SEC
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News from the South Eastern Circuit

THE CIRCUITEER

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A PRIVILEGE TO BE RECORDER

by Valerie Charbit

It is nearly the end of my term as Recorder of the South Eastern Circuit and I have enjoyed the privilege of assisting two inspirational leaders, each so supportive of the bar and the profession.

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When my friends and family asked me to describe what my experience at the Keble College course was like, lawyer boot camp was a phrase that came to mind.

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EDITOR'S COLUMN


Karim Khalil QC

Looking out over the sun-drenched Algarve coast makes one wonder, just a little, why we are so wedded to the world of work. The answer, of course, is that it makes the refreshing 'long weekend' achievable. But enough of 'getting away from it all': what about that from which I have escaped?

The recent Circuit AGM was both informative and uplifting. As our Leader explained how the negotiations over publicly funded pay have been 'progressing' and how Circuit representatives have engaged the Judiciary at many levels with the important task of making the justice system work (crime, family and civil), it became clear that we are, as always in good hands and indebted to the few who work so tirelessly for the many.

This edition of The Circuiteer sheds a little light upon the remarkable breadth of talent that is available to those who litigate in the UK, with articles covering the breadth of training that is pursued, encompassing both national and international placements – I don't believe that the article on 'Tax Evasion' is connected to these!

Our charismatic Recorder, Valerie Charbit, says her goodbyes and leaves a fantastic legacy: the importance of considering Wellness at the Bar has now become widely accepted in a profession that has previously considered matters pertaining to physical and particularly mental health as awkward issues to be mentioned 'after the event' or preferably not at all.

The rollout of the Vulnerable Witness Training Programme has been a monumental task. Aaron Dolan has been the primary organiser with help from others including, in particular, Harriet Devey. Those of us who trained as Lead Facilitators didn't know what a huge commitment would be required as the programme changed its format and we all trained for a second time before being unleashed on the Bar as a whole to 'cascade' (I truly hate that word now) our knowledge to the next level of Trainers for further 'cascading' to the whole of the Bar. Nonetheless, it's done – there is no excuse for anyone not to undertake the training before the wider regulatory and political implications of litigation involving vulnerable witnesses become known. I have no doubt that successive governments will see this as a soft target for law-making to sate their desire to appear to be 'tough on crime' and to wave the banners of 'victims' in ever more lofted a manner.

I was delighted to be invited to an evening in Fitzwilliam College, Cambridge, to hear the Foundation Lecture given by Catherine Bernard about the legal implications of Brexit. It made for stimulating conversation and, I confess, a few too many glasses of 'Wellness Wine' to help to overcome the sense of impending catastrophe. Any strong supporters of the Leave Campaign should have been there to provide coherent answers to the labyrinthine complexity of the legal implications that have already arisen and those that are anticipated. The conduct of every aspect of UK trade, professions and services is so enmeshed within the fabric of the EU that it will surely take decades of continued political incompetence to unravel the spools – members of our profession should be at the forefront of these negotiations so the best of luck to those who find themselves called upon to 'help'.

My spam email box is now full of adverts for US style "Black Friday" shopping opportunities – I had to remind myself that the definition of a sale is that it offers goods that you don't need at prices that you can't resist – but surely there is something that I do need, please Santa? Happy Christmas to one and all!

Renewed thanks to all involved in preparing The Circuiteer, with particular gratitude to Aaron and Sam for 'cajoling' and 'typesetting' respectively.

Karim Khalil QC

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Editor *The Circuiteer*

If you wish to contribute any material to the next issue of The Circuiteer, please contact: Karim.KhalilQC@drystone.com

RIDE LONDON FOR CHARITY

Team Drystone was featured in *Cycling Plus* magazine as it left the start of the Prudential London100 last July. **A big thanks to the many who sponsored us to raise over £15K for Opportunity International.**

LEADER'S REPORT

by Kerim Fuad QC, LEADER OF THE SOUTH EASTERN CIRCUIT


Kerim Fuad QC

As we all return to our routines after (hopefully, for most) a relaxing break over the Summer, the "back to school" feeling invites reflection on the past year and thoughts of what lies ahead.

However I start with the tragic loss of two exceptional Judges.

In memoriam

We were all saddened to hear of the recent passing of two much-loved and admired members of the judiciary.

Lord Roger Toulson

and

HHJ John Plumstead

The memorial service for Lord Roger Toulson took place on Monday 16th October at 5pm at Inner Temple Church.

The funeral for HHJ John Plumstead was held on Friday 20th October for family.

My first 10 months as Leader of this wonderful Circuit have been eventful, to say the least. I knew that it would be challenging, but I did not fully anticipate quite how many obstacles would be thrown (often inadvertently) in the way of my attempts to restore pride in our profession and improve the well-being of those at the Bar working long hours in increasingly difficult and often poorly paid circumstances.

Andrew Langdon QC, Chair of the Bar, and the other Circuit Leaders have been superb and supportive in helping me try to improve our lot and get our messages across.

I attend between 6 and 15 meetings each week regularly including Saturdays, and deal with sometimes hundreds of emails a day, so this role is not for the faint-hearted! I feel that I am making a difference and I still have plenty of energy to fight for us all but surely it should be much simpler to achieve constructive change – fewer meetings and more listening to what the Bar suggests maybe?

Sitting Hours Protocol

I am proud to say that the SEC played a lead role in helping the Bar Council create a Sitting Hours Protocol (www.barcouncil.org.uk/media/571291/sitting_hours_protocol_-_final.pdf). For it to be meaningful, the Senior Judiciary must ensure it is enforced nationwide, as there are still horror stories of some Judges listing cases at, and sitting, unacceptable hours. I would encourage them to endorse the Protocol.

Unfortunately, following several complaints, I had to report a Judge who had regularly been sitting at 8.30am and 9am in a far-flung court. Such behaviour is worrying and shows no understanding at all of the Bar or those with childcare or family responsibilities.

There is a chasm of difference between sitting at an odd hour, to assist all parties in exceptional circumstances, and regularly sitting anti-social hours (no doubt in a bid to get court statistics up), with the effect of making the lives of advocates and their young families miserable and costly.

AGFS

I am sorry to report that we still do not have in concrete the resolution of the long-going AGFS discussions. Our patience shows our resilience and we must not give up in waiting for the new system to be introduced.

The unexpected General Election in June obviously threw a massive spanner in its timing. The Party Conferences have caused more delay. This is particularly frustrating when we worked so hard to provide a comprehensive and measured response to the Consultation way back in March. I can only assure you that I feel that progress is being made, and I expect an announcement in late October 2017.

I have consistently stressed the importance of index-linking and a periodic review every 12 months so that practitioners are comforted (to some extent) by the knowledge that the fees will not remain unchanged (lurking as an annual "cut and paste" job in the back of the Archbold supplement for the next 10 years, which would be unthinkable.)

The fact that we are talking of "cost neutrality" is a warped notion, for the many cuts and lack of any increase in fees for more than a decade have hit the Bar so hard we wonder whether it can be sustainable. If the new fee structure proves not to be adopted, everyone knows where we will be heading (and no, not the Circuit Bench).

Recorder Competition

It started as a shambles. Applicants getting the test too early, or not at all.

People logging on to a test and submitting the results for the system to crash. On that day, I received 414 emails from members of the Bar complaining. You couldn't make it up.

LEADER'S REPORT LEADER'S REPORT

I was reassured that the integrity of the competition would be preserved. The feeling of the many dozens who have contacted me is that they were so scarred by the process they will not be applying again. That is a real shame.

Later down the path applicants (sitting, lest we forget, for a post trying criminal cases in the Crown Court) were asked questions about a lengthy Court of Appeal Judgment about reciprocal tax arrangements between South Africa and the UK authorities. I wish those who got through the best of luck in the final stage.

I am always told that the process will improve. Time will tell. We must have the best and fairest system. There are hundreds of excellent people to appoint and it's clearly vital to appoint the best candidates, not those who have learned to fill out a form and have the time to devote to filling it in.

QC Secretariat

They do a fine job but in my view the system needs improving. I have been increasingly worried about the few who get over the line who should not. Judges, QCs and juniors are regularly more than just raising eyebrows at, I stress, just a few who get appointed each year. They have expressed these concerns to me but as ever "don't wish to name names." We must get this right because this benchmark of excellence is crucial, especially with Brexit so prominent and the need for the kite-mark to shine across the world.

At my request, the QC Secretariat kindly met me and I submitted a document fully supported by the Circuit Leaders, setting out the proposals I have for reform. Best I don't say any more now until I learn if they have been incorporated.

Flexible Operating Hours

The lack of consultation with me and sheer absurdity surrounding the introduction of the FOH pilot scheme surprised us all. It does seem to have been invented by someone with no understanding of how the criminal justice system works, let alone how we would like it to work. I stress that if we are consulted properly about any positive and constructive change we will engage wholeheartedly with it. We want the system to be better.

We also want courts that are fit for purpose. So many are filthy and decaying.

As I write this, I believe that the pilots, although now happily postponed until February 2018, are going ahead despite all the many flaws which we, and others, have pointed out to the powers that be (see my article www.southeastcircuit.org.uk/images/uploads/FOH_Dispelling_myths_and_misunderstandings.pdf). *Unless there is an independent and proper review of the pilot it will not be worth the paper it is written on.*

You know that I personally, and your Circuit, will support you as we try to deal with the changes and difficulties which the pilots are likely to cause.

How to make the Crown Court work

I have been inundated with emails from practitioners who said "Kerim, that is spot on, that is *exactly* how to make it work, so why aren't the powers that be doing what you suggest?"

Why indeed. I will keep working on my proposals (www.southeastcircuit.org.uk/images/uploads/Split_Shift_Pilot_scheme.pdf).

> While I often feel like I should just bang my head against a wall, I can stop myself from doing so when I see how well the Circuit community can come together to support each other and those less fortunate than themselves.

Summer Ball

Our inaugural Summer Ball (held jointly with the CBA) at Sadlers Hall on 23rd June was oversubscribed and such fun, with wonderful food and drink in a beautiful setting. It gave me great pleasure to see so many members enjoying spending time together for a summer's evening of chatting and dancing, without too much pomp and ceremony. I very much hope that we will be able to repeat this event as there was more chance to mingle than at a formal dinner – and thus more chance for the youngsters to escape from the boring tales of court heroics told by oldies like me! Huge thanks must go to Aaron, indefatigable as ever, for arranging such a fantastic party.

Chief Prosecutors

I have regular meetings with the senior branch prosecutors in London. I have found them receptive and constructive, with a real desire to try to improve the system.

To make these meetings more useful, I have set up a working group to collect suggestions from prosecuting counsel which can then be addressed. If you prosecute, please email my PA, Harriet Devey (H.Devey@churchcourtchambers.co.uk), with any ideas, both areas for improvement and examples of good practice which could be developed. Our aim is to make life more efficient and smoother for all.

Keble

Our recent annual Advanced International Advocacy Course at Keble was another example of a great achievement, extremely beneficial for the advocates and also a wonderful advertisement for the Bar and the Circuit in particular. I have received many letters of thanks and congratulations, commenting on the excellence of the training as well as the high standards of advocacy shown by the students. My gratitude goes to Aaron, HHJ Julian Goose QC, now Mr Justice Goose, the faculty, organisers and participants who worked so hard to make it such a success.

London Barristers Clerks' Dinner – 8th June – Royal College of Surgeons

Our relationship with clerks who are often the unsung heroes who keep the system ticking (and listen to the odd whine) is being cemented. I am keen to hear of ways we can improve their mechanisms and working lives, which will of course also improve the Bar's.

The Bench

Another highlight is the progress in our relationship with the judiciary. I meet regularly with the Senior Presiding Judge and will shortly be meeting the new Lord Chief Justice.

I have found LJ Julia Macur a breath of fresh air and we could all do with a massive gulp. She is engaging, fully understands the issues we face and wants to make the Bar and judiciary as strong and inclusive as possible.

We have also instigated a programme to ensure that Bar Mess Chairs or SEC Officers (or other senior members of the bar who are delegated by the Bar Mess

Chairs) meet with Resident Judges on a regular basis to share thoughts and ideas for improvement. So far, we have been warmly welcomed and I feel confident that this will be of mutual benefit. We are keen to improve their working lives which in turn will improve our own.

You must tell me where Judges are failing and equally when they are doing great things for the Bar.

Two examples:

One barrister complained about the inappropriate and arrogant remarks by one Judge not caring a jot that she might miss her family holiday if a listing was not accommodated. I reported this to the Resident Judge who accessed the court log and then brought home to the Judge in question how inappropriate their language and approach were.

Another barrister complimented a Judge at Luton for how sensitively the Judge dealt with a case and helped Counsel. I brought this to the attention of the Resident Judge and the praise was passed on.

It is crucial to praise those who do well and bring up the few that make life miserable for others.

Family Law Bar

The SEC is so pleased to be bringing the Family Law Bar back under our umbrella. They are welcome members. I was impressed by their energy and collegiate nature. They hosted their annual FLBA Dinner on 24th February and their Garden Party on 26th July, and both were very well attended events. Credit goes to Philip Marshall QC, their Chair, and Frances Judd QC, the Vice-Chair FLBA.

The Dame Ebsworth Lecture

Tracy Ayling QC and Jessica Walker (Head of Advocacy, CPS) spoke to the Bar about the importance of learning from a young age the STAR method for competency-based form-filling. Since so much the Bar now engages with requires this sort of application, it is essential that we learn from those who have much to offer how the Bar can improve and approach such tasks well and painlessly. Our thanks to both speakers for a well-received and interesting lecture.

LJ Treacey will be kindly giving the next Dame Ann Ebsworth Memorial Lecture on Tuesday 8th May 2018 at Inner Temple. More details to follow once confirmed.

Vulnerable Witness Training

An incredible 89 SEC advocates are now Facilitators, qualified to give Vulnerable Witness Training to others (in addition to the 12 Lead Facilitators trained last year). With the dedication and hard work of Circuit members who have agreed to train other members, we will have trained over 160 Facilitators by December, a superb achievement. I honestly can't tell you how impressed I am with the way that people have given up their free time, without any pay, to train and be trained in order to implement this huge programme. Again, much credit goes to Aaron for organising the complex logistics and cajoling/persuading Lead Facilitators to take part. It is now very important that the roll-out continues with Facilitators leading sessions in their Chambers. ***Please*** make sure to start this roll-out as soon as you have been trained.

Wellbeing

This continues to be a top priority for the Circuit. We understand the pressures you face daily. The Circuit is organising for two judicial members to speak to the Bar about wellbeing. We will continue to push forward with projects that will assist the Bar, in conjunction with the CBA and the Bar Council's working party group.

Please do consider attending the Bar Council's Annual Bar and Young Bar Conference, to be held on Saturday 4 November. It is being chaired by Rachel Spearing, head of the Wellbeing at the Bar working party group.

Charitable events

The weather held, just about, for the many generous members of the Circuit who gave up their precious free time this summer to take part in bike rides, marathons, walks and other events to raise money for others. In the current climate of longer hours for less pay, I never doubted that our members were a selfless bunch, but I am very proud of all that you do for others, whether in sponsored events or giving your time voluntarily on committees, working groups and other pro bono work.

SEC Officers and Committee

Which leads me straight to the upcoming elections for SEC Officers and Committee Members. As the saying goes, "If you don't like something, change it", and one of the ways you can do that is to become an active participant in the business of the Circuit. Details of the election process are available here www.southeastcircuit.org.uk/events/sec-general-committee-and-officer-nominations. And if you are not able to help in this way, please do still think of other ways in which you can make a difference – organise an event, suggest training ideas, get involved with your Bar Mess, provide your feedback.

Retirement of another super Judge who will be sorely missed

Having recently seen the retirement of a large band of Old Bailey Judges we are about to lose another top-notch Judge to retirement.

HHJ Warwick McKinnon QC, the Resident Judge at Croydon, retires on Friday 3rd November 2017. His valedictory is most likely to be on that day at 4pm. We will miss his excellent judgment, huge experience, appreciation of the pressures of the Bar and his wicked sense of humour.

New Vice-Chair of the Bar Council

Richard Atkins QC who has served with such distinction as Leader of the Midland Circuit has been named as next year's Vice-Chair of the Bar Council. From 1 January 2018, he will serve under Andrew Walker QC. I am particularly delighted as I know first-hand how intricately Richard knows the problems the legal profession are facing. He will attack them head-on with his usual steel, organisation and quick wit.

> So, onwards and upwards . . . I know that you will continue to do your best to your clients and to the judicial system despite ongoing uncertainties over the next few months.

I assure you that I will carry on doing my best to fight your corner and to fight for what is right for that system which we all believe in so strongly. Please remember that my door is always open and I welcome your thoughts and suggestions. After all, it is YOUR Circuit.

Kerim Fuad QC

Church Court Chambers
Leader of the SEC

Keble Advanced Advocacy Course

"What have you just done?" I asked myself, not for the first time in the past few weeks. I had arrived late in the evening and was waiting for the porter to open the large sturdy wooden gate that would lead the way to Keble College. The following day I was to start the 25th South Eastern Circuit Bar Mess Foundation Advanced International Advocacy Course at Keble College, Oxford, also known as the Keble Course.

One may wonder why (a) I was so apprehensive and (b) if I felt so strongly why was I going ahead with it? Again, what have you just done?

My fear stemmed from ignorance. I first heard of the Keble Course during the New Practitioners' Advocacy and Ethics Course years before. Described as the most demanding and intensive advocacy course in the UK I decided there was no way I would voluntarily engage in such an ordeal. The thought of exposing myself to an even more rigorous process of advocacy training and risk embarrassing myself in front of eminent silks and esteemed judges was unthinkable. The Keble Course was firmly on my 'Not to do' list.

But of course, I did attend. The recent change of the CPD rules played a role as I now had to consider what area I wanted to develop before engaging in activities in which I could earn CPD points. My chosen area was advocacy and I wanted to be proactive in my development. In my experience there are few accurate measures upon which you can rely on in order to gauge how well you are doing as an advocate. Your tribunal will not tell you about missteps you have made such as asking that one question too many. Your instructing solicitor will probably be too polite to mention your 'interesting' gesticulations. Your opponent cannot and will not advise you on how you could tweak your submissions to make them more persuasive. As a pupil I was encouraged to adopt what I liked when I observed more experienced and skilled advocates in action. However, my own ability to reflect on my performances was limited for a variety of reasons, including not actually being able to identify what it is that I was not doing so well and then understanding why it did not work. Moreover, that exploration in itself exposed a level of vulnerability that I did not really want others to comment on. Those I did trust to provide honest yet tactful feedback were rarely in court to see my performances. However, feedback was not forthcoming.

When I became aware of the dates for the 2017 Keble Course I began to consider it. The course is taught by senior juniors, silks and judges who have been invited to train the advocates. This time instead of being scared of being vulnerable in front of those people I began to see the invaluable opportunity of being taught by the best and have them take the time to look at my advocacy and offer advice and guidance especially tailored to my skill set.

Another factor that caused a shift in my thinking about the Keble course was speaking with a colleague who had completed the course a few years before. She is an impressive and effective advocate and I wanted to be described in the same way. So while the thought of doing the course frightened me, my wish to improve my advocacy began to outweigh it and I started to reflect on my premature and hasty dismissal of the course.

The Course

At the same time as applying for the course I applied for a scholarship. The Inns of Court offer funding for up to five of their members practising as Barristers in publicly funded work, towards the cost of attending the Advanced Advocacy Course. I was incredibly fortunate and was offered the funding to cover the full fee for the course as well as the cost of my South Eastern Circuit membership this year.

This incredibly well organised course is divided into two streams; criminal and civil. I chose to do the civil course but as a family law practitioner specialising in care proceedings there is a clear benefit in participating in either, as the skills developed are applicable and beneficial. I would encourage practitioners of all fields of law to participate.

In addition to the main case, we were also provided materials for appellate advocacy exercises, interpreter case files and an expert case study in either finance or medicine.

We were given a very clear timetable and instructions on what we needed to prepare in advance of the course and for each session. Prior to starting the Advanced Advocacy Course we were advised to use approximately four days preparing. The bundles are not particularly large and the content is not difficult but there is a significant amount of detail to assimilate and analyse. How preparation is done is a matter for each individual but it is worth completely familiarising yourself with the materials in order to get the most out of the course.

The participants were divided into groups of approximately six or seven and then further divided into Claimant/Prosecution and Defendants for the duration of the course. Each group was allocated a Group Tutor and for each exercise they were joined by another two faculty members who rotated throughout the week and reviewed us using the Hampel method. Over the week there were approximately seven exercises that we participated in and received feedback from. The final exercise at the end of the course is a trial and you work with a partner and divide the advocacy tasks between you.

Before each advocacy exercise there was a presentation followed by a demonstration. After undertaking our assignments we were immediately reviewed by two faculty members in the room. The assignments were recorded and following the room review we then went to watch part of the performance with the third faculty member and received a further review from them.

For those not unfamiliar with the Hampel Method, it is the most effective method of teaching advocacy skills. Following the performance, each participant is reviewed in the room and is given feedback on what could be done to improve that performance. Specific quotes are given so we could understand exactly what needed to be improved and an explanation of why that particular approach did not work so well. We were then given very helpful and practical advice on how to resolve this issue before the trainer demonstrated how to apply this guidance.

I found the demonstrations especially impressive as the trainers had limited time to spot what was not quite working and then formulate the submissions or

questions in order to show you how it should be done. That said, we were trained by the very best; it is my understanding that each faculty member was selected and invited to train on the Advanced Advocacy Course. The majority of faculty members were Queen's or Supreme Court Counsel or Judges from around the world and included The Hob Justice Ann Ainslie-Wallace, the Chair of the Australian Advocacy Institute (a position formally held by Professor the Honourable George Hampel QC, the creator of the said Hampel method).

Following the review and demonstration, each participant then had a second review by the third faculty member who had not watched the live performance but instead reviewed the video recording in another room. This is further opportunity to deal with another area which could be improved on but also address any stylistic issues. I admit recoiling and then cringing when watching myself on screen but this soon dissipated, as video reviews are such an efficient method of appraisal. When I watched myself I noticed how I stood, how I sounded, what my eye contact with witnesses or my tribunal was like, and some odd mannerisms that I will not mention here and hope you will never know. Importantly, I could also see what I did do well. By observing myself I saw the changes I needed to make and stopped the distracting habit that undermined my performance immediately. By watching with a reviewer it was again another opportunity to have tailored advice in order to improve.

The final part of the Hampel method is for the participant to have a second attempt at the exercise, incorporating the advice given. Due to the fact you are reviewed by two people in the room and a third reviewing your performance on video you amass a wide range of bespoke guidance which you can use to make the necessarily adjustments in your working life. The improvement of each advocate on every single assignment was evident.

I had been worried about being judged by my peers and very experienced trainers and also embarrassing myself but I needn't have worried. My group was especially supportive and we all benefited from watching and hearing the constructive comments in respect of each of us. We were joined by international participants from as far away as Jamaica and the United States, it was a real pleasure to work with and learn from them. My partner for the trial, Patrick from Jacksonville, Florida, delivered devastating cross examination and showed me how it was supposed to be done. Short questions, one fact per questions and complete control of the witness; it was a real privilege to watch and see how he, and others, had developed over the course of the week.

Our group tutor Ed Pepperall QC was always warm and encouraging. The feedback from faculty members was consistently gracious and delivered in a way that allowed me to absorb, assimilate and apply it.

You are also provided with an opportunity to engage in vocal coaching. This was an eye-opening experience as I had not previously appreciated the impact of not breathing correctly. I was advised on this and how to stand and project my voice properly so that everyone in the court could hear what I was saying clearly. This complemented everything we learned and combined with the excellent general advice; bespoke guidance for each of us; observing the performance and feedback of our group members; and, regularly practising these tips meant that the advocates conducting the trials at the end of the week were very different from the advocates who had started on 29th August 2017. Our advocacy abilities were all significantly transformed.

This is not to say it was easy or comfortable all the time. I found the expert case study the most difficult. We were helpfully given a talk on the differences and had time to have conferences with our experts before witness handling. Despite that when it came to the first exercise I knew the doctors were speaking in English but in my head I could not understand half of the words they were saying when they answered my questions. They knew more than I did about the subject and were throwing answers back at me in a way that made me feel completely disempowered. It was a complete disaster. That said, I am pleased this experience happened in the much safer environment of the Keble Course and not in court. I also had the excellent coaching and contrastive feedback from Sarah Clarke QC, Darryl Allen QC, Naomi Ellenbogen QC and David Nolan SC and my second attempt was a very noticeable improvement from my first and I regained my confidence.

It wasn't just work work work. There is a very friendly atmosphere and all participants and faculty members alike, attend the nearby The Lamb & Flag to unwind in the evening. You have an opportunity to speak with faculty members and ask them how they approach their cases, what advice they had been given and found to be invaluable. What steps they take to make them so eloquent. I had a great discussion with Grant Brady SC (Senior Counsel), who is a criminal practitioner in Australia. He pointed out that often the first time we said our submissions or cross examination aloud for the first time was in court. The practice run must be earlier. You must practise what you say aloud first so that you can make necessary edits and adjustments. It sounded time consuming to me and I was slightly resistant but I tried it in preparation for the end of week trial. Unwisely I chose to do this publicly instead of in my room. Don't do that. Does it work? Absolutely. I was more confident in my delivery, it sounded much smoother and I was not thrown off in my submissions during judicial intervention because I knew what I wanted to say. So although I wasn't trained specifically by all faculty members I did reap the benefits of being able to talk with them out of hours. Having said that, of course, you don't have to talk about law or advocacy at all. Everyone is very sociable.

When I stood outside the Main Gate and Porter's Lodge at the beginning of the week I did not know what to expect. I knew it was going to be hard and expected it to be brutal and traumatising but it was far from it. It was more than an advocacy course in the sense that it has provided me with a fresh basis upon which I can continue to build my career. I would thoroughly recommend the Keble Advanced Advocacy Course regardless of the quality of the advocate as there is so much to be gained by anyone who participates.

Bibi Badejo

4 Brick Court Chambers

ACROSS THE POND TO KEBLE

When my friends and family asked me to describe what my experience at the Keble College course was like, lawyer boot camp was a phrase that came to mind. By the end of our mock trial on Saturday, I was running on fumes, but I knew that the amount of time and energy that I put into the course was well worth it. On Monday, the first day of the course, the course director assured us that we would be better advocates by the end of the week. On the last day of the course, as I reflected over the past week, it was clear to me that he was absolutely right.

The Trial Lawyers Section of the Florida Bar has a tradition of sponsoring lawyers to make the trip across the pond and attend the course, and I was one of three lawyers who were fortunate enough to represent the Trial Lawyers Section at the course this year. When I found out about the opportunity to attend, it didn't take me long to jump at the chance. I knew the course was going to be a challenge, especially after I received the course material that consisted of several hundred pages worth of pleadings,

witness statements, expert reports, and other documents. It was clear to me that the material was prepared with great detail, and each document was full of information that would prove to be useful during the trial exercises we would perform throughout the week. As I prepared for the course, I was looking forward to testing out my skills and exploring the many issues raised in the materials.

This was my first time in the U.K., so I was excited to visit a new country and see what England was like in person. My plane left Orlando, Florida around 6:30 PM, and I arrived at the London Gatwick airport at 7:30 AM the next morning. I have always had trouble sleeping on planes, and my flight to London was no different. Starting off the trip with one hour of sleep on the first night was not ideal, but I was able to manage. After spending a day in London and finishing up some final preparations for the course, I took the train from London to Oxford.

When I arrived in Oxford, I decided to walk from the train station to Keble College so that I would have a chance to see part of the city. It was a beautiful Sunday afternoon, and the streets were flooded with people, some of whom might have been slightly annoyed with me as I attempted to make my way through the crowded sidewalks with my luggage. I was anxious to explore Oxford, and I had the chance to do so after the course was over. But before then, I had work to do.

We started the course just before noon on the first day. After the day's activities were over, as I was walking to dinner, I told one of the faculty members that, while it was only half a day's worth of work, it felt like a full day. He chuckled and said something to the effect of, "Just wait. You're going to need to pace yourself this week." That comment set the tone for the rest of the week.

The setup of the course promoted learning in a variety of ways. We spent the majority of our time during the week in intensive small group sessions. The advocates were split up into groups of around six to eight people, and three or four faculty members were assigned per group each day. One faculty member was assigned to each group for the entire week, known as the group tutor, while the other faculty members rotated from group to group on a daily basis. This gave us the chance to receive insight and feedback from barristers and judges from different locations and practice areas.

During the group sessions, each advocate was called upon to perform a trial exercise in front of the group, which was immediately followed by feedback from the faculty in front of the entire group. Having to stand up and receive criticism in front of a room filled with your peers may seem like a rather daunting and uncomfortable experience. However, at Keble, the faculty and advocates created a supportive and encouraging atmosphere where everyone was pushed to improve.

Each advocate was given a headline, or a takeaway from the exercise that the advocate could aim to improve upon. After performing the exercise, we were sent to another room to review the video of our performance with a faculty member and receive more feedback. After everyone in the group completed their exercise and video review, we did a "replay" and performed a shortened portion of the exercise again. During the replay session, the goal was to focus on your headline and improve your performance based on the critique you were given. Doing the replay forced us to improve and perform the exercise the right way the second time around, which is, in my opinion, a great way to learn.

The faculty that I had the chance to learn from, including my group tutor, Grahame Aldous, was outstanding. I was blown away by their ability to immediately pinpoint areas where each advocate could improve and then demonstrate their critique by performing a short portion of the exercise themselves. It was obvious to me that the faculty members were highly-experienced courtroom advocates, and they knew the case material just as well, if not better, than we did. Several of the faculty members that assisted my group during the week were judges from different countries, including Canada, New Zealand, the U.S. and Malaysia, all of whom provided a valuable perspective from the bench.

Part of the course that truly provided an international flavor was on Thursday, when we cross-examined a witness who testified through an interpreter. In my practice in the northwest portion of Florida, I have never had to examine a witness who did not speak fluent English, so this was a new experience for me. The witness we were assigned to examine spoke Spanish, a language that I am somewhat familiar with. To test the advocates, the witness and the interpreter purposefully made the examination difficult at certain times during the examination. During my examination, the interpreter had several private conversations with the witness in Spanish, and I eventually had to call this to the attention of the judge. In another examination, the witness quit speaking in Spanish and started answering the advocate's questions in English, just to see how the advocate would handle it. This took us out of our comfort zone and gave us the chance to deal with difficult situations, so that we would be prepared to handle them in a real courtroom scenario.

On Friday, the second to last day of the course, we spent the day working on handling expert witnesses by doing an examination-in-chief and cross-examination of an expert. There were two different sets of case materials for the expert day. About half of the advocates worked on a medical case, and the other half worked on a financial case. Because I had some prior experience dealing with medical issues in my cases in Florida, I decided to try my hand in the financial case.

A team of accountants from Deloitte was brought in to testify about an accounting dispute over the treatment of certain transactions in a company's financial statements. I took a few accounting courses in college, but most of these issues went beyond my level of accounting knowledge. Fortunately, we had a chance to meet with the experts beforehand for some guidance.

There were several issues in the case that the expert testified about, and the expert had to switch hats throughout the day and testify on both sides of the case under the fire of cross-examination, which was probably not an easy thing to do. One aspect of the expert day that I found particularly helpful was the willingness of the expert to share his thoughts with each advocate about the examination. The expert shared tips about how to assist experts with their testimony during examination-in-chief and how to effectively cross-examine an expert. Our expert obviously had experience testifying in court, so having the opportunity to discuss effective strategies and how to approach our examinations with him was quite beneficial.

On the last day of the course, we participated in a mock trial. This was a great way to cap off the week on a high note, as it gave us the opportunity to implement what we had spent the week practicing and learning. The other advocates that were involved in my mock trial, Greg Callus and Adam Ross, were fantastic, and by observing their performance during trial, I discovered ways in which I could improve my own advocacy.

One of the things that I found most rewarding about the course was the opportunity to engage with judges and barristers from different countries and learn about their different traditions and courtroom styles. In my small group alone, we had advocates from three different countries, and we had judges from several different countries during the week. I found that there are more similarities than differences between the English legal system and the U.S. legal system, and that the lessons I learned during the week will translate to my practice in the U.S. The faculty members often emphasized being direct and concise in your arguments to the judge and making your arguments clear and easy to follow. This type of advice lends itself to any legal system, and I'm certain that U.S. judges would prefer that advocates follow this advice as well. With respect to the overall style of the English barristers, I greatly admired the ability of the barristers to find a proper balance between being a zealous advocate for their client and showing respect and courtesy to other barristers, the witnesses, the court and the legal system as a whole.

While free time was hard to come by during the week, it was nice to have some time to get to know some of the other advocates outside of the course, given the rather gruelling nature of the work that took place the majority of the week. During breakfast, lunch and dinner, we ate meals together in the college's Gothic-style dining hall. After dinner, if you were up for it, you could usually find a group of people headed to a local pub such as the Lamb and Flag. Having the opportunity to unwind after a long day and get to know some of the other advocates outside of the course setting made my experience far more enjoyable. All of the barristers that I got to know were incredibly hospitable and friendly. As Americans, we were considered to be guests in the country and were treated as such.

All in all, the course proved to be a truly rewarding experience that I will never forget. There is no question that I left Keble a better courtroom advocate than I was when I walked in on the first day. To all of those who had a hand in organizing and preparing the course, and in particular the faculty members that devoted their valuable time to helping us improve as advocates, I'm extremely grateful.

Cameron Carstens

Attorney at Law
Florida Bar

A PRIVILEGE TO BE RECORDER

It is nearly the end of my term as Recorder of the South Eastern Circuit and I have enjoyed the privilege of assisting two inspirational leaders, each so supportive of the bar and the profession.

To succeed at the bar requires drive and determination. It also requires sleep. Matthew Walker[1] a sleep scientist says that "sleep could save your life" and that we are "in the midst of a catastrophic sleep-loss epidemic" and that "more than 20 large-scale studies report the same clear finding, the shorter your sleep, the shorter your life" and in his opinion the more likely you will develop dementia later in life.

The circuit has sought to ensure wellbeing for its members in a number of ways and will continue to do so: the Court Sitting Hours Protocol, a new initiative of regular lunch time meetings to ensure better communication between Bar Messes and the judiciary, the Ebsworth lecture on competency based form filling, a practice management resilience and recovery training, and driving forward the new graduated fee system. In the future: speakers from the judiciary who have come forward and who wish to share their views on wellbeing, and continued support to the Bar Council's working party group on Wellbeing chaired by Rachel Spearing. We are also looking to survey the members and the judiciary working in criminal courts in order to ensure that we have evidence about the quality of working lives, so we can respond fully to new proposals such as the Flexible Operating Hours Pilot.

I am amazed by the lack of sleep that executive committee members must endure in order to respond to consultations, train others on the new Vulnerable Witness Advocacy Training and to assist the leader on various tasks that he is asked to assist on. It is the same for so many barristers and whilst we all accept that part of our professional lives requires the ability to respond quickly to more work, should we have to sacrifice our sleep to do so if the consequences to our health are so serious? We are regularly asked to press the metaphorical reset button after a traumatic case or after we have suffered a personal upset and we do so but we must ensure that barristers have the ability to realise the importance of rest and build it into their working lives. This is a change of culture but it is one that promises better productivity, improved decision making and a positive effect on mood, mental health and, it seems, brain health. When we look at retention at the bar in senior and junior levels, are we willing to acknowledge that many people leave simply because they are at the end of their tether?

The Wellness for Law Conference on 30th June 2017, marked a turning point for me. On 30th June barristers and clerks gathered for an all day conference at Inner Temple. There were representatives from many areas of the bar. It was my turning point because I realised that if I am to 'talk the talk' then I must 'walk the walk' and that day I became committed to improving my personal wellbeing alongside circuit members. Adam Kay[2], a doctor, turned comedian after a particularly catastrophic day at work just decided that was it for him; he left the medical profession. Barristers like doctors take pride in making sure they do the best they can no matter what the personal cost to themselves but does our ability to move to the next case show our professionalism or should we pay more attention to making sure that we supervise ourselves by processing the experiences we have had; however that may be. We are privileged to work in a profession which brings us intellectual challenges and a world of fascinating case stories but do we foster a culture of 'insecure overachievement[3]' where we forget to teach ourselves and others that the culture of overwork is counterproductive.

Schools now teach the four R's: resilience, resourcefulness, reciprocity and reflectiveness. We should try to adopt these ourselves, teaching those that come into the profession the importance of life outside work and the need to plan a career. If we can't show those more junior than ourselves how to work and realise their true potential then we are complicit in supporting a culture which does not adhere to the importance of creativity, motivation and productivity, all of which are considerably enhanced when those who are working are happy and healthy.

So I encourage you to look to how you can make a difference within or outside the profession. For those who are keen to set the standard in chambers, the Bar Council has recently decided to issue certificates for chambers that encourage wellbeing by mentoring or by other initiatives that might do so. Studies have shown that professionals that meet and share 'war stories' or time together have an improvement in their sense of wellbeing. Those of us that started at the bar 20-25 years ago did not work in a virtual world and there were more opportunities for members of chambers to meet and share time together. My own chambers at 2 Bedford Row, is willing to trial a regular meeting for all staff, clerks, tenants and pupils to see if this improves wellbeing. We can but try a variety of different well proven techniques to see if they help any of us. This is the first step to show whether we are truly committed to changing the culture and improving our working relationships and lives.

Valerie Charbit

2 Bedford Row
SEC Recorder

[1]The New Science of Sleep and Dreams by Matthew Walker. [2]This is Going to Hurt – secret diaries of a junior doctor by Adam Kay. [3]Article in Financial Times by Andre Hill.

AS THE GOVERNMENT 'CRY WOLF', IS IT ANYTHING MORE THAN A HOLLOW COMPLAINT?

TAX EVASION

As recently reported in the Times on 14th September 2017 under the headline 'Amazon in £1.5bn tax fraud row', HMRC has claimed that Amazon and eBay (among others) have failed to cooperate in fully tackling a multibillion pound fraud. The article comes after a series of hearings in front of the Parliamentary Public Accounts Committee ('PAC').

During the hearings, Her Majesties Revenue and Customs ('HMRC') complained that large online sellers, particularly Amazon, were not providing complete transparency with regards foreign retailers using their site. HMRC has asked for complete transparency between the companies and HMRC.

THE NUB OF THE ISSUE

What obligation does Amazon, eBay and their fellow companies have to check that the businesses using their sites are VAT registered in Britain? It is easy for HMRC to raise the issue in front of the PAC, PAC is a committee made up of MPs. What easier target is there for them to follow up their very well meaning highlighting of Starbucks and other large multi national companies tax positions, than accusing other multinationals of assisting HMRC to claim VAT.

MP's were not bashful in pointing the finger at Amazon and others. In some ways, that is the nature of the beast. But is it fair? It seems not. On the face of it they have not breached any law or regulation. Neither would it be fair to blame HMRC. They are highlighting a clear problem, and one which will get worse as the digital economy continues to expand rapidly. If anything, the blame lies at the feet of law makers for not taking action to combat the issue earlier.

So the question is what should happen now, if anything? There seem to be three possible options in tackling this problem.

OPTION ONE

First, they could continue with the current position whereby the government uses publicity to shame companies into putting in place a framework where they regulate their users and ensure that they are tax compliant. This would follow the campaign, led by the PAC, to persuade companies to pay corporation tax here rather use company structures to move their profits offshore and pay their tax in a more favourable tax regime.

This might mean a public campaign, as seems to have been inferred by the committee's hearings to persuade the companies in question to increase their transparency. Or it could mean that PAC (or anther Government body with the input of HMRC) put forward a voluntary code of conduct for companies to sign up to. This might be a relatively easy option. It has none of the downsides of the second option I outline below, but will set a clear public standard of what is acceptable. It should also garner public support. The problem is that it is not enforceable in law. Although the big companies might be pressured into it, or might even embrace it, it will not solve the problem completely.

OPTION TWO

Alternatively, the Government could go down the second avenue and impose regulations to make online (and offline) companies check that their suppliers or those who they facilitate are VAT registered in the UK. There are two obvious issues with this. First, how would this regulation work without completely slowing business? Could it be done? In a digital world is it really possible to regulate all companies who operate in a digital market place and sell in the UK?

Second, could it be done without severely damaging the large businesses who dominate the market place and have become such a dominant part of consumer retail experience? Ultimately, in my view, putting regulations in place would have a knock on effect to consumers, while not stopping the problems. Companies flouting the rules will always find a way.

Even if regulations were imposed which meant that companies had to be totally transparent about what companies used their sites, would this really solve the issue? It would put pressure on Amazon and eBay, but it might just move the problem to HMRC. How would they deal with that large amount of information and would they have the international tools to recover the VAT, if they could track it down?

CONCLUSION

The Public Accounts Committee and comments from HMRC certainly highlight a problem. But fixing that issue will not be easy. In an international world, where the transfer of money through a number of different jurisdictions can be done in a heart beat, taxing those transactions is not going to be simple. It is this bigger issue that is starting to be discussed. Although a global tax system is never going to be practical, we need to have an approach to tax which takes consideration of these international factors while not discriminating against companies based in the UK with those based internationally. The answers are not apparent yet. But they will have to be developed quickly, as the globe is only going to get more international and digital.

Barnaby Hone
Drystone Chambers

Some British lawyers abroad...

In keeping with a long standing South Eastern Circuit tradition, four brave junior lawyers and a shining exemplary silk are sent to Florida to attend the University of Florida's Civil Advocacy Court, with our silk, Rebecca Stubbs QC, showing the Floridians a thing or two about advocacy in England, and the Floridians giving us junior barristers (Joel McMillan, Amelia Highnam, Adam Taylor and Saara Idelbi) a chance to play an American advocate for a few days.

Our journey began with a full blown appreciation of the beautiful Sunshine State in Tampa and a social programme to keep us thoroughly occupied until we made our way to Gainesville for a different kind of entertainment.

As Miley Cyrus once said, "it's a party in the USA". We can only assume that, like us, Miley has sampled the delights of the Isoms' sunshine state hospitality. For a long weekend before the advocacy course started, the British troop were definitely 'nodding our heads like yeah'.

Thanks to Woody and Claudia's immaculate planning, we sampled the best bits of Florida life.

For the early arrivals, there was a chance to hire a car and road trip over to the coast, to visit the Dali museum in St Petersburg, wander along the marina, then hit the beach. By the time that everyone else had arrived stateside, we went to watch the sunset at Indian Rocks beach on the Gulf Coast. In a sign of blessed welcome, the mythical green flash appeared, rare as emerald, as the sun sank below the horizon.

And then...

...we took out kayaks and paddled, vigorously and inexpertly, through the mangrove swamps around Weedon Island in Tampa Bay. We dealt with amateur boaters, giant insects, tricky roots, sunbathing, storytelling, and map-reading. Some of us pretended to know how to use an oar, while others held back their rowing prowess for slightly too long, like sneaky sneaksters. All sailors were treated to a post-journey lakeside lunch at the local cool café.

...we visited a manatee sanctuary and, despite the bizarre torrential rain that had followed us from London for one day, we observed the graceful animals feasting and frolicking in their own super-chilled-sea-cow kind of way.

...we were treated to a networking lunch with the local Tampa junior lawyers forum, which gave us the opportunity to chat about our differences, such as wigs and gowns, depositions, witness statements, solicitors and barristers, and federal court.

...we were lucky enough to be taken to a number off superb restaurants, eating fresh fish, seafood, and creole specialities, all with a fine wine or local beer.

Finally, the centrepiece of the weekend was a Tampa lawyers pool party at chez Isom. The catering team put on a feast of local cuisine and the cocktail artists were in strong demand. Gin was polarising the guests. Brits and Floridians shared stories of local court dramas, university life, sports, Trump, Brexit, and classic cars. No inflatable slide though?! Consider this a slice of constructive criticism!

Woody and Claudia thought of everything. So now, even when we think back months later, we have to hand it to the Isoms. They know how to throw a Party in the USA, and we're still 'nodding our heads like yeah'.

Though it was hard to resist, we did not just sample to social delights of our surroundings. Woody and Claudia ensured that we developed a thorough insight into the Floridian legal system.

We were given the opportunity to visit a number of courts in Florida which was fascinating. On the Monday we went on a tour of the State Court with Claudia, Judge Isom at work, and met with Chief Judge Ron Ficcarrota before visiting courtrooms in all divisions of the Court. This involved seeing a really wide range of cases from family law disputes (where the Judge had tissues and lollipops in the courtroom!), bail hearings, mental health cases and other civil matters.

The Judges all worked from an electronic system and the advocates were asked to file all documents online. This meant that the Judge could read their docket on their tablet before the hearing and all courtrooms had touchscreen tablets and really good IT systems. We also heard that there is a courtroom dog which sits at the feet of children when they are giving evidence in the courtrooms. We did find it strange that until about three years ago a child could be sentenced to the death penalty but the advocates didn't seem to think that was so shocking.

To English eyes, the goings on in a Florida courtroom are at once entirely familiar and thoroughly alien. The common roots of our systems mean that the fundamentals are more or less the same but some marked differences have arisen in the two centuries or so since the jurisdictions diverged. In many respects, it is the Americans who have stayed true to earlier practice and a number of features that now appear curious to a visiting barrister were once part and parcel of the English system: juries in civil trials, grand juries, 'plaintiffs' and jury selection.

Of all the differences that we encountered, the most striking was jury selection. We probably all had some notion that the procedure existed but none of us were prepared for its intricacies or for the central role it played in a trial.

One of the teaching faculty's practice included claims against tobacco companies. She told us that it was normal to start with a pool of 70 and to spend up to two days selecting the six members that comprise a Florida jury. Another faculty member told Joel that jury selection was the most important part of a trial, and that the majority of cases were won or lost before the opening speeches.

We observed part of a jury selection during one of our court visits and faculty members also performed an abridged demonstration with volunteer members of the public as a part of the course later on in the week.

The process works as follows. The entire pool is brought into the jury box and counsel for each party is given an opportunity to question each juror at some length in open court, at the end of which the selection takes place.

Each juror is assigned a number and the starting position is that numbers one to six will form the jury unless they are struck. If, say, juror number one is struck, juror number seven will step in and so on until all parties are happy with the composition of the jury or until all strikes have been exhausted.

Each side can seek to strike as many jurors as they like 'for cause' and, in addition, each side is given three 'peremptory' strikes.

A juror will be struck for cause if it can be established that the juror is not qualified to hear the trial. This can be for a number

of practical reasons such as illiteracy but the primary basis is impartiality.

Counsel for each party therefore explore in some detail each juror's attitude to the issues raised in the case (although not the particular facts). So, in a tobacco case for example, a juror may be expected to discuss their attitudes to personal responsibility, or the morality or otherwise of tobacco companies; or to disclose whether they have a relative who has died from a tobacco related illness. If, following the conversation, a party can persuade the judge that there is reasonable doubt about the juror's impartiality, the juror will be struck for cause.

Peremptory strikes allow parties to strike a juror without having to provide a reason. Naturally, counsel use them to try to ensure that the jury is comprised of members who are likely to be sympathetic to their client.

In a personal injury trial, where jurors determine quantum as well as liability, we were told that political leaning was the most useful predictor as to whether a juror was likely to be plaintiff or defendant minded: liberals (in the American sense) with their bleeding hearts incline towards plaintiffs, and conservatives with their the-world-doesn't-owe-you-anything mindset favour defendants.

The lawyers we observed therefore asked the jurors for their views on a whole range of social issues and were particularly interested in the jurors' primary source of news: followers of the 'mainstream media' like CNN being more likely to award a large pay out, and viewers of Fox News being more likely to award more modest damages or none at all.

The whole procedure involves complex tactics. For example, there may be a juror who is a bit of a wildcard and too unpredictable for a party to feel comfortable with on the jury. Counsel has to decide whether to use a peremptory strike or whether to gamble that his opponent will think the same and do the job for him.

Or, it may be that plaintiff counsel chooses to use a peremptory strike on perfectly impartial juror three so that his opponent will shy away from using a peremptory strike on slightly plaintiff minded juror ten as doing so would bring into the selection even more plaintiff minded juror 15.

All in all, quite a process and fascinating for us to have observed, but one that made some of us, at least, thankful that jury selection and civil juries this side of The Pond are mostly a thing of the past.

We then went to the U.S. Middle District Court and met Judge Mary Scriven. She was incredibly inspirational and we had the opportunity to go into her private Chambers to meet her before the case and after the case to discuss the law and procedure and to learn more about her career as a Judge.

On the Tuesday we went to meet the appellate judges at the Second District Court of Appeal and observed oral arguments. This was completely alien to all of us as there is no threshold to bring an appeal in Florida; anyone can do so. As a result, an advocate was limited to ten minutes to make any argument or to resist any application and this time limit was strictly enforced by the Judges. It made me cast my mind back to mooting and the fear that you encounter as you realise how much more you have to say and only 30 seconds in which to do it!

The visits were an eyeopener into how, despite applying very similar legal principles and rules, systems between countries can differ immensely and even though we were sometimes surprised by the court system in Florida, when we explained how it worked in England that was equally mind-boggling to the Floridian bar. Everyone was incredibly welcoming and helpful and some of us felt there were systems that would work over here, such as the electronic court folders and the use of therapy dogs in the family courtrooms where the setting was more informal.

Nevertheless, with our insights and the gracious loan of Claudia's car, we made our way to Gainesville, braving the proper American highways. When one is confronted with a 500 page plus bundle as a junior barrister, it is inevitable you will begin your preparation with some degree of trepidation. We were faced a variety of accolades about our predecessors. "We are always impressed with how great the Brits are." Right. No pressure then.

We were surprised to find out that the Advocacy Course counted towards the number of trials that a Floridian lawyer had to undertake per year for their professional qualifications, which meant that we had the fortune of being in a mixed group of really junior lawyers and exceptionally senior lawyers. Right. No pressure then. The benefits of having such diversity in the group meant that we gathered an interesting insight into how the seasoned practitioners approached the case.

What strikes you at the outset is the fact that the witness evidence does not come to you in a tidy witness statement structured by paragraphs and witty headings; they are transcripts. Reams and reams of transcripts. We were all designated our respective parts representing the different parties in a employers' liability cum clinical negligence trial. It was interesting to approach a civil trial like a criminal one in England and Wales, so the examination in chief was taken orally. No leading questions please.

Our demonstrations, often of about eight minutes, were judged by three or four course tutors, including our own representative silk, and video recorded so that we could gather one to one feedback at a later on. And although our tutors were kind enough to adjust their feedback to take into account our traditions of standing behind a lectern and an absence of gesticulation, we nevertheless were encouraged to try our hand at the classic American courtroom style to move freely around the courtroom, to drop in a casual comment (usually reserved for submission) and, most curiously, a simplification of our use of language. Indeed, the use of "envisage" garnered the shock of one of our fellow participants, to much surprise. But, we were informed that, as jurors were often selected purely on possession of a drivers' licence and had an early secondary school education, the necessity for simplicity was pervasive.

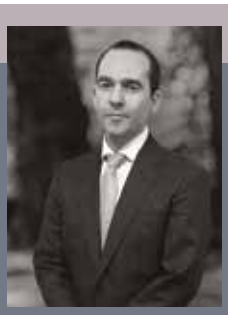
We enjoyed the opportunity to be a little freer in our mannerisms but we all expressed a degree of discomfort with walking around a court room. At the same time, we got the chance to demonstrate how we modulated our expression to try and be persuasive when we are shackled by our lectern-addiction. We did appear to have an unfair advantage over our peers, as our accents apparently in and of themselves made "everything sound like the truth". If only we all had such powers at home!

Our trip to Florida was definitely eye-opening and provided us with an excellent insight into a legal system entirely different to our own but hinged on the same core values. The commitment to advocacy adapted to an audience is one of the first principles of all of our advocacy and understanding the adaptation to the likely audiences that faced our American peers expanded our own appreciation of how to approach our own advocacy, making sure that we package our examination to reach an apex that allows your listener to understand your best points.

We rounded our visit off with a dinner at the house of the President of the University of Florida's house where we kept with tradition and played out a sketch written by Adam with embodied our exceptionally British humour. Some of it more Monty Python than Friends, but then we were the Brits abroad.

Joel McMillan, Amelia Highnam, Adam Taylor, Saara Idelbi

ARE YOU EATING SAFELY?



Richard Heller examines the Sentencing Council's Definitive Guideline on the sentencing of Food Safety and Hygiene Offences

THE SENTENCING GUIDELINE FOR FOOD SAFETY AND HYGIENE OFFENCES – A YEAR LATER

Introduction

In January 2015, a full year before the new Sentencing Guideline for Food Safety and Hygiene Offences came into effect, the food and drinks giant, Mitchells & Butlers ("M&B"), was fined £1.5 million for causing a fatal outbreak of food-poisoning on Christmas Day in 2012, having served contaminated turkey lunches to more than 100 diners.

The fine was at the time, and remains, the largest fine ever imposed in this area of the criminal law. It could be argued therefore that the new Guideline has meant little change in sentencing practice, but figures alone tell only a small part of the story.

Historically, it was extremely difficult to predict with any degree of certainty the likely disposal in a food safety or hygiene prosecution. This was borne out by discussions between counsel in the M&B case when, before sentence, the usual guesses were being made about the size of the fine. Most thought it would exceed £100,000, but no one thought it would be more than £500,000.

What was significant at that time though is that the consultation period for the new Guideline had commenced just three months earlier, in November 2014, around the time the company was convicted.

The consultation followed a review of sentencing practice across the UK that revealed inconsistencies in the way sentencing decisions were being reached.

The Food Standards Agency had shared with the Sentencing Council its concerns that penalties being imposed were not reflecting the seriousness of the matters before the court, and that fines being passed on corporate offenders, in particular, were too low.

Following the publication of the definitive guideline for sentencing environmental offences (effective from 01/07/14), the Sentencing Council wished to ensure that there would be a consistency of approach in the way the courts sentenced comparable regulatory offences.

The fact of inconsistency was hardly surprising. Unlike the sentencing of health and safety offences, which developed through a series of authorities, and in respect of fatalities by reference to predecessor guidelines, the sentencing of food safety and food hygiene offences had not been the subject matter of previous guidelines issued by the Sentencing Council.

In that regard, the Guideline is to be welcomed. For big business, its effect may not be.

Following the period of consultation, the Definitive Guideline was published in November 2015 in accordance with s.120 of the Coroners and Justice Act 2009 ("CJA 2009").

By s.125 CJA 2009, the courts must follow Sentencing Council guidelines in sentencing an offender unless 'satisfied that it would be contrary to the interests of justice to do so'.

Application

The Guideline applies to all organisations and individuals aged 18 and over sentenced after 1 February 2016, regardless of the date of the offence:

i) In England, for offences contrary to Regulation 19(1) of the Food Safety and Hygiene (England) Regulations 2013; and

ii) In Wales, for offences contrary to Regulation 17(1) of the Food Hygiene (Wales) Regulations 2006 and Regulation 4 of the General Food Regulations 2004.

Whilst there are separate legislative provisions for England and Wales, the offences refer to the same Community provisions set out in EU legislation, meaning the Guideline applies to offences ranging from fatal food poisoning outbreaks to technical hygiene breaches.

The Guideline does not apply in Scotland, although in Scottish Power Generation Ltd v HMA, [2016] HCJAC 99, it was observed that Sentencing Council guidelines *"will often provide a useful cross check, especially where the offences are regulated by a UK statute"*.

There can be no doubt, despite the size of the M&B fine, that the effect of the Guideline is to impose significantly higher penalties on organisations than they might have faced previously, focusing the sentencing tribunal on the size of the organisation and the need for the effect of any financial penalty to be keenly felt.

This has been seen more frequently in health and safety offences and environmental offences than in food safety matters, almost certainty because of the greater number of prosecutions, and very often for more serious offences in the former areas.

The £20 million fine passed on Thames Water at Aylesbury Crown Court by HHJ Sheridan in April 2017 will take some beating, but the defendant company had caused 1.8 billion litres of untreated sewage to be pumped into the Thames.

The highest level of fine stipulated by the Environmental Offences Guideline is in fact £3 million, being the same as in the Food Safety Offences Guideline, so it must be assumed that there is a possibility of fines greatly exceeding the ceiling in the Guideline being passed in particularly serious cases.

In the Thames Water case, HHJ Sheridan made clear that he wanted to send a message to the shareholders that pollution is not acceptable. In sending this message,

HHJ Sheridan was merely tapping in to the beating heart of the Guideline's raison d'etre – making recalcitrant companies sit up and take notice.

Status of Case Law

Save in unusual or exceptional cases, the Guideline should be treated as a self-contained code for the purposes of sentence. In R v Thelwall [2016] EWCA Crim 1755, Thomas, LCJ (as he then was) observed that *'the citation of decisions of the Court of Appeal Criminal Division in the application and interpretation of guidelines is generally of no assistance'*.

He went on to warn that *'it is important that practitioners appreciate that our system now proceeds on the basis of guidelines, not case law'*.

Practitioners could perhaps be forgiven for citing authorities, given that just three months earlier counsel had been chastised by Hamblen, LJ in R v Ernest Doe & Sons Ltd [2016] EWCA Crim 1110 for not providing assistance to the court at first instance by way of reference to other cases. Hamblen, LJ observed that *'[whilst] there is a huge range of culpability and indeed means of various companies ... valuable guidance is to be found in other cases before this court'*. But now the value of such guidance will be of extreme rarity.

It was also said in Thelwall that R v Friskies Pet Care UK Ltd [2000] 2 Cr App R(S) 401 is no longer of any materiality, meaning the practice of supplying 'Friskies Schedules' is over. However, practitioners should not assume this removes the requirement to serve a form of sentencing schedule, as is made clear by Parts 24.11 and 25.16 of the CPR and Criminal Practice Direction 7Q3-7.

The Steps in the Guideline

The Guideline requires the sentencing tribunal to follow a nine-step process – for a company this means starting from determining the offence category by assessing levels of culpability and harm, to examining the size of the organisation to be sentenced, making adjustments on the basis of proportionality, allowing for discounts for guilty pleas and assistance given, taking account of ancillary orders and the principle of totality, to explaining its reasons for passing the sentence imposed.

For individuals, there is also a nine-step process, but the steps are slightly different - from determining the offence category by assessing levels of culpability and harm, to examining the financial circumstances of the individual to be sentenced, making adjustments on the basis of proportionality, allowing for discounts for guilty pleas and assistance given, taking account of ancillary orders and the principle of totality, to explaining its reasons for passing the sentence imposed and deciding whether to give credit for time spent on bail.

This process has thrown up inevitable disputes concerning how culpable the defendant might be or quite how harmful their conduct was or might have been. The findings the court makes in this regard have the capacity for stark differences of outcome. Ordinarily, such a dispute would lead inevitably to a Newton Hearing, but the cannier defence practitioners will invite a judge to resolve these matters informally during the sentencing process to ensure no loss of credit for their client.

If a very high level of culpability is established, the defendant can expect to receive a substantial penalty, relative to their means, even if the level of harm is low, but the converse is not true, meaning the focus of the Guideline is on how far below acceptable standards the conduct in question fell. As expected, the Guideline reserves the highest penalties for cases where there has been a deliberate breach or flagrant disregard for the law causing, or risking, serious harm.

Once culpability and harm has been established, the next two steps in the Guideline makes all the difference for companies – their size, whilst for an individual it is a question of how much of their weekly income they are at risk of paying, or whether they might be at risk of custody.

There are four bands of company size, from large – those with a turnover of £50 million and over – down to Micro, being those with a turnover or equivalent of not more than £2 million.

Where the offending organisation's turnover 'very greatly exceeds' £50 million, the Guideline recognises that it may be appropriate to move outside the stipulated range.

No further guidance is provided, which might be seen as unhelpful given the number of very large organisations that operate in the food and drink sector.

However, the issue of how to sentence a 'very large' company was addressed in R v Thames Water Utilities [2015] 2 Cr. App. R. (S.) 63 when Thomas, LCJ made clear that *'the aim of the sentence [is] to bring home the appropriate message to the directors and shareholders of the company in question'*.

Undoubtedly, this was ringing in HHJ Sheridan's ears when he sentenced the same company in April, and one can only assume, given the company's experience of the criminal justice system in the last two years alone, that the shareholders are receiving the message loud and clear.

Since the enactment of section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (giving the power to the magistrates' court to pass an unlimited fine, provided the offences being sentenced were committed after 12 March 2015), more cases are being resolved in the Magistrates' Court, but the more serious are still being committed to the Crown Court, as they should be. For individuals at risk of even a community order, their case must be committed to the crown court.

It is, however, worth noting the emphasis in the Guideline that a financial penalty is likely to be the most appropriate disposal even when the threshold for imposing a community order has been passed.

Paradoxically, whilst for large companies the most significant aspect of the Guideline is the prospect of massively enhanced financial penalties, for smaller companies and individuals the penalties might be significantly less severe than before the implementation of the Guideline. In one fatal food-poisoning case prosecuted by Cornwall County Council in February 2017, the manageress (and food business operator) of a pub that caused the death of a pensioner by serving undercooked or inadequately re-heated lamb was sentenced to a fine of just £750. This was a consequence of a faithful application of the Guideline, but such a sentence would have been unthinkable a year or two earlier. The defendant company was fined £20,000.

At Step Three of the Guideline, the court is required to consider issues of proportionality, meaning it must ensure that the proposed fine based on turnover is proportionate to the overall means of the offender.

This part of the Guideline adopts s.164 of the Criminal Justice Act 2003, which requires the court to take account of a defendant's means (which in the case of a corporate defendant cannot readily be equated with turnover) and to reflect the seriousness of the offence when passing sentence.

However, at Step Two, the Guideline stipulates that only the financial material relating to the organisation before the court should be taken into account *'unless it is demonstrated to the court that the resources of a linked company are available and can properly be taken into account'*.

The Guideline is silent on how this should be demonstrated (although presumably it would have to be proved by the prosecution if the defendant were pleading impecuniosity) or when it would be proper to take such matters into account.

This issue was considered in general terms in R v Ineos Chlorovinyls Ltd. [2016] EWCA Crim 607, a reading of which will repay those acting for or against corporate defendants.

The Guideline emphasises that any fine *'should meet in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence'*, and again reflecting the tone of one of the stated reasons for the consultation leading to the publication of the Guideline, that *'the fine should be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to operate within the law'*.

The court is, however, entitled to have regard to the profitability of the offending organisation, and should look at their financial circumstances in the round. The court should 'step back' and if necessary make adjustments to the fine to ensure it fulfills the general principles set out in the Guideline. Traditionally judges have been reluctant to sentence on the basis of small net profit figures when the turnover is substantial.

The remainder of the Guideline reflects recognised sentencing practice – taking account of credit for guilty pleas, assistance a defendant might have given, the making of any ancillary orders, such as compensation or disqualification from acting as a company director, and having regard to the principle of totality.

The effect

There can be no doubt that the Guideline has resulted in raising the size of fines imposed on larger companies. Fines running to the hundreds of thousands are now commonplace, when once they were the exception. It should be assumed this will make responsible food businesses pay even greater scrutiny to their food safety management systems, or the shareholders to whom Thomas, LCJ and HHJ Sheridan have issued clear warnings can expect to see a sharp decrease in their dividends.

The position in respect of individuals is rather more nuanced, as penalties are not merely an exercise of elementary mathematics. As stated above, individuals may in fact be the beneficiaries of this Guideline. Carelessness in the workplace might not be punished in such an effective way, but a deliberate flouting of the law almost certainly will.

Richard Heller

Drystone Chambers

I was recently honoured to be awarded the Anglo-Israel Scholarship by Middle Temple. I spent a period of four weeks in Israel which was split across three legal placements. These were with the law firm Herzog, Fox & Neeman, within the criminal courts with Judge Ido Druyan and finally with the Israeli public defence service. This article provides an overview of my placement.

HERZOG, FOX & NEEMAN

During my placement, the majority of the time was spent with the law firm, Herzog, Fox & Neeman. They are one of the largest firms in Israel, winner of the 2016 Israel Law Firm of the Year Award and specialise in different areas of legal practice including Corporate, Banking and Finance, Taxation, Litigation and Dispute Resolution law.

I had the opportunity to work on a variety of projects. For example, I worked on cases in the field of investment arbitration. Queries involved the applicability of treaties signed by the UK to crown dependencies and the implications for investment arbitration procedures. I also examined the implications of treaty provisions, which excluded investment protection for Israeli companies, but came into existence prior to peace treaties having been signed between Israel and the relevant country, which in this case was Jordan. The work involved a comparison of treaties and an analysis of which one overrode the other in the case of contrasting treaty articles. I also focussed on legal work in relation to applicable UK domestic legislation. For example, I evaluated the position of companies that provided short term financial relief, commonly referred to as pay day loans, and what procedures these companies must comply with when they offer services in the UK but are originally Israeli companies. I also examined the duties of directors in a company in relation to the entity's stakeholders. This was all interesting work as it involved not only an evaluation of the law but also its applicability to the real- life scenarios faced by Israeli companies.

At the firm, I met a variety of staff from trainees up to partners. Some of the firms' lawyers had initially qualified in the UK and then moved out to Israel whilst others had completed their education and legal training in Israel. Making the transition from practice in the UK to Israel appears to be a challenging process due to the fact that a lawyer undergoing this process needs to pass exams in law in Hebrew. It was interesting to gain knowledge of how a fused legal profession operated where there is no distinction made between solicitors and barristers. However, this did not result in all lawyers feeling a pressure to immerse themselves with the full legal procedure. For example, some lawyers informed me that they did not perform advocacy as they felt better suited to written work.

I was made to feel very welcome at Herzog, Fox & Neeman and was assigned a "buddy" who was very helpful in answering my questions about the law firm and also Israel in general. His

THE ANGLO-ISRAEL SCHOLARSHIP

tips were very useful in helping me explore Tel Aviv. They also made a substantial effort to make sure that I spent lunchtimes with different members of staff. This allowed me to explore what it was like on a day to day basis working as a lawyer at different levels of the firm.

ISRAELI CRIMINAL COURTS

Another part of the placement involved me shadowing Judge Druyan at the magistrates' court in Tel Aviv. I also spent time watching a hearing at the criminal district court in Tel Aviv which is the equivalent of the crown court in England and Wales. I observed proceedings with a translator so that I could understand the proceedings. The translator asked if I wanted everything translated or just a general gist of what was going on. I opted for the latter option as I felt that I could learn a lot from the proceedings not just from the words in the hearings but also the body language. Judge Druyan was very friendly and open to my questions about criminal law in Israel. This was particularly interesting to me as criminal law is my main field of practice in the UK. We spoke in detail about comparisons between the criminal law systems of our countries with respect to topics such as bad character evidence, special measures and sentencing.

Proceedings were fascinating. I watched the equivalent of a magistrates list of first appearances. The speed of the hearings was rapid without detectable adverse impacts on the quality of decision making. I would estimate that the length of the hearings was between three to four times shorter than the equivalent hearing in an English court. The court room had the feeling of a market with lawyers shouting at different times and roaming around the room to hand up documents and speak to relevant court personnel. However, despite the apparent chaos, business appeared to have been conducted efficiently. This was aided by the use of two prosecutors so that one person could conduct the advocacy whilst the other dealt with any enquiries from defence lawyers. I was impressed by how the judge oversaw the proceedings and provided practical solutions. There is a substantial use of home detention in Israel as a punishment rather than resorting to prison placements. Emphasis is placed on rehabilitation, particularly with first time offenders. I sat beside the judge and one of his staff members so I could witness notes being made during the proceedings.

My time at the criminal district court allowed me to witness a major trial in relation to drug importation. I witnessed the cross examination of an Israeli police officer who acted as the officer in the case. This was particularly fascinating as it took the form of an argument between the officer and the defence lawyer rather than questions and answers. This format continued for half an hour non-stop. The body language between the two people involved was fascinating as detailed criminal procedure was being discussed.

PUBLIC DEFENCE SERVICE

The final part of my scholarship was with the public defence service who provide criminal defence lawyers in Israel. This was particularly interesting to see how a country could provide defence representation through a state agency rather than numerous independent solicitors. The public defence service is well respected in Israel and representation through its services is not difficult to obtain. Some clients still prefer to instruct their own private representatives, particularly for trials, but it is not uncommon for the public defence service to represent a client for the earlier stages of the criminal law process and then a private representative to be instructed for the trial. It was interesting to compare the provision of defence lawyers in Israel as compared to the UK. Personally speaking, I am against the state providing an organisation to defend people at the same time as providing an organisation to prosecute people. I believe it is in the wider interests of defendants to have access to a range of defenders (i.e. different law firms) so that they can make a choice of who they feel will provide them with the best representation, even if they are represented through public funds. However, there are advantages to the Israeli system particularly as it can still co-exist alongside private representation. An example includes easier access to information from the prosecution services.

Part of my time with the service was at the Supreme Court in Jerusalem. The building is a distinctive one overlooking the city and the interior was magnificent. I witnessed an appeal hearing into whether a Palestinian, who originally resided in the West Bank, had the right to be in Israel. This was based on intelligence which originally suggested that the person's life was in danger if they stayed in the West Bank. However, after the appeal was lodged, but in time for the hearing, additional information was provided which suggested that this was not the case. This eventually led to the appeal being withdrawn.

The other part of my time with the service was in the youth court in Tel Aviv. This was another busy court day. Like in the UK, youth court proceedings are conducted in private and this particular hearing was dedicated to a legal argument. Proceedings were quite informal. The judge engaged me in discussion before the hearing. Advocates did not wear suits and some did not wear a tie.

CONCLUSION

I close this article by thanking Middle Temple for funding such a wonderful experience as well as the various legal personnel in Israel who made me feel welcome and educated me about their country's legal system. It was a rewarding and fascinating journey. I learnt a lot about law and its application to the wider world.

Richard Davies

Drystone Chambers

YJLC

Youth Justice Legal Centre

ARE YOU A YOUTH JUSTICE SPECIALIST?

'My first trial was in the youth court. I represented a 14 year old called Kai who was facing an allegation of having a bladed article in a public place, a knife was found in his pocket when stopped and searched by police on New Year's Eve. I met Kai for the first time, half an hour before his trial, I struggled to get more than monosyllabic responses to my questions. I knew for certain I couldn't call him to give his account of why he had the knife. When the prosecution opened their case, the knife in question was passed round in an evidence bag and I noticed it looked fairly small. Somewhere in the back of my mind I recalled the need for the blade to be more than 7cm long or so. I asked the Officer in the Case just one question, 'Did you measure the knife'? The answer was 'No'. The district judge got out his ruler and my submission of no case to answer was successful.

Outside court, Kai seemed indifferent to the victory. Other than to ask him his name and address, no one in court had spoken to him until the judge had told him he was free to go. For him, the whole trial had been meaningless. He had other things on his mind, another more serious case in a couple of weeks, he'd been excluded from school and things were difficult at home.'

It is because of cases like this that the Youth Justice Legal Centre (YJLC) was set up by the charity Just for Kids Law. Our ambition is to achieve recognition that lawyers representing children in criminal cases need specialist knowledge and expertise. Sadly, Kai's case is not an isolated example. With alarming frequency, barristers who I meet recount stories of their first days on their feet representing children in the youth court. All too many share similar stories of being out of their depth, with little understanding of the vulnerabilities of the children they were representing. It is no longer acceptable that the youth court is viewed as a training ground, where pupils and junior barristers are quite literally 'practising' on children.

But we are not just talking about the youth court. In the Crown Court too, experienced and talented barristers lack training. Disturbingly few advocates representing children and young people refer judges to the Criminal Practice Directions on Vulnerable Defendants. The result is that important safeguards are not put in place. Child defendants are not seated next to their parent and supporting adult and close by their barrister. [1]Instead vulnerable children languish behind glass enclosed secure docks reliant on security staff to advise them of what is happening in court.

We want to change this. We want to provide barristers with the opportunity to become specialist youth justice lawyers and improve the status of this area of work.

Kai was lucky, but too often we see children who have been unnecessarily criminalised because opportunities to divert cases have been missed; important background information has not been identified; and so the best possible outcomes have not been achieved and child defendants have been left with little understanding of the process they've been through. We believe that lack of knowledge of youth justice law and lack of understanding in how to communicate effectively with their young clients, mean lawyers, are frequently unwittingly missing opportunities to achieve better results for children and young people.

So why is the criminal justice system routinely failing to protect the best interests of children and young people?

The need for specialist training

'Representing young people and children accused of criminal offences is difficult. Specialist legal knowledge and practical expertise are required.' Angela Rafferty, Chair, Criminal Bar Association[2]

'It would be difficult to conceive of an advocate being competent to act in a case involving young witnesses or defendants unless the advocate had undertaken specific training. That consequence should help focus the minds of advocates on undertaking such training…' Lord Chief Justice[3]

Lack of knowledge and expertise in youth justice law can have devastating consequences. The law in relation to children in the criminal justice system is completely different to adults, with distinct procedures and legislative frameworks, special protections and child-specific sentences. Every week we come across cases where children are at risk of being poorly advised.

Training is not only required in youth justice law, but also how to communicate and engage children and young people. Children are inherently vulnerable. It is all too easy to assume that a child's compliance and apparent agreement means they have understood and processed what is happening to them. Evidence about child and brain development confirms what is plain to see, that children act impulsively and lack consequential thinking skills. They fail to appreciate the consequences of their actions. This is why offending for children and young people is often a phase which passes fairly rapidly, but it also means they fail to grasp the significance of their contact with the criminal justice system. Children do not have the same developmental or emotional capacity as adults. This makes it essential that their criminal lawyer understands the child's needs and is able to communicate effectively. It can be all too easy for a child or young person to plead guilty without comprehending that a criminal conviction can have the life-long consequences or sit compliantly through a criminal trial without understanding the processes they are going through.

We know that children who come into contact with the youth justice system are much more likely to have communication difficulties, have undergone trauma or have complex needs. At least 60% of children going through the criminal justice system have significant problems with speech and language or other communication difficulties (the comparable figure within

[1] See paragraphs 3G.8-3G.9 Criminal Practice Directions [2015] EWCA Crim 1567

[2] The Times Newspaper, The Brief, 30 May 2017

[3] R v Grant-Murray and Henry; R v McGill, Hewitt and Hewitt [2017] EWCA 1228, at para 226

***Martina**, aged 15, was arrested and charged for possession with intent to supply class A drugs. Martina has been reported missing on repeated occasions. She had started spending nights away from home, her mother suspects she is the victim of child sexual exploitation. It was only once YJLC became involved that the court were alerted to this history, the guidance on child sexual exploitation and the National Crime Agency's guidance on County Lines. This guidance identifies children as being potential victims of gangs who target vulnerable young people to act as 'drug mules' and advises that children should be viewed as victims not perpetrators. Following our representations, the prosecution were granted an adjournment to review their case and Martina was released from custody and remanded to Local Authority Accommodation.*

***Amy**, aged 17, had been arrested for allegedly assaulting staff in the children's home where she was living. The police were keen for her to receive a youth caution. She had made admissions in her police interview and the duty solicitor advised accepting the caution. It was only after her social worker contacted YJLC that we were able to provide the police with the relevant CPS guidance on offending in children's homes and the over representation of looked after children in the criminal justice system. Looked After Children (LAC) are six times more likely than other young people to be cautioned or convicted of a crime[4]. The police reviewed their decision and Amy was offered 'triage' (an out of court disposal that involves a referral to the Youth Offending Team and attendance at an intervention programme) and subsequently the allegation was recorded as 'no further action'.*

***Scott**, aged 16, came before a magistrates' court because no youth court was sitting. This is his third arrest in the last month. The case had to be adjourned to a day on which a youth court is sitting. The prosecution advised the court they had the power to remand Scott to youth detention accommodation (YDA). The remand framework for under-18 year olds is complex. The Youth Offending Team were concerned the court were wrongly interpreting the law, they advised the defence lawyer to contact YJLC for advice. YJLC were able to explain the statutory framework and the two sets of conditions under section 98 or 99 Legal Aid, Punishment of Offenders Act 2012 that must met to remand a child to YDA. The lawyer concluded the court had no power to remand Scott to YDA and was also able to direct the court to guidance that where a youth court isn't sitting the court should grant unconditional or conditional bail children to appear before a youth court. Without fully understanding the specific statutory provisions relating to children, the court may have been wrongly remanded Scott into the secure estate.*

the general population[5] is 1-7%), one-third of children in custody have been diagnosed with a special educational need; around 30 per cent of children who have 'persistent offending histories' in custody have IQs of under than 70, signifying a learning disability; and one third of children in custody have a mental health disorder, which is three times higher than the general population. Children (as compared to adult offenders) have much higher rates of learning disability, post-traumatic stress disorder, attention deficit hyperactivity disorder (ADHD) and other psychiatric disorder, notably conduct disorder.[6]

All too often, children in the youth justice system have been out of school for long periods of time through truancy or following exclusion. As a result, half of 15-17 year olds in custody have the literacy or numeracy levels expected of a 7-11 year old.[7] The recent Lammy Review, highlighted the disproportionate representation of BAME young people in the criminal justice system. Despite making up just 14% of the population, over 40% of young people in custody are from BAME backgrounds. Lammy's findings highlighted the 'trust deficit' between BAME individuals and the justice system.[8] Lawyers need to be equipped with the skills to deal with these issues to ensure their young clients are properly represented and protected.

The Youth Justice Legal Centre

Since YJLC was formally established in 2015, there has been growing recognition of the importance of youth justice work and the need to provide criminal lawyers who represent children and young people with the skills and expertise they need. Research commissioned by the Bar Standards Board (BSB) and Chartered Institute of Legal Executives (CILEx) the Youth Proceedings Advocacy Review highlighted the damaging effects that poor advocacy has on access to justice for young and often very vulnerable offenders, and their perceptions of the system in general. Researchers were told by barristers, 'I did a lot of this sort of work during pupillage and the early years of my practice. I've now moved on'; 'You tend only to be in the Youth Court when you're learning your trade'; 'It is a kindergarten for professionals to gain skills'. As one judge put it 'it's seen as a place where young barristers and solicitors cut their teeth.'

The Lord Chief Justice's recent remarks make it apparent that it is no longer acceptable that youth justice work is undertaken by barristers who are not provided with adequate training. The Bar Standards Board (BSB) has recognised the need for specialist training in their Youth Proceedings Competences, and has recently consulted on their proposal to introduce compulsory registration. The Inns of Court College of Advocacy have developed a series of Youth Justice Advocacy guides and a short film. The Criminal Bar Association has identified raising the status of couth court work a priority, 'raising the status of Youth Court work and the representation of the young is a priority for the Criminal Bar Association. The Association aims to support junior members in doing this work and inform and educate more senior barristers dealing with young people.'

In May, the Youth Justice Legal Centre hosted the first ever Youth Justice Summit, bringing together experts in this field and others who recognise the importance of raising standards in youth justice work. We are building a community of expert youth justice lawyers to ensure children get the specialist representation they deserve and lawyers doing the work are properly recognised for their expertise. The Youth Justice Legal Centre will continue to support barristers in driving up standards in youth justice law and achieving the recognition of the importance of this area of work. We want to bring about a culture change in how we view children in the criminal justice system, how we protect children's rights and how we work towards a youth justice system better equipped to meet their needs.

Kate Aubrey-Johnson is a criminal barrister and mediator. She is director of the Youth Justice Legal Centre. Visit www.yjlc.uk to access resources, advice and training.

All names have been changed to protect the identity of the children and young people involved.

Kate Aubrey-Johnson

Director of Youth Justice Legal Centre

[4] 'In Care, Out of Trouble - an independent review chaired by Lord Laming, Prison Reform Trust, May 2017

[5] Hughes, N., Williams, H., Chitsabesan, P., Davies, R., & Mounce, L. Nobody made the connection: The prevalence of neurodisability in young people who offend, October 2012, Children's Commissioner for England, page 9 & Youth Proceedings Advocacy Review, Institute of Criminal Policy Research, published by the Bar Standards Board and Chartered Institute of Legal Executives (CILEx), 2015, page 4

[6] Unfitness to Plead Report, Law Commission, Jan 2016, paragraph 7.39

[7] Review of the Youth Justice System in England and Wales by Charlie Taylor (Ministry of Justice), December 2016, at paragraph 8

[8] The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System (published 8 September 2017)

KEBLE 2017

"Whatever you do, don't embarrass the United States."

These were the parting words I received from my supervisor, partially in jest, when I was told that I had been selected to attend the Keble Course at Oxford approximately a month before the course was scheduled to begin in August of 2017. I laughed, of course, because how likely was it that I would be challenged to the point of potential embarrassment at a seminar? I was, after all, a seasoned litigator with over five years of prosecutorial experience and an additional two years of criminal defense work under my belt. For all I knew at the time, this seminar was going to be just like all the other lecture-based courses I had attended over my career as a lawyer in Florida. But boy, was I in for quite the surprise. But before I delve into the anxiety-ridden week that is the course, I want to explain how I ended up across the pond for what ended up being the most challenging and rewarding week of my legal career.

To understand how incredibly lucky I feel to have been selected for this course, you have to start from the beginning. And that is exactly where we will start, with the email truly read around the world. "The" Keble Advanced International Trial Advocacy Course email. The initial email I received from my office was merely a forwarded email from another jurisdiction asking if anyone would be interested in a weeklong course in Oxford. I, quite obviously since I am writing this, responded to that email with expediency. Who would not jump at the opportunity to head overseas and possibly learn something that could help in the everyday rigmarole of law practice? To make it even more of a no-brainer, I work at the pleasure of an elected state official, so the idea of the always budget conscious government office paying for a trip abroad was an opportunity that only comes along once in a blue moon. Plus, I studied abroad at St. Edmund Hall in Oxford when I was a second year law student and have been biting at the bit to return.

I was notified about a week later that I had been selected out of the pool of interested applicants to represent our circuit. Quite frankly, I am certain I was only selected out of sheer luck of the draw, but regardless of the reason I knew I was lucky. And to sweeten the pot even more, my husband, who is a partner at his law firm which gives him the flexibility to work remotely, was able to join me abroad and turn the trip into an extended vacation. So I packed my bags and booked my flight. Then the fairytale wanderlust subsided, because I began to comb through the email I received that included the course material. And the initial words of my supervisor offered in jest began to make more sense.

That initial email from the program coordinator, Aaron Dolan, was full of great information both practical and logistical. And there was a line in that email that I now, in retrospect, realize was foreshadowing: The course materials will require at least four full days of preparation. "Four days?" I thought. Most of my felony jury trials do not get four full days of my time dedicated to their preparation. But with the motivation from my office to not embarrass the US as a whole, I dedicated the suggested amount of time to the course materials. I started reading, and analyzing, and re-reading. Then the reality began to sink in. This wasn't the average seminar that you attend more for the social aspect than the education. This was intense. This was time consuming. And this was when I started to question my decision. What in the world was I getting myself in to? I would be lying if I didn't say that I at least considered a few options on how to respectfully recuse myself from the course.

The deadlines for the pre-course submissions approached as quickly as the course itself, and I frantically realized that the assignments were truly challenging and time consuming. So I did what every respectable litigator would do. I Googled. A lot. For instance, the almighty power of the Boolean search engine helped me avoid certain embarrassment when it came to figuring out what a skeleton argument was (and to all the future American participants, a piece of advice: it is NOT a bullet point outline. Think more along the lines of a shell of an appellate brief.). Although I knew I would not be required to memorize British Law to competently complete the course, I knew I would need to at least figure out what these submissions were supposed to look like!

And while we are on the topic of advice to future participants and research, I do have a few more words of wisdom. Do. Not. Google. The. Faculty. You will be afraid, very afraid. I cannot adequately explain how thankful I am that I was willfully blind to how utterly impressive each and every member of the faculty was. Silks, Judges, former prosecutors from The Hague, those who excelled in trial work, those who virtually wrote the books on advocacy, and those who were frequently featured in the media for their exceptional trial work. These were not the types of barristers who you wanted to fail in front of. But the reality was that we were going to fail in front of them. Each of us. And the faculty would never have thought twice about turning those failures into moments of teaching.

It is for that reason that these incredibly over-qualified faculty members took time away from their highly coveted legal careers to come to a weeklong training to help make us better advocates. They were not there for personal or financial gain. They were all there to make us better. They were there to make *me* better.

So with the fear rising from the depths of my unsuspecting core, I embarked on our first breakout group after the plenary session. Closing statements. Sure, I do closing arguments regularly back in the States with my position as an Assistant State Attorney. I am literally the type of lawyer you see on Law and Order. I should excel at this exercise, right? And that, my friends, is when my "trial lawyer of 7 years" ego took its first wrecking-ball sized blow.

Jazz Hands. My faculty advisor assigned to my breakout group for the week, who despite his charming personality and mega-watt smile scared me like no other, called me "Jazz Hands." I was mortified. I had just given what I thought was a rather stiff and run of the mill closing statement. But as I later learned in the video review session that immediately followed this performance, I was a walking, hand-gesturing stereotype of an American lawyer. Using my hands, walking around the lectern, I was the typical American litigator personified in front of these judges who clearly saw my everyday litigation style as kitschy and novel. As the warmth of embarrassment crept up my spine, I didn't think it could get much worse. But fast forward to Wednesday of the course, and being a stereotype would have been a blessing. Wednesday of the course will forever be burned into my soul as the day I was referred to by a Silk as a huge mess.

I will spare the details of my less than stellar performance during the interpreter exercise, because the outcome of the embarrassment holds far more longevity than the bruised ego. Every single one of us in our small group had their version of my "huge mess" experience throughout the week. And this brings me to what was so extremely important about those emotionally draining moments that occurred not only in my group,

An International Perspective

but in each breakout group that I spoke to throughout the course. The camaraderie.

Each one of us would give looks of support when our colleagues needed them the most. We bonded more and more with the passing of each session. We would all pat each other on the back and offer words of encouragement during our late morning coffee and early afternoon tea breaks when we knew the other received tough criticism on a performance. We would help each other gather our thoughts between sessions when time was of the essence to complete the corrections suggested by the faculty. We were not there to create some misguided air of competition. We were all there with a common goal and we wanted to see each other succeed. We were a team. We were forever bonded by this experience.

Despite all of our deep seeded fears of complete and utter group shaming, the faculty members really, truly, were there to help us and not to mock us. Their purpose was to assist, even in the smallest of ways, in moulding us into future advocates like themselves. And I realized very early on that I might be scared to fail and embarrass myself, but the faculty was there to build me up. Not in the all too familiar "everyone gets a participation trophy" sort of way that my generation is used to. Not in the slightest. Think of it as more of a brow beating with a smile. Besides, even the most brutal of criticisms sounded so pleasant in a proper British accent.

I would be remiss to leave out at least a brief comment on all of the exceptionally helpful plenary sessions that occurred before the breakout group exercises. These sessions always occurred in a lecture type of environment before the breakout groups were called to perform. These helped to put the topics into perspective, and also gave me as an international participant lots of helpful context for what the exercise should end up looking like. This year's course work also included immensely useful sessions on the use of an interpreter during litigation. I use interpreters almost daily in my personal practice, and it was fascinating to see how something I partake in so frequently could be honed into a much more effective tool in my legal arsenal than what I was currently getting out of it. My advice to all future participants would be to pay special attention to this session because no matter where you practice around the globe, you are inevitably going to use the skills learned during the interpreter lesson during your career.

I also greatly enjoyed the vocal coaching session offered this year. One on one vocal coaching was available throughout the week. But we also had a general seminar-wide session during the week. This particular session ended up forcing each and every one of us all out of our comfort zones by encouraging lots of silly sounds from suited barristers filling an auditorium. All kidding aside, breathing exercises were explained and practiced. This session did cut the tension of the week as well, since there were plenty of giggles when some participants let out surprising guttural sounds. It was a nice reprieve from the stress and anxiety of the week, all while teaching us valuable skills which directly translate into the courtroom.

Beyond the rigors of the course which lasted most days from 7:45 am until after dinner, there was another element of the course that was rather remarkable. The social experience was absolutely wonderful. Each meal was taken in the Harry Potter style dining hall with all participants in attendance. We ate, slept and breathed the course, and I couldn't imagine it any other way. It is still unbelievable to me that we were somehow able to function after a day of intense coursework and stay awake until the early morning hours to experience the pubs and socializing that happened every night. After all, there was a lot of steam that we all needed to let out.

The four American criminal participants who became lovingly known as the American Contingency would venture out every evening to our local, Lamb & Flag with several of our newfound comrades from the UK, New Zealand, Australia, Ireland, Jamaica, Hong Kong, and Trinidad and Tobago to name a few. We would laugh, joke, and sometimes cry over the events of the day, often having to remind ourselves that we were this stressed over a made up case. Every night, without fail, we would be persuaded by greater men than ourselves to forego the extra two hours of sleep and head out to see what Oxford was all about. I would not trade those late night conversations and bonding sessions with both the other participants and the faculty that always joined for anything I learned about advocacy during the course (although at the time extra coffee during breakfast was an absolute necessity to keep those of us not used to this level of constant revelry at a baseline level of functioning).

These barristers who were complete strangers to me at the beginning of the week are now lifelong friends that I have maintained communication with on an almost daily basis since the course. These are friendships and professional connections that I will build upon for the rest of my career. I look forward to the daily messages and status updates on social media from these friends. I have already shared in many of their successes and smile knowing that we all survived and thrived at Keble. And if it wasn't for Hurricane Irma unexpectedly delaying our trip home after the course concluded, I would have already have had the pleasure of meeting up with one of the Judges back in Florida.

As an international participant, the reality is that not all of the skills that I was taught during the course will translate into my everyday practice of law. But quite frankly, many of them will. And several of them already have. Now that I have been back home for about a month, and the anxiety and sleep deprivation have subsided (or possibly, in the alternative, the Stockholm Syndrome has set in), I miss being caught up in the insanity that was the Keble Advocacy Course. I truly do. And as I reflect on why I have such strong emotional responses to the memories the course provided, I realize that it is quite simple. For the first time in my legal and professional career, I was uncomfortable in the situations that I am normally the most comfortable in. I was pushed. I was questioned. And I was forced out of my familiar comfort zone of advocacy. So whether my typical American-lawyer style was criticized or praised didn't matter whatsoever. What mattered is that I grew as an advocate and as a person. It may take a few more months to know whether the effects of the Keble Course will have longevity, but at this point I can say confidently that I am a better advocate because of the training (read: torture) I underwent at Keble.

And for the sake of full disclosure, I still cannot possibly bring myself to watch my video recorded review sessions from the week. Maybe after a few reminiscent pints at the Florida equivalent of a "local" will help me build up the courage. But one goal at a time. I will start with the basics, and continue to work on controlling my American jazz hands first.

Nicki Mohr

Attorney at Law
Florida Bar

IMPORTATION OF CHILD SEX DOLLS – A need for guidance?

In recent months, there have been a number of prosecutions under the Customs and Excise Management Act 1979 (CEMA); an Act designed in the latter part of the last century and covering the physical importation of "prohibited items" into the UK and the evasion of duties more generally. At the time, the Act caught those seeking to import pornographic videos and magazines.

Such legislation seems redundant given the evolution of the internet where a borderless "superhighway" facilitates the exchange of intangible digital indecent and obscene material; and yet, the wheel has come full circle. A trend is emerging where a more tangible form of sexual gratification is now being sought. Recent customs seizures reveal a developing market for lifelike, anatomically correct, child sex dolls which have moveable metal skeletons, synthetic skin, functioning orifices and a USB charging function to warm them before use.

The seizures by Customs Officers of dolls being imported from the Far East, which have founded notable prosecutions in Norfolk, Cheshire and Kent (*R v Larkins, R v Dobson and R v Turner*), have posed a number of questions for the Prosecution and for the Courts: has an offence been committed and how should such be sentenced absent any relevant Guidelines?

Those who have been prosecuted thus far have also been indicted for possession and/or the making of indecent images of children pursuant to provisions under the Criminal Justice Act 1988 (CJA 88) and the Protection of Children Act 1978 (PCA 78). The Sentencing Guidelines Council has published Definitive Guidelines for sentencing such offences (see Sexual Offences) but no such Guideline exists regarding the importation of child sex dolls.

S.50(3) CEMA creates an offence if:

"... any person imports or is concerned in importing any goods contrary to any prohibition or restriction for the time being in force under or by virtue of any enactment with respect to those goods, whether or not the goods are unloaded, and does so with intent to evade the prohibition or restriction, he shall be guilty of an offence under this subsection and may be detained."

CEMA seeks to criminalise the importation of "prohibited or restricted" goods. One needs therefore to look to other legislation to determine what goods might be covered by this either-way offence, which carries a maximum of a seven-year custodial sentence. The Crown Courts where the "sex doll" cases have been heard have all resolved that the dolls are "obscene" within the prohibitions created by otherwise antiquated legislation, namely, S.42 Customs Consolidation Act 1876. S.50(3) CEMA is thereby triggered. While challenges to such findings have been made at first instance, no appeals as yet are known of regarding the propriety of pleas or the Crown Courts' findings – common sense, no doubt, has underpinned such hesitation. This leaves then the more significant question: how should the Courts sentence absent any specific Guideline?

While the Definitive "Fraud, Bribery and Money Laundering" Guidelines refer to CEMA offences, the sex doll cases, thus far, have been perpetrated by individuals in pursuit of sexual gratification rather than the evasion of duties or securing other financial gain. The Guidelines do not seem to cover the mischief.

As stated above, the "sex doll" offenders were all also prosecuted for making/possessing indecent images of children. Allowing for "Totality", the Court might conclude that an appropriate approach to sentencing an offence under S.50(3) would be to treat the CMEA offence as a significant aggravating feature of those offences falling to be sentenced under the CJA 88 or PCA 78.

That said, the sourcing of the doll evidences a worrying step beyond the gratification obtained by viewing images alone. Given the dolls would be used to simulate sexual activity with children, the Court might conclude that the defendant had taken a step beyond visual stimulation and was seeking to embark upon the next stage of deviant sexual activity, namely, physically acting out his sexual desires towards children but short of committing acts directly involving the same. Does such a step not merit its very own Guideline?

Police Constabularies and the National Crime Agency have acknowledged that these offences are likely to become more prevalent. The reported cases thus far have not seemingly detailed the mechanics of the sentencing process. Advocates and Sentencers alike will be in need of clarification as to the approach to be taken.

Oliver Haswell
Drystone Chambers

SEC Kent Bar Mess

The last few months has seen progress towards the transformation of the Bar Mess at Maidstone Crown Court. Sadly, the Court / Govt. were not prepared to contribute s single penny and so it fell to the generosity of the bar to contribute towards the regeneration of the tired and dirty environment we are expected to work in when at Maidstone. Only regular practitioners were picked on and between we us we raised just short of £500 with a notable contribution from HH David Radford. Combined with chatting up some local businesses, the Maidstone Bar Mess now has plants, shrubs and small trees in the outside area. The library, the robing rooms and dining room (the parts without carpet on the walls!) have been painted and the ladies and gents loos are due to be painted over the next two weekends by 'offenders' completing unpaid work as part of their sentences. I have also combined with the local Snappy Snaps store to have some photographs of the Kent countryside and landscapes enlarged and framed to give some colour to the place. Add in some new-ish furniture and the books from 9-12 Bell Yard's former library before they moved and changed their name and a much improved environment is being created for members of the bar to work in when at Maidstone. I have even bought some new loo seats!! We hope to 'borrow' some photographs from the newly retired HH Goymer who is a keen amateur photographer and will have shots of the great and good of the South Eastern Circuit from years gone by to fill some wall space. All being well, the transformation will be complete by November.

This year the KBM Dinner will be on the 1st of December 2017 in the Parliament Chamber, Inner Temple. Guest speakers include HHJ Carey, Resident Judge at Maidstone Cr Ct and HHJ Griffiths, former regular practitioner on the South Eastern Circuit. It promises to be another cracking night.

John Fitzgerald
Kent Bar Mess Representative

MILITARY JUSTICE

An unfair system?

Military jurisprudence seeks to regulate both service and civilian injustices. Every fighting force throughout history has found itself in need of a distinct system of discipline. This ensures operational effectiveness and the standards of orderliness and integrity that we correctly expect of our military. The modern court martial has improved considerably since the Second World War but there remains residual unfairness. It rarely comes to the attention of the public because servicemen do not usually demand rights preferring instead to focus upon their duties. It would be destructive to the excellent standards of our military to encourage an attitude of entitlement amongst the ranks but justice demands that those who place themselves at risk to protect the nation have at least parity with civilian defendants. The case of Acting Colour Sergeant Alexander Blackman has highlighted remaining injustices.

The case of Lance Sergeant Findlay brought about huge improvements to the court-martial. In 1990, whilst in drink, Alexander Findlay, a Lance Sergeant in the Scots Guards, armed himself with a loaded service pistol that he had unlawfully in his possession and held members of his unit at gunpoint. After firing two shots into a television set he surrendered and was subsequently charged with six civilian and four military offences. He was sentenced to imprisonment of two years, reduction in the ranks and dismissal from service. Findlay petitioned for a reduction in sentence and, having exhausted all domestic remedies, he applied to the European Court of Human Rights. The question for the European Court turned upon whether the court-martial constituted an 'impartial tribunal' for the purposes of Article 6 of the ECHR. It was held that it did not. That led to a wide ranging review of military justice and a decision to remove those elements that were criticised. Those changes were contained in the Armed Forces Act 1996 which came into force on the 1st April 1997. The role of the Convening Officer has been abolished and his functions distributed between the Prosecuting Authority, the Court Martial Administration Officer and the Reviewing Authority. Army Legal Services have been split into three branches dealing separately with legal aid, legal advice and prosecutions.

A defendant serviceman is entitled to legal representation by a civilian barrister or solicitor paid for by legal aid. A Defence Assisting Officer is appointed to protect the interests of an accused. The service defendant is not required on his own initiative to gain assistance to the same extent as his civilian counterpart because his superiors have a duty to ensure that he has it. There is the same right of appeal from summary dealing as there is at the Magistrates Court. When tried by court-martial the procedure is broadly similar to that of the Crown Court. Significantly each member of the board votes upon innocence or guilt in reverse order of rank so that he cannot be influenced by his superiors.

However, the contribution made by the lay members of the board to a court martial remains a concern. The lack of legal training they receive has been considered before and it has been found to be an acceptable amount – R v Boyd, Hastie and Spear, Saunby and Others [2002] UKHL 31. It is acknowledged that the lay members of the board would need no training at all if they confined themselves to the role of a juror deciding upon innocence or guilt. However, they do not. They also engage with the sentencing exercise and it is arguable that their training is inadequate. Also, the service members of the board of a court martial outnumber the Judge Advocate and therefore there lies a risk of injustice that lay members can outweigh the conclusions of a professional Judge. Even now that sentencing guidelines exist, this risk cannot be ignored.

More significantly, a simple majority can be enough to convict at a court-martial. In the case of Alexander Blackman five of the panel found him guilty and two found him not guilty. In a civilian court that ratio would be insufficient to convict. This practice has been criticised by Judge Advocate-Generals repeated and most significantly by Lord Burnett recently in his Parliamentary speech upon the Marine A judgment. Our servicemen do not demand special treatment but it cannot be right that their service to the UK places them in a less advantageous position than a civilian defendant would be.

Lord Burnett made various other recommendations to improve the court-martial system. One was the mandatory testing of accused servicemen for battle fatigue and other psychological issues pertinent to diminished responsibility. In fact, those of us who defend military personnel should be alive to the need to investigate this issue without any need for it to be mandatory. Another suggestion though was that a duty should be placed upon the Judge Advocate-General to bring the issue of potential combat fatigue to the attention of the court. Our troops are under continual threat when on exercises in adverse conditions and often in the searing heat. Regularly they are expected to show mercy towards an enemy that treats the rules of engagement with contempt. Alexander Blackman had spent fifteen years in the Royal Marines and served on operational service six times. During those tours his behaviour would have been observed closely and it gave rise to no cause for complaint. Nobody in the Royal Marines complains about that level of deployment but it would be closing our eyes to reality to argue that it did not have consequences.

Our servicemen do not seek or need special treatment. A civilised society would wish them to be treated equally to civilian defendants whose contribution to society may fall far short of those who have chosen to sacrifice their lives in serve of our nation. In the meantime, those of us tasked regularly with defending servicemen must be alive to issue such as battle fatigue and other stressors and their impact upon decision making skills.

Shaun Esprit, Jo Morris

Church Court Chambers

High Sherriff's Service celebrating

25th anniversary of Luton Crown Court

On Sunday 17 September 2017, the Parish of St Mary's, Luton was host to the Justice Service for the County of Bedford. For those who are not familiar with this church, it is the beautiful, 850 year old Medieval church set in an oasis of calm, in the middle of Luton town centre. This year was especially significant as the event was also organised so as to celebrate the 25th year since the opening of the, then new, Luton Crown Court building.

The yearly Justice Service is held for the local Judiciary and presided over by the High Sheriff of Bedfordshire, Vinod Tailor, and this year, members of the Herts & Beds Bar Mess were pleased to be able to attend and show their support of behalf of the Bar for this popular and well respected Crown Court. We were even more pleased when we arrived to discover that there was an excellent lunch waiting for us. Having been well fed and watered, we all changed into our full Court Dress, whilst the Judges wore their formal attire which included full bottomed wigs and buckled shoes. We will spare their blushes by not reproducing the images here, however there is little doubt the local press made full use of their cameras.

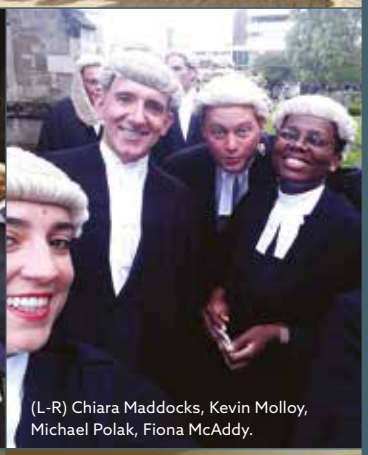
One of the major highlights of the service was the performance by the Next Generation Youth Theatre. The performance told the tale of those who had been involved in the 2011 riots, and their desire to write their own futures beyond the criminal justice system. We heard of the murder of a young man who had wanted to move beyond gang violence, and what could be learnt from his death. Despite the serious subject matter, the performance was very well received and the overall message was one of hope, of promise and of community.

The surprises of the day continued after the service, with an invitation to the UK Centre for Carnival Arts for refreshments. Nobody who attend could fail to be impressed by the beautiful costumes on display. But perhaps more impressive and heartening was the sight of local adults and children excitedly waiting their turn to take photos with the Circuit and High Court Judges present.

Every possible detail of the day had been considered by those from both the Court and the Church who were responsible for the organisation, and the success of the event was a real credit to them.

Fiona McAddy

Church Court Chambers



(L-R) Chiara Maddocks, Kevin Molloy, Michael Polak, Fiona McAddy.