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News from the South Eastern Circuit

THE CIRCUITEER

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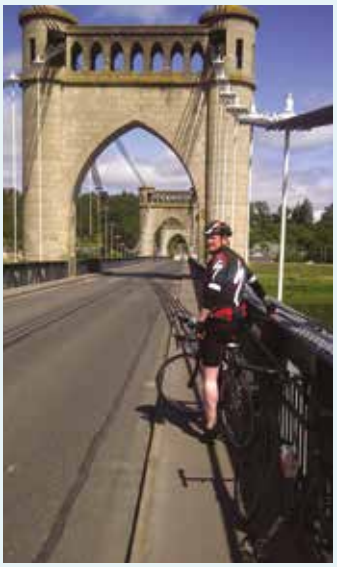
RIDE LONDON 2016

HHJ Christopher Morgan discusses cycling for a good cause.



When asked to be part of the Drystone Chambers cycling team participating in the 2016 Prudential 'RideLondon100' on Sunday 31st July, I did not hesitate to say 'yes'. It is the same every year, the e-mail from a fellow cyclist (in this case Karim Khalil QC) asking whether I would be willing to put my 'mind, body and soul' into riding for a good cause: as we celebrate International Women's Week, Opportunity International is a particularly topical charity, focusing primarily upon helping some of the most disadvantaged women across the world.

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The Presiding Judge's final year

Sir Rabinder Singh talks about his time as Presding Judge.

When I was first appointed a Presiding Judge of the South Eastern Circuit in 2013, I was interviewed by The Circuiteer magazine. The appointment of a Presiding Judge is usually for a term of four years. It is hard to believe that three of those years have already elapsed. I am now embarking on my fourth and final year as a Presider, and this year I am the Lead Presider of the Circuit.

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A rite of passage

'Keble' is a rite of passage. Barristers who've attended over the past 20 years told me it was: 'the best thing I've done for my advocacy', 'hard work, but a must do', 'brutal, but brilliant'... The PR is very, very good. The problem with this reputation is it puts rather a lot of pressure on attendees to be improved. Who wants to go against the grain of 20 years worth of testimony?

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THE RETIREMENT OF HH JUDGE MICHAEL LAWSON QC

A SPEECH BY TIMOTHY DUTTON CBE, QC

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EDITOR'S COLUMN

It has been a busy time across the Circuit. The regular updates from our Circuit Leader and the Monday Messages from Mark Fenhalls QC remind us of the many fronts upon which those who represent our interests are engaged and in turn kept away from more pleasurable pursuits: those of us who simply 'get on with the day job' owe them all a significant debt of gratitude.

This Circuiteer contains a Spring cocktail of articles effervescing with enjoyable tasters of members' antics across the Circuit and across the pond: as the US elections enter the final lap and we smile pityingly at the strident electioneering promise of building a wall to keep the migrants out, we should remember to look closer to home at some of the demands for stronger rules to keep others out: none of these carrion calls are in the spirit of the independent Bar and our celebration of diversity. Let us instead rejoice in the knowledge that there many talented men and women who remain interested in justice systems across the world and are prepared to fight to make them work – turn through the pages of the Circuiteer to read about our Circuit exchanges with lawyers in the USA; advanced advocacy training at Keble and the commitments of our Presiding Judges and Resident Judges to upholding the best traditions of our way of life.

Read also about the recent experience of conducting a trial with the defendant present only on the video link – how much further this will develop remains to be seen – remember the initial horrors when witnesses were first permitted to be present in the same way? I think that I can hear the MoJ officials running to the Chancellor with calls of a triumphant saving in the budget.

There have been many appointments to celebrate – Circuit Judges, Recorders and Silks aplenty – and there are more to come, as the next round of applications is well underway. I'm sure that readers join me in congratulating those who have succeeded thus far and commiserating with those whose hopes remain outstanding. We hear from one recent appointee of his cycling prowess and experience as he leads our "*Tour de Londres*" in trying to raise funds for Opportunity International, supporting the aspirations of the weakest in communities across the world – do please help in any way you can, even if only by being suitably noisy on the day! I trust that this sits well with Valerie Charbit's timely reminder of the recent developments in the attention to wellbeing at the Bar – for too long have we neglected the needs of our colleagues who are often overcome by the strains of the unremitting pressures that accompany our profession. Do contact her and provide help where it is most needed.

There have been several notable retirements too: one former Leader of our Circuit receives particular prominence. Many also had the pleasure of attending a dinner to thank Oscar del Fabbro as he completed the "double" by retiring from being the Circuit Treasurer (for as many years as anyone can remember) and being appointed to the Circuit Judiciary. He shared this occasion with Natasha Wong, as she retired from the position of Recorder of the Circuit.


Karim Khalil QC

My thanks to my sub-editor, Adam Morgan; Aaron Dolan who works tirelessly for the Circuit in so many ways; Sam Sullivan for his typesetting patience as deadlines passed and to all who have contributed to this edition. Please remember that we are always looking for articles and photos that reflect the rich tapestry of Circuit life, so make a few jottings and see your news published to the most critical and appreciative audience in the world!

Karim Khalil QC

Drystone Chambers
Editor *The Circuiteer*

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

Dinner for our former Treasurer and Recorder

An informal dinner at De Palo's, 8 Bride Court on Thursday 25th February to honour the posts of Treasurer and Recorder of the Circuit.


From left to right: Max Hill QC, Natasha Wong, Oscar del Fabbro, Robert Seabrook QC and Sarah Forshaw QC


From left to right: Philip Brook Smith QC, Natasha White-Foy and Karim Khalil QC


Max Hill QC

LEADER'S REPORT APRIL 2016

All of those in practice at the publicly-funded Bar have become accustomed to bad news in recent years. Whilst we faithfully adhere to the 'one Bar' philosophy, we had come to imagine one future for the private market, and quite another for the legally aided sector.

I need not recount successive rounds of stagnation and then real cuts to legal aid budgets, alongside the decline in court buildings and facilities which has been the legacy of the austerity years since the financial meltdown of 2008.

It was with suspicion and surprise, therefore, that I came to realize last autumn that the Bar had come through a 'good year' in 2015, and that 2016 and the future look almost bright. Is this an illusion? I hope not. More importantly, I believe that our survival is assured. That survival has been won through hard effort and sleepless nights spent by so many on this Circuit and throughout the Bar, both in arguing our case and in reorganizing our professional lives at a personal and chambers level.

Let us take stock.

The state of legal aid funding remains extremely fragile. We are working harder and for less than ever before. But no further round of cuts has been imposed on the Advocates Graduated Fee Scheme. That is so, because everyone with real knowledge of legal aid provision now recognizes that the cuts of the last five years or more have been deeper and more damaging than anyone – including those in government – thought. If we have achieved general recognition of this fact, we have achieved something worthwhile.

Key individuals from this Circuit, together with representatives from the other Circuits and the Bar Council, have now formulated proposals to overhaul the AGFS for the better. We may still be hamstrung by the Ministry of Justice' mantra that any changes must be 'cost neutral', but we have devised a new scheme which rewards effort rather than mere page count, and which restores a sense of financial progression through a career at the criminal Bar. It is our hope that our colleagues who represent solicitors throughout England & Wales can now perform the same revision to the Litigators GFS. Then we will all have a fairer deal than at present.

The time for congratulating and naming the key players from the Circuit in all of this work is not quite upon us. However, progress looks very good. It is my hope that we are securing a stronger, firmer foundation for publicly-funded practice in the future. Once achieved, the next step will be for those who follow me to insist upon a real increase in criminal fees, which we all know has not happened for two decades. We are at last moving in the right direction.

Putting finance to one side, there are changes to the administration of defence practice at the criminal Bar. Our proposal for defence panels of advocates also sits with the MoJ for their approval, and it is modelled in much the same way as the existing CPS panels. Whilst I am always careful to say that it is solicitor leaders who should take the credit for forcing the Government to move away from Two Tier contracts – though our support up to and including partial strike action during the summer of 2015 played a significant role – all who practice in the criminal courts should take an equal interest in ensuring that defence advocates are fit for purpose in every case. That is why our proposal for defence panels is necessary and timely. As with the new AGFS, progress looks very good and I hope will come to fruition later this year.

Nobody should confuse defence panels with QASA. They are completely different. Our defence panels do not represent a regulatory scheme. They will not expose members to daily judicial evaluation. They will not require judges to give up their time to run a cumbersome new infrastructure. So defence panels are both advocate-friendly and judge-friendly, whilst still ensuring that only those up to the job should undertake difficult criminal work where the rights of victims and the liberty of clients are engaged every day.

However, it will not have escaped your notice that QASA still has not launched, albeit many months have passed since the Supreme Court pronounced its verdict on the scheme. The Bar Standards Board should be congratulated for taking a step back, and for continuing to look around in order to see whether there is any actual need for QASA. I believe we will all find that QASA, hotly argued during 2012-15, will now evaporate. Let us see.

Meanwhile, the CPS panel which of course ensures that prosecution advocacy is up to standard and is conducted by those who are fit for the role, is about to refresh

for the years 2016-20. Here too, Circuit representatives have played an important part in constructive negotiation with the CPS. By the time you read these words, you may already have received your letter confirming your continuation on the CPS panel for another four years. The details have been worked through, and the solution promises to be quite painless and I hope, successful. May I also remind you, in the unlikely event that you receive a letter of complaint about your work as a prosecution advocate, that I sit on the CPS Joint Advocate Selection Panel which determines such cases. If you find yourself on the receiving end of JASC business, do not hesitate to contact me first.

I always start, as does each Circuit Committee meeting, with the news for those who practice in crime. However, it is the seismic change in non-crime areas which has been taking our attention recently. From the Briggs report announcing virtual courts for many civil actions, to the Jackson proposals for fixed fees in a swathe of civil cases, this is the year in which membership of the South Eastern Circuit means that there is at last a balanced conversation about areas of mutual concern. Of course, we are all going through the changes necessary to digitalise the justice system. Better Case Management is the new phrase in criminal courts, but I find on attending the Family Law Bar Association dinner that digital streamlining is the first topic on the agenda and the subject of the address given by the President of the Family Division.

So this means that our 'one Bar' is going through rapid change, and we can all help each other to discuss the various proposals.

That is why the South Eastern Circuit Access to Justice Working Group, founded in 2015, is enjoying a very busy 2016. I have to say that I am delighted. I have been able to co-opt civil practitioners onto the main Circuit Committee in unprecedented numbers, relying upon the willing help of members of the Access to Justice Working Group. Thus, the Circuit Committee is more representative than it has been during the twenty years of my membership. At a time when all members of the Bar are discarding reliance upon one practice area or income stream – a reliance which built up over the last two decades and which was unhealthy – this is progress which makes us stronger.

And so we have a very full programme of events this year. Our lecture series is already underway (stewarded again by Iain Morley QC who deserves our thanks), commencing with a January lecture from Jodie Blackstock of Justice. We are making a Circuit trip to Paris in April, where as guests of the Paris Barreau we hope to discuss international cooperation in combating terrorism, and where we shall show our support for French colleagues dealing with the aftermath of the attacks in Paris in November which so shocked us all. We look forward to the Annual Dinner on 10th June in Middle Temple Hall. And we are joining with the Bar Council in actively promoting Wellbeing at the Bar; helping individual barristers to withstand the huge pressures of working alone, without feeling that there is nobody willing to understand what it is like and to share the burden. Our Recorder Valerie Charbit holds this brief and has written about it in these pages. My thanks to her, as well as to her popular predecessor as Recorder, Natasha Wong.

If you receive the Circuiteer but feel that you know little about the work of the Circuit Committee or the SEC in general, please ask me or ask any member of the Committee who will be glad to tell you more. Success in guaranteeing the Bar of tomorrow comes from hard work today, and there is evidence aplenty from our large and dedicated Committee.

We said farewell to Oscar del Fabbro, Circuit Treasurer and the holder of most of the key Circuit roles over many years, on his appointment to the Bench at Snaresbrook in December. However, the farewell is thankfully only partial, as Oscar remains a Trustee of the SEC Foundation which runs the SEC Senior Advocacy course at Keble College Oxford. We owe an enormous debt of gratitude to Oscar for this – as well as for all of his work in holding the SEC together for so long – and I look forward to Keble 2016 under the wise leadership of Course Director HHJ Julian Goose QC and all of his team.

So the bad news of recent years has been replaced with a new sense of optimism for this year and far beyond. I hope you enjoy this edition of the Circuiteer, in which you can learn more about the Circuit and all of its good work.

Finally, my personal thanks to two people who make things happen for the benefit of us all. Circuit Administrator Aaron Dolan continues to be worth his weight in gold, administering Keble as well as the Circuit all year round, and my personal assistant Tana Wollen has become indispensable in the year since she joined us, and long may she remain.

Max Hill QC

Red Lion Chambers
Leader, South Eastern Circuit

Presiding Judge of the South Eastern Circuit

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The office of a Presiding Judge is still relatively little known. It is a statutory office, which was first created by the Courts Act 1971. The principal function of a Presiding Judge is to provide leadership and management to the court judiciary on each Circuit. There are six Circuits in England and Wales. Most of the Circuits have two Presiders each but the South Eastern Circuit has four, both because of its geographical size and because of the large number of judges who sit on it. Almost half of all the judges in England and Wales are assigned to the South Eastern Circuit. Because it includes London, it also has some of the most prominent courts in the country on it, in particular the Central Criminal Court (the Old Bailey) and the County Court at Central London.

As is well known, the Lord Chief Justice of England and Wales is the head of the judiciary, as a result of the Constitutional Reform Act 2005. Ultimately he is responsible for the deployment of all judges. It is a cardinal principle of our constitution that deployment of judges is a matter for the judiciary and not for the executive. However, for obvious reasons, the Lord Chief Justice cannot exercise these powers on a day to day basis on each Circuit. Accordingly his powers are delegated to the Senior Presiding Judge for England and Wales (now Lord Justice Fulford). The SPJ in turn has delegated his powers to the Presiding Judges on each Circuit. In practice, there is a continuing and important relationship between the Presiders and the SPJ.

As Presiders we decide where a newly appointed judge is to sit. We also decide any application by a judge to transfer to another court or sometimes even to another Circuit. We also have an important role to play in decisions, which are taken by other, more senior judges such as the SPJ. For example, we consider expressions of interest from Circuit Judges who wish to be a Resident Judge at a Crown Court (unless it is one of those posts which is a Senior Circuit Judge post, in which case a competition is run by the Judicial Appointments Commission). We also consider expressions of interest from both Circuit Judges and Recorders who wish to have certain authorisations ("tickets"), for example to try serious sexual offences. These decisions, as I have said, are made by others but we have an input into them. If you are a member of the South Eastern Circuit and sit as a Recorder, you are therefore likely to come across the Presiders in that context.

The Presiders also have some role to play in supervising the training of judges on the Circuit. Although the training is provided by the Judicial College, to some extent it is administered by each Circuit. Again, if you sit as a Recorder on the South Eastern Circuit, you will have come across the Presiders at one of our Saturday "Sentencing Seminars". These are annual seminars, which we regard as important to ensure that all judges, including Recorders, on the Circuit are up to date with developments in criminal law and procedure. This training is additional to that available from the Judicial College at a national level.

The Presiders also have a valuable pastoral role. We are on hand to provide advice and guidance to all judges on the Circuit. There can be many and varied issues which arise. For example, a judge may be unsure about whether to accept an invitation to become a trustee of a charitable or similar organisation or to give a public lecture on a particular topic which may turn out to be controversial.

There are many challenges facing the Circuit. The most important, it seems to me, in the coming year will be the implementation in full of Better Case Management. This has already been in operation in some "early adopter Courts" since October 2015. On the South Eastern Circuit those courts were Isleworth, Reading and Woolwich. From 5 January 2016 BCM has been in effect in all courts. We all have the responsibility of making sure that BCM works and works well: that is judges but also the prosecution and the defence. It also requires the full and active participation of other agencies such as the police and probation service. I am grateful to everyone who has been involved in this process already, including Circuit Judges, and I trust that in the coming year we will all work together to make sure that this important venture succeeds.

However, I am of the view that the Circuit is not only about what goes on in court. There is already a lot of good work which is going on all around this Circuit, where judges and others involved in the legal system are taking an active part in their local communities. I am keen to encourage this in my year as Lead Presider. Lots of courts hold open days and invite the public into see how they work in an informal way. Many courts also hold moots and mock trials, especially aimed at children and young people. This can help to demystify our legal system. It can also help to make our system more accessible to the public. It is very important that we as judges should appreciate that we are here to serve the public. It is a great honour to be a judge. It is not like any other job. We are entrusted by the public with important powers. It is important therefore that members of the public should be given every appropriate opportunity to find out about how the court system works in their name.

I recognise that the South Eastern Circuit, not least because of its size, sometimes appears to lack some of the cohesion which the others Circuits may have. Nevertheless, I am very proud to be Lead Presiding Judge of the South Eastern Circuit. I am keen to work with you in any way that I can to make this Circuit not only an efficient one but also one in which we can all take pride. The Circuit and local bar messes perform an important role, in my view, in helping to achieve that cohesion; and also of course they provide an opportunity for us all to enjoy ourselves as well.

Sir Rabinder Singh

Lead Presiding Judge of the South Eastern Circuit

SPEECH BY TIMOTHY DUTTON CBE, QC

ON THE RETIREMENT OF HH JUDGE MICHAEL LAWSON QC

LEWES CROWN COURT 29TH JANUARY 2016

At virtually the same time as man was first setting foot on the moon, Michael Lawson was called to the Bar in 1969, aged 23. He took silk within a short time being appointed in 1987 and was elected Leader of the South Eastern Circuit in 1997, a post which he fulfilled with vigour and determination for three years. He remained a staunchly active member of the Bar Council until 2003. He was elevated to the Circuit Bench in 2004. Today after more than eleven years on the Bench and forty six years as a loyal servant of the law we are gathered to wish him and his family all good fortune in retirement.

Not only was Michael a distinguished practitioner, primarily in criminal law, prosecuting and defending as a strict observer of the cab rank rule, but he was head of Chambers, following the leadership of Michael Hill QC, when his chambers had moved from the centre of Middle Temple to 23 Essex Street, and where under his wise and humane leadership the chambers grew in strength. He attracted talent from other sets and the set became one of the power houses for criminal and regulatory law, not only in the South East, but in the country as a whole.

His Qualities

If I were to choose the central characteristic of Judge Lawson which shines out from his other qualities, it is his essential Humanity.

Michael understands and understood throughout his career the real meaning of Diversity and Inclusion. Michael was the first of any Circuit Leader to create what has become the Diversity Committee of the South Eastern Circuit to work as a central part of the Circuit structure.

By the late 1990s the Bar Council was contemplating banning sole practitioners from practising as such. Judge Lawson had other ideas. He persuaded the Bar Council to stay their hand whilst he worked with a group of leading sole practitioners to form the Sole Practitioners' Group to ensure that they were organised under the firm leadership of Robert Banks, now famous for Banks on Sentencing.

Michael's time as leader was before the Constitutional Reform Act of 2005 and before the silk system changed in 2004-5. This meant that he held considerable power because he was consulted over every single judicial appointment on the South Eastern Circuit and on every application for silk. Here his sense of duty, fairness and humanity shone forth. He worked long hours, consulting widely before giving the Leader's response, consulting SBAs in the individual's specialist area, other practitioners, and judges so that the fullest picture emerged of the candidate's qualities. This was long and exhausting work. Many in silk now or on the bench owe it to his work; yet it was done quietly, and with enormous commitment.

I would also like to mention Michael's sense of fair play. Those of us with a less than distant memory of the House of Lords will remember the case of Edmunds v Lawson [2000] EWCA 69. Whilst Michael was both Head of Chambers and a member of the Bar Council the profession was divided as to whether pupils should be paid. Michael believed that pupils were employed for consideration and therefore should be paid. He thought that the way to resolve the impasse was to have a test case so that the doubters could be silenced by the law. Michael therefore agreed that he would be the Defendant to a test case

so that the question should be tested as a matter of principle. This compliant Defendant permitted his name to be used as Defendant all the way to the House of Lords so that ultimately, the point having been tested, pupils became paid. Lord Bingham when the case came before the House of Lords recognised the service which Michael was doing. It is a measure of his humanity and courage that in order to ensure that the point was tested, and the doubters silenced, he permitted his name to go forward in circumstances where he was in fact providing a service for all of the thousands of pupils who have followed since.

Where, one might ask, does Michael find the strength to have fashioned out his career and his service to the law? Beside this successful man has been throughout his career at the Bar his wife Tam and their two talented and delightful daughters, Kate and Sapphire.

During his leadership of the Circuit we who worked with him were always conscious that at the end of a frazzled working week an invitation would come from Tam to have drinks and dinner in the family flat in Kings Bench Walk. The strength of family values, which is so evident with them, pervades all that Judge Lawson did and does. All who became involved in the Circuit, with its membership of 2,500, entered a form of extended family. All who became members and took an interest had a sense that they belonged in the benign family circle created across the whole swathe of the South East by its leader.

Under Michael's leadership of the Circuit he encouraged us all to work hard on raising standards of education across the whole Bar. Civil and criminal practitioners would come to the Keble course or to other courses and events laid on by the Circuit. It was an August Bank Holiday Monday when I was preparing the Keble course in Michael's first full year as leader in 1998 that I was informed that our dear leader would be arriving on a jet from his family holiday in Italy. Sappho, my wife, got ready to greet the arriving leader. The college gates flew open and there dressed in a white linen suit, shirt fashionably unbuttoned, sporting the exuberant tan, teeth gleaming, blue eyes blazing, hair blonded by the sun, was ... the leader of the South Eastern Circuit. As he stepped across the college threshold my wife opened her arms, ran forward and said, "At last, the matinee idol has arrived!"

I have withstood the description of HHJ Lawson as the "matinee idol" with as much fortitude as I can muster for the last eighteen years. The matinee idol image coupled with a gentle, soft, speech, which requires the listener sometimes to lean forward, provides an intoxicating combination.

The image of a matinee idol may be true, but that of softly spoken advocate belies a steel core. Michael acted in some of the most difficult and fraught criminal cases of his time, where nerves of steel were required.

I believe that his last case was a high yield investment fraud where Michael was defending in Worcester (off his usual patch). We all know that defences for those involved in such cases, namely that they honestly believed that the scheme would work, are fundamentally hopeless. Having attended as matinee idol and course tutor for many years at Keble, Michael Lawson QC decided that his closing speech to the jury would take on a new hue. I will give you the opening lines of his closing speech, they go like this:

"Members of the jury, it is now my opportunity to close this case for the first Defendant." And with that brief introduction he burst into song ...

"Somewhere over the rainbow bluebirds fly, there's a land that I heard of once in a lullaby".

The jury, enamoured of the matinee idol now singing in his fullest baritone, duly applauded the performance. But they convicted his client. What a fabulous way to end a brilliant career at the Bar!

The Bench

Judge Lawson started off his career on the Bench at Maidstone Crown Court serving there until 2010. But no one would describe this particular oiseau as an "estuary bird". No; Judge Lawson is a man of catholic taste who belongs in the architecture and green environs of a place like Lewes. At both Maidstone and Lewes he has served the public with distinction.

It is increasingly common for people to describe success in the law by reference to the money they make as practitioners at the Bar. For me, and I hope many others, the making of money is never a yardstick of true professional success.

Some measure success in the law by the legal analysis contained in judgments handed down, but for me the real measure of success of a practitioner and judge, only starts with a command of the law. Of course His Hon Judge Lawson is erudite and has a gifted mastery of the law. My knowledge of him, and my researches for this speech indicate that he has rarely been appealed, and that successful appeals have been even rarer. His sentencing is exemplary.

But there are two other factors, which, if you want to be complete in your success with the law are, for me at least, essential. First, is to nurture the welfare of your profession whether as lawyer or judge. If you do nurture, then not only the profession, but the Rule of Law, are the beneficiaries. Judge Lawson's nurturing of the profession in the South East and nationally through his work, has been in the vanguard.

The final and most important part of distinction is that a practitioner or judge should be able to better the lot of human kind. If ever there was a judge who understood the broad requirement of the law's connection to humanity, it is Michael Lawson. One need only read the brilliant and resonant sentencing remarks in the case of R v Forrest of 21st June 2013 which were printed and broadcast verbatim by the BBC, to understand that this is a man with a true grasp of what is required of those who can count themselves successful in the broadest sense of the word in the law. Michael Lawson is the epitome of success in the law in its proper sense.

Michael and Tam will now have time to enjoy their family, bucolic, musical and other pleasures. A couple with such talent and with so much to give will always be welcome in the law's precincts. We look forward to welcoming them in the Inns, on this Circuit and as our guests.

We wish them the happiest retirement.

Timothy Dutton CBE, QC

Leader of South Eastern Circuit from 2004-2006

PEGASUS REPORT

Having arrived in Washington, D.C. during the heart of the Fall, the next seven weeks as a Pegasus scholar saw me travel 13,000 kilometres of the "land of the free and home of the brave", traversing the country via eight states. My first experience of the U.S. justice system was in Indiana. It was at an Inn meeting, on day one, that I began to digest the wealth of differences between our systems. America has nearly 400 Inns of Court, founded upon our four historic Inns, yet their arrangement is more akin to that of our Bar Associations. The educational element of the meeting saw us compare the evidential rules of 'impeaching' a witness in the U.S. to that of attacking the credibility of a witness based upon a previous inconsistent statement. By the end of that first day I had come to realise two factors that held true throughout the scholarship: being hosted by the elite of the American Bar would make this scholarship really special; and there was so much to absorb and learn.

From left to right:

Michael Weinstein, American Inns of Court Pegasus Scholar 2015, Associate Member of Church Court Chambers

Clara Hamer, UK Pegasus Scholar 2015, Barrister at One Brick Court

Ryan Cicoski, American Inns of Court Pegasus Scholar 2014

Rebecca Penfold, UK Pegasus Scholar 2015, Barrister at Drystone Chambers

Tyler Garrett, American Inns of Court Pegasus Scholar 2015

'Celebration of Excellence' at the United States Supreme Court

Other practical differences were evident early on. The U.S. court system does not differentiate between areas of law, rather jurisdiction: Federal and State. This took some getting used to, particularly due to the huge variance from state to state. Nonetheless, the States were united on one front: sheer awe and respect for our justice system and the Bar as a profession. Confusion often arose when attorneys questioned 'what is a barrister?' The legal training in America is wholly different: there is no equivalent of Bar School or pupillage. There is no differentiation within the profession that compares with our Queen's Counsel; indeed there is no separation between litigators and advocates. In terms of court dress, my wig and gown enraptured all around the States: in Sacramento a former judge presented an annual award ceremony having donned my wig, whereas in the Mid-West I was asked where in my robe a gun pocket could be found and I rebutted the assumption that only male barristers wore wigs.

On the topic of women at the Bar, it was noted with admiration that my co-scholar and I were both female. I was honoured to meet the Chief Justice of the California Supreme Court, Tani Cantil-Sakauye, noting the astounding constitution of her court: majority female and no white male. My proudest moment was the awe-inspiring Justice Ruth Bader Ginsburg commending us in the well of the U.S. Supreme Court at the annual black tie event, the 'Celebration of Excellence'.

Our time as Pegasus scholars immersed us in the wider legal system of America. I visited the Capitol and spent time in the offices of Congressmen. A private tour of the White House, the Pentagon, the U.S. Treasury, OFAC and State Department are amongst my fondest memories. It was of huge interest to compare the deference the American courts pay to decisions of the government and executive, compared to our courts. We observed a Court Martial at Quantico Marine Base, visited a state penitentiary, watched arbitration and shadowed a mediator. Depositions were fascinating and very different to proofing a witness. Visiting the U.S. Supreme Court was enjoyable although I felt unable to engage with the appellate arguments due to the 30-minute oral advocacy time limit. These numerous opportunities within diverse areas of law truly enhanced my experience.

The influence of 17th century England has had an enduring impact on the modern legal system of America. Differences

between our systems lie where America has preserved models from that era, such as the retention of certain legal vocabulary: 'a demurrer', 'felony', 'misdemeanor' and 'attorneys'. A more striking example is jury selection, known as 'voir dire' in America.

In Virginia I watched in awe as a civil jury panel were questioned for hours, in order that the attorneys could select who would sit on a personal injury trial. I was shocked; firstly by the concept of a civil jury trial, secondly upon finding out that the jury would also determine the level of damages and thirdly by the probing and often intimate questions asked in an attempt to find bias. The second 'voir dire' that I witnessed was for a criminal trial, which again provoked my disbelief at the questions asked and the view that probing potential jurors could create a more favourable jury – but for which side? On this occasion, healthy debate followed and I sought to persuade the attorneys that their perception of our lack of jury selection might not in fact annihilate a fair trial, by referring to the annual statistics of the Ministry of Justice on rates of conviction. The rate is significantly lower in England than in the USA.

Another legacy from the 17th century is capital punishment. An enthralling area of law that, thankfully, plays no part in my day-to-day work as a criminal barrister. In St. Louis, Missouri we met attorneys who specialise in death row advocacy. It was sobering to hear the sheer determination leading to lengthy submissions to the Supreme Court up until the final hour, in the hope of saving a client's life. It was also apparent that 'mitigation advocacy' is of far greater importance in America than in England. Perhaps this is because the jurors are deciders of sentence in a capital case and mitigation can mean the difference of life or death? Due to European restrictions on certain drugs, death by lethal injection has been limited and attorneys are now having to argue the merits of which method of killing their client is more humane – death by firing squad, death by electric chair or death by hanging? I found the concept of drafting such submissions particularly harrowing. On a more positive note, later in the scholarship we attended an Inn meeting in downtown D.C., this time not as the guests of honour, but in the audience of a man recently released from death row. All too often miscarriages of justice occur on both sides of the Atlantic. What sets England apart from America in this regard is that we have a body that deals specifically with this issue: the Criminal Cases Review Commission.

Another aspect I found particularly troubling is how certain judicial and prosecutorial offices are elected positions. I watched the sentencing hearing of a serious felony in Virginia, aghast at the speech the prosecutor delivered in opening, pointing and shouting at the defendant that he was a "wicked, wicked Jekyll and Hyde", and reading a victim impact statement requesting the death penalty for this non-capital case. After court, I was informed that the rest of the audience was unsurprised at the Razzie winning performance of the prosecutor: he was due for re-election. I was also disappointed with how those accused of crimes are treated regarding bail. In America, a defendant's liberty prior to trial is subject to bond. Unsurprisingly, most cannot meet the amount to secure their liberty, and the legal test found within the Bail Act for a custodial remand has no American equivalent. Furthermore, the process of bringing a prosecution is entirely different. In St Louis, the District Attorney showed us the 'grand-jury' room, where members of a jury hear untested prosecution evidence in secret, to enable them to reach a decision on an indictment. The American view on our use of the secure dock and the potential infringement of the presumption of innocence was also a topic of debate, a criticism which was difficult to concede when faced with an American defendant appearing in court, shackled by the ankles, handcuffed, wearing the orange jumpsuit, flanked by armed prison guards.

California State Capitol, Sacramento, CA

From left to right:

Rebecca Penfold, UK Pegasus Scholar 2015, Barrister at Drystone Chambers

Clara Hamer, UK Pegasus Scholar 2015, Barrister at One Brick Court

However, I hope that our criminal justice system can soon catch up with America in three distinct areas: listings, disclosure and technology. All cases are listed in line with Counsel's availability and there are only fixtures – not a warned list in sight! This has the obvious advantage of continuity of properly prepared trial Counsel and certainty for those facing trial. American attorneys were appalled at returns and the late instructions criminal barristers regularly receive – questioning whether it fell within the realms of professional negligence. The rules of discovery require full and frank disclosure of all evidence to the defence well in advance of any trial. Whilst in Delaware, I watched in awe the evidence given by a forensic scientist in a racketeering trial. The court system allows for exhibits (in this case a gun) to appear on screens, with the witness having the capability from the witness box of drawing and highlighting relevant sections on the screen. Undoubtedly this aids jury comprehension.

In all, an enriching and unforgettable scholarship that simply cannot be put into words to do it justice. My utmost thanks to all those involved State-side: the organisation and hospitality by the individual Inns of Court, our hosts in Indiana, Illinois, Delaware, California and Missouri, and the American Inns of Court – you have opened my eyes to so much. My immense gratitude goes to the Pegasus Trust for providing such a brilliant opportunity to promote the junior bar of England and Wales. I now have the good fortune to host a fellow Pegasus scholar from the U.S., which I look forward to immensely.

Rebecca Penfold

Drystone Chambers

Ride London 2016

Continued from page 1

Having accepted the invitation there follow a few days of quiet satisfaction knowing that a good cause will benefit from my pain. Then reality sinks in. How long have I got to get my aging body into shape? Will I be able to give up alcohol? Is this good carbohydrate or bad? I doubt my ability to complete the course, to follow the fast wheels and head the 'chain' of a well-drilled team. As quickly as they come they disappear, forgotten in the satisfaction of the first 50-mile training ride, completed in the cold and wet. As I lean over the handlebars trying to maintain a constant rhythm on the pedals my doubting mind takes me back to the completed 'centuries'. The Norwich 100 in 2014 when I rode into a headwind along the coast between miles 40-80, nothing left in the 'tank', thoughts of 'getting off the bike' and climbing on the bus! 2015 Lake Como and the exhilaration of riding with semi professional riders, ice cream and sunburn.

The PRL 100 is a tough ride and the one most London cyclists want on their 'Palmares'. I have done what I usually do when having doubts and that is to look at the 'profile' of the route and compare it with past 'century profiles'. Four hills (I suggest my team mates ignore the KOM data from Strava!), Newlands Corner, Leith Hill, Box Hill and Wimbledon Hill await us. We shall conquer.

Thank you to Karim and OI for the invitation. OI are a global microfinance charity that unlocks the potential and entrepreneurial spirit of women and men living in poverty. Al Whittaker and David Bassau founded OI in 1971 with the aim of providing financial services and training for people without access to banks or funding opportunities: OI has since helped to create 15 million jobs worldwide and aims to increase that figure to 20 million by 2020.

OPPORTUNITY International

Drystone Chambers is hoping to raise at least £10,000 for OI. Please consider helping out via **http://uk.virginmoneygiving.com/team/Drystone** remember, where 'micro financing' is concerned every little helps! To find out more about OI please visit their website www.opportunity.org.uk.

From left to right: Andrea Luccetti, John Stigwood, Will Nichols, HHJ Christoper Morgan, Andy Baxter and Richard Franklin

PRUDENTIAL RIDELONDON

HHJ Christopher Morgan

Drystone Chambers

THE REVENANT

Once upon a time, when the Supreme Court was a twinkle in the Government's eye, limitation of legal aid was only in its infancy, court fees were minimal and thus within the means of all citizens and the judiciary and the legal profession had an independent voice in parliament and I was still at the Bar, I used to write a column for this esteemed organ under the pseudonym of Grunty Fen. I am delighted to be invited by your editor to return to its pages and write a little something about being a Resident Judge. All pseudonyms must now go, lest it be thought I had not managed to emerge from the primeval sludge of the Fens and was making observations from ground level – almost below sea level. Instead, there will be a few observations from the perspective of a drained and anxious member of the judiciary – only just above sea level.

When I was working for the circuit, the mantra in the face of endless proposed "reforms" and "consultations" was always "go with the flow, or else worse will be imposed upon you". I have always thought that was a dangerous policy to adopt – particularly if all such reforms and consultations were promulgated by politicians; since all politicians realise with absolute clarity that the only people less popular than themselves are lawyers and there are no votes in being nice to lawyers. In any event, since the late 1980's the mindset in government seemed to be that the state always knows best and those who, with very few exceptions, worked extremely hard within the professions to do their best for their patients/clients needed to be told what to do by others less experienced than themselves. The concept of self-reform was rarely considered and interference had to take place. Although the Judiciary is doing its utmost to reform itself, I fear that our independence is already threatened and that worse may still be in store.

I was appointed Resident Judge of Cambridge Crown Court in 2007 after my predecessor, Jonathan Haworth, had completed 8 years in the job. He had been swiftly elevated to the post after his predecessor had unexpectedly and sadly died in office. Of course things were a little more straightforward then. There was one incredibly uncomfortable courtroom in the Guildhall, in Cambridge, and when Jonathan was asked who he would like to appoint as Diversity Judge, Probation Judge and Magistrates Liaison Judge, looking wildly around the cupboard which doubled as his chambers, he sensibly concluded that the only person he could appoint was himself. Desultory phone calls would usually reveal there was little on the agenda that would trouble him – no distractions from endless e-mails then – and all was peace. Guidelines for sentencing hadn't really been invented, although sentencing policy at Cambridge was never a real problem. The stairs to the cells passed the window of the judge's cupboard and thus, if one returned to one's chambers after sentencing, one could ascertain whether ones sentence had hit the mark from the choice remarks as Defendants descended the cells or had no impact at all – "Did you manage to shag Sharon last night?"

But as Jonathan saw out his first 4 years as Resident, the new Cambridge Palais De Justice was rising from its very expensive foundations – very expensive because the court was situated directly over one of Cambridge's major sewer junctions. This was also a PFI contract – a Brown folly – and whilst, since its construction, we have not suffered from the collapse of any part of it, unlike the rest of the court estate, and things are repaired in a matter of days – the cost is eye watering. Talking to those from the Ministry is always an uncomfortable experience since the agonizing cost of running the court is always etched on their faces and the conscious look is always, " I don't know what you are complaining about" – although I imagine the same look is reserved for all Resident Judges

these days, if they venture to suggest that common sense is lacking in the endless reshuffling of boundaries, re-organisations and "consultations". Any suggestion that their belief that this will save money is, judging from experience, going to be offset by the resulting chaos, is met with blank incomprehension or incredulity. The reality is that we are now in a situation where short-term financial gain trumps all rational argument.

When I took over from Jonathan, things were still relatively straightforward – although there were 3 courtrooms to look after not one. At an early Resident's meeting I attended, our Presider asked the civil servants to leave the room and warned us that the civil service was trying to take over the asylum and to stand our ground. This we did but it has become increasingly difficult because until recently nobody in government has questioned the actions of the Treasury and, as I say, money trumps all.

Whilst all of this has been going on, we have tried to reform ourselves. From what I have said earlier, it must be clear that this has to be done, but this has sometimes led us down some strange byways. All I can remember from the meeting when I was appointed, was a suggestion that I

should travel as much as possible to other courts – it was not healthy to be isolated in a small court, otherwise I might go mad like some of my predecessors (Not Jonathan, I might add). At subsequent Residents' meetings it was clear that the buzzword was "Leadership" which most of us, in our own way, had been endeavouring to effect. This reached its apogee in a lecture when a very senior army officer who had played a major role during the Falklands conflict addressed us. At the end of his lecture, we reflected that whilst we could certainly play a part in resisting an Argentinian invasion, we were in some doubt as to the practicality of applying his principles in controlling those errant judges who always wanted to play golf and managed to escape shortly after lunch. If rational argument is trumped by short-term financial gain, then this is the area into which we are confined when considering how to reform ourselves and demonstrate to the government, that we are doing all we can to provide an efficient and robust criminal justice system – a meaningless excursion into a peripheral issue which all of us have our own ways of dealing with in any event.

We are now faced with BCM and digital working. The intention is good but the practicalities, once again, are worrying. At a time when every agency in the criminal justice system is under resourced, it only takes one player to fail and the whole system crashes to the ground. Morale is low – especially with court staff who play a vital role in keeping each court going. In Cambridge, unless you are married to a reasonably high earner or living at home, it is simply impossible to survive financially on the salaries now paid to court staff, who have little hope of promotion; if they leave they are replaced by someone moved sideways, probably with little experience of working in a Crown Court. The role of a Resident Judge gets no easier.

I have now finished my 8 years as Resident at Cambridge. I wish my successor HHJ David Farrell Q.C every success. His task will be more onerous than mine. He is Resident of Cambridge, Peterborough and Huntingdon, separated by that nightmare, the A14. Well, that shouldn't cause a problem – we will all be digital, mighty Mekons on a screen – no travelling, no paper. Efficiency, or a recipe for alienation of judges from a criminal justice system which has, hitherto, contained a human element, and more importantly the cooperation or alienation of those charged with criminal offences from a concept that they are going to have a fair crack of the whip?

HHJ Hawkesworth

Cambridge Crown Court

Move to Florida and practice law?

We had such a great time in Florida, I was left in a bit of a quandary. So here goes...

Image labelled for reuse on Google Images

For:

- The English accent and UK court terms of address go down a storm, such that my average advocacy was indulged.
- The objection system is spectacular – rather than just raising your eyebrows hopefully at the judge, you can pipe up and prevent an opponent taking random pot shots at your client/witness. It can also be used to great tactical advantage. I did not enjoy being subjected to it.
- Advocates are free to roam the courtroom, including standing at the witness box and the jury bench, gesticulating wildly.
- Counsel approaching the judge's bench to discuss law (behind sound cancellers) while the jury remains in court is a no brainer. It makes the time wasted traipsing juries in and out of court here seem medieval.
- Ditto transcripts being available at the end of the court day.
- Floridians are roughly 90 times nicer than Londoners. Our hosts, trainers and fellow students were fun and hospitable to a fault. They explained the rules of evidence and flip cup with equal patience in the face of our utter incomprehension.
- The Gainesville football stadium holds 50,000 people and the Itchetuchni River is beautiful.

Against:

- The 'voire dire'/jury selection system is brilliant fun, but totally counter intuitive to anyone brought up on English procedure. Put simply it's chatting to the jury and working out what they'd make of your case, then getting rid of (on technical grounds and a number of wild cards) those you think would go against you. The advice we were given was that cases are won or lost in voire dire and I can believe it. The skilled advocates identified prejudice and then cross-examined it out of the jurors they wanted to keep and into the ones they wanted to loose. Done well, it was quite terrifying.
- The division of defense and prosecution is absolute. There was a real sense of distrust between the two that thankfully is a rarity here.
- You can't put your case in cross-examination – it's 'argumentative'. It's a more pleasant experience just putting individual details to a difficult witness, leaving putting your case to speech, but ultimately it's frustrating. Something of the art and fun is lost.
- Florida is full of reptiles – bats and crocs.

For now I'm staying put, because of the bats and the voire dire.

Lizzy Acker

23 Essex Street

ESSEX BAR MESS

We welcome two new Circuit Judges, HHJ Emma Peters and HHJ Christopher Morgan, both joining the happy band in Chelmsford, with Judge Morgan sometimes sitting also in Basildon.

Members of our Mess have swollen the ranks of the part-time judiciary, with the appointment of Christine Agnew QC, Jacqueline Carey and Noel Casey as Recorders.

Competition for judicial roles has surely never been stiffer. We offer our warmest congratulations and good wishes to all these appointees.

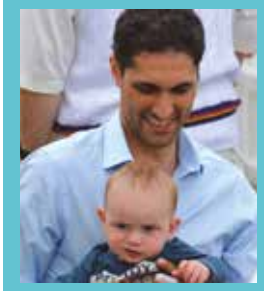
More poignantly Deborah Champion, the 'mother' of the Mess, retired at the end of January. Debbie was called in 1970 (it was possible to be called at a very young age in those days) and sat as a Recorder for approximately half her career. She has always been a stalwart supporter of our Mess and the Circuit and we hope that we'll continue to enjoy her company at future dinners for very many years to come.

By the time of the next edition we will somehow have struggled through the trauma of the retirement of HHJ Christopher Ball QC, the announcement of which brought a sombre moment in an otherwise extremely jolly annual dinner at the Mercer Restaurant in Threadneedle Street in November. The closing of CB's innings will be marked in various ways, including at our annual cricket match, an event of which His Honour has always been a fervent devotee.

Last summer's cricket was a typically convivial outing. Clark and Volz opened the batting for the Bar and, with the panache they always exude in court, looked to be closing in on a stylish half century partnership. Umpire Gratwicke had other ideas and each was on the receiving end of an lbw decision which lesser men might have queried. Karlos' delivery was high enough to pose greater peril to his teeth than his bails, while Clarky was so far forward as to be tickled by the Honorary Recorder's moustache. Thereafter the Bar's eventual total was unlikely to suffice: so it proved as the Court team emerged comfortable victors.

On 18 May 2016 a memorial service will be held in Lincoln's Inn Chapel to celebrate the life of our dear friend Frances Coles-Harrington, who died last March. The service will be followed by a drinks reception in the Great Hall. For information and to register to attend, colleagues should please email Emma Gluckstein at: emmag@187fleetstreet.com

The Essex Bar Mess cricket match last summer



CALLING ALL BAR MESSES

Please email your contributions for the next issue of The Circuiteer to: Karim.KhalilQC@drystone.com

SOUTHEND PIERRE

Essex Bar Mess

SEC
YOUR CIRCUIT.
YOUR VOICE.

THE SOUTH EASTERN CIRCUIT BAR MESS FOUNDATION ADVANCED INTERNATIONAL ADVOCACY COURSE

In association with The Inns of Court College of Advocacy

at Keble College, Oxford

Monday 29 August – Saturday 3 September 2016

Applicants must be members of the South Eastern Circuit
(application for membership may be made at the same time).
Meals and accommodation will be provided.

43.5 hours of CPD applied for
(33 CPD hours, 9 Advocacy hours and 1.5 Ethics hours).

For further information and to download the course application form,
visit: www.southeastcircuit.org.uk

The Inns of Court are each offering funding for up to 5 of their members towards the cost of attending the Course. For details please visit the websites of each Inn.

FLORIDA CRIMINAL ADVOCACY COURSE 2015

Pimms, Picklebacks and Prosecution rebuttals

From 2nd to 7th August 2015 a contingent from the South Eastern Circuit comprising one Silk (Andrew Jefferies Q.C.) and three juniors (Lizzy Acker, Satya Chotalia and Rachel Law) was hosted by the University of Florida for the 2015 Florida Bar Association Criminal Advocacy Course.

A very warm (albeit persistently rainy) welcome awaited in Gainesville, a small college town best known for its Gators – the reptilian kind and the football team. Based on their experience of previous attendees, expectations were high among our hosts, not least for the traditional "Pimms Party" we would be throwing later in the week.

The six days of intensive training followed the course of a trial using two case studies – from opening speeches, examination and cross-examination through to legal argument and closing speeches, with all exercises recorded and critiqued by a panel of senior lawyers and judges. To begin with, and completely surreal to all of us, was the most important part of the U.S. criminal trial: jury selection. It seemed almost like cheating to grill our potential jurors on their backgrounds and beliefs and pick the ones we wanted; equally bewildering to our new American friends, meanwhile, was our ability to prosecute and defend.

It became apparent over the course of the week that, while advocacy is advocacy wherever you are, the differences between our legal systems go so much further than the obvious court dress. The defenders among us were impressed by the absolute right to silence with no adverse inference, and the prosecutors thrilled by the thought of having the last word in their rebuttal closing speeches. Pertinent to current debate at home was our controversial use of the dock; as our hosts wondered, how can the female attorney snuggle up to her client to signal to the jury that he's definitely not a dangerous wife beater if he's behind plate glass? It was also evident that our American tutors had given up some years ago on pushing the English visitors to get out from behind the lectern and work the courtroom; and we were surely not the first British contingent to take great pleasure in yelling "objection!" whenever possible.

In a week packed with preparation and classes there was still some time to explore. During a few hours off, and a break in the rain, we put the top down on the Mustang and headed out on the freeway (with a Backstreet Boys soundtrack provided by a member of our team who shall remain nameless) to the Ichetucknee Springs for an afternoon of tubing down a creek populated by hungry alligators. Say what you will about the thrill of the courtroom, there's a certain frisson in not knowing whether the log you're heading for is suddenly going to open its mouth to reveal a big set of pointy white teeth.

If you ever meet an alligator: weave across the path as they can only run in a straight line (N.B. of limited use if you're sitting in a small rubber tube on a river). Other useful knowledge learned from our new friends included the difference between beer pong and flip cup (part of every American college education), an introduction to picklebacks (for those not familiar, a shot of whisky washed down with the vinegar from a jar of gherkins – actually quite delicious) and the best night out in Gainesville: Rockeys Duelling Piano Bar. Quite the singing voice you have there, Mr Jefferies...

Overall, an exhaustingly wonderful week was had by all and a great deal gained, both in and out of the classroom. We left armed with some daring new advocacy techniques (careful consideration of your judge required before deployment), thorough and generous feedback and, most valuable of all: a completely different perspective on the habits and practices we use every day without a second thought.

To the Florida Bar Association, the University of Florida and of course the South Eastern Circuit: many thanks y'all, and high fives all round.

Rachel Law

Goldsmith Chambers

VOIR DIRES, OBJECTIONS AND 'GOLDEN RULE' VIOLATIONS

The South Eastern Circuit in Florida

In 1977, Professor Gerald T Bennett founded his statewide trial training programme for prosecutor and public defenders.

This joint training, explicitly paying homage to our system of joint training, is unique in the USA.

After passing billboards advertising pro-life groups, gun outlets, 24 hour bars with naked dancing girls (showers and truck park included) and boot stores, I finally arrived at the sprawling University of Florida (serviced by no fewer than three interstate exits). It was time for the annual Gerald T Bennett Prosecutor/Public Defender Trial Training Program, provided by the Florida Bar. Its founder had close ties to the criminal bar in the UK and we were welcomed warmly.

Together with Satya Chotalia, Lizzy Acker and Rachel Law (who will participate as students), I arrived at the Martin Levin Advocacy Center (sic) to join the faculty and trainers on a hot and humid Sunday afternoon.

We joined just shy of one hundred state prosecutors and public defenders for, what is in the USA, a unique week of advocacy. Unlike all of our advocacy training and CPD courses, defenders and prosecutors never learn or train together. It is truly a unique experience for those American lawyers who attend the course. Our independence and the fact that we prosecute and defend, work for both the state and the privately paying client are concepts which are alien to the American legal system.

A great deal of the focus is for prosecutors to cross-examine and for public defenders to examine in chief. Why? Because the defendant's right to silence, the absence of adverse inferences and the right not to give evidence with impunity is enshrined in the Constitution. This is why very few public defenders call their clients and get to lead and very few State attorneys get to cross-examine defendants. Linked to this point is the fact that defendants do not sit in a dock (see Arch News Issue 3 April 17 2015).

The faculty membership is impressive; the CVs show lawyers and judges of vast experience and a wide range of professional knowledge and skills.

What followed was six days of intensive advocacy training. The week started with the voir dire. Not our sort of voir dire, but the selection of the jury. In choosing the jury, American lawyers have to be inventive to explain, inter alia, the burden of proof, the elements of a crime which must be proved and such concepts as mistaken ID – my favourites respectively being what reasons there might be for only a cat remaining in a box in which both a cat and a mouse were placed, (reasonable doubt), the chocolate candy bar in a blue wrapper (elements of the offence), so it's irrelevant the chocolate has raisins in it) and losing your boyfriend at a music concert (ID).

A number of barristers probably violate the "golden rule" daily; namely asking jurors to put themselves in the position of the defendant or a victim. Objections loom large – Relevance, Hearsay, Leading, Lacks Foundation, Argumentative, Improper Impeachment and Outside the Scope, all prefaced with "Objection". These are normally followed by a curt comment by the Judge who has to be on the ball throughout the proceedings.

Most exercises were recorded, the student critiqued by two trainers in the session, with a further critique offered by a third trainer when the student reviewed their own performance in the play back rooms.

The cases used for the Program (sic) are detailed and realistic. It is quite apparent (and absolutely crucial) that the students have prepped the cases like they were real trials. Reading from notes is frowned upon; the lack of notes by the students was very impressive. A week doesn't allow time to explore the numerous issues raised and the points that could have been taken. Even in Closing Statements, issues were being raised for the first time which some had simply not spotted.

One very noticeable difference in actual court room procedure is that in the UK, notwithstanding the sometimes critical comments made by the Court of Appeal, we argue much of the evidence and plan ahead, well in advance of the trial. In Florida, it sometimes seems as if they are storing up objections to raise at trial rather than hammer the points out in advance in the absence of the jury. Gasps of amazement could be heard when I described the concept of the jury bundle of photographs, plans, exhibits and the like – all agreed by a one line admission. The Americans don't seem to like agreeing very much in advance of the trial. However, everyone agreed that this program is hugely rewarding. It is incredibly hard work but the advancement seen in the students during the week was both obvious and appreciated.

Andrew Jefferies QC

Mansfield Chambers

CALLING ALL JUNIOR (CRIMINAL) BARRISTERS THREE TO SEVEN YEARS' CALL

CALLING ALL SILKS WITH A CRIMINAL PRACTICE

THE SOUTH EASTERN CIRCUIT

FLORIDA CRIMINAL LAW ADVOCACY COURSE

Held at the
University of Florida, Gainesville
31 July – 5 August 2016

The Florida Bar Association funds course fees and accommodation.

Flights are provided for Silks. Juniors will be required to make and pay for their own travel arrangements.

Previous courses have attracted 25 CPD hours.

Applicants must be members of the South Eastern Circuit (application for membership may be made at the same time).

The South Eastern Circuit seeks a **Silk with a criminal practice** to attend this course as an ambassador on behalf of the South Eastern Circuit.

And there are up to four scholarships available and the course is open to all **junior (criminal) barristers**, three to seven years' Call.

Closing date for applications: 3 June 2016

For further information and selection criteria, please visit www.southeastcircuit.org.uk

A rite of passage

Continued from page 1

The surroundings are pretty impressive – high church, high Victorian, massive red and white stripy brick quads. Your bed is turned down every day and three cooked meals are provided. The pubs in Oxford aren't bad either. However, that is where the comfort ends.

The Saturday-to-Saturday timetable is packed from 8:30am to 6:30pm (sometimes later). The bulk of the time is taken up with small (4-6 person) group sessions in which you perform exercises (argument and witness handling) and receive feedback from your group leader and another trainer (rotating) before going to the video room to watch your efforts back with a third trainer. There are also larger (8-10 person) group sessions on case preparation and ethics. Finally, there are various lectures attended by everyone.

Keble has the spine-tingling hallmark of all Circuit/ Inns training – the entry of someone properly impressive into a room in which you are about to massacre a very simple submission; the draining of blood from your system as you realize this individual will conclude you're either useless or lazy. This first happened to me during the pupillage course at Middle Temple when a particularly well regarded Silk arrived to assess my cross examination on a statement I was reading as he introduced himself to

the group. I had stupidly prioritised work for my pupil master over preparation.

Only here it's different. You will be prepared. The papers are emailed to you long in advance and the timetable throughout the week permits further work. If you don't heed the advice of the course organisers and prep hard, you're a glutton for punishment. However, you are treated as a fellow professional. At Cumberland Lodge, Inns pupillage training, the NPC and so on there was always a slightly p/ maternal 'have you done your first Crown Court trial yet?' tone. At Keble, judges you appear in front of and Silks/senior juniors you may be led by train you, and they and you recognize that fact.

Some highlights were:

- Vulnerable and expert witness exercises – child actors and doctors expert in the relevant field attend to play the witnesses and give feedback thereafter.
- **Jackson LJ on skeleton arguments** – never has someone described what makes their blood boil with such disarming charm and precision.
- **His Honour Judge McCreth and John Ryder QC on mitigation** – hilarious and useful. The faculty vote on sentence afterwards was illuminating too.
- Without name-dropping, the range and calibre of trainers.

Some things I learnt:

- A few helpful inside tracks – certain Judges' bête noires and thinking on specific areas of law.
- Advocacy is subjective – sometimes what one trainer compliments in your advocacy another criticises, one wo/ man's killer point is another's duff. So at a certain point you have to back yourself.
- Advocacy is personal – some of the comments about my manner and appearance (in and outside of advocacy) were pretty painful. See above.
- Preparation is everything.

The week after I came back I had a section 18 trial (hammer attack). It was a reminder that not all is how it is envisaged in the dreaming spires. Evidence that impacts fundamentally on your case is served late (further CCTV of my client with said hammers); Judges don't always give time just because you ask for it and Silky tricks don't work without the gown. That said, the benchmark applies and I felt the difference in my advocacy and preparation.

I really didn't want to write a sycophantic fluff piece and fear this is shaping up a little toad colored. However, it was a really useful week and more than that, it feels representative of something more significant.

The independent criminal bar is a precarious place to be, so to spend a week being trained and encouraged by those that have made it work is heartening.

Juniors are farrowing entirely new paths, those taken by our leaders and Heads of Chambers having been grassed over. Or they're leaving. There is uncertainty and stress (financial and administrative). Yet many of us are still here, thoroughly enjoying and committed to this job, this life. To spend a week being assisted in that foolhardy endeavour was fortifying.

In this line of work one doesn't receive 360 peer review, quarterly appraisals or any of the other mechanisms that seem to saturate my non barrister friends' working lives. Beyond the vague out of earshot 'X is an alright/God awful brief' or true evisceration in court, we can be in the dark day to day. We are starved of praise and constructive criticism, so when it comes it's invaluable.

Keble is in a long line for me – I have been trained by my Inns, by my Chambers (during and after pupillage), by my Circuit, by Judges and fellow barristers (both senior and junior, but specialised). In what other profession is so much expertise handed out for free? Yet this is the norm at the Bar – it is how we are brought on and we need to keep participating (as trainers and students) to make it work.

Throughout this note I've referred to 'you'. If you haven't and you can, go to Keble. There are bursaries. Some chambers fund juniors to attend. It's four days out of court. It won't be a walk in the park, but you'll be improved. No pressure.

Lizzy Acker

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The future is bright the future is trial by flat screen TV

I had what was for me a unique experience this February at Luton Crown Court. I had a trial without a defendant in the dock or indeed in the court at all and before you think it was a trial in absence, it wasn't. In fact the defendant played his part in the proceedings via the wonder that is "video-link". At the same time the jury watched the defendant, in possibly a bit too much detail as his face and head took up most of the 60" TV screen in court.

Barristers have become used to defendants taking part in preliminary hearings via video-link and because they are invariably listed with many other cases there is a sense of urgency about it that makes it all feel rushed and a little unsatisfactory. Usually matters aren't helped by the cumbersome method of trying to persuade a rushed usher to get you access to a video booth so you can have a conference with your client before the hearing begins. Any of you that have tried to conduct such conferences will be familiar with the difficulties you regularly encounter in simply trying to make contact with your client. It can begin with either you or the usher asking politely "hello is anyone there?" This can on occasion develop into the usher shouting "hello!" at a screen, which continues to show nothing more than an empty, prison issue chair. In short, many video-linked hearings can leave you hankering after the "good old days" when defendants in custody actually got produced and met their barrister face to face.

So the idea of having a trial via video-link would not immediately fill one with confidence. In my case the defendant was a Cat A prisoner who was already serving a full life term. At an earlier hearing he had waived his right to attend court in person, preferring the option of conducting the whole trial via video-link. The result of his non-attendance had certain advantages for all parties. There would be little disruption to the defendant's current prison regime as it spared him being sent to a new prison for the duration of the trial; for some defendants in custody the idea of changing prisons can cause a lot of anxiety. As we all know, many within the system suffer mental health issues of varying degrees so this anxiety it is not something to be dismissed lightly.

For the tax-payer, having a trial this way made sense as the cost of producing this particular defendant, described by the trial Judge as "one of the most dangerous individuals within the prison system today" would have been astronomical. The last Cat A prisoner I represented was costing, according to the Crown, in excess of £20,000 a day to produce! By having a full trial via video-link a host of logistical problems disappeared, not to mention the obvious cost savings.

Clearly not every trial can be conducted via video-link. There is the potential prejudicial impact of conducting a trial this way, however courts have got used to dealing with witnesses via video-link so is it really that big a step to have the defendant on a screen also? In the trial at Luton there was no issue as to bad character as both the defendant and the complainant were going to have their offending histories put before the jury by agreement. Furthermore, as the allegation was one of attempted murder in a high security wing at Woodhill prison, character had to be dealt with sensibly.

Multi-handed trials present more of a technical challenge and of course the facilities at the prison need to be flexible enough so as to be able to accommodate a defendant sitting in a booth all day.

I was actually pleasantly surprised at how smoothly the trial went. I was fortunate enough to have helpful court staff on hand to give me access to the video booth outside the court room as and when I needed it. The prison staff helpfully said I could have a conference with the defendant "at any time during the lunch hour". This was preferred to the usual security ritual of going downstairs to the cell area and checking oneself through two if not three security doors, for a conference in a small, stuffy room. The trial Judge, HHJ Foster, was very accommodating and patient with any issues the defendant raised during the trial, such as when he asked more than once, "Can I speak to my barrister please?" As Judge Foster sensibly observed, "you can't pass notes to counsel when you're on a TV screen". The camera angles allowed the defendant to see most of the court, in practice this meant him seeing the back and side of the particular witness giving evidence. The defendant could also see one side of the Judge, both counsel and all twelve members of the jury ... just. Given these restrictions it all went relatively smoothly and with a few technical tweaks, such as another camera to give the defendant a different view of the court, you could see such trials catching on.

After the defendant the most important people to have asked for feedback would have been the jury. I suspect they, like us, got used to it very quickly. In an age when we watch news anchormen and women conduct interviews and discussions with several contributors via multiple video-links all at once, the concept is not that alien to us.

Of course there is no substitute for seeing a witness or indeed defendant giving evidence in the flesh as it allows you and the jury to assess body language as much as the actual evidence they give. That said, I wouldn't be averse to the idea of doing another trial this way, provided of course the defendant is content and doesn't feel he is disadvantaged in any significant way. Is it desirable that such trials become a regular alternative in certain types of cases? Are we heading towards the "remote trial" experience? Time will tell.

Kevin Molloy

Church Court Chambers, Temple

KEBLE

Care to give up more than a week of precious holiday or valuable earning-time, to go back to university and allow your peers and seniors (including Judges) to scrutinise your cherished advocacy skills? To work damn hard for a week, and pay for it too – £1,700+VAT for the civil course and £1,100+VAT for the criminal course? Tempted? You should be. Having recently returned from the whirlwind of the 2015 Keble course, let me tell you why.

The South Eastern Circuit Bar Mess Foundation Advanced International Advocacy Course at Keble College Oxford (mercifully shortened in general use to "the Keble Course") has now run 22 times. It is an intensive six-day residential advocacy course, widely acknowledged to be the finest of its kind in the common law world. In 2015, it attracted participants from the Cayman Islands, Guernsey, Hong Kong, Ireland, Pakistan, and South Africa. You live, work and eat alongside your peers and the faculty in the very pleasant surroundings of Keble College Oxford, and the pace of the course is such that it is easy to forget that you have not set foot outside of the college for days on end.

The meat of the course is the case study – a set of papers provided in advance which you are expected to have mastered before you arrive. During the week you progress through closing speeches, examination-in-chief, cross-examination, opening speeches, appellate advocacy, before on the last day bringing everything together in a half-day trial.

For each of these tasks, a similar pattern is followed. First, there may be a plenary demonstration, in which the whole civil group watches an eminent faculty member make submissions (usually to an actual Judge). Then you split off into small groups of about six participants (with three faculty), and take it in turns to perform about 5-7 minutes of advocacy. Immediate feedback is given by the faculty members, according to the Hampel method, which discourages vague praise or criticism in favour of a single headline point to be improved. My headlines ranged from "keep to the essentials", "move quickly away from trouble" to the memorable "set your hefalump traps" (from Mrs Justice Andrews). The faculty members recite a section of the participants' effort, then demonstrate (with slightly frustrating ease) how it could be done better.

Each piece of advocacy is taped, with the assistance of invaluable helpers (often law students). Once they've had their turn, each participant then goes off to another room with their memory card for the painful experience of watching what they have just done with a third faculty member, who focuses particularly on the physical aspects of advocacy (I discovered that asking questions apparently causes me to sway dangerously from side to side). Then it's back to the group to observe the other participants and their feedback. An hour or two later, in the light of the feedback, you have another go, focussing on the "headline" point.

I gained a lot from watching others perform the same advocacy with different styles, and I think we all made some last minute adjustments of our own performances as a result of watching others and hearing the feedback they received. Our group of six included a practitioner of 24 years' call specialising in clinical negligence, one of 19 years' call practicing in civil fraud, a South African advocate practicing in personal injury, and three of us at four years' call with a mix of commercial / chancery / insolvency / construction practices.

Genuine expert witnesses appear in Oxford part way through the week – a team of endocrinologists for those who had chosen the medical option and accountants for the financial stream. We had a memorable introduction to accountancy expert issues from Simon de Quidt and Philip de Voil of Deloitte, whose duck-based lessons on how to take apart expert accountants under cross-

Images labelled for reuse on Google images

examination will stay with us all for some time. We then had individual conferences with "our" experts, to help us spot the weak points in the other side's reports, before examining them in chief and cross-examining the other sides' experts. We found the feedback from the experts themselves particularly valuable – the most significant of which was the importance of not giving them too much time between questions to think.

We had sessions on vulnerable witnesses. For those of us who rarely encounter vulnerable witnesses, (or think we don't – after all, witnesses giving evidence through interpreters have features of vulnerability) it was an eye-opening experience. Initially it seemed that we were being asked to cross-examine with both hands tied behind our backs (how exactly are we meant to elicit helpful answers without asking closed questions, tag questions, or putting our case?): the exercise demonstrated that it can be done, though it takes very careful preparation. We benefited enormously from the involvement of gifted young actors who played the part of a teenager with Attention deficit Hyperactivity Disorder (ADHD). They did so with enormous zest – staying in character during the breaks. And now I know how to react if a witness takes a shoe off and starts tossing it into the air while I'm trying to cross-examine them.

Alongside the main activities were a succession of talks and lectures. Desmond Browne QC gave a talk on Ethics, Lord Justice Jackson gave a spirited plea for short and focussed skeleton arguments, and James Hartman (a voice coach) gave a highly interactive talk on the physicality of speaking. His Honour Judge Mark Drummond (a Judge of the Eighth Circuit in Illinois), gave a talk on the effective use of audio visual and other presentation aids to hold the attention of an audience.

The course was undoubtedly hard work. For those (like me) who had not put in the whole of the recommended four full days of prior preparation, there was a good deal of late-evening and early-morning work, since there were rarely gaps in the timetable from breakfast at 7.45am to the end of dinner at about 8.30pm. But the collegiality of the meals and the occasional foray to the Lamb & Flag kept the spirits (topped) up. It wasn't quite clear to me whether the practice of scheduling the full trials for Saturday morning (after the traditional immoderation of the Friday night Banquet) was a result of sadism, chance, or a desire to ensure that we could perform while not feeling on peak form, but we made it through nevertheless. There must have been endless hours of preparation and organisation by the Course Director, HHJ Julian Goose QC and his team, including in particular Aaron Dolan, unseen by as all. It is a testament to the quality of the organisation that the participants could simply progress through the course, almost without noticing the administrative and organisational effort, which must have lain behind it.

So, who should do the course? It is quite easy to fulfil our CPD requirements hour-by-hour, by sitting in the back of lecture theatres, letting a talk of marginal relevance to our practice area float above our heads. In my view, anyone who takes their craft seriously, who is willing to learn, of any seniority, would benefit from attending the Keble course. After all, once out of pupillage, it is quite rare for us to get detailed (or indeed any) proper feedback on our advocacy.

Lastly, a note on the faculty members: there were about 50 faculty for about 80 participants. Most were eminent silks, including senior counsel from other jurisdictions including Pakistan and Hong Kong. There were also a number of Circuit Judges and three High Court Judges in attendance for the week – Andrews, Green and McGowan JJ. The faculty received no payment at all, but spent six days imparting their wisdom and experience to us, rather than taking a well-earned holiday or earning thousands or tens of thousands of pounds. The overseas faculty had to pay for their own flights. I was amazed to learn that each year there is actually competition for faculty positions. The Course Director has to select which august practitioners will be allowed to give up their earnings/holiday to spend a week improving the advocacy skills of the Junior Bar. Comment on that remarkable fact would be superfluous, so (with the benefit of my Keble education) having said what I wanted to say, I will stop.

Ian Higgins

3 Verulam Buildings

Wellbeing

Many of you may have read Rachel Spearing's excellent article on Wellbeing at the Bar in Counsel magazine in June 2015. If you didn't, here is the link: www.counselmagazine.co.uk/articles/wellbeing-the-bar

So what has been happening since then? A committee of barristers from the Inns and specialist bar associations has been meeting regularly in order to develop and progress a program of tools that will assist barristers.

The young bar website has information on wellbeing already. See: http://youngbarhub.com/2015/10/05/wellbeing-and-worklife-balance/

The Commercial Bar also seems to be progressing this and we hope to be able to access their work too.

In the course of meeting we have reviewed what is already out there (and there is a lot of helpful information) to find out what appealed to us all. The working group is really committed to making sure that any resources are tailored towards the Bar and the problems they face.

What is clear is this is now on the agenda of the Bar Council, and the working group of which I am a part, and it is really keen to make a difference. So many people struggle with so many types of difficulties and it is no longer good enough to say the profession is all about survival of the fittest if we want a diverse profession. Those who have had difficulties will be well aware that the struggle they have experienced in whatever form allows them either to have more compassion, or a better understanding of those who suffer similarly.

Wellbeing in the current climate becomes harder when resources are so stretched. Everyone wants more of you, often for no more money, and people have less and less time to support one another, or even to find out what is going on with others. Many barristers live in a virtual world where their only contact with others is at court or on brief visits to chambers.

Currently, a consultant has been asked to assist the working committee with a view to better understanding how the various pressures of the Bar can be assisted by toolkits and other readily accessible information. She is in the process of being briefed about the specific pressures facing different specialisms.

So while waiting for help from the Bar Council, what can you do in the meantime to put wellbeing at the top of your agenda and your chamber's agenda? Speak to each other about the stresses or strains facing you, make phonecalls or arrange to meet, make time for it even when you don't have time, exercise, eat well and work out how you can try and create sometime for yourself, even if it's only a short walk each day. What is clear is just as with mental health problems generally there is no magic solution. An awareness of the distinction between thoughts and reality often becomes clearer when we chat things through with a colleague or friend. Doing small things for others, like getting lunch for a fellow court user if you have time to pop out, or checking in on someone who you know could do with a friendly chat can often be more rewarding for the person helping than for the person receiving. Obviously the Bar's view of success tends to involve being super busy and earning lots. However, we might sometimes like to reassess what we really think makes us happy – balance is often the route to wellbeing.

Recently I saw Ruby Wax's one woman show with a fellow barrister, having promised one another we would have an evening of laughter after our difficult case. Ruby Wax holds a masters degree in mindfulness-based cognitive behavioural therapy and what was most interesting about her explanation of how the brain works was when she explained that if you are feeling stressed, upset or angry and you then focus in on one of your five senses this will dissipate your negative feelings; "as soon as you fully focus on one of your senses, your anxiety goes down because your brain can't be in two places at once. That's all it is. You're tricking your body". So whilst we all know calm breathing etc helps, understanding that focusing in on any one the five senses will have a positive effect on our wellbeing, I felt was an important point, which I wanted to share.

As some of you may recall, the Bar's wellbeing group called for evidence last term. There was a good response. Many people had some great stories to share. The consultant is reviewing the evidence collated along with the collation of problems noted by LawCare. Since it is apparent that different things have helped different people, it may be that members of the circuit would like to write to me letting me know what has helped them. Of course such information would be kept confidential but could be shared if anonymised in a column in this magazine. It's unlikely that one size fits all so the opportunity for others to try what may sound appealing, and has helped someone else, is worthwhile. For my part, while recovering from a serious knee operation this summer I involved myself in coaching with a family member from the USA who is now working occasionally in the UK. 'Invisible Power: Insight Principles at Work' is a book written by Robin Charbit and others. His successes with companies and professionals garnered my interest. In addition I completed an online training with Tara Mohr,who I would also recommend – I found her recent book for women entitled 'Playing Big' inspiring for both women and men.

I hope to be able to report back by the summer with more news on what resources will become available to you all. My wish is that this article is read in the spirit it's author intended to write it – a kindly one.

Valerie Charbit

2 Bedford Row

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