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England's Curious Court System: An American Looks On page 15

MOST OF THOSE on the bench are laymen, and attorneys need no degree. But the legal system in England seems to work smoothly — though with a distinct British accent — reports one American law student who spent a week with a firm of solicitors.

By Anthony Joseph Rollo Jr.
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EACH SUMMER, hundreds of Americans celebrate their brief respite from law school by signing up for one of the many accredited overseas law-study programs. Some of these programs offer a fortunate few the unique opportunity to clerk with the legal professionals of the host country. Such was my experience this past summer in England with a firm of solicitors.

The William and Mary Summer School of Law in England, in conjunction with the law department of England's University of Exeter, annually arranges clerkships with legal practitioners in the city of Exeter for a limited number of applicants. One credit-hour is awarded upon successful completion. The one-week clerkship is held before the regular five-week course of study. Hosting legal professionals volunteer their time in the interests of international educational exchange.

The clerkship afforded me a comprehensive view of the English legal system. I gained a rich and textured "feel" of the English system by accompanying solicitors to the different courts, sitting in on client conferences and pre-court briefings, meeting and speaking informally with those holding positions at different levels of the legal profession and especially by engaging in intensive dialogue with members of the firm. Additionally, many principles and concepts encountered in law school were clarified when viewed in light of their origins.

Upon my arrival in Exeter, Gareth Owens, the 37-year-old senior partner of the venerable firm of Dunn & Baker (est. 1888), briefed me on the upcoming week and patiently gave me a synopsis of how justice is administered in his country.

"First you should realize that the legal profession is divided into solicitors and barristers," he stated with a quintessential upper-class British accent. "For our population of 60 million people there are about 35,000 solicitors and 4,500 barristers. In describing a legal practitioner, the term 'lawyer' has no particular application in England."

A solicitor may not at the same time practice as a barrister, Mr. Owens explained. Solicitors are general advisers retained by the client. Mr. Owens' work dealt with a large number of non-litigious matters such as the drafting of wills, the supervision of trusts and settlements, the administration of estates and, above all, conveyancing. His right as a solicitor to litigate in court was limited to county courts, magistrates courts and certain Crown Court proceedings. When a case is heard in a higher court, a solicitor retains a barrister. In that event, a solicitor will deal with the preparatory aspects of litigation such as organizing evidence, interviewing witnesses and conducting the day-to-day communications with the client, acting as an interface between the client and the barrister.

Barristers, on the other hand, are still primarily litigation specialists, with a right of audience in all courts. Many, however, in fact spend most of their time engaged in paperwork such as the drafting of pleadings, divorce petitions, complex settlements and opinions on specialized areas of the law.

Other distinctions exist between the two branches of the profession. Solicitors, for example, are instructed by their clients directly, while barristers may be instructed only by a solicitor — not by a lay client. Additionally, solicitors may enter into partnerships whereas barristers may not. Perhaps the most obvious difference concerns their dress. Barristers appear in court in gown and wig (except in magistrates court, the lowest-level court). Solicitors only wear gowns in certain courts, notably, the county courts, and are never bewigged. Finally, solicitors may be liable for professional negligence, while barristers are historically immune from such liability.

Surprisingly, many practicing solicitors — Mr. Owens included — have neither a law degree nor a bachelor's degree. To become a solicitor, one only must pass the Law Society's examinations and do two years of "articles" — an apprenticeship with a solicitor of five years' standing. (The Law Society sets professional guidelines for solicitors. Two current guidelines that differ from the American rules

are prohibitions against contingency fees and advertising.)

Due to increased competition, however, applicant qualifications have improved to the point where most new solicitors have a university degree.

Barristers have no degree requirement either, yet 95 percent of them probably have degrees, Mr. Owens estimated. The candidate must pass a bar examination, join an Inn of Court — representing the English bar: barristers and judges — attend a required number of dinners at his inn and take part in other traditional activities. He must also serve a year's "pupillage" with a practicing barrister after passing the examination.

AS I began my first day at Dunn & Baker, I was struck by the contrast between the computerized equipment and the several-centuries-old wood-carved desk and chairs in Mr. Owens' office. During my first morning, I met all of the firm's partners and many of its "legal executives," whom we would term paralegals.

Mr. Owens and I were soon driving through the hedge-rowed bucolic "West Country" on our way to the Collumpton Magistrates Court for a "grovel." A "grovel" is solicitors' slang for a case that is a sure-loser and the only avenue left is for the solicitor to plead for mercy. Along the way he described the nature and function of a magistrates court. All criminal cases and some civil cases start off in a magistrates court.

Magistrates are laymen and sit in groups of three. They are appointed by the Queen and are not paid for the two days out of each month that they sit. Because magistrates are primarily triers of fact, no previous legal knowledge is required. They are given some training, however. Each court at this level must have a full-time, legally qualified clerk.

The author is a second-year student at Rutgers Law School in Camden, N.J.

Solicitors & Barristers & Red-Ribboned Briefs

We met our client about 15 minutes before trial. He was arrested for driving at 110 mph on the motorway. Since this was his third speeding violation — or "endorsement" — in three years, a conviction would result in a six-month suspension of his driver's license. Since he was a salesman, this suspension would cost him his job. A family man, he had no other skills to fall back on. In court, Mr. Owens "grovelled" the case. When the business-suited magistrates recessed to decide judgment, they requested that the clerk accompany them.

Mr. Owens explained to me that most solicitors get perturbed if clerks enter chambers when no question of law has been raised, as in this case. The clerks, whose only function is to advise on points of law, often have tremendous influence over magistrates in deciding questions of fact, and sometimes this influence is abused. Since solicitors often appear before the same magistrates, though, most do not complain in order to avoid antagonizing the court.

The magistrates returned and pronounced sentence of a three-month suspension of driving privileges. Mr. Owens, disappointed, said he would appeal to the Crown Court, where there was a good chance the suspension would be reduced. Some magistrates are known for their parochialism, especially in small towns where traffic violations are the most serious offenses that come before them. These magistrates sometimes impose penalties that are too severe and are often reversed on appeal.

There is great pride, however, in this system, which employs 25,000 laymen as magistrates. The system is highly efficient and effective and produces a low number of appeals overall. In 1979, the magistrates courts dispensed with about 2.5 million cases. Each magistrate is appointed for life, although retirement is mandatory at 70. A magistrate's training typically includes periods of observation in court, lectures by clerks, visits to penal institutions and continuing education in emerging areas of the law. The powers of a magistrate are limited to issuing fines of up to 1,000 pounds and imposing prison sentences of up to six months.

Later in the week, I went with one of the firm's junior solicitors to the county court for a civil case. The client was on "legal aid." England's national legal aid scheme has proven to be a boon, not only to the majority of citizens who have difficulty in affording legal advice, but also to younger solicitors by ensuring a steady stream of clients. Since the scheme pays only 90 percent of the practitioners' fees, established solicitors turn this work away or refer it to younger solicitors building up a clientele. Dunn & Baker's policy is to accept as many legal aid cases as it can because the 10 percent fee loss is made up in increased volume, and with the government paying the bill, the firm is always assured of payment.

MY FIRST opportunity to see barristers in action came on Thursday. With me at the Crown Court was Dunn & Baker's criminal specialist, Pat Nichols. The Exeter Crown Court is situated in the red-brick keep of a well-preserved 12th-century Norman castle. I was introduced to the barrister representing Mr. Nichols' client (solicitors have no right of audience in Crown Court, a general jurisdiction trial court. Magistrates courts handle all preliminary criminal matters and hold trials for minor offenses.)

Dressed in a black pin-striped suit under a black robe, and wearing a gray horsehair wig held in place by bobby pins, the aristocratic-looking gentleman discussed the functions performed by barristers (whom Mr. Nichols called "wigs"). "Someone may practice as 'counsel' in England only if he has been 'called to the bar' of one of four Inns of Court: Lincoln's Inn, the Inner Temple, the Middle Temple or Gray's Inn." Located in London, these inns are as old as professional advocacy itself and appear to have started out as living quarters for legal practitioners.

"Barristers," he continued, "group together not as partners — which is illegal — but in a set of chambers, which is a method of sharing overhead expenses and libraries, etc., with the tendency for a set of chambers to specialize in an area of the law. A barrister is not strictly an officer of the court — as a solicitor is — but is more an officer of justice. Mr. Nichols' function is to insulate me from his lay client so that I can carry out my fundamental duty to the court without the problems of conflicting loyalties."

A barrister has a greater duty to the public interest than to his client's interests. Thus the English advocate has a generally high reputation for integrity before the bar and in the public's eye.

Barristers are, in effect, apprentice judges. The judge relies on the barrister for the facts and the law. The judge may not have studied the case before the hearing, and he may give an extemporaneous judgment at the end of it. He could not do that unless he could rely on the barristers to present the two sides of the case fully and fairly. Traditionally, a judge does no further research on the case after the hearing, even when a written judgment is called for. This results in fast disposal of cases. The English system runs smoothly with only 400-odd judges nationwide.

Chuckling, the barrister recalled viewing American trials on the BBC and said such adversary "histrionics" would never be tolerated in an English courtroom. "The courtroom decorum in our country," he said, "is traditionally strict and rigid, and such behavior is prohibited."

It was time for the pretrial briefing with the defendant, who was accused of theft and was meeting the barrister for the first time. The barrister explained to the defendant what his strategy would be. This strategy was outlined in Mr. Nichols' brief to the barrister, which was rolled up like a scroll and tied with red ribbon. Unlike an American brief, the English version is just a set of instructions and suggestions from a solicitor to a barrister on how to go about arguing the client's case. No copy of the brief is given to the judge.

We then went into the courtroom to wait for our case to be called. In the center of the courtroom was an elevated square box. The "dock" is where the prisoners stay during the trial. Directly under the dock, connected by stairs, are prison cells where the defendant is taken before and after trial. I thought that this procedure could possibly be prejudicial to a defendant, especially in a jury trial, as it seemed emblematic of guilt. The elderly judge wore a robe, wig and red and purple sashes. The red symbolized blood, Mr. Nichols pointed out, and meant that this judge was qualified to hear criminal cases. The purple sash meant the judge could also try civil cases.

The jury for the trial in session soon left for deliberations and the judge immediately commenced a new case. In the meantime, if the jury reached a verdict or had a question, a green light over the jury box would flash. At the next break in the newly initiated case, the judge would call in the jury and either have the verdict read and pronounce sentence or answer the jury's question.

Jury trials in England are almost an anachronism today, Mr. Nichols said. The jury system once was considered the primary safeguard of the individual against abuses of the Crown. But the royal prerogative has long been in eclipse. As the volume of litigation in civil cases snowballed and summary proceedings in criminal cases rapidly expanded, juries were used less frequently. Today, fewer than 2 percent of English

civil cases are heard [illegible] of defamation cases). Although the loss of faith in the use of juries for criminal cases has been less marked, only a very small percentage of indictable offenses is tried by a jury.

Two summary cases were disposed of. Then our client was called to the dock. He had been caught in the act, so our barrister simply asked for leniency. (I wondered if a stately barrister would term this case a "grovel.") In view of the defendant's prior record, the judge decided against imprisonment and instead prescribed a sentence of community service for 200 hours.

For five years now, England has been strongly encouraging a national sentencing policy of community service in certain situations. This program, deemed a success by most of the legal community, is an often-used alternative to a prison sentence. Enforcement is through the probation department, with a maximum sentence of 240 hours. The unpaid service entails such work as painting municipal buildings, working in community centers and assisting the elderly. Our client was pleased with his sentence, as were the barrister and Mr. Nichols.

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The week, and my clerkship, soon drew to a close. It was a valuable experience.

An American law student who clerks with a practitioner in another country is better able to objectively view and comprehend the American system of law and justice.