

**Spencer Turner**  
**2022 British Pegasus Scholar Report**

*“America is not like a blanket – one piece of unbroken cloth, the same colour, the same texture, the same size. America is more like a quilt – many patches, many pieces, many colours, many sizes, all woven together and held together by a common thread” – Jesse Jackson*

The Pegasus Trust was formed in 1987 to allow barristers to learn about the practical workings of the common law system in countries other than England and Wales and to form links with lawyers in those countries. The Trust first sent two barristers to the United States in 1989. Every year since, two members of the Bar have travelled to the United States and this year I had the opportunity to spend six weeks travelling the country as a Pegasus Trust Scholar.

Our visit to the United States was originally due to take place in November 2020 but, due to the pandemic, 18 months later than planned we boarded the plane to Washington DC in early March 2022. Any apprehension about long-haul travel and Covid travel requirements quickly gave way to the excitement of the opportunities the next six weeks would bring as well as the familiar feeling of sitting in slightly cramped aeroplane seats and eating terrible aeroplane food – it felt quite ... “normal”.

We arrived into DC late on a Friday afternoon and were greeted by Ellen DeSole, an appellate tax attorney at the Department of Justice, and our host for the first few days of the Scholarship. What immediately struck me was the hospitality of those who were hosting us; not only was Ellen opening up her home for us to stay in, she was also part of a group who had helped to organise six weeks’ worth of experiences which would see us meet lawyers, judges and politicians, attend dozens of events and take us across the whole of the US and back.

After a weekend of sightseeing, exploring DC and sleeping off the jetlag we began the first full week of our scholarship with a poignant visit to Arlington Cemetery, resting place of over 400,000 members of the armed forces as well as some of the most prominent individuals in US history, including Ruth Bader Ginsburg and John F. Kennedy.

Our next stop, and first taste of US advocacy, was at the Department of Justice, located in the Robert F. Kennedy Building in the heart of DC. True to the times, we were watching hearings in the Court of Appeals for the Ninth Circuit via Zoom. One of the most fascinating aspects of watching the appeals was the time limit; 30 minutes for each side, with a big digital clock counting down until each attorney’s time was up. The clear emphasis at the appellate level was on the written word, with the appellate advocates using their short time before judges to give a brief précis of their argument and answer the court’s questions.

The limits on oral advocacy and the focus on the written form was a feature we encountered time and time again throughout our time in the US. I found myself asking why the US had distanced itself the oral traditions of the English legal system (both from the perspective of advocates and the judges; it was incredibly rare to see an *ex tempore* judgment) and whether it was a good or a bad thing.

In Mark Kravitz's fascinating paper on Written and Oral Persuasion in the United States Courts<sup>1</sup> he points to the fact that (i) many early American lawyers were not trained in the oral traditions of the English courts, (ii) the size of the US made it more efficient to submit written argument to far-away courts and (iii) the need to build a body of precedent as reasons for the focus on written advocacy as reasons for the court's preference on the written over the oral. It was also apparent to me that there was a huge efficiency boost; limiting oral argument to 30 minutes or an hour meant that the courts could hear vastly more cases than their counterparts in the UK could – a particularly pertinent issue given the backlog of cases caused by the Covid-19 pandemic. Nevertheless, I was left with the feeling that oral advocacy still offers something that written advocacy cannot; a nuance in the spoken exchange of ideas of concepts, an emphasis that cannot necessarily be conveyed in written form and, as Kravitz puts it, a 'spontaneity [which] has a way of unlocking more about the issues in the case than volumes of briefs'.

After the hearings we were treated to a tour of the Robert F. Kennedy Building; not only is it home to the agencies of the DOJ, it also houses a unique collection of art commissioned as part of the FDR's New Deal and a stunning two story Great Hall decked out in aluminium trim, terra-cotta floor tiles and Spirit of Justice and Majesty of Law statues flanking the DOJ's lectern (which we managed to sneak a couple of pictures at).

That evening we were in Maryland attending a dinner hosted by the Montgomery County Inn of Court - the American Inns of Court boast 400 different Inns across 48 states with 30,000 members. At dinner we sat with attorneys, judges and students and mentees introduced their mentors to the legal community. After dinner ideas and legal updates were shared through case studies and question and answer sessions. It was clear to me that the UK and the US Inns shared the same ethos; a focus on training, a commitment to the rule of law and a goal of creating a vibrant and diverse legal community.

The second stop on the trip was on the west coast - Sacramento, California. Despite it being March, the sun was out (as I was quickly told that it always was in California) and our host Art Scotland, retired residing Justice of the Court of Appeal, Third Appellate District, was there to meet us at the airport. The week we spent in California was one of the busiest, varied and fascinating weeks I have ever spent anywhere – we watched Judge Michael Savage of Sacramento County Superior Court deal with a docket of 100 plea bargains in a single morning, met the Chief of the Sacramento Police Force and spoke about the issues around policing in the US, toured the state Capitol and were welcomed on the Assembly floor by Assembly Member Ken Cooley, spoke with the US Attorney for Eastern California, met with Chief Justice Tani Gorre Cantil-Sakauye and shared ideas and experiences with family, defamation and criminal attorneys as well as state and federal judges.

Three highlights stood out for me from our time in California. The first was attending and observing 'Re-entry Court', presided over by Judge Larry Brown. The Re-entry Court was formed in Sacramento in 2013 and it focuses on lower-level offenders with moderate to high risk of reoffending. Rather than being sentenced to custodial sentences in state prison, the offenders are sentenced to serve their term in county jail. Offenders will then have their county jail prison sentences suspended and they are instead placed on probation and enter the Re-entry Court.

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<sup>1</sup>[https://lawrepository.ualr.edu/cgi/viewcontent.cgi?article=1280&context=appellatepracticeprocess&httpsredir=1&ref](https://lawrepository.ualr.edu/cgi/viewcontent.cgi?article=1280&context=appellatepracticeprocess&httpsredir=1&referer=)

The Re-entry Court is led by the Judge and includes a defence attorney, a prosecutor, a parole agent, a probation officer, and treatment staff and/or case managers. Participants in the Court are assessed for their risk of re-offending and their treatment needs and are then placed on programmes which connect them with mental health treatment, substance abuse treatment and housing needs. Participants attend court to discuss their progress and the Court will have collaborative roundtable meetings to discuss the participants. When a participant completes the programme (which usually lasts around 12-18 months) their suspended sentence is removed.

We attended the Re-entry Court to listen to Judge Brown and the team discuss how various participants had been getting on in their programmes; when the participants were called into Court, they were all called in together and could hear about each other's progress. One participant, who had recently graduated from his programme, spoke candidly to the other participants about how the programme had kept him 'honest and accountable', he said that he 'hoped everyone took advantage of everything the Court had to offer' and that 'doing [life] clean and with your family is the best way to do it'.

I was struck by how innovative the Re-entry Court was; its approach to mental health and addiction was progressive, caring and solution focused. The adversarial nature of the court process had been removed and replaced with a collaborative approach which was designed to break the cycle of criminality and incarceration. To my mind, it was a huge advertisement for the success and role that alternative sentencing can have within a criminal justice system.

The second was attending the offices of Dreyer Babich Buccola Wood Campora, a personal injury firm specialising in catastrophic personal injury litigation. We met Roger Dryer and Bob Buccola and spoke about the vast differences between our two systems; in the US almost all PI trials will involve a jury who decide both liability and quantum issues and the value of the cases in the US are many scores higher than we would see in the UK (Roger demonstrated this by showing us his 'wall of cheques' that represented hundreds of millions of dollars' worth of settlements over the years). Roger and Bob also spoke about forum issues which arise in cross-state PI claims, the need to be an entrepreneur to build a PI practice in the US (where I might give a seminar, PI lawyers in the US might appear on a billboard or a radio advert) and the difference in advocacy styles across our two systems.

The third highlight was the generosity and hospitality of Art, our guide, and Parker and Carole, our hosts. Art made sure that we managed to meet the great and the good of the Californian legal and political communities – no request was too much trouble. Parker and Carole put us up in their stunning home and treated us to wonderful trips wine-tasting in Napa Valley and hiking around Muir Woods.

From Sacramento we headed first San Francisco, where we enjoyed the St Patrick's Day celebrations, and then to Lexington, Kentucky. A world away from the sunny climes of Northern California we were now staying with Andre Regard, an attorney, thoroughbred horse owner and Bourbon producer in his historic 19<sup>th</sup> century home in Scott County.

Our first (literal) taste of Kentucky was a weekend tour of the Maker's Mark and Four Roses Kentucky Bourbon distilleries where we learned about the process of making bourbon (made from a grain mixture of at least 51% corn, aged in new, charred oak containers and bottled at 80 proof or more), and also sampled some bourbons (my favourites were the high rye bourbons). The same weekend we were taken to Keeneland racetrack to watch horses undergo their morning workouts and had grits for breakfast at the track kitchen.

Our education in the American legal system continued with a trial concerning the alleged negligent construction of a horse barn (a very Kentucky-esque set of facts). The outcome of the trial, both as to liability and quantum, was to be decided by a jury which meant that voir-dire had to take place. The role of voir-dire in the US is unlike anything I have seen or experienced in the UK; prospective jurors are examined concerning their potential attitudes, general experiences, and preconceptions of the case. Questioning begins with the judge, but attorneys will also question the potential jurors and each side will have a certain number of ‘pre-emptory strikes’ where they can strike potential jurors without having to give a reason (subject to equality provisions). Throughout our time in the US many attorneys had told us about the importance of voir-dire with some even saying that the trial could be ‘won or lost’ in voir-dire so I was fascinated to see it play out in person.

The voir-dire process at the trial began with around 80 potential jurors being called into the court room. The Judge explained the process of the hearing to the jurors and then asked a series of questions to the jurors (did they know the parties? Did they know the attorneys? Did they have any reason why they couldn’t sit for the duration of the trial?). It was then the turn of the attorneys to ask questions. The questions which followed – does it influence you that our client is from California? Are any of you involved in barn building? Does anyone think that litigation in America is a problem? Does it influence you that our clients are wealthy? – appeared to me to, not only be a chance to attempt to obtain the best jury for each party’s respective client, but also the first opportunity to put your case. The opening to the opening speech. Each attorney carefully spent their time building rapport with potential jurors, introducing them to the issues in the case and subtly, but surely, setting out the foundation upon which they would build their arguments over the coming days. After a few hours the jury had been selected. I ultimately found myself wondering whether the voir-dire process was a useful method to determine juror impartiality or whether the process benefited the party with the greater access to resource (particularly by reference to the quality of a party’s advocate or their ability to pay for jury consultancy services).

The time we spent in Kentucky stands out particularly because of the people we met and the culture we experienced. Every single Kentuckian we met was proud to be from the State; we heard regularly about the rich horse racing and bourbon heritage, were taken to hiking through the stunning natural landscapes of the Red River Gorge (and to the world famous Miguel’s Pizza afterwards), learnt about the State’s history with visits to various historic settlements and the State Capitol and enjoyed several long delicious dinners around Judge Lucinda Masterton and Greg’s dinner table where we enjoyed their home grown food, shared stories with numerous different judges and attorneys from the Kentucky legal community, made friends and really discovered what ‘southern hospitality’ meant.

The final portion of our tour took us back to the East Coast. We arrived back in Washington just in time for the peak of the iconic cherry blossoms which circle the tidal basin in DC before heading to the first of several sporting events that had been lined up for us – an NBA game between the Washington Wizards and the Golden State Warriors.

Eric Nitz, an attorney at MoloLamken, had organised the next week of events for us. We spent time in Delaware with Judge Ambro of the United States Court of Appeals for the Third Circuit, watched the federal trial of a Defendant who was accused of having appropriated software belonging to a federal agency and spent a day at the Montgomery County Court in Maryland.

During the same week we were treated to a tour of the Supreme Court of the United States by Jen Fischell, the clerk to Justice Kagan (which included seeing the ‘highest court in the land’ – a basketball court which sits at the very top of the Supreme Court) and we also spoke with Lou Capozzi, clerk to

Justice Gorsuch. Each year every Supreme Court justice hires four law clerks to help with his or her work. The process, Lou explained, is incredibly demanding with only the very best making it. The rewards for getting there are huge – the hiring bonus for an associate coming from the Supreme Court is as high as 500,000 dollars. Multiple Supreme Court Justices were clerks to the Supreme Court themselves as were many of top attorneys regularly appearing before the Supreme Court today. When clerks are appointed, their names will be reported in the news cycle and some clerks have even written books about their experiences as clerks in the Supreme Court. This is a significant contrast to the position in the UK where clerks perform similar roles to their US counterparts but enjoy a far lower profile.

We continued our Supreme Court experience with the American Inns of Court Celebration of Excellence – an annual celebration held in the court room of the Supreme Court to honour individuals who have contributed their talent, time, energy, and resources to furthering the ideals of the American Inns of Court. It was a genuine privilege to attend as guests of the American Inns of Court and to be recognised for being awarded our scholarships. It was even more of a privilege to hear Chief Justice Roberts, Judge Kent Jordan of the Third Circuit and Judge Carl E. Stewart of the Fifth Circuit announce various different awards which reflected the commitment of Inn members to leadership, service, pro bono activities and diversity – I particularly took a lot from David G. Yee’s essay and acceptance speech about promoting diversity in the legal profession. The icing on the cake was meeting Justice Sonia Sotomayor and dining in the Great Hall after the awards ceremony.

In our final two weeks we watched the Washington Caps (ice hockey) and the Washington Nationals (baseball) play, met with a congressman, visited Howard Law School, toured the J. Edgar Hoover FBI Building, met the Solicitor General, toured the Capitol, enjoyed Richard Schimel’s famous DC monuments tour, ate crabs on the Maryland shore and watched numerous state and federal hearings, including in New York and Virginia (we had particular fun spending a day at the celebrity trial of the year: Depp v Heard in the Fairfax Courthouse in Virginia).

In these 3000 words I have hardly scraped the surface of the experiences we had during the trip – the effort those who organised the six weeks we spent in seven different states in total was monumental. We were embraced with warmth and generosity everywhere we went and my six weeks in the US were some of the most rewarding, interesting and fulfilling of my professional life. Thank you to every single personal who hosted us, organised events for us and put us up in their homes. I am sure I will inevitably unintentionally miss people who are deserving of thanks but particular thanks has to go to Cindy Dennis, Jesse Binnall (and all of BLG) Ellen and Tim DelSole, Eric Nitz, General Malinda Dunn, Richard Schimel, Andre and Jenn Regard, Lucinda Masterton and Greg, Art Scotland, Parker and Carole (and their three dogs!), every practitioner and judge who spent time with us and shared their experiences and knowledge with us and to the American Inns of Court and my fellow scholars for making the trip so enjoyable.



**2020 Pegasus Scholar - Spencer Turner** is a barrister at 12 King's Bench Walk, a central London chambers. He specialises in cross-border, mass tort, industrial disease and personal injury litigation.

Spencer regularly acts in claims involving an international element and he frequently advises on applicable law and jurisdictional issues. His international experience has seen him work on a variety of cases, including a multi-millionpound arbitration in Singapore and litigation arising from accidents in the air or at sea. He also regularly appears in the context of claims brought on behalf of Claimants who have suffered illness as a result of exposure to asbestos. Spencer has significant experience in personal injury litigation, has appeared in the High Court and is regularly instructed on complex matters with

a high value; he has a particular interest in injuries arising in the context of sporting accidents and has represented clients in anti-doping proceedings. Spencer's mass tort experience includes working on litigation arising from the PIP breast implant litigation. Spencer appears in court on an almost daily basis; he is adept at witness handling and is comfortable appearing in front of a range of different courts and tribunals.

Spencer is contributor to prominent asbestos and travel law blogs and is a co-contributor to the Human Rights Act chapter in the latest edition of Local Authority Liability.

Before coming to the Bar, Spencer studied law at the University of Bristol. As a student, Spencer was the president of an award-winning Bar Society, the news editor of the student newspaper and won the Hunt Cup for debating.

Spencer completed the Bar Professional Training Course at the University of Law in London where he was awarded an Advocacy Scholarship and won the University of Law IV Moot which took place before a Supreme Court judge in the Supreme Court. He is also an Exhibition Scholar, Frank and Buriss Gahan Scholar and the recipient of a Duke of Edinburgh Entrance Award and a Marshall Hall Trust Award from the Honourable Society of the Inner Temple.

Spencer was the winner of the Jarman Award, a prize given by the Honourable Society of the Inner Temple to top pupil barrister in recognition of their advocacy. He also won the Times Law Award in 2018.