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News from the South Eastern Circuit

THE CIRCUITEER

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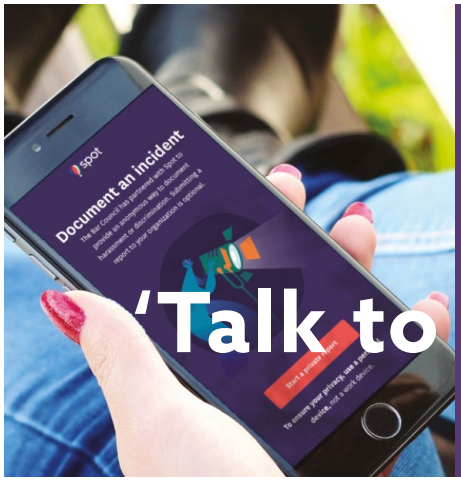

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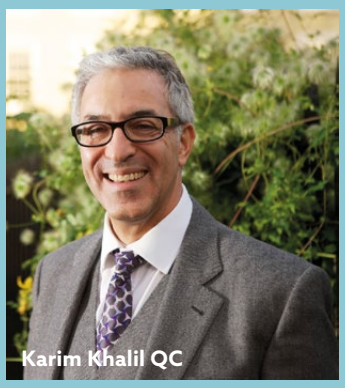
Karim Khalil QC

EDITOR'S COLUMN

So much has happened at the Bar and in the nation since the last "Circuiteer" landed in your inbox that we have an embarrassment of riches to consider. One marvels at the behaviour of national leaders both here and abroad – they truly are 'children of our times', turning to the use of social media in their attempts to get ahead of the story and then complaining, often in viciously unpleasant terms, when all does not work out as they had hoped: this penchant for quick and unsophisticated 'shouting' is reflective of a wider malaise, for we seem to be living in an age of increasingly self-centred ignorance coupled with unfettered rudeness by keyboard warriors who are usually too cowardly to speak directly and courteously with those whom they are so willing to offend. Is there any counterpoint to this? Fortunately the answer is as resounding 'yes' – feel free to read the succinct, penetrating and deeply impressive judgment of the Supreme Court after it wrestled politely and without recourse to personal jibes with the many submissions in relation to the constitutional crisis that enveloped Parliament recently – how refreshing it would be if all practitioners and Judges behaved likewise.

Wellness at the Bar has grown from a simple idea for the few who were willing to put their heads above the parapet to one that now encompasses us all – it takes many forms but it's increasingly accepted importance has provided a backdrop against which one regards the conduct of different Sets of Chambers and the practitioners within them. Surely, the more mannerly we can become, the less pressured will our various working environments become: is this too much to ask?

And so to this issue – bursting with the good that happens around us, often unsung and unnoticed but hugely important. Bar leaders at every level have been campaigning on our behalf with Government agencies in respect of the whole of the criminal justice system – their careful and thoughtful approach has already paid dividends and we should see the fruits of their labours shortly. Of course, what HMG gives with one hand it takes with another: the scandal of the closed courts continues unabated. To have a weekly update from the CBA of the extraordinary number of Crown courts that are not sitting is bad enough – add in the certain knowledge that of those sitting many are operating manipulated lists to make it appear as if something worthwhile is happening and you have a catastrophe of significant human misery – witnesses and defendants are let down; Police are left neutered; Judges scratch their wigs in disbelief; solicitors and barristers wonder if their incomes will simply collapse altogether. None of this is in the public interest and the public should be interested – thank goodness for those who are pressing behind the scenes for a sea-change and for those who are willing to write and speak publicly about it.

Thanks to all who have contributed the articles in this edition – without your efforts "The Circuiteer" would fade – but a plea for more – please can practitioners across all sectors of the Bar send in articles. As with membership of the Circuit, it is crucial that we represent the interests of everyone. My thanks to my sub editor, Adam, and to Aaron Dolan and Sam Sullivan who respectively collate all the materials and then transform them into Your Circuiteer

Now, where's that new passport ...

Karim Khalil QC

Drystone Chambers
Editor The Circuiteer

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

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LEADER'S REPORT

by Mark Fenhalls QC, LEADER OF THE SOUTH EASTERN CIRCUIT

Mark Fenhalls QC

Must Things Fall Apart?

I write this the day after Parliament resumed sitting, after the prorogation that never was. The 'passionate intensity' of the debate has never seemed higher, or less helpful. The turmoil in our politics defines and frames every step we take trying to resolve some the more glaring problems in the Criminal Justice System.

As one gets older there is always the risk of imagining that things were better before. I am quietly confident that when we think about the crumbling fabric of the Court estate, stretched resources at the police, CPS and LAA that I am not guilty of rose-tinted nostalgia. Each time I contemplate writing another article, I wonder how I can capture something fresh about the extent of the decay and erosion over the last decade of cuts. But I hardly need to because you all know, you live and breathe and endure it every day.

Of course the picture is complex because there has been a lot of money spent on "digital" and there is a stark contrast with the torn carpets, broken chairs, leaking pipes and, in many places, the absence of even a third rate coffee machine. There are shards of light – the new ID cards mean security staff are a bit less likely to dip sample your porridge at the door of the court – but these pale into insignificance when we see how many court rooms are dark and court doors are locked. We understand that government departments are constrained to spend as little as possible, but rail about short termism and false economies that just store up trouble.

LEADER'S REPORT

The Retreat of the State

Of all the crises facing the CJS, the biggest threat may be the retreat of the state from the investigation and prosecution of crime. The figures below are becoming better known but merit repeating and thinking about.

CPS annual reports show that in 2011/2 the CPS prosecuted 894,000 cases across all courts; in 2018/19 this figure had dropped to 494,000. No index suggests crime levels have dropped in the intervening period. That is a 45% drop in cases and hundreds of thousands of distressed complainants/ victims of crime who have not had justice. There has been welcome front page coverage of these issues, focussing on sexual offences and fraud which helps us as we try to lobby for change.

What are the causes of this drop? Diversion of low level/ first time youth offenders away from the CJS is no bad thing. But the real causes are plunging police and CPS budgets (25% or so depending on how you measure it) over the last decade and, I believe, cultural and structural problems within the CPS and Police and between the two.

I fear that the police are not even measuring the fall off in the files they are presenting to the CPS for charging advice. Although some forces are at least honest about the fact that certain categories of (often economic) crime no longer merit investigation at all.

When the CPS returns a file to the police saying, "almost ready to charge, but could you do x, y and z first", who is making sure that this is done? We all know that the CPS cannot direct the police, but unless CPS lawyers chase, what happens to these thousands of potential cases? Is anyone tracking the numbers? By not completing the CPS request (which might include completing the disclosure schedule), the police can help the CPS avoid the tiresome business of actually having to prosecute an otherwise perfectly strong case.

We continue to shine the spotlight on these problems both privately and in public, briefing the politicians and press to try and improve policy and to make sure broadsheets and tabloids alike report the problems as accurately and sensibly as possible.

Some political will is being shown to address some parts of this problem, but it is difficult to see whether the "ocean liner" is indeed turning. The intensely political promise of "20,000 new police officers" will not provide any short term relief and brings its own extraordinarily complex issues.

The Closed Courts

One might think that the drop in receipts of cases to the Crown Court would enable the state to do something useful by reducing the backlog of cases awaiting trial, thereby granting complainants and defendants alike better justice. Some enlightened Resident Judges had deliberately designed new ways to try and cut the number of cases in warned lists, for the benefit of the parties, witnesses and lawyers. Everyone would benefit, the public interest most of all.

Sadly this noble and worthy ambition has been largely stymied by the deliberate ***'political decision'*** to reduce sitting days this year (and the restrictions on the use of Recorders), which has made the problem more acute and caused immense grief. Most people report that the key improvement that could be made to the justice system would be certainty as to when their trial was going to happen. The public suffers enormously when the MoJ is indifferent to this. Many of you will have read the exchange of letters between the Chair of the Bar and the Senior Presiding Judge on point.

If you are a barrister increasingly feeling on the edge and insecure because your work is disappearing, then seeing the courts close so that the state does not have to pay the bill for a completed case, or see the prison population rise, is truly galling. And if you can see an empty locked court room but are told that your case is adjourned because there is "no Judge to try it", putting a hole in your diary that now cannot be filled, it is hardly surprising that so many of us are so angry.

We know that the Judges are no happier. It is intensely depressing for all of us to be involved in a process where we have to explain delay and adjournment. I write and speak to Residents and Presiders regularly about these issues; I know that no one wants to adjourn any cases, or lose them out of the lists.

Meanwhile the government threatens to further ratchet up sentences, which is perhaps the most fatuous political "solution" of all. Has anyone ever met a client who is deterred by the prospect of how long their sentence is? I have not. The only thing that 'deters' anyone is the fear of getting caught and

being prosecuted, which is precisely what the state is failing to do. Public confidence requires that criminals are investigated and prosecuted and unless this is sorted out, then tinkering around with longer sentences is "fiddling while Rome burns".

It seems to me that one of the things the Courts might profitably do is investigate the causes of adjournments in their areas. Is there a way that an under-employed Judge might check to see that all PSRs due the following week are ready and, if not, adjourning administratively to avoid a wasted trip? Or checking that every case that needs an interpreter has had one booked?

Discussions in Petty France with CPS and MoJ/LAA

CPS fee review. I hope people are beginning to see the benefit of scheme D that came in on 1st September. The wider CPS fee review will be complete by the end of September. The Bar's negotiating team will be continuing its detailed discussions with CPS HQ and it is hoped that further improvements to remuneration emerge swiftly afterwards. This has been a good first step in the right direction after almost two decades of CPS fee cuts. We are determined to not repeat mistakes of the past and keep fees under review where there are technological changes and in line with every Spending Review. We will also fight to keep them indexed to inflation.

Defence fee review. The December 2018 "deal" with the MoJ agreed a Criminal Legal Aid Review that would report in summer 2020. The threatened action earlier this year led to an MoJ commitment to bring forward some proposals/ improvements to November this year. Work continues apace within the MoJ and with the professions; in theory this timetable is on track. Some of you will have attended meetings around the country where the key civil servants have presented and answered questions. Others will either have attended, or will attend, workshops.

But funding arrangements for MoJ (LAA) are far more complex than for CPS because of primary legislation. And the discussions involve other professions. These proposals will then require public consultation and statutory processes; crucially whatever emerges from discussions will be subject to the uncertainties of parliamentary process/ time. For obvious reasons this last element means I am not holding my breath. But it is essential we try to achieve something through the conventional channels, while maintaining pressure publicly and privately.

By and large everyone who has attended presentations/ workshops has emerged a tad less cynical and smidgen more optimistic. In both sets of discussions, your negotiators (from the most junior to silks) will continue to press for more realistic and fair remuneration now and through future spending reviews. But never forget that the MoJ's responsibilities start with prisons (of which they are trying to build three) and the crumbling court estate. So winning the arguments with the MoJ is one thing; the next lesson in Government is convincing the Treasury – something that everyone who works in "spending Ministry" learns quite quickly. And this is what we are trying to do; pretty much full time.

2020

I fondly imagine a year when the criminal fee increases are sufficient to satisfy, the police and CPS are doing their jobs properly and the courts are open and thriving. We can then concentrate our energies on improving life at the bar for all practitioners young and old, across all practise areas, in this digital era. The path ahead is not easy, but we will keep striving.

Mark Fenhalls QC

23ES London
Leader of the SEC

RECORDERS OF CAMBRIDGE

PART TWO

Judge Tony Bate

Visitors to most Crown Courts on our Circuit will nowadays see on the daily published list that the Resident Judge has the suffix of "Honorary Recorder" of that city or town. But where did this title come from? In the second of a two-part article, Judge **Tony Bate** continues to trace the history of this civic office and its recent revival in Cambridge, where he sat between 2007 and 2013 before moving to Norwich.

For hundreds of years, criminal cases not dealt with by magistrates were heard either at Quarter Sessions or at Assizes. Quarter Sessions juries tried misdemeanours (which we know as 'either way' offences) and felonies (triable only on indictment) were heard at Assizes by High Court Judges. Quarter Sessions also decided appeals from magistrates' courts. Borough Quarter Sessions were presided over by a practising barrister, usually an eminent silk, who was elected Recorder by its Mayor and Corporation. This required him also to perform some ceremonial duties and attend occasional civic events. In 1969 a Royal Commission chaired by Lord Beeching (better known for his report a few years earlier on British Railways) recommended that these two higher jurisdictions be merged and this was duly achieved by the Courts Act 1971.

This Act came into force on 1st January 1972 and created the Crown Court. The historic office of (say) Recorder of Cambridge lapsed with the abolition of its City Quarter Sessions. Section 54 of the Act preserved the power of a borough council to appoint an honorary recorder of the borough. However, it was rarely exercised until Lord Phillips LCJ published national Guidelines for local authorities in 2007, encouraging the much wider use of section 54 to promote closer civic links between local Crown Court centres and the city or town they served. Many revivals of Honorary Recorderships followed, with – for example – the Resident Judge being elected at Norwich in February

Hugh Griffiths

2008 (Peter Jacobs) and Cambridge in October 2013 (Gareth Hawkesworth). A few provincial cities had maintained the tradition, for example Oxford, where HH Judge Julian Hall was appointed Recorder in 2002 and succeeded by Gordon Risius CB in 2011.

In the Judges' library at Cambridge Crown Court are the photographs of eight past Recorders of Cambridge who held office between 1926 and 1971. Five were later knighted upon appointment as Judges of the High Court. Four became Privy Councillors and one a Law Lord. Tony's first article published in the July 2017 *Circuiteer* recalled the distinguished careers of three of them: Sir Travers Humphreys, Sir Melford Stevenson and Sir Michael Eastham.

This article looks back at two more holders of the old Recordership of Cambridge and the first after its revival (HH Judge Gareth Hawkesworth).

Frederick Lawton (1911 – 2001) took Silk in 1957 and became a High Court Judge (Queen's Bench Division) in 1961. He was President of the British Academy of Forensic Sciences in 1964 and Presiding Judge of the Western Circuit between 1970 and 1972. He was sworn of the Privy Council on his promotion to the Court of Appeal in 1972. He retired in 1986. Here are some extracts from *The Daily Telegraph* obituary:

"Fred Lawton was known as a no-nonsense judge, but his firmness with violent criminals was tempered by a sympathetic streak when it came to lesser offences ... Lawton's robust courtroom comments occasionally provoked controversy. When an anti-nuclear demonstration in Cornwall got out of hand in 1981, he raised eyebrows by suggesting that 'a good South Devon bull might work wonders' ... He became known as one of the finest criminal advocates of his generation and had an extremely busy practice as a junior, doing both prosecution and defence work. Among those he prosecuted was Nina Ponomareva, a Russian discus thrower caught stealing women's hats at a department store in Oxford Street. His pupils included Margaret Thatcher and Robin Day. After taking Silk in 1957, Lawton appeared in a number of prominent trials and was said to be the highest earner at the criminal Bar. He defended William Trew, the driver of the steam train in the Lewisham train disaster and Gunther Podola (a photographer hanged for murdering a detective) for whom he ran an unusual – and unsuccessful defence of amnesia combined with insanity ...

"Appointed a High Court Judge in 1961, he soon acquired a reputation as one of the ablest criminal trial judges. Defendants knew that he would ensure they had a fair trial. He had no truck with spurious arguments, cut through extraneous matters with great efficiency and treated the jury without condescension. In [April] 1969, he sat in the trial of the Kray brothers[1] for the murder of Frank "Mad Axeman" Mitchell, who had been sprung by them from Dartmoor Prison ... In the Court of Appeal, he often found himself alongside Lords Denning and Diplock. They rarely agreed, and so Lawton was frequently required to deliver leading judgments on complex civil matters of which he had very little legal experience ...In 1978, he suggested that teenage delinquents be treated to 'short, sharp shocks' in spartan ex-Army camps ... On his retirement, the then Attorney General Sir Michael Havers compared Lawton to 'a labrador' who only had to sniff the prospect of a good day in court and his tail would wag."

Hugh Griffiths (1923 – 2015) was commissioned into the Welsh Guards in 1942 and landed in Normandy in summer 1944 with the Guards Armoured Division (2nd Welsh Guards Reconnaissance Battalion). He was awarded the Military Cross[2] for gallantry at the battle of Hechtel in northern Belgium on 8th September 1944. A copy of the recommendation for this award is preserved on microfiche in file *WO 373* at the National Archives in Kew.

1 This second trial began six weeks after the verdicts in the more well-known trial of the Kray twins at which Melford Stevenson presided (see above). Lawton J's preliminary ruling in relation to the jury panel is reported at (1969) 53 Cr. App. R. 412. Both brothers were later acquitted of the murder of Mitchell.
2 Gazetted 1st March 1945. In the same list is Lord (Peter) Carrington.

The Jagdpanther disabled by Lieutenant Griffiths' Cromwell tank was taken back to England for evaluation and is now on display in the Imperial War Museum. It can be seen in the Land Warfare Hangar at Duxford. After demobilisation, Hugh Griffiths went up to St. John's College, Cambridge. He won Blues for cricket in 1946, 1947 and 1948, recording career best figures of 6 wickets for 129 runs against Lancashire in 1946. He was called to the Bar in 1949 and took Silk in 1964. He was a High Court Judge (Queen's Bench Division) between 1971 and 1980. He was sworn of the Privy Council on his promotion to the Court of Appeal in 1980. He was made a life peer on his appointment as a Lord of Appeal in Ordinary in 1985. He retired in 1993. He was President of MCC in 1990 – 91 and Captain of the Royal and Ancient (St. Andrews) Golf Club in 1993 – 94. Following his retirement in 1993 he continued to work as an arbitrator and mediator in international and domestic commercial and other disputes. He celebrated his 90th birthday with a dance in the Inner Temple. He died in May 2015, aged 91. His *Daily Telegraph* obituary described him as a good-natured, reforming arbiter, renowned for taking a robust and independent line from fellow judges.

In January 2013 the author drew the attention of the then High Sheriff of Cambridgeshire (Mrs Penny Walkinshaw) to the Lord Chief Justice's 2007 letter to local authorities (*above*). The High Sheriff embraced this initiative with her characteristic enthusiasm and energy, took soundings and found there was wide support for the revival of the tradition in Cambridgeshire.

On 24th October 2013 the City Council voted unanimously to revive this historic office and invited His Honour Judge Gareth Hawkesworth to become the honorary Recorder of Cambridge for the remainder of his term as the Resident Judge of its Crown Court. The installation ceremony took place on 4th November.

Gareth was called in 1972 and became a senior and highly respected member of the East Anglian Bar. He was a witty contributor to *The Circuiteer* under the pen name "Grunty Fen", the location of a notorious 1980s affray between two traveller families in the rural hinterland

His Honour Judge Gareth Hawkesworth

of the Isle of Ely. Gareth was appointed a circuit judge in 1999 and was Resident Judge at Cambridge from 2007 until 2015. He retired from the Bench in April 2018. His cordial civic duties as Recorder of Cambridge included processing in the Mayoral party at the opening of the annual Midsummer and Reach Village Fairs. The first of these ancient fairs has been visiting the city's Midsummer Common by the River Cam for over 800 years, making it the country's oldest travelling fun fair and market. In 2014 it is said that after the Fair was duly declared open, there were free dodgem ridges for the civic party. At the Reach Village Fair, the Mayor and other officers of the Council (including the learned Recorder) followed the age-old tradition of opening the fair by scattering newly minted penny coins for the children.

Part one of this article can be found in The Circuiteer issue 43, download it from the SEC website https://southeastcircuit.org.uk/resources/the-circuiteer

HH Judge Anthony Bate

Norwich Crown Court

RECORDER'S REPORT

By the time you read this elections will be underway and a new Recorder will have been chosen to represent you on the Circuit: my two years in office as Recorder will be (nearly) at an end and I will be on the brink of moving on to deal with Wellbeing and trying to tread worthily in Valerie Charbit's pioneering footsteps. So, a strange time perhaps to pop my head above the parapet and write my first 'Recorder's Report' to be published in the Circuiteer rather than just relayed to the Committee? Or rather the perfect point at which to look both back and forward having gained a valuable insight into how the Circuit works.

The Recorder's post occupies an unusual position between the Leader and the membership, hopefully providing support to the former and access for the latter. With such able and committed leadership as that provided by Kerim Fuad QC and Mark Fenhalls QC over my term in post most of what matters has happened through their endeavours rather than mine and of that you will have heard ample in the Leader's reports along the way. As for the daily travails of working in our courts (or at least our criminal and family courts) you know them all too well and hardly need me to highlight them for you. However, I hope that I have managed to convey them on your behalf to those who don't see or understand the way in which we have been expected to work to meet ever tighter budgets and ever more restrictive court allocation.

Where you have told me in robing rooms of specific examples, those have been invaluable: frustrating as it may be to have to state what we believe to be 'the obvious', government, in my recent experience, works largely on data and statistics – without those specific examples of which case was taken out of the list, which witnesses were inconvenienced, how old the defendant or complainant was or how vulnerable we cannot make your case. So thank you to those who have taken the time to set out exactly how justice has been affected in the cases you deal with. And please keep it coming: clearly the struggle is not yet over, whether on working conditions, pay or human rights and justice. It is irritating and frustrating to have to justify ourselves at every turn, when we should be able to expect that the results in terms of the outcomes we achieve for our clients would be apparent to all, but what I can report is that where we do do so there is progress. The CPS/ Bar liaison Committee, for example, on which I sit has responded to our pleas for better instructions and greater assistance in court in the playing of electronic material. We have moved to looking at what might be put in the 'private' section on DCS to form a central 'backsheet'-type record and to add unused material, both of which would transform the experience of those covering individual hearings or picking up briefs at the last minute. Progress is not easy given concerns about the security of a system which is operated by HMCTS rather than the CPS themselves, but we remain hopeful.

Decisions on fees lie elsewhere, but we hope that demonstrating the additional tasks which prosecution counsel now regularly undertakes will underpin the continuing fees negotiations. Again, specific examples of unfair and inadequate fees generated by inflexible application of fee schemes whether prosecution or defence help in our efforts to point out where changes need to be made.

Aside from information, what has also been crucial to our representation over my term as Recorder has been the many members who have been willing to give of their time and experience either on the committee or as members of the various ad hoc groups which have addressed everything from formal consultations to trying to get coffee machines into robing rooms circuit-wide. Thank you to you all, especially those who have taken pity on me and so generously responded to my last minute arm-twisting when deadlines have needed to be met.

One gap we have sensed, however, is that we would like to involve more of the most junior Juniors, as well as those who practice in areas outside crime and family. Many on the committee are criminal practitioners and it is all too easy to confine our pleas for help to those whom we know from our own practice areas. We are actively looking at setting up an 'action squad' of those early in their careers, to help us better understand the challenges they face and how we might help: volunteers are being sought now, so if you think you might fall into that category or you know someone in your Chambers who does, please let us know.

Before I finish with the past, it would be inexcusable not to recognise that none of what we have done over the last two years would have been possible without the unfailing wisdom, enthusiasm and efficiency of the administrative support provided by Aaron Dolan and Harriet Devey. You are both stars in the Circuit firmament!

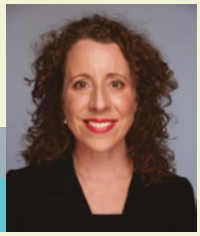
As I move on to the Wellbeing role after Christmas rest assured that I do so knowing that the greatest impact on our wellbeing is to be paid properly and on time and to be treated with respect and courtesy when we go to court. There is only so much that mindfulness can do when you're staring at a stack of bills which there is little income to meet. However, we can all take responsibility for how we care for ourselves and for those we meet as we do the job, and there is often professional wisdom available to help.

With that in mind I hope to carry on the series of professional 'visitors' who have given talks on how we can arrange our working lives to maximise our Well being. The series is already well-established, having been grounded in the hard work of Valerie Charbit as she has shared her passion for improving life at the Bar over the last two years. If you know of anyone who might make a good speaker please do let me know, along with any topics you feel it would be helpful to cover.

We have also begun renewed bridge building with the Judiciary on this issue, increasingly in the civil jurisdictions too, and among whom we know that there is much good will if we can only talk to each other about the small adjustments which might benefit us all.

Finally, the best boost to morale is often in seeing each other, and with the danger of increased isolation brought about by digital working (in spite of its many benefits) we feel that it may be time for more social as well as networking events. The first of those is just before Christmas, so please join us for drinks and tell us what you'd like to see happening in 2020.

And if you'd like to join the 'action squad' or to participate in some other way, please don't wait – just email Aaron and we'll be in touch.



Nicola Shannon
Lamb Building, Temple

FLORIDA CIVIL COURSE

Each year, the South Eastern Circuit generously provides four scholarships to enable juniors to attend an advocacy course taught by the Trial Lawyers' Section of the Florida Bar. The four lucky recipients of the scholarship in 2018 were Robert Amey (South Square Chambers), Sophie Beesley (Old Square Chambers), Daria Gleyze (3 Stone) and Amy Rollings (9 St John St). The group travelled to Florida along with Gavin Mansfield QC (Littleton Chambers), who led the group, and joined his Floridan colleagues on the faculty as an advocacy trainer.


Kayaking at Weedon Island

Our first few days in Florida were spent in Tampa, where we were kindly hosted by members of the local bar in their homes. Particular thanks must go to Judge Claudia Isom and her husband Woody, who gave a considerable amount of their time showing us around and generally looking after us.

At the weekend, we enjoyed trips to the beach, and a kayaking adventure at Weedon Island. Monday began with a tour of the State Court. It being a Monday, the building was packed with local citizens who had been called for jury service. A peculiar feature of the US court system is the right of the parties (in both criminal and civil trials) to select their jurors. In the cases we saw, the venire (or 'jury pool') were subjected to quite extensive questioning to determine their likely attitude to the case (whether they thought eyewitness testimony was generally reliable; whether they thought that 'compensation culture' was out of control etc) and to the other jurors (whether they considered themselves a 'leader' or a 'follower'). The process may be centuries-old, but it has kept up with technology: in two cases, the lawyers had combed potential jurors' social media accounts to identify issues for further questioning. We were told that the whole process can go on all day, and sometimes into a second day.

After a lunch with members of the Hillsborough Bar Association Young Lawyers Division, who gave us a warm welcome, we were hosted by Judge Mary Scriven at the US Federal Court. We had the opportunity to see part of a criminal trial, and then to meet Judge Scriven in her chambers during the short adjournment. As Judge Scriven explained, Federal law requires such buildings to be built to a particular specification, and the US Federal Court building was, compared to many English court buildings, palatial. The courtroom itself was airy and spacious, with high ceilings, and plenty of room. Behind the scenes, Judge Scriven's chambers incorporated a large office, a conference room, and additional space for her judicial assistant and law clerks to carry out their duties. We then received a tour from an agent of the US Marshals Service, who explained the building's impressive security features, including emergency backup generators,

centrally controlled door locks, bullet-proof screens and CCTV covering virtually every part of the building.

On Tuesday morning, we visited the Second District Court of Appeal. The judges of that court kindly took time out of their schedules to meet us before hearings began, and to explain a little more about the workings of the state court system. We then saw three appeals in quick succession. Oral argument in the Florida Court of Appeal is limited to 20 minutes for each side, and advocates are therefore required to get to the point very quickly.

On Tuesday evening, we travelled to Gainesville, where the advocacy course began. Much like the Keble advocacy course operated by the SEC, the Florida Bar's Advanced Trial Advocacy course aims to teach students the various skills required in a trial (opening speeches, examination of witnesses and closing speeches) through the medium of a mock trial, in which the students play the advocates for either the plaintiff or the defendant. Students performances are recorded on video, and feedback from members of the faculty is provided twice. Students receive feedback immediately from faculty members who have observed their performance, and then go to a video playback suite, where another member of the faculty provides further helpful advice.

The course centred around the case of *Ron Coker v Z-Mart Corporation*. The plaintiff, a teenager, had been injured at a sports day organised by the first defendant Z-Mart Corporation. Z-Mart denied that it had been negligent or that any negligence had caused Ron's injury. To complicate matters, Ron had received medical treatment from the second defendant, a doctor who may or may not have been negligent himself. To complicate matters even further, Ron's doctor had inserted a medical implant which may or may not have been poorly manufactured by the third defendant. Ron Coker claimed that, but for his injury, he could have made millions as a professional golfer, although this was disputed too. The case would have to be resolved with evidence from witnesses of fact, and also expert witnesses in the fields of health & safety, sport, medicine and material science.

Throughout the week, the practical sessions were interspersed with demonstrations by the experienced advocates who comprise the faculty (including our own Gavin Mansfield QC, who treated us to demonstration of how to cross-examine an expert) and informative lectures on technique and strategy at various points in a trial.

A core difference between civil trials in England and in Florida is the fact that a litigant in Florida has a constitutional right to a jury trial, and personal injury cases will typically be decided by a jury. The Florida course (unlike the Keble course) therefore included lectures on effective jury selection, a matter of vital importance to a Florida trial lawyer, and one which is entirely alien to English advocates.

The style of advocacy one uses to persuade a jury is also, as one might expect, very different to the manner in which one tries to persuade a legally-trained judge. Advocates are expected to walk around the courtroom and to use their body language when explaining points to the jury. Visual aids are used much more extensively. Technical language is avoided in favour of submissions designed to make jurors feel sympathy for the advocate's client.

Although the American system allows much more dramatic licence than the English system (American TV dramas you might have seen are not far off the mark in their depiction of courtroom scenes) it would be a mistake to think that US advocates can walk anywhere and say anything they like. There are strict rules preventing an advocate from standing too close to a witness, for example, or tugging on the jury's heartstrings by asking them to imagine how they would have felt if they were the plaintiff. Poorly phrased questions to a witness, or a submission which is not properly supported by admissible evidence, will inevitably result in one's opponent leaping to their feet with an objection.

Despite the differences between England and Florida, the course is of real utility to an English advocate. Whatever tribunal one is appearing in front of, the advocate's task is to understand what type of argument that tribunal will find most persuasive, and to present that argument in the most attractive way possible. Presenting a case in front of an entirely different type of tribunal forced us to think carefully about what we were doing, how we were doing it, and why we were doing it that way.


University of Florida President's House

At the end of the course was a gala dinner hosted in the University of Florida President's House. As is now traditional, the English barristers provided some after-dinner entertainment. This year, we invited the participants to guess the outcome of some famous English legal cases.

The course provided a wonderful opportunity to develop our own advocacy skills and cement the bonds between the SEC and the Florida bar. We are enormously grateful to the SEC for its support, and to the members of the Florida bar who so kindly hosted us.

Class of 2019 – Florida

SEC Runs HMCTS Reform Programme Panel Event

On 3 October 2018, the South Eastern Circuit ran the first of what is hoped to be an annual event at on HMCTS Reform Programme before a packed room at Middle Temple.

This event was organised by the South Eastern Circuit's Michael Polak and the panel for this event was chaired by Monidipa Fouzder of the Law Society Gazette and comprised of HMCTS Chief Executive Officer Susan Acland-Hood, Penelope Gibbs of Transform Justice, Ben Stuttard of Commons Legal, Jerry Hayes of Goldsmith Chambers, and Sue James solicitor at the Hammersmith and Fulham Law Centre.

Susan Acland-Hood began by addressing a central question that was put to her: why undertake such an ambitious reform programme, instead of fixing, what was described as '*the basics*'. With reference to the joint statement by the Lord Chancellor, Lord Chief Justice, and the Senior President of Tribunals on this subject, Susan underscored the importance of acknowledging that, whilst many refer to the UK justice system as one of the best in the world, many parts of it do not currently look this way; there are deeply embedded issues which will take more than mere 'tweaks and adjustments' to mend. To illustrate this, Susan highlighted the absurdity of the fact that currently, there are approximately 16,000 staff employed at HMCTS to photocopy, file, and type. HMCTS needs to think about the fundamental way that it does things, rather than pursue a marginal change to the level of resources. Susan Acland-Hood stated that the guiding principle of the Reform Programme is that technology can be used to improve the system, namely by making it easier to navigate. She referenced the potential for technology to improve access to the Initial Detail of the Prosecution Case, as well as HMCTS's new online divorce application system, which, at the time of the event, had processed 12,000 divorce applications since its launch in April 2018, and reduced the amount of forms sent back to the applicant due to errors from 40% to 0.5%.

The notion that reform should centre on technology faced significant pushback from the panel. Criminal barrister Jerry Hayes stated frankly that a new computer system would not improve things, and quipped that whilst a sleek-looking HMCTS reform plan pamphlet had been presented, this was a bit like the air conditioning at Snaresbrook Crown Court; it makes impressive noises, but it doesn't work. He discussed the 39% cut in court staff, which has meant that there are sometimes not enough court ushers to take the jury out, as well as the dilapidated buildings which barristers have to work in, often without a functioning lift. He argued that if these working conditions could be improved, it would not only boost barristers' morale, but it would also have the knock-on effect of improving the efficiency of the system in general. In a similar vein, Ben Stuttard of Commons Legal argued that an improvement in court building conditions would restore the degree of majesty, and thus authority, which a criminal court should carry. In her rebuttal, Susan Ackland-Hood argued that a lengthy period without any investments into the system had allowed maintenance issues to develop further than they should have, but that HMCTS had now undertaken a comprehensive survey of every building across the estate, giving it a clear set of priorities regarding where to spend its current budget – around £40-50 million a year in capital maintenance.

The panellists also challenged Susan Ackland-Hood on HMCTS' apparent lack of analysis of the impact of aspects of the reform programme. In particular, Sue James from Hammersmith and Fulham Law Centre was vocal on the impact of court closures on access to justice, especially for young people. She highlighted the closure of Hammersmith Magistrates Court, as well as the recent proposal to relocate Wandsworth County Court to Clerkenwell & Shoreditch County Court. She emphasized that if colleagues and experienced solicitors were struggling to travel across London to attend hearings, as she knew they were, then we should be worried about the impact on litigants in person. Transform Justice's Penelope Gibbs also mentioned the negative impact on witness attendance that could be caused by court closures. In response to these criticisms, Susan Ackland-Hood drew attention to the $40 million received for the sale of Hammersmith Magistrates court which she said could be channelled into improving other court as well as the performance issues which could be blamed for its closure. She discussed the issue of the underutilisation of courts prompting a confused debate as to how this is actually calculated and stated that, despite court closures, the number of cases outstanding in the Crown courts was actually at the lowest level since official statistics began.

Penelope Gibbs also raised concerns about HMCTS's plan to increasing the use of video links at criminal hearings, despite the fact that the full extent of their impact is not yet known. She stated that the only piece of evidence that we have in this regard is a 2010 study from the Ministry of Justice, which indicated that more guilty

HM Courts & Tribunals Service

pleas were entered and that sentences were more punitive, when defendants appeared by video from the police station. The same study also indicated that those appearing by video were less likely to have legal representation. Indeed, Jerry Hayes highlighted that what we absolutely do not want is a situation in which a large number of defendants plead guilty without legal advice.

Susan Acklan-Hood closed the event by making two promises, the first of which was that HMCTS was not going to conduct crown court trials on video. She stated that the focus instead would be on preliminary and interlocutory hearings. She emphasised the benefits of a 15-minute consultation service being piloted, which could be used by anyone with a decent device. Tomas McGarvey of Church Court Chambers shared his own negative experience of video-link hearings (where the defendant had missed his 15 minute window and thus began his hearing completely uninformed) and highlighted that such a service did not protect the professionals involved in any way since, for example, with a video link you cannot get a client to sign an endorsement.

Heated debate ensued among the panel and audience members, with the South Easter Circuit's Kerim Fuad QC making the notable statement that the state of the UK courts is a national disgrace. Susan Ackland-Hood never got to her second promise; it looks like the jury's out on that one (presuming there's a court usher available to accompany them).

Rumer Ramsey

Prudential 100 (No: 4)

The time is 06.30am on a Saturday morning. The dog is stretched out on the sofa, his eyes tell me that he is waiting to see if he is to be disturbed and dragged out for a walk. He is reassured as I sit with porridge and jam; a 2- egg omelette, juice and black coffee. The dog yawns showing little interest in the nutritional needs of a pro-cyclist. I'm not a pro-cyclist but today is the penultimate long training ride for the Prudential 100 (actually 99.3 miles unless you weave down the Mall). I've taken nutrition seriously this year (diet and making the man at Naked Wines miserable) hoping to avoid the dreaded 'bonk'. Taking nutrition seriously means confronting my weight, not easy for a 55 year- old! Arriving at this point is a slow process: it starts with avoiding the scales and spending money on expensive pieces of carbon to reduce the overall weight of the bike. Eventually, the dealer takes pity on your wallet and family and advises you to simply loose weight. The maths is simple. Spending £2,000 on carbon wheels to shave off 315 grams from the weight of your bike is pointless if you add 1-2 kilograms to your waistline (or other bits but mainly the waistline on the 55-year-old) as a result of keeping the man from Naked Wines happy. You are ultimately forced into dieting and forsaking the pleasures of the grape. The maths has, however, become more complicated: I now need a calculator to work out my carbohydrate intake on a ride (anywhere between 0.5 grams-1 gram per kg of bodyweight per hour). The dilemma is clear - the heavier you are the more carbohydrate you need and the more food you need to carry because if you stop at the feed stations you lose time; the more food you carry, the heavier the overall package of bike and rider and the slower you go! This is madness.

Why do I put myself through it? It's simple. I ride for Drystone Chambers' Team sKKy who support the work of Opportunity International. OI provide finance and associated financial facilities throughout the World, but mainly in Africa. A small loan can lift someone from poverty. I think back to a time when I walked into my bank and obtained a loan to survive whilst completing my Bar Finals – I'm not suggesting for one moment that I was living in poverty ... but I had easy access to financial institutions which enabled me to realise my dream: many don't.

Perhaps Eammon the Wine guy from Naked Wines will read this and understand why he has suffered due to my suffering. When I cross the finish line, I am going to have the biggest glass of wine!

MAMIL

p.s. Over the year I have dieted, reduced my alcohol intake and now I only look faintly ridiculous in Lycra bib-shorts.

HHJ Morgan

Drystone Chambers

It has been over 8 weeks since Team Drystone heroically took on the Prudential Ride London 100 mile cycle ride – we hope you have fully recovered! Many of you were cycling veterans and for some, this was a complete first – congratulations and thank you to you all.

Our final fundraising total is £9,358.00 which is fantastic.

This money will go into our **Uganda Innovation Fund** which is focused on providing 165,000 Ugandans with the tools, knowledge and confidence to work towards a better future.

PRUDENTIAL RIDELONDON

FLORIDA CRIMINAL LAW ADVOCACY COURSE

University of Gainesville, Florida

For those of you who are regular readers of Circuiteer you will be familiar with the fact that the South Eastern Circuit ("SEC") has a long standing tradition of sending four junior members of the criminal Bar and a Silk to attend and participate in a week-long Criminal Law Advocacy Course in Florida. This year Bibi Badejo (Four Brick Court), Sophie Quinton-Carter (9 KBW), Major Charles Coventry (Army Legal Service), Alex Cameron (Drystone Chambers), and Jo Martin QC were selected to represent the SEC and attend the week-long course, from 28th July to 2nd August 2019. They followed in the footsteps of approximately 160 juniors and 40 QCs, who have made the trip across the pond to attend the course, since 1979.

Getting to Gainsville by Alex Cameron

My journey to Gainsville initially began and ended in March. Whilst looking at the SEC website my attention was drawn to the "Upcoming Events" section where one of the tabs simply said "28 July 2019, Florida Criminal Course 2019 (Junior)". Whilst the click bait did its job, my initial thoughts were "you won't catch me applying for another advocacy course any time soon". It's not that I don't like a challenge or that I don't think that my advocacy can be improved, far from it. In fact, I still wince when I think back to the final advocacy exercise of my pupillage in front of everyone from Chambers in Blackfriars Crown Court and how dreadful my performance was. I didn't get taken on and I am sure that my dreadful performance was a significant contributing factor. Since then it hit me that if I was ever going to succeed at the Criminal Bar I needed to speak, and speak well and since then I have been determined to improve and develop my oral advocacy skills at every opportunity.

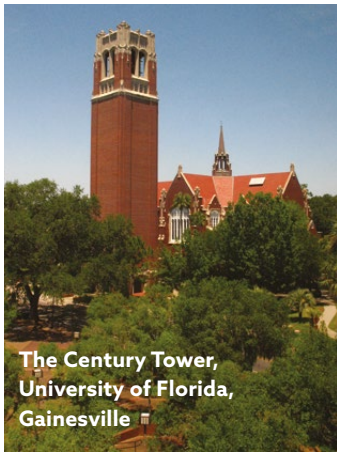
My reaction was simply because having attended the International Advanced Advocacy Program at Keble College, Oxford last year, my advocacy scars from the course hadn't quite healed yet, as I hadn't been able to put into practice what I had

learnt during the course in court, as much as I would have liked, due to going on a secondment.

Keble was the best advocacy training I have had and I thoroughly enjoyed every minute of it (well almost every minute) but it was quite tough going at times. It is quite daunting and unnerving to stand up and complete an advocacy exercise in front of your peers but it's doubly unnerving when your performance is recorded and swiftly followed by a robust but constructive critique of your advocacy by one or a number of the faculty members, the majority of which are Judges or QCs. To do this the faculty would use the Hampel method to offer suggestions on techniques that could improve your advocacy performance and would then provide a demonstration on how the exercise should be done. I know that I am not a natural or a gifted advocate and although I don't have a fear of public speaking, I have to confess that I still get nervous when I am just about to rise to my feet in court.

Keble taught me a lot about myself as an advocate, both the good and the bad, and I have no doubt that everyone who attends the course walks out of the Porter's Gate at Keble College, a much better advocate than the one who walked through them at the beginning of the course. I know that I did. I was therefore keen to build on the advice I had been given by the Keble Faculty, who all appeared, without exception, to be both natural and gifted advocates and to build on the firm advocacy foundations that had been laid in Oxford last summer. After giving myself a good talking to, curiosity got the better of me, I took the bait and clicked the link, read about the course and decided to dust off the advocacy tin hat and to stick my head above the US advocacy parapet and applied for the course.

An email from Aaron Dolan, in early March informed me that I along with the other applicants had been invited to attend a 10-minute interview with the Recorder and Junior from the SEC, in order for them to select the four most suitable candidates


The Century Tower, University of Florida, Gainesville

for the scholarships to attend the course and to act as ambassadors not only for the SEC, but also the Criminal Bar. So on a dark and cold March evening after a typically long day at Court, I found myself rushing down Middle Temple Lane to attend the interview. It's raining and, whilst wondering what I would be asked in the interview, I couldn't help thinking that if I got selected to attend the course at least it would be in the Sunshine State and it would be rain-free for the week! The interview was over all too quickly and a few days later I received an email informing me that I had been unsuccessful this time around and to consider applying for the course in 2020. The disappointment of rejection quickly faded away as I settled back into my practice, mindful that I would probably apply for the course next year and began to look forward to the two-week family holiday I had booked in August and a long weekend catching up with very good friend called Steve Hamilton that I hadn't seen for several years, who would be in the UK for a few days at the beginning of August.

My plans for the summer were thrown into disarray when on the 16th of July, just 12 days before the start of the course, I received an email from Aaron, asking me if I would be interested in attending the course, as someone had to drop out at short notice due to professional commitments. A flurry of emails to my clerks and others to see if I could clear my diary for the week went better than I had hoped, and after a very apologetic call to Steve, I was able to confirm that I could attend the course.

A few days later the course papers arrived in my pigeonhole in Chambers. I started to read the case studies and began to look forward to the course, which is organised and run by the Criminal Law section of the Florida Bar and the University of Florida Levin College of Law in Gainsville. The course has forged strong links and friendships between English and US criminal practitioners for the past 40 years, providing an opportunity for junior barristers and a silk to meet with and experience the Florida Bar.

So, on the Friday morning before the course, I made my way to Gatwick Airport where I met up with Sophie and Jo, as we were all booked on the same flight to Florida. Bibi and Charlie were on different flights but we would all meet up at the hotel that we were staying in, the following morning. I am not the greatest of flyers and thankfully the flight was turbulence-free and uneventful. We landed in the Sunshine State, just as it was getting dark. After clearing customs, we walked out of the air-conditioned terminal into a very warm, and fairly humid summer's evening. We then spent an hour or so waiting in the

not so fast queue to pick up our hire car and with Jo at the helm we took the Florida turnpike to the I – 75 and headed north for the 114-mile drive to Gainsville. During the drive, Sophie, Jo and I spent the time getting to know each other and discussing what we were looking forward to most on the course and our time in Florida. About an hour into the journey, light drops of rain started to hit the windscreen and moments later the heavens opened and we were caught in a torrential downpour the likes of which we had never seen before. The windscreen wipers had little effect and seemed to spread the water rather than disperse it, visibility was almost zero and traffic slowed to a crawl, whilst American semis roared past us seemingly oblivious of the rain. Despite the urge to pull over and let the rain pass, we braved

the downpour and carried on; some several minutes later it had passed. We eventually arrived at the Hilton University of Florida Conference hotel in Gainsville, which would be our, and the other delegates' base for duration of the course, in the early hours of Saturday morning. Bibi and Charlie arrived at the hotel at various points on the Saturday and we arranged to meet with them that evening and head out for meal. As strangers in Gainsville, we decided to rely upon Charlie's Lonely Planet guide for a recommendation for a restaurant and headed to "Civilization". The meal and the restaurant didn't disappoint and as we spent the evening getting to know a bit more about each other, it was clear that the friendships we formed that evening would continue long after the course had finished.

The Course by Bibi Badejo and Sophie Quinton-Carter

Just after lunch the following day, we made our way to the Levin College of Law to start the course. Before going into detail about our time on the course, it is worth explaining a little bit about the US attorneys and the courts in which they earn their spurs. Firstly, US attorneys make a choice to be a state attorney or a public defender and as such, will only ever prosecute or defend, never both. In Florida, the court system is comprised of the Supreme Court, five district courts of appeal, 20 circuit courts and 67 county courts. The majority of jury trials in Florida take place before a single judge sitting in one of the twenty judicial circuit courts (think Crown Court). The circuit courts have general trial jurisdiction over matters not assigned by statute to the county courts and also hear appeals from county court cases. The County Courts (think Magistrates) handle such matters as misdemeanours, small claims (under $500 disputed), civil cases (under $15,000 disputed), and traffic violations.

Most of the US attorneys that attended this year's program had between six-months and three-years of court experience, with some having been in more than 15 jury trials, whilst others had not had their first one yet. Additionally, further restrictions on advocacy experience were apparent due to the inherent weight placed on the presumption of innocence. As such, the vast majority of defendants do not give evidence at trial because there is no provision for an adverse inference to be drawn. Many of the state attorneys therefore, have limited experience of cross-examination, and public defenders have limited experience of examining on direct. For many US attorneys, this program is the only opportunity for any form of advocacy training to be undertaken, and is entirely voluntary. This is in stark contrast to the English Bar, where from an early stage the focus is on creating and developing talented advocates through regular training courses, such as the New Practitioners Programme and the Keble Course.

Registration for the course started on the Sunday afternoon and we met our fellow delegates in the impressive Martin H. Levin Advocacy Center Courtroom, where we had the course opening address and the introductions to the Faculty, made up of an array of experienced trial lawyers, prosecutors, professors, and Judges. One of these, was an appeal judge, who was a former student of Irving Younger, who would enthusiastically deliver the 10 Commandments of Cross-Examination in his lectures.

After the introductions, all of the delegates were divided into four main groups, with one English Junior barrister in each group. Later these groups would be subdivided into a further two groups for the advocacy workshops and exercises, before returning to the original four groups at the start of most days. The benefit of this was seeing a wide range advocacy and the subsequent feedback, before moving on to more focused small group sessions with the faculty.

Over the course of the week, delegates prepare and present advocacy exercises in respect of three criminal cases, which are run like mock trials. This includes opening and closing statements, direct and cross-examination of witnesses with names such as "Fat Louie" and "Stick Phillips" (actors play the defendants and witnesses) and real fingerprint technicians and forensic psychologists take the stand as expert witnesses. There is also a further opportunity for additional feedback in the form of a one-on-one video review after each exercise. There are also case analysis sessions, lectures on voire dire (jury selection in the US) and the digital presentation of evidence.

Of note is the fact that the Florida Bar faculty does not employ the Hampel method of advocacy training, which is used in most advocacy courses taught by the Inns of Court and the International Advanced Advocacy Program at Keble

College, Oxford. The Hampel method requires the reviewer of the advocacy to give feedback, provide a practical remedy, demonstrate a more efficient version of the advocacy just performed and then the participant replays the exercise. Instead, all the faculty reviewers in a group would provide feedback instead of just one reviewer, and they sometimes give an example of how they would put questions to take the subject matter further. This gives you the benefit of hearing the different ways that you can frame a question or sound more persuasive. They were also very keen to see how the English Juniors would tackle each advocacy exercise and accepting of our different styles of advocacy from across the pond. It was said that at times, we destroyed the witnesses with kindness.

During the advocacy exercises, there were dramatic performances of direct and cross-examination, with delegates freely roaming around the courtroom. What was striking though, was the ability of all of the US attorneys to deliver opening statements, closing speeches and witness handling without being tied to their notes. This conveyed confidence and a mastery of the facts; something we all vowed to take away with us. All the delegates were really helpful in sharing the tips and practices they had in making sure they did not have to read their notes. By way of an example, during one advocacy exercise that Bibi was taking part in, she was advised by the faculty reviewing her performance to try and stop being tied to her written notes. During the next exercise, she abandoned her notes to great effect and decided from then on in, to stop using written notes as comfort blanket.

We also found that once the US attorneys had developed their theme from their case analysis, the attention then turned to the evidence. Participants were encouraged to use demonstrative aids to enhance the evidence they had elicited as much as possible, for example, a detailed plan of an apartment. It was also common for PowerPoint to be used in closing speeches.

Throughout the course, the faculty reminded us to constantly weave the evidence into our closing submissions. We wondered if this was because in Florida, one cannot put one's case to the witness and is instead limited to eliciting facts that will support the closing submissions. It was great practice for all of us to go over the exercise of getting as many helpful facts as possible before launching into putting our conclusions to the witness.

The course was conducted on the basis of Florida law, which inevitably involved some differences in technique and procedure, but these did not detract from the value of advocacy training and the course as a whole. One area that did take a bit of getting used to, was the inevitable cries of "objection" from your opponent, such as "hearsay" or "relevance". What we

didn't expect, was the fact that it was open season: any that any of delegates in the class could shout objection, not just your opponent, which can make a tough advocacy exercise just that little bit tougher, as you have to respond to each objection raised. After the faculty review, the delegates would make their way to a one-on-one video review of exercise where the reviewers, with their wealth of real world trial experience, were able to give helpful words of encouragement and practical advocacy advice to all.

> The fascination with the different approaches to trial advocacy undoubtedly extended in both directions: many US attorneys were curious as to why English barristers would want to undermine all their hard work in cross-examination, by being forced to 'put' their case to a witness. Further, on discovering there is no process for deposition in England, the response was, "but how do you know what a witness will say?"

Our American counterparts were shocked to find that UK barristers could act for either the Crown or defendants and would sometimes switch sides several times during a day in court. Most agreed that if they were able to have experience of both sides, it would undoubtedly make them better lawyers, and better advocates. The Florida Advanced Trial Advocacy Program is one of the few programs in the United States that has brought state prosecutors and public defenders together for training. It was helpful for all involved to hear how someone who is committed to acting for one side would consider matters in order to get a more rounded view.

Amongst the hard work, there was plenty of opportunity to socialise: particular highlights being the faculty meet and greet and hosting our own very British 'Pimms Party'. Those of us who had travelled from the UK chose to conduct a fashion show of court dress, including a 'gown for the future' spectacularly created by our silk, Jo Martin QC. This was accompanied by a very British quiz on everything from the royals to Yorkshire pudding, rewarded with Harry Potter socks no less.

All too quickly the course came to an end and we were saying goodbye to Gainsville and our newfound American friends. What was clear was the course was well-organised, and despite


Pelicans in Key West, Florida

the differences in the law, advocacy is advocacy wherever you practice. Advocacy tips and advice that we received throughout the course could be transported from the US to UK courtroom. If there is one thing this experience has taught us all, it is that practising advocacy amongst lawyers from another jurisdiction provides not only an insight into different methods of trial advocacy, but facilitates the critical analysis of your own approach, providing a fuller understanding of the traditional English method of the criminal trial, enabling us all to further build on our own advocacy foundations when returned to the UK. After the goodbyes we all went on our own mini American Adventures: Bibi headed to Utah, Sophie to Washington DC, and Alex and Charlie stayed in Florida for a couple of days in the hope of seeing the Space X Amos 17 Rocket launch, which ended up being delayed due to adverse weather conditions so remains on the bucket list. Charlie stayed for an extra week and headed to the Everglades and below is his Post Course American Law Adventure:

"Having torn ourselves away from work, and after an intense week on the course, we didn't rush back to the grindstone. Resisting the plastic charms of the theme parks just down the road, all the UK participants headed to see more of the US. I drove south on the I-95, pausing at the Everglades National Park (a very beautiful swamp) and then pushing on to the Florida Keys.

Eager to see the inside of a real US courtroom after a week of simulated trials, I caught up with an Assistant State Attorney I had met on the advocacy course. Ryan moved to prosecuting in Key West after playing American Football in Germany. I was interested to see what it is like to prosecute in Key West; the island is nearer to Havana than Orlando, and known for partying and permissiveness, but is still firmly linked to the US via the bridges that snake down from the mainland.

Criminal trials have moved from the historic Monroe County Court House (charm, colonnades, and a clock tower) to the Justice Center (newer, but still colonnaded) next door. I noted enviously the parking spaces outside: 'Reserved for State Attorney'. Entering the court, security is provided by armed sheriff's deputies. On my visit Ryan was working his way through the morning list of arraignments. About 20 people sitting in the public rows were called forwards in turn to plead to assorted DUIs, assaults and overfishing. The judge was measured and respectful, efficiently moving through the daily business; a reassuring contrast to the more outlandish film portrayals of the US courtroom.

Ryan told me afterwards about his work; along with the usual State Attorney's case load there is an emphasis on protecting Key West's diverse and abundant wildlife. One of his memorable cases involved a William Hardesty. Hardesty was visiting Key West from Maryland when he jumped into the sea to wrestle a pelican. He later posted a video of himself doing so on Facebook. The video went viral, but Hardesty was unrepentant in the ensuing online debate. A public outcry saw Hardesty brought back to Florida, prosecuted by Ryan, and sentenced to 90 days in prison, a $1000 fine, and a year of probation. His late expressions of contrition were described at the sentencing hearing as 'troll remorse'. The pelican also achieved some form of justice: the video shows it biting Hardesty in the face.

The trip to Key West courthouse was an interesting snapshot of life as a junior Florida prosecutor. In hindsight, I would have built in an extra day or two to see part of a full trial. As Ryan fairly points out, practising in Key West has its perks. Following the morning's list, I spent an afternoon diving on the surrounding reefs, and an evening sampling the waterfront bars under Ryan's direction."

Conclusion

We are all extremely grateful to the South Eastern Circuit and the Faculty of Florida Bar for this fantastic opportunity and the support they provided to each of us during our short dip in to the lives of American prosecutors and defenders, enabling us all to take full advantage of this incredible opportunity. In particular we would like to thank our own Aaron Dolan and Jenifer Zedalis from the Florida Bar, who were our primary points of contact for the program and were responsible for the UK and US administrative sides of the course. To all of the Faculty members but in particular Peg O'Connor and Denis Devlaming, who are both very busy Attorneys but who always went that little bit further to look after us and to ensure that we made the most of what little time off we had during the course and for being such great and generous hosts. And last but not least, we would like to thank one other Faculty member, Jo Martin QC for all her advice and guidance throughout the course for which we are all grateful and for her ingenious, hand made post Brexit Barristers gown of many colours.

The SEC is already seeking applicants to fill the four Juniors slots for next year's course, to those that are reading this and are eligible, we would all strongly encourage you to apply.

Class of 2019 – Florida

Sitting in a Primary School parent governor meeting last week I decided to write a list of 10 ways barristers could behave towards one another.

Certainly the surroundings prompted my thoughts. What could we do to make life better for one another – how could we set the standard? Since becoming Wellbeing Director for the Criminal Bar Association I am a little saddened by how hard the job has become for the bar and bench alike. For the CBA and Circuit alongside our indefatigable administrator Aaron Dolan, I try to organise events where both criminal barristers and criminal judges can meet and swap experiences from our diet of depressing and heavy caseloads. I am convinced if we were able to better support each other that is the best way forward and happily there are many judges willing to engage. How this affects women and men is something we have been exploring. Our feedback from these events has been really positive, and surely something positive for the bar must be a good thing?

So I came up with '10 principles' for the criminal bar. Why did I dream up the 10 principles for our profession in a primary school last week? Certainly not because I want to play headteacher but because I thought it really wouldn't take much to make our jobs better: all we would need to do would be to sign up to the following:

1...	**Be polite**
2...	**Be respectful**
3...	**Be kind**
4...	**Be thoughtful**
5...	**Be professional**
6...	**Listen**
7...	**Never shout**
8...	**Keep calm**
9...	**Help others**
10...	**Treat others with unconditional positive regard**

If we set the standard I am convinced that others would follow and that all of us would feel more valued and happier in the workplace.

As a woman at the bar how have I progressed? Trial and error – what works for some doesn't necessarily work for others. By being honest about how hard it can be in conversation with colleagues, and by trying to be kind to myself which is always a work in progress. Ultimately for men and women the job is 24-7. Some people have a partner to help with the rest of life, others cope admirably as a single parent as my mother did years ago. Can we change things? Yes. The 'wellbeing at the bar' working group slowly but surely is making positive steps to improve things for the bar. Conversations which we didn't have before we now have with senior leaders. I am proud to see many of my female friends and colleagues in silk and becoming judges, but I know the sacrifices many have made to do so. What worries me is in a world of austerity we will lose the gains we have made. Women leaving to take jobs where they will be valued and better supported is all too common.

A life as a self employed barrister has no HR department, no sick pay, no holiday pay and no maternity pay. We have nevertheless alongside our male colleagues worked hard for a job we love but the pressures on all of us cause many to say it's not worth it and so we lose women at the top and on their way to the top. That is what I hear so many women tell me – that they are not sure how much longer they can stay on.

So if we sign up to the 10 principles then we need the senior Judiciary to help us by settling fixed court sitting hours, email etiquette and the abolition of warned lists or floaters because no one can afford to prepare a trial for only £55. We are reaching out because the profession wants to ensure future diversity but we all need to agree on a few things that will allow women the opportunity to continue to rise through ranks. Speaking out is not easy when it's personal but in our job we know that a more diverse voice can be a powerful force for change.

Valerie Charbit

Red Lion Chambers
SEC Recorder

'Talk to Spot'

Bar Council launches new online tool for recording and reporting Harassment and Bullying

We all know that the Bar has recently been waking up to the way in which discrimination, harassment and bullying still infiltrates our working lives, and the way in which it undermines a profession which has sought to become more diverse, more tolerant and simply a better, safer and more professional environment in which to work.

So often, however, insidious bullying or discriminatory behaviour is overlooked simply because reporting it seems too complex, to place too much of a burden on those experiencing it, and to take too long to have any prospect of effective intervention and correction.

Those who have experienced it are also often too shocked, or too unsure of themselves to complain. By its very nature, undermining behaviour undermines...

The Bar Council hopes that its new online recording and reporting tool will change that.

And no, 'talking to Spot' is not about seeking solace in our canine friends – rather a modern 'blog' style approach to record creating and trend spotting.

It works like this:

You are bullied or harassed in court, or in chambers, or the robing room.... I see it. Someone else hears it. The bully might be a colleague, a judge or a member of staff. The case progresses and we all go home, but you've been subjected to behaviour which was unfair, abusive and undermined you in doing the job you were there to do. It's difficult to work out whether you've got a complaint, who might want to hear it, and who might do something about it. But you know it's wrong, and you'd like it to stop. You'd also like it not to happen to someone else. I saw it and did nothing about it, or I saw it and tried to do something about it and it didn't work. I'd also like it to stop, and I might have more confidence about reporting it than you do.

Both of us should be 'talking to Spot' at this point.

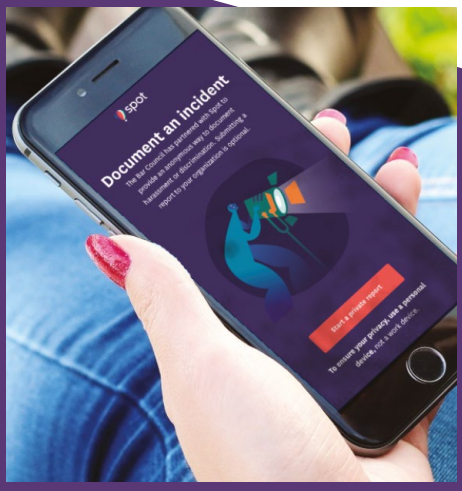
Live from 3rd October, the webpage at **http://talktospot.com/barcouncil** allows those who have either experienced or witnessed unacceptable behaviour at the Bar to make an instant record of the incident. The record can include details of what happened, when, where, who was involved and who saw or heard it. Once it is saved, it 'belongs' to whoever recorded it. The system generates a date-stamped contemporaneous record of the incident.

What happens after that is up to them.

At its simplest it allows them to have all the information dated and in one place to support a later complaint – whether to Chambers, an employer or a regulator. If it amounts to criminal conduct it can be used as a contemporaneous record to help report an incident to the police and to identify potential witnesses.

If the record-creator gives permission, it will be sent on to the Bar Council Equality and Diversity team. The team can't investigate a report themselves but they can provide advice and support in the making of a complaint through the appropriate channels.

Crucially, however, reports which are shared with them also allow the Bar Council to inform the reporter of whether others have made similar complaints against the individual involved (which may inform their choice over whether to take formal action) as well as providing the



Equality and Diversity team with a bank of information from which to compile anonymised aggregated reports of trends or themes which appear to be developing. These can then be used in discussions with the Judicial Office, for example, over issues which require intervention or training and awareness.

All reports can be anonymous if the reporter so chooses. As can those recorded by third parties.

If multiple similar complaints are received about a named individual, the Bar Council can contact each reporter to tell them that there have been other such complaints. It is hoped that linking up reports in this way will increase people's confidence in making formal complaints, or at least help them by letting them know that they are not alone.

So – next time you witness or experience unacceptable behaviour at the Bar, don't ignore it, get online and talk to Spot. It's time to call it out... because it's our profession, and we're in it together.

Nicola Shannon
Lamb Building, Temple