

Reflections from Lord Phillips of Worth Matravers KG PC

A brilliant intellect spread across a wide range of enthusiasms

We are here to do honour to the memory of Michael Mustill – and to enjoy exchanging our memories of him. I am not sure that he would approve of the former for he was not one for pomp or for personal aggrandizement, but he would certainly approve of the latter. He liked a good party and he delighted in reminiscence and this evening is the occasion for both. Michael was President of the London Shipping Law Centre for 30 years – from its founding in 1995 to his death in 2015 and we are grateful to the Centre, and particularly to Aleka Sheppard, for organising this evening.

Michael was my brother-in-law in more ways than one. I was his pupil and I was briefed with him and against him. Unfortunately, I never had the chance to sit with him in the Lords but after he retired he came to sit with me once in the Court of Appeal. Happily, I managed to persuade him not to dissent.

He married my sister Caroline who has provided most of the material for my contribution. She discovered at Michael's family home at Pateley Bridge, carefully preserved, letters that he had written to his parents over a period of about 20 years, starting in 1939, when he was eight years old and ending in 1961, in his early days at the Bar at 4 Essex Court. I am going to share some of these with you and trace some of the traits of character and behavior of the Michael Mustill that we came to know.

The earliest letter was sent from his mother's parents' home in Pateley: *Dear Mummy and Daddy, Everything is fine. My arm is better now and hardly hurts at all.* This is the first of many references to illness or injuries of one kind or another that punctuate Michael's letters. He was throughout his life accident prone and he survived a number of life-threatening illnesses. The first was when, as a very small boy, he contracted peritonitis. The distinguished Leeds surgeon who was called to attend him would only operate if paid in advance. Fortunately, his parents had set aside an emergency fund of £5 in a pot on the mantle piece and this substantial sum sufficed to save Michael's life.

He acquired an enthusiasm for horses that never left him, despite the fact that on one visit to the stables he was kicked in the stomach and received a wound that had to be patched with a metal plate. Back to his letter to his grandparents. *I am getting up at nine and am supposed to be going to bed at seven...I am spending most of my time outside playing with the girls.*

Michael's father's parents lived in Boroughbridge and Michael was very fond of them. In 1939, he was given a new bicycle for his birthday. One day Michael and his bicycle vanished. Without telling anyone, he cycled 28 miles to pay them a visit. His bicycle, though not the same one, remained an important part of his life and each year he derived a vicarious enjoyment from following the Tour de France. After a particularly good brief, he invested in his own expensive racing bike. He was showing it off to an admiring group in Essex Court when one young man asked if he could have a go on it. With customary generosity, Michael told him to go ahead. He was more generous than he intended. The

young man rode it out of Essex Court and he and the bicycle were never seen again.

Michael was born in Leeds in 1931. From 1936 to 1940, he went to Ingledew College, which advertised itself as “For the Sons of Gentlemen.” Lord Dyson, who some time later attended the same establishment, has questioned whether many of the pupils could properly be so described. Certainly, Michael was not one of them.

Michael’s mother Marian was the daughter of a Pateley Bridge grocer and Methodist lay preacher and when Michael’s parents retired, they bought the cottage in Pateley Bridge that Michael was to inherit. His father’s family originated in Norfolk but two great uncles moved to Boroughbridge where they founded a company producing ‘Mustill Brothers Mineral Water’. Michael’s grandfather chose, however, to go to Geneva to learn the hotel trade. He went for seven weeks and stayed seven years, rising to the rank of head waiter, before returning to join his brothers at Boroughbridge.

There he sustained a serious accident that prevented him from continuing to work or funding further education for his son Clem, Michael’s father. This was a pity, because both Michael’s parents were highly gifted. His mother was a talented pianist and his father Clem made a good living as a highly inventive engineer, ending as Managing Director of Jackson Boilers in Leeds. Both became involved in Conservative politics and each was urged to stand for

Parliament. Lacking the means to do so they supported the successful campaign of their friend Keith, later Sir Keith, Joseph.

Michael's parents made sacrifices to make sure that he had the education that they had been denied but I doubt whether they would have been successful had not Michael proved adept at obtaining scholarships. They sent him to a series of boarding schools. From 1940 to 1942, he attended the Wells School at Ilkley. His weekly letters show a continuous interest in food, a growing enthusiasm for sport, and a stream of requests to be sent necessities, some of which he had left at home.

His first letter home recorded: *Please send my writing pad. I felt rather homesick at first but am getting on all right. Will you send or bring a play box – also a pen. We go out for walks. My dorm is very nice. The meals are lovely. Send me stamps without fail. Do you think you could see if I have left my skates key at home?* This was an early indication of a life-long tendency to lose track of his possessions. On one occasion, the postmistress at Lablachere pursued him down the village street. *Monsieur Mustill, Monsieur Mustill, vous avez laisse votre passeport!*

Church was an important part of school life. Michael reported: *Sunday service and scripture are compulsory and begin at 2pm ending at 3.30 pm. No boy will be excused.* The boys were required to learn the Collect off by heart each Sunday, not perhaps the most effective way of promoting the Christian faith.

Michael wrote: *I am not looking forward to the first Sunday in Advent as it is nearly the longest Collect in the book.*

His parents were closely informed of the school's successes and failures in cricket and football matches with other schools, although not allowed to come to watch these. As Michael explained: *Dates of football matches are not divulged because it is said (and believed) we perform sadly before parents. Perhaps that is what is meant when French people say "we take our pleasures sadly"---an extraordinary comment from a nine-year-old Yorkshire schoolboy.*

All this was to the background of the War. There were references to air-raids and to the following Sunday pastimes: *In the morning the Doctor will immunise us. In the afternoon an ARP warden will inspect our gas-masks, followed by a lecture on fire-fighting. Please may I have some chewing-gum; it is the craze."*

Immunised or not, amid these letters was the following sinister printed missive. *Medical Superintendent Wharfedale Isolation Hospital, Menston. Michael Mustill was admitted today. Patient No. 140.* The letters give no hint as to what he had but he recovered to report on end of term exams: *In French Grammar I was 3^d with 70; in French trans I was top with 77; in English I was top with 93; in Geometry I was top with 89; in Algebra I was top with 100 and in Arithmetic I was top with 100.*

You would not guess it from his letters but Michael was unhappy at Wells. Perhaps this was clear to his parents because they moved him for the next two

years – 1942 to 1944 – to Stancliff Hall in Derbyshire, which he loved. He was, however, affronted by a school rule that said that all tuck sent from home had to be shared. *Please eat the cake yourselves because the cake is pooled and it would be a waste of such a nice cake as you or Nanny could make for it to be pooled. And later: Nanny Harrison sent me some biscuits and to save them being shared out, I put them in the sweet cupboard in a tin and covered them over with sweets. This is not being selfish for I only do it because at one end of our table there are some boys who always gorge other people's cakes and never bring any themselves.*

Michael's letters from this school show a change of interest. He was into literature and progressed rapidly from Biggles and Raffles to weightier works. He reported: *This week I read Swiss Family Robinson, Edmund Blunden's "Undertones of War" and re-read Jardine's "Ashes and Dust". Then he discovered classical music: Did you hear Myra Hess playing a Beethoven Concerto – or was it a Sonata?.P.S. I stayed up until ¾ hour after bedtime by mistake to listen to Nimrod and Beethoven's 5th. have got a tune on my brain and am having to play it on the gramophone over and over again. It is the Toccata and Fugue by Bach.*

One wonders when he found time to do any work but he did. He started quite a way behind his peers but steadily overhauled them until he was getting top marks in every subject, except geography. He reported: *I am now top of the school in the top game, top form, top dorm, Member of the School Council, Reader out of Lesson in Chapel and 2nd of Pheasants – whatever that was. He*

had the grace to add in brackets – *swank*. And then the nemesis: *“this has been my unlucky week. I have been in bed for a few days with a temperature. When I was walking outside with wellingtons on I trod in some mud, fell heavily and put out my hand to save myself. Unhappily, the spot I chose to put my hand down was already occupied by some broken glass. Ouch!, its quite a deep cut.*

On to Oundle, inevitably with a scholarship. Food resurfaces as a major topic in his letters as he acknowledges receipt of a series of delicious cakes, now shared with and appreciated by his friends. He got confirmed. Typically, he wrote: *“I’m afraid that during the melee of packing, the details of my christening got lost. Could you tell me about them again?*

Another frequent topic of conversation was the cane. Corporal punishment was administered with abandon for the most trivial of misdemeanours. It seems that his father had anticipated this and equipped him with a cushion that could be concealed in the trousers. *I got beaten today for fighting for a chair. I only got three but the cushion has come in very useful...On Thursday I was beaten. It was by Tomislav for talking in prep. He gave me four but they did not hurt much so it did not matter. However I was quite glad of the cushion.*

As he moved up the school, his letters became less informative, perhaps because with maturity he acquired a modesty that inhibited him from describing how well he was doing. He played piano and cello, conducted the house orchestra, was house captain of cricket, fives, shooting and music and was invited to join the debating society, *to give it some of that simple, sincere,*

genuine, funny, homespun, altruistic, untarnished, unclosed idealism of yours.

The qualities that we knew were getting recognised.

Those familiar with the judgment that Michael gave in *Bland*, reluctantly agreeing that the doctors could switch off that patient's life support system, might be interested in passages from an essay on the topic of death that he wrote at Oundle. Speaking of comatose patients, he wrote: *All these people exist – their hearts beat, their lungs expand and contract, and they need food to continue to do so, yet can they be said to live? It seems that some new definition of Death is needed. Here science, religion and ethics have failed; when a man gives up the ghost, no one can tell. There is no means of telling when that elusive particle the 'soul' escapes from its bounding body...If some means could be determined of saying at some moment 'Now! This man has ceased to exist except as a bundle of nervous reactions' then there could be no moral guilt involved in stopping the body from functioning.*

Compare this with this passage from his speech in *Bland*: *I do not assert that the human condition necessarily consists of nothing except a personality or deny that it may also comprise a spiritual essence distinct from the body and personality. But of this we can know nothing and in particular we cannot know whether it perishes with death or transcends it. Absent such knowledge, we must measure up to what we do know".*

From Oundle, he gained a scholarship to St. John's College to read maths but only after two years of National Service in the Army. By the time he got to

Cambridge, he had decided to switch to law but with no firm idea as to where this might lead. When he came down, he went to work for Slaughter & May, pending passing his Bar exams. They recommended that he do a pupillage with Michael Kerr in 4 Essex Court and the rest is history.

Here is his description of his first brief, taken from the correspondence that was still continuing with his parents: *The only news of any note which I have is that I did my first case on Friday. The brief was from Slaughter & May and concerned a cheque for £20 which had been signed by an accountant on behalf of one of his clients and made out in favour of S & M on account of one of their clients. The accountant ran short of his client's funds and stopped the cheque without warning us. This annoyed S & M and they sued the accountant to teach him a lesson.*

The case was in Kingston County Court before the Registrar. I went down there with my robes (which I now have complete except for the wig) and a borrowed wig and three hefty books, all in my blue bag and weighing about a ton. I sat in court until 12.15, my witness (the litigation king in S & M) getting very restless. I bobbed up to ask if they would move us forward in the list as we were very short (I was afraid we might be there all day). This they did. I had just begun my opening when the Registrar stopped me and had a few words with the defendant. The upshot was that judgment was entered for us without my firing a shot. Which was annoying as there were some quite interesting points of law. However, at least I won and the ice is now broken.

I have been trying to show you the roots and the early development of a very complex man. The brilliance of his intellect was adorned but sometimes masked by as wide a range of enthusiasms as could be combined in one person.