

COMMENT

A California Lawyer in Oxford

I was in the city of Oxford under the international lawyer's program known as ILEX, which arranges for American lawyers to broaden their legal skills by spending a month or more with law firms in other countries.

The ILEX program provides only an introduction to the foreign host firm; details as to arrival date and length of stay are worked out by correspondence between the participants. The American participant arranges for and bears all costs of travel and accommodations, in addition to which he pays a modest fee to the ILEX committee.

My host firm in Oxford was Linnell & Murphy, a law firm organized about 1900 by the forebears of the present Mr. Linnell and Mr. Murphy in the firm. The offices are housed in a six-story building in King Edward Street in downtown Oxford close by Oriel College.

The ILEX program is quite unstructured, and upon arriving at my host's office we quickly agreed that I would spend most of my time with the firm's solicitors, participating as an observer during client interviews, reviewing selected case files, attending court sessions with solicitors and barristers, and doing legal research in the firm's law library and Oxford University's famous Bodleian Library.

The Bodleian is one of the world's great libraries. The law library building is one of the few modern structures and contains the English law reports and those of the Commonwealth. On my first visit I was researching a point of English law and took time to explore the vast shelves of English reports. On a corner shelf I noticed a familiar American set of books, the current Martindale-Hubbell directory. When I asked about other American volumes, I was informed that the entire second floor was the American section, where I found not only appellate reports of every state, but law reviews, digests, and the codes of every state.

The Bodleian is not a public library, and anyone not connected with the university must be qualified as a "reader" in order to use the library. I was able to qualify by having an Oxford graduate support my certification that I would be responsible for any library material used.

My schedule at Linnell & Murphy was sufficiently flexible to allow time for me to browse around the twenty-eight or so colleges of Oxford University.

All Souls College is justifiably proud of its law library, where I noted a large section devoted to works on international law, plus an extensive selection of volumes on Roman law. All Souls College law library is an archi-

tectural gem among the many distinguished libraries of Oxford. Original wooden benches and tables are still in use under an ancient beamed ceiling and colorfully decorated woodwork.

Brasenose College, founded in 1509, is highly regarded for law studies, although a local judge informed me that such reputations for excellence in any field of study tend to be attributed to an outstanding professor rather than the college itself.

A friend in his third year at Lincoln College (founded in 1427) showed me the magnificent stained glass of the chapel and pointed out the lectern used by John Wesley during his days there.

Other colleges of Oxford date back to the thirteenth century; University College, Balliol College, and Merton College trace their beginnings to somewhere between A.D. 1249 and 1264.

The standard tourist joke in Oxford concerns the visitor who, while standing in the center of town, asks directions to the university. If you've done any homework at all before leaving home, you will know that wherever you stand in the city of Oxford, the university surrounds. The colleges in Oxford are clustered not only in the central area of town, but throughout the city and its environs. Wherever you happen to be in Oxford, you are either in or near one of the colleges.

It was October when I was there and the opening of the Michaelmas term was in progress. All over town the new "freshers" were rushing about, gowns flying, on their way to appointments. Some were in formal attire (including white tie) for the traditional class photograph in their college courtyard.

At Linnell & Murphy I was assigned a desk in the law library where the approximately sixteen solicitors in the firm could find me to invite me to court sessions or to spend the day in a solicitor's office.

Most English solicitors are also commissioners, a function much like our notary public, except that foreign documents and those for use outside England are certified by a solicitor who has been designated a "notary," a higher status office. It is an ecclesiastical appointment observed with some ceremony and accompanied by presentation of an impressive scroll of office as a badge of authority. To be considered for such office, a solicitor must prepare a "memorial," which is a document signed by local dignitaries expressing the need for appointment of another notary in that area. The actual appointment is made by the Archbishop of Canterbury at the Faculty Office in Westminster Abbey!

Both solicitors and barristers are included in the term "lawyer," but there the similarity ends. The solicitor's right of audience (the right to appear in court on behalf of a client) is limited to the lower courts, i.e., magistrates' courts (criminal) and county courts (civil), although he has a limited right of audience in the crown courts, the next higher court which hears the more serious criminal cases. Solicitors are sometimes known as a class as the "lower branch" of the profession.

When acting as an advocate in court, the solicitor wears a simple black robe (gown, in England) of a design somewhat similar to that worn by our judges; he also wears "tabs" or "bands" under a starched white butterfly collar. He gives a slight bow in the direction of the bench when entering or leaving the courtroom while court is in session, as do other court officials. Bailiffs also wear robes, as do clerical assistants who perform other minor functions such as notifying persons in the hallways or waiting rooms that their presence in court is required. Solicitors are members of the Law Society, whereas barristers are members of the Bar.

The solicitor is involved in every stage of a client's case. The solicitor engages a barrister when necessary for court appearances or for advice and submits the barrister's bill to the client for fees when tendering his own bill for fees. The client is always the solicitor's client, not the barrister's.

There are roughly 35,000 solicitors in all of England, compared to about 4,000 barristers. The solicitor prepares to enter the profession by acquiring a law degree after which he studies for the solicitor's examination, somewhat similar to our bar examination. Upon passing, he enters a two-year period of service as an "articled clerk." His service as an articled clerk is usually with a firm of solicitors, who will certify him for admission to practice on successful completion of his two-year apprenticeship. As an articled clerk he is paid a salary somewhat smaller than that paid to a qualified solicitor, but until about ten years ago he served his time without pay. Before that time in some areas of England it was not uncommon for him to pay for the privilege of serving his two-year apprenticeship!

As in the States, there is a growing number of women entering the ranks of solicitors. At Linnell & Murphy, the number of women solicitors approximated 20 to 25 percent of the total.

A substantial portion of the solicitor's practice is conveyancing, the practice of which amounts to a near monopoly for solicitors, since usually no one but a solicitor handles transfers of real property. In a sale of property, the buyer and seller usually enter into a preliminary agreement through the seller's "estate agent" (real estate broker) who has listed the property. Both buyer and seller thereupon engage solicitors, who draft contracts of purchase and sale. The purchaser's solicitor arranges for mortgage money, makes inquiries concerning building regulations, codes, zoning restrictions, and may hire a surveyor. A contract of purchase and sale is then signed by the parties, and the buyer pays a deposit, after which the seller's solicitor furnishes an abstract of title. A conveyance draft is prepared by the purchaser's solicitor, and after final title searches, the balance of money is paid and the buyer receives a deed. No title company is involved at any stage of the proceedings.

The seller pays his solicitor's fees as well as the broker's commission; the buyer pays a fee to his solicitor.

England is in the process of switching to registry procedure to establish title without the traditional search procedure, which can involve many doc-

uments and can require many hours of time for the solicitor. The change-over is mandatory, and I am told that about one-half of England's private real property has already been converted to registry.

Barristers are the trial lawyers of England and are largely confined to that function. Their only contact with a client is through a solicitor. In actual practice, the barrister may not even meet the client until shortly before trial, when he interviews the client with the solicitor to discuss trial prospects and strategy.

It may appear that since the barrister is quite dependent on the solicitor for his cases, he is in the position of an employee. Such is not the case. A barrister with a reputation for a high degree of skill in court is of course much sought after, particularly in areas in which the barrister has special expertise. In this respect, the similarity with respect to the function of the American trial lawyer is evident.

When a barrister achieves higher rank by appointment to practice in the higher courts, he is designated a Q.C. (Queen's Counsel) or K.C. (King's Counsel), whichever is appropriate. The barrister is then referred to as having "taken silk" and his vestment so indicates. Roughly 10 percent of England's barristers are "silks." Other barristers are known as junior barristers. Most judges are appointed from the ranks of silks.

The barrister prepares for the profession by entering one of the four Inns of Court: Inner Temple, Middle Temple, Lincoln's Inn, and Gray's Inn. A barrister's affiliation with the inn is retained throughout his professional life. When ready for practice as a member of the Bar, he or she takes a "seat" in chambers, which means becoming a member of a group of barristers in practice together. English practice forbids barristers from forming partnerships; however, partnerships are common among solicitors. Most barristers have chambers in the area of the inns, which are conveniently close to the courts. There is reportedly some overcrowding in chambers due to the increase in new barristers entering the ranks in recent years. Barristers are not allowed to practice from home and must have a seat in chambers other than at home.

The inns provide student facilities such as common room, meals in great dining halls, scholarships, and moot court facilities. Barristers are required to dine in their respective dining halls a minimum number of times each term.

Women are entering the profession in greater numbers, and it is now believed that 8 to 10 percent of the barristers are women. They wear the same vestments as men in court; a robe (gown) of slightly different cut than the solicitor, bands, and a wig.

One of the arguments used by supporters of maintaining the tradition of formal dress in court is that the wig tends to reduce the distinction of age or sex.

In court, the barrister is guided by instructions from the solicitor in the conduct of the case. To illustrate, I witnessed a court scene in which a

barrister's argument was interrupted by the judge, who expressed some doubt as to the credibility of his argument. The barrister explained that he was acting on instructions and appreciated that not all his arguments would be accepted by the court.

When his services are concluded, the barrister submits his bill to the solicitor, who collects the amount from the client along with the solicitor's fee. A rule of practice holds that solicitors do not sue barristers for malpractice, and barristers do not sue for collection of fees from solicitors. The latter rule is self-executing because the clerk of the barrister's chamber will refuse to take on any further work from a debtor solicitor until outstanding fees are paid.

There is traditionally a slight difference in the cut of the barrister's robe as compared to the solicitor's. A pocket sewn in the back of the barrister's gown is a holdover from days when the barrister was above dealing with the matter of fee; the solicitor discreetly slipped the fee into the pocket, thereby relieving the barrister from handling anything as sordid as money.

It is not a common occurrence for a barrister to switch roles and become a solicitor, but it has been done. To do so a barrister must de-bar himself and complete several of the solicitor's examinations before being admitted as a solicitor.

One of the first court sessions I attended was in the Oxford magistrates' court. This is the lower criminal court which is on somewhat the same level as our municipal court in jurisdiction. The magistrates are usually addressed collectively as "your worships." There are three magistrates who are laymen appointed for life. They serve one day a week and usually serve without pay, although there are certain stipendary magistrates. There are about an equal number of women as men; none have formal legal training. Most are active in business or professions and are appointed after being qualified as competent and representative of the community. There are no juries in magistrates' court; if a jury is required, the case is heard in a higher court.

The clerk is the highest ranking officer of the magistrates' court. He has had legal training and instructs the magistrates on the law. He calls the cases, talks with solicitors, and generally is in charge.

The corresponding lower civil court is the county court. The sessions I attended were concerned with landlord and tenant cases involving arrears of rent in which the landlord wanted to evict the tenant. The judge was addressed as "your honour" and seemed most solicitous toward the tenant. He offered advice to the tenant as to the law and explained how to handle his own case if he so desired. At one point, the judge asked the tenant what amount he could pay toward his arrears. When opposing counsel pointed out that the tenant had broken numerous promises to pay, the judge explained there was no point in extracting a promise he would be unable to keep; the judge further informed counsel that he was interested only in the future, not the past; "let's see if he keeps this promise." One tenant admit-

ted he had a substantial bank account but wanted to apply for legal aid before hiring a solicitor, upon which the judge explained how he could proceed in person.

Defendants in both civil and criminal cases are entitled to payment of legal fees and costs under a government legal aid program upon showing of a meritorious case, in addition to assets and income below established limits.

Solicitors wear gowns in county court as do the clerks and bailiffs. Any barrister present also is gowned and wigged. The judge wore a wig, robe with a purple sash, and the usual white collar.

The higher criminal court is the crown court, of which there are three in Oxford; two in the Town Hall (city hall), and one in a centuries-old stone castle-like structure on Queen Street near the center of town. Town Hall Crown Court had a central waiting area, with entrances to the courtrooms, a barristers' conference room, gowning room and jury room. There was much frenzied activity in the waiting room usually solicitors looking for clients or barristers who were late in arriving. I attended conferences with clients in the waiting area, but found their accents difficult to understand.

In the courtroom, barristers sat in the first row of raised bench seats facing the judge; the second row was raised higher and was occupied by solicitors (where I sat); the third raised row was for solicitors' clerks; behind the clerks at a still higher level was the dock where the defendant sat with prison officers guarding him.

I visited the high courts in London by making day journeys on the train. The service between Oxford and London is excellent, with fast trains making the trip in one hour. By taking a 7:00 A.M. train to Paddington Station and a ten to fifteen minute ride on the Underground, I was deposited at Chancery Lane for a short walk to the courts on Fleet Street. For about \$20, U.S., I could spend the entire day and evening in London.

I visited several higher courts housed in the huge gothic structure on Fleet Street, surrounded by the four Inns of Court and barristers' chambers. The courtrooms are magnificently decorated with richly paneled walls and ceilings. The walls were lined with wood latticed book cabinets of artistic design, which proved to be very functional. When a barrister cited a case, robed ushers promptly sped to the shelves and found the reports which were taken directly to the judge for instant use. Later I attended an appellate hearing in the court of Lord Denning, Master of the Rolls. He is a celebrated judge now over eighty years old who sat with two other appellate judges. When cases were cited by barristers, the ushers brought three copies of each report, one for each judge. Emphasis is on oral argument rather than written briefs.

Lord Denning's courtroom was the most richly decorated of any I visited. In addition to the wood-paneled walls and cabinets, an elaborate wood carving of the crown emblem decorated the wall behind the bench.

In one courtroom, the judge took copious notes of the barrister's statements, and when the judge could not keep pace, the barrister waited until the judge caught up in his note taking, at which time the judge nodded at him, the signal for the barrister to resume speaking.

After a full day in London, I was glad to take the 8:00 P.M. train from Paddington Station, which sped me back to the more relaxed pace of Oxford. In the five weeks there, I became quite at home in what had by then become familiar surroundings.

Oxford is worth taking the time to explore in depth. For those who would like to experience the flavor of English life, I heartily recommend they see England by first exploring Oxford; not only the university, but the entire city and the charming English countryside of surrounding Oxfordshire. Because of the international flavor of the university, it plays host to visitors and students from around the world.

The Oxford pubs have a special charm, steeped as they are in the university's history. At one cozy pub near St. Johns College, I tasted foaming "Hooky" brew (from the brewery at the nearby village of Hook Norton), under a plaque which proclaimed that J.R.R. Tolkien, C.S. Lewis, and his brother W.H. Lewis met at the very same table every Tuesday and talked about the books they would write.

Another pub popular with Oxford students is the Turf Tavern hidden in an ancient narrow lane past the Hertford College Bridge, behind New College. The Turf is reported to have been the setting used by Thomas Hardy for the courting of Arabella in *Jude the Obscure*. It is a favorite meeting place for students; well-mannered and scholarly, usually in spirited discussion of academic topics.

Surrounding Oxford is the famous English countryside of green farmland, thatched-roof cottages and neat tea houses. For the sightseer there is Blenheim Palace, where Winston Churchill once lived and near Bladon where he is now buried. A few miles beyond is the quaint Cotswold country, with its picturesque villages of distinctive stone buildings. Stratford-upon-Avon is about forty miles north of Oxford, where lovers of Shakespeare can enjoy a continuous feast of the Bard's plays. I have seen *Hamlet* performed in the United States dozens of times, by high school groups, college players, and professional companies, but when I attended a performance by the Royal Shakespeare Company, I felt it was a flawless interpretation.

For me, five weeks was not enough time to savor all that Oxford can offer an American; besides, I wanted to leave something for the next visit. I hope it will be soon.

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