

Entry Seven

Summer is well and truly over. A feeling of “back to work” pervades in robing rooms, which are now fuller with most members of the Bar back from any holidays.

There is also celebration in the air, as a number of pupils accept tenancy at their chambers and begin their practice without the direct oversight of their supervisor (and a looming tenancy decision). To complete the feeling of change, there a number of new faces in robing rooms as new pupils begin on circuit. It is great to see so much support across the Criminal Bar as more junior members take a step forward in the profession.

As for my whereabouts, I had the pleasure of four days over in Merseyside based out of Exchange in Liverpool with member of chambers, Nicola Daly. Being able to spend time at different court centres across a region with a “home away from home” feel is a great feature of being a pupil in a chambers which has practitioners based in multiple cities.

A trial for possession of indecent images was due to start the week off. What transpired was a test of good judgment, interpretation of instructions and cooperation with the prosecution... all before the trial could begin. I have mentioned the topic of disclosure in a previous diary entry; an area that can be fraught with difficulty and present insurmountable obstacles if not carried out correctly.

A number of trials involve data extracted from mobile phones as evidence. This evidence needs to be processed into a readable format, analysed, redacted depending on whether information is sensitive, inadmissible or irrelevant and served on the parties for consideration. Depending on the case facts and offences alleged, processing phone data can be an enormous but central exercise to the presentation of a case. Unfortunately, due to deficiencies in this process, late disclosure of more detailed phone evidence was served on the defence at the eleventh hour in this trial.

Faced with these challenges, I observed Nicola take numerous factors into account to decide the best course of action. How could this late disclosure affect the defendant’s case? How should the prosecution be affected by a failure to properly analyse and disclose parts of their case? Has the Judge indicated any course of action to ensure parity between parties? How does the defendant feel about this and have their instructions changed? Do they understand the impact this could have on their case?

Readers of this entry may be familiar with the Core Duties of a barrister and in particular the interaction between CD1, CD2, CD3 and CD4. Without straying into an ethics exercise, this scenario gave me a good opportunity to consider how different duties are triggered in real-time, possible with conflicting responsibilities.

Slowly but surely, all the questions above were answered and different puzzle pieces began to fall into place. The trial could not take place, but in not doing so the defendant had time to consider his position with regular cell visits and updates from Nicola. By understanding his position better for trial and the significance of forthcoming disclosure, the defendant was

seriously considering a change of plea. This emphasised the importance of keeping your client informed and clear about the proceedings.

One trial off and two trials on however, as my week progressed. Nicola's former pupil, Eve Salter, kindly had me along for a day on a trial part-heard in front of a Recorder (a practicing barrister who sits as a part-time Judge). Eve's client was accused of possession with intent to supply drugs of Class A and assault of an emergency worker. The day contained concise examination-in-chief and cross examinations of police officers and the defendant himself to "tell the story" to the jury. Witness handling in trials such as this are most useful to see in short form how the matters in issue take front and centre, as opposed to irrelevant matters.

Thanks to Nicola, Eve, other members of Liverpool chambers and chambers staff for being so welcoming during my trip to Merseyside.

Back in Manchester the following week, and to finish this entry, I joined another member of chambers, Richard Brigden, on a trial in Crown Square. One of the features of the Bar I particularly value is the variety between practitioners and how each barrister has a unique practice. Richard's practice is solely on defence briefs, therefore it was instructive to see first hand his experience dealing with defendants during a trial.

Whilst defence counsel must fearlessly promote a client's best interests by all proper and lawful means, this does not mean always telling them what they want to hear (think ethics again!). A defendant may need time and assistance to fully understand the evidence against them and where appropriate concessions can act in their best interests for running their case. However, instructions are ultimately their decision.

Due to the alternative charges laid before the court and the defendant's instructions, legal issues of causation and a possible intervening act argument (*novus actus interveniens*) were key issues. To advance the strongest possible arguments on the defendant's behalf, these arguments were fully aired, with involvement of the defendant, to narrow down the issues. This also ensured the directions given by the Judge to the jury were correct when the time came. Clarity and rationale are key.

A final thought for this entry is on ethics, as mentioned above. Ethical behaviour at the Bar is of paramount importance. Breaches of ethical obligations are taken seriously and have far-reaching consequences. Compliance with ethical obligations is not only a minimum requirement but allows counsel to evaluate the most effective course of action, as there are often several options available. The [*Bar Standards Board Ethics Handbook is publicly available*](#) and if you are interested in counsel's duties to their clients, Part 2-3C "You and your client" may be of particular interest.