

at The Oak Room and Terrace, The Bar Council, 289-293 High Holborn, London WC1V 7HZ from 6:00 pm to 8:30 pm.

Tickets: £10 for Student and Pupil Members; £15 Other Members and All Guests. See details on p.3.

THE ASSOCIATION OF
WOMEN BARRISTERS

MEMBERSHIP APPLICATION

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Current home address:		
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Area/s of interest:		
Final year student:	CPE/GDL law student:	BVC/BPTC student:
Pupillage obtained: Yes/No	Inn Membership:	Year of Call (if applicable):
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