**Anglo-American Exchange 2018 Report**

The majority of my six weeks in the USA was spent in the office working with Master Critelli on a number of his on-going cases. I read through case papers and deposition records, observed Master Critelli’s strategic planning, and attended client meetings.

Key cases:

One case involved meeting with clients who were beneficiaries of a complicated trust and were seeking to have the trustee removed. They faced the obstacle that their sibling fellow beneficiaries supported the trustee, who was a lawyer with a strong reputation in the local community (perhaps a reflection of the comparatively parochial world of Middle America). Another concerned a former psychiatrist who had been subject to professional discipline and was now seeking to have the regulator’s records updated to better reflect what had actually occurred.

One major case centred on alleged intellectual property infringement by our client, a casino accused of knowingly using copied software without permission. This had developed into a dispute between our client and their insurers over the terms of a “cannibal” policy. I accompanied Master Critelli to the client’s offices to record a “video before action” for the dispute with the insurers. Something without a direct English parallel, this allows clients to set out their case and informally but effectively place other parties on notice that they are considering formal proceedings, as an additional step before sending a formal letter before action. An added complication to the core intellectual property case was that we were pursuing having the plaintiff’s lawyer removed from the case for unprofessional conduct. They had been erratic and aggressive throughout proceedings, going as far as allegedly threatening another defendant’s attorney with physical violence. Master Critelli assures me that such behaviour is as much of an aberration in their jurisdiction as it is in ours!

Depositions:

Another standout case is perhaps more notable for facts and procedure than substantive law. We were representing a minor who, having been seriously injured in a bullying incident, was pursuing action against the board of the School District in negligence. Somewhat shockingly, this was not the only such case that had recently been brought against this particular board. Given the large number of witnesses in the matter, a significant number of depositions were required. In addition to reading through the records of a number of lay witness depositions, I attended one for one of our experts, the client’s psychologist. This was of some personal interest to me, as my father is a psychologist who specialises in PTSD and is regularly instructed as an expert witness. It also provided an example of a “good” witness, who was capable of maintaining his position under (in my assessment, overly) aggressive interrogation by the defendants’ attorney.

Based on my, admittedly brief, experience of depositions I cannot say that I am convinced that this approach is preferable to that of the English legal system. The longer process does allow for more in-depth and open-ended questioning of a greater number of witnesses than would be possible in most English trials. However, it is not clear that this offsets the costs incurred from extending pre-trial litigation or the risk of cross-examination at trial losing much of its bite when witnesses have effectively been given a dress rehearsal.

Mediation:

Perhaps the most quintessentially Iowan legal experience I had was a case concerning crop insurance (agriculture and insurance being two of the state’s largest industries). This dispute, between an insurance provider and their broker (our client), was triggered by the Risk Management Agency (the regulator) investigating the parties due to their failure to acquire reinsurance. With each party claiming the other was responsible, the providers initiated proceedings and attempted to apply for a receiver, claiming a failure to be licensed would trigger the broker’s insolvency.

I experienced the early stages of this case, most significantly accompanying Master Critelli to a mediation conducted by a former Iowa Supreme Court Justice. As an aside, this judge had been part of a court who had been recalled by voters as a result of a unanimous decision where they had legalised same-sex marriage. The mediation was ultimately fruitless, lasting around 10 hours with no resolution and being followed by a complete breakdown in relations over the following weeks. Nevertheless, this was an invaluable experience. Whilst I can hardly claim to have become an expert in insurance law, let alone anything to do with crops, I believe that I gained significant insights into the process of mediation not to mention corporate politics. On our side, the dynamic between the company executives and their venture capital backer informed priorities and decision-making. The same was true of the complicated internal structures and hierarchies of the large insurance provider on the other side. Likewise, the temperaments of the providers’ lawyers and the use of back-channels between the parties (the mediator was acting as a shuttle-diplomat) were of clear importance.

Court:

Unfortunately, Master Critelli had no court hearings that I could attend during my stay. However, over the course of my final two weeks, I was sent to spend time with Judge Rosenberg, a contact of Master Critelli’s at the Polk County Courthouse. Judge Rosenberg provided interesting information about the Iowa court system. The fact that first instance criminal and civil cases are heard in the same courts by the same judges stands out as a major distinction with England (and interestingly parallels our respective professions being fused and split).

Judge Rosenberg also directed me to a number of hearings and trials. I saw jury selection for a drug possession case; an application in a childcare matter; a fraud trial (which was complicated by one offence occurring in another state); a sentencing in a manslaughter case, where the victim was a biker (meaning the court was packed with a large biker gang!); and various docket proceedings.

I spent the most time at a commercial trial. Following the purchase of a start-up by a larger company, a number of original shareholders were suing the former director (also a shareholder). Following the acquisition and subsequent disputes with the purchasing company, the former director had received significant remuneration whilst the shareholders had received nothing. This resulted in claims for breach of contract, fraud, breach of fiduciary duty, and in promissory estoppel. It was striking to see a case of this kind heard in front of a jury. Ironically, however, after the case was heard the judge accepted the defence’s motions for “directive verdict” on the basis that all claims except for breach of fiduciary duty failed and that, in any case, it would be impossible for the jury to determine quantum and how to distribute any award between the roughly fifty plaintiffs given their varied interests. Such a verdict is, I am told, highly unusual.

Education:

Master Critelli also arranged for me to spend some time vising Drake and Creighton law schools in Des Moines and Omaha. In addition to going to classes on evidence, contract, and tort, I met members of the faculties and toured the campuses. At both universities I visited their “legal clinics”, where senior students provide free advice and representation for clients. The degree of responsibility, not to mention the integration of the system into the university, was a striking difference with the situation in England even though it is designed to address similar issues to those we have faced following legal aid cuts. Conversely, the substantive law classes that I attended actually highlighted significant similarities between our systems (with many apparent differences being mostly cosmetic).

Social:

I had an extremely busy social life during the trip, which I can only briefly summarise. In addition to eating out with Master Critelli and Judge Rosenberg, I spent a lot of time with Master Critelli’s American interns. One of them was generous enough to invite me to his family’s 4th July party and subsequently introduced me to his local friends. Perhaps the most quintessentially American experiences were going to baseball games and the Iowa State Fair, and visiting the ranch of one of Master Critelli’s contacts. Whilst in Omaha I stayed with another of Master Critelli’s contacts, Jon Jacobsen, a representative in the Iowa House of Representatives.

Professional development:

Whilst all of these experiences provided an informative picture of the culture and practice of US law, it was the advice and guidance of Master Critelli that was the most valuable aspect of my time in the states. In addition to watching him in action, I was given insights from a fifty-year career. Perhaps the most unique piece of guidance concerned a theory of how to structure written and oral arguments, based on research of Abraham Lincoln’s career (I was even able to meet one of the authors of the book that articulated this idea). More broadly, I received advice (and homework!) about how to approach negotiation, advocacy, written argument, case analysis, client handling, and preparation that I do not believe I could have received anywhere else.

*Emile Yusupoff,* Anglo-American Scholar 2018