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THE PHONE-HACKING TRIAL

The Hon. Mr Justice Andrew Edis QC (1975, Law) was named 'crime silk of the year' in the 2013 Chambers and Partners UK Bar Awards, and is described as 'a true heavyweight and a genuine star', by industry guide *The Legal 500*. He was lead prosecutor in the recent phone-hacking trial. His notable successes include prosecuting the former energy minister Chris Huhne, and his ex-wife and economist Vicky Pryce, over the speed points swapping scandal and defending footballer Bruce Grobbelaar, who was cleared of allegations of match fixing.

Edis was called to the bar in 1980 and took Silk in 1997. He was sworn in as a High Court Judge on 1st October 2014. **Charles Smye** (2013, Law) interviewed him for *The Martlet*.

What was your time at Oxford like, and how did your experiences influence your choice of career?

When I went to Univ in 1975, I went up to read Mods and Greats, and I didn't really have a particular career plan. One thought was that I might like to end up as a scholar, a professor of Latin poetry, studying Virgil and Horace. In fact, I did one year of that course and at the end of that year I asked to be changed to read Law. That was partly because I'd discovered that I didn't really think I had the necessary application to make a good enough job of Mods and Greats.

I had in my mind at that stage that I would probably practise law, probably as a barrister. I didn't really make any plans, or do any work experience or anything like that – we didn't on the whole in those days, because I think it was a much more relaxed environment than it is now. At the end of my course I had to apply to go and do some vocational training. At that point, I discovered that I had actually missed the deadline for applying to the solicitors, the College of Law, so I couldn't do that! Whereas the applications were still open for the Inns of Court School of Law which confirmed what I really thought anyway, that I would probably be better off as a barrister than a solicitor, so I applied to the Inns of Court School of Law and went there in 1979.

After that, I did pupillage in London, and when I didn't find myself with a place in Chambers doing Chancery work (which is what I had actually aimed for), I had a choice of either giving up on becoming a barrister and becoming a solicitor in London or going home, as my father was a General Practitioner with four children who had supported me through university, and there was no more money for me except what I could earn. So I went home to Liverpool, where I could live with my family while I was in the early years of my career at the Bar and could generate some income. In the provinces, generally speaking, you end up with a rather mixed common law practice, or did in those days. In my early years at the Bar, I did crime, family, personal injury, clinical negligence, a bit of judicial review, the occasional boundary dispute, all sorts of things, and enjoyed it all greatly! But what that means is that what you end up specialising in is very often not a matter of a decision, but a matter of where things take you: the contacts you make, the work you get offered, quite often what's most interesting, and frankly, what pays the best.

You take thousands of decisions of what cases you're going to take over a long career at the Bar, and in the end the career sort of steers itself as a result of many, many different decisions, and just bits of luck, or bad luck! You happen to be offered a case, and somebody likes the way you've done it and then they offer you another one and off you go! Or if they don't like it, you don't get any more cases from them and doors close! So you don't have a great deal of actual control as a barrister over precisely the way your practice goes, though

you can choose overall which areas you are willing to practise in, which ones you think you are competent at. You end up going with the flow a bit!

How did you get involved in the phone-hacking trial?

The phone-hacking case effectively started when the News of the World closed because The Guardian had revealed that Milly Dowler's phone had been hacked by the News of the World in 2002. The person in charge of terrorism cases at the CPS was promoted at about that time, and she became instrumental in deciding who should conduct the phone-hacking case. In August 2011, just a few months after the closure of the News of the World, she rang me on holiday and said, 'Would you like to prosecute the phone-hacking case for us? Don't accept any defence briefs if you would like to do it!' I said that I thought that sounded absolutely fascinating and would like to do it. That's why I became involved, because I had done a series of very long, very difficult and in some cases very acrimonious terrorism trials which had all gone well. The sort of terrorism trial that I'm talking about is usually based on circumstantial evidence and requires the jury to be prepared to draw inferences because we haven't had a lot of actual bombs go off in this country recently. So the trials are often about plots in which people have been trying to perpetrate an act of terrorism, and those are difficult cases to pull together. I'd done a lot of them and they had gone well – nearly all had ended up with convictions. Because of that they thought that I might be able to manage the phone-hacking case, and that's why they offered it to me. I accepted...I don't think it's the kind of thing that you turn down!

It was of course a huge trial which attracted a great deal of public outcry and interest. What was it like to be a part of it?

Well, it was very hard work – that's what I will always remember about it. The charges were brought in 2012 and some in early 2013, and the trial was anticipated to start in September 2013, which meant that I had about 12 months to get it ready. Although they retained me (they asked me to do it) in the summer of 2011, they didn't actually send me any papers until after the charges had been proffered in 2012. So it's, if you like, twelve months from getting some papers to the start of the case.

It was the nature of the case that loads more work kept coming in during that twelve months: lots more evidence, lots more unused material. There were loads of legal arguments, lots of hearings to be had, and there wasn't much time really to just settle down calmly and read the papers, process the information and get it sorted. When it did start, it continued to be very hard work – in fact, it became harder. It really was a seven days a week job for eight months. My normal working hours are between 5.30 in the morning, and 6.00 in the evening, so you can imagine how hard it was working under such considerable pressure, as things had to be done for deadlines. One of the great things about our system is that when the trial starts and the jury is sitting there, it's your turn and you've got to do your job as well as you can, given the amount of preparation you've been able to do. Generally speaking, you can't stand up and say, 'I'm not really ready to do this...Can I perhaps do it next week when I've had a chance to mug it up?' When the curtain goes up, you start doing your job and that does impose a very considerable pressure on the advocates involved in the case.

In the end, the case took a very long time, indeed longer than expected. What effect did this have?

Well, it was extremely difficult. The trial eventually ran from October 2013 to June 2014, which was not ideal. It was really too long for a criminal trial. It asks a lot of a jury to concentrate on a case for eight months, and really tests its ability to return verdicts. And of course, it's also a strain on the barristers, when you're in court in May 2014 and need to recall evidence and information from November of the previous year, organise it all in your mind. So yes, it was a very difficult case.

Did the intense media coverage affect you?

Well, being conducted in the great glare of media publicity did add an element of theatricality to the whole thing, but that doesn't really bother me much. I don't worry about what they're going to say about me in the newspapers, or what they're going to say about the case. It just means that you have to be a little more careful about what you say than you would be if you were doing some case that nobody was taking any interest in! But really you try and do all the cases as well as you can, whether they are in the papers or not.

The trial was one of the longest and most expensive in British legal history...did you anticipate five of the seven defendants walking free?

I didn't think that it was likely that everybody would be convicted, or everybody would be acquitted. I thought there would be mixed verdicts. It's important to be quite careful about what you say about a jury's verdict, particularly where there is an acquittal. The process is that the CPS decide at the start that there is evidence

which gives a realistic prospect of conviction of an offence and if they come to their conclusion and it's in the public interest to prosecute, they do. In this case, there was evidence to justify that decision. There was, on all the counts except one, evidence to go to the jury – that's to say the judge decided that on all those counts against all those defendants there was evidence on which a jury, properly directed, could convict.

Then of course, once the CPS and the judge have taken those two decisions, it's over to the defence to give evidence to the jury if they want to and then it's up to the jury to decide whether they're sure of guilt. So there are three different decisions which are taken at different stages, different tests and, in saying that I thought that there probably would be some acquittals, I'm not saying that the charging decision was wrong, or there wasn't evidence on which a jury could have convicted if they had wanted to. I'm only saying that although there was evidence on which they could have convicted and everyone was properly charged, I wasn't surprised that there were some acquittals.

From looking at your track record at the Bar, Andrew, you've been involved in a number of high-profile cases. Which case did you find the most satisfying?

The case that I'm proudest of is a case called Ahmed and Ahmed, and it concerned the murder of a young teenage girl called Shafiea Ahmed, who was murdered in the kitchen of the family home by her parents a long time ago. There was an investigation by the police who decided that the principal suspects were the parents, and in 2006 the decision was taken not to prosecute them because there wasn't a realistic prospect of conviction.

Some years later, the victim's sister was arrested for robbing her parents and, when she was under arrest and she was being interviewed, she revealed to the police that she had been present while they killed her sister. That meant that the investigation began again, and it came to me after the papers had been with the CPS for quite a long time. The CPS wanted to know whether these parents should be prosecuted. At that time, there was the evidence that had been there in 2006, and the new evidence of the sister. However, she obviously had a motive for telling lies about her parents because she was being prosecuted for robbing them, and she was compromised in a number of ways.

There was a lot of hesitation about whether these two people should be prosecuted for this crime. I was given the papers, and very quickly came to the conclusion that they should be prosecuted because there was evidence on which a jury could convict, even though there were lots of difficulties in the evidence. On the basis of my advice, they were prosecuted.

There's a lot of sensitivity about the case because it was the kind of case which you might call "honour killing". The motive for the killing was that Shafiea, who had been born and brought up in Warrington, wanted to live, to some extent, the life of an ordinary, young Western teenager. She wanted to have boyfriends, and she wanted to be able to choose whom she married, and she wanted to be educated, go to university and become a doctor. That's what she wanted. But her parents didn't approve, in fact very strongly disapproved of some of the things that she was doing. They were trying to stop her, and in the end, they took her off to Pakistan, where they tried to get her forcibly married to someone. She managed to escape that by swallowing bleach, so she became "damaged goods" and she was then brought back to Warrington, where not long afterwards she was killed.

The body wasn't found for a long time, so there wasn't any forensic evidence or anything like that. There wasn't even a known cause of death, but her body was found hidden in undergrowth 100 miles away from the family home in the Lake District. So it was a very difficult case, a very sensitive case. The father, when he was arrested and charged, accused the police of racial stereotyping, saying that they only thought that he had murdered her because he was Pakistani, and that it was all a racist approach.

In the end, we had a long trial in Chester and they were both convicted of murder. The evidence actually improved and developed during the course of the trial in very interesting ways. It was an absolutely fascinating trial. I think the most important thing was that it demonstrated the use of the Criminal Justice System to send a message that it is not frightened of prosecuting murder in these circumstances, and does exist to protect vulnerable people in their homes from all sorts of threats. I think it sent a good message, and was a very valuable piece of work. So that's the case I'm proudest of, of all those I've done. I've done so many murder cases that I lose count and, though they're all different, they all matter. That one seemed to me to matter a lot.

There has been great controversy over the last months and years surrounding cuts to Legal Aid and the difficulties this will cause barristers at the independent Bar. So do you think the Criminal Bar has a future?

Well, do I think the Criminal Bar has a future? ... I think that the future is very uncertain and I would perfectly understand those who say that it doesn't have a future. I think that as long as we have an adversarial system with a jury for criminal cases, somebody will have to prosecute and someone else will have to defend. Those will be lawyers, who will be doing the job which is presently done by the Bar. But whether in the future they will still be self-employed members of the Bar, or whether, as they increasingly are now anyway, they will be employed lawyers, is one of the things that the future will decide. But there will still be work for people who are good at that. It won't pay the same, at least out of public funds, as it has done for large parts of my time at the Bar, and expectations of income levels by those who start have to be adjusted accordingly.

It will never be able to compete with what you could earn in a Magic Circle firm in the City of London I don't think, but of course if it goes really well, then you can get private work: when the rich and the famous are prosecuted on the whole they pay for their own defence. In the phone hacking case, most of the defendants but not all who were tried in that long case, were funded by News International. The rates of pay are entirely different to what you can get from Legal Aid, or from the CPS, and you can make seriously good money. But of course there aren't an enormous number of those briefs to go around, but there is a decent market in privately paid criminal work in London (most of it is fraud and that sort of thing). So there is a career path whereby if you acquire enough profile, enough skill doing ordinary criminal work, you may break through into this privately paid market.

You can also keep other strings to the bow, and what increasingly a lot of people are doing is regulatory work, which is effectively professional discipline, and other forms of tribunal, which are remunerated in a different way to ordinary criminal work. You can also do crime related judicial review and other things like that. So there is an area of work where a barrister interested in crime can go, and make a decent living out of it (as I say, you have to be realistic about the level of that living). But I think there is a future for competent, capable, gifted lawyers who want to work in the area of crime and associated work. And I think that will probably always be true, as we're always going to have criminals, and it's extremely important that they are prosecuted and defended properly.

The problem, frankly, increasingly is at the very junior end, the less serious Crown Court work involving relatively minor violence, is increasingly staying in a Magistrates Court, increasingly it's done by solicitors on both sides, and the independent Bar doesn't necessarily get much of a go at that. But you wouldn't actually want to be doing that sort of work for the whole of your career but some people do, and traditionally some barristers who remain juniors throughout their career. But that's not an option any more – you need to keep moving forward, take Silk and succeed to make a go at it nowadays.

You mentioned earlier that you are soon to become a judge. Can you say much about that at this stage? If so, how did you end up down that path, and what will the new role involve?

Yes, I can. I applied to be a High Court Judge in November 2012. That's now a transparent although confidential process which is run by the Judicial Appointments Commission. You make an application, you have an interview and they decide. I was told the result in March 2013. In the ordinary run of events, I would have been appointed I think in June 2013, but because by then I had done months and months of work on the phone hacking case, and the trial was supposed to start in September (though it didn't actually start in September in the end) I had to find out what I should do. I made some enquiries and was told that they would wait for me, and so I should do the phone-hacking case and my appointment would be announced afterwards. Of course at that stage we thought it might finish within perhaps about four months and it was going to start at the beginning of September, which would have meant that it was finished just after Christmas. In reality, it didn't finish until the following June.

So in the end my appointment wasn't announced until the end of July, and it was supposed to be a secret throughout that time until its announcement on the Judiciary website. I am expecting to be sworn in as a judge on the 2nd October, and to start sitting as a judge full time on the 3rd October in Leeds, when I shall be trying a murder. As a High Court Judge, doing criminal cases and other kinds of work, you tend to spend quite a lot of the year in London, and quite a lot of the year travelling around where there is a case that requires a High Court Judge to try it. A Circuit Judge tends to be assigned to a particular court base. In London I shall be doing civil cases, judicial review, and sitting in the Court of Appeal Criminal Division, and I shall also be travelling the country trying to do justice in serious crime.