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THE TYRRELL WILLIAMS MEMORIAL LECTURE

The Tyrrell Williams Memorial Lecture was established in 1948 by the family and friends of Tyrrell Williams, a distinguished member of the faculty of the Washington University School of Law from 1913-1946. Since its inception, the Lectureship has provided a forum for the discussion of significant and often controversial issues currently before the legal community. Former Tyrrell Williams Lecturers include some of the nation's most distinguished legal scholars, judges, public servants, and practicing attorneys.

The Rt. Hon. Sir Robert Megarry, Vice-Chancellor of the Supreme Court of England and Wales, delivered the 1984 Tyrrell Williams Memorial Lecture on the campus of Washington University in St. Louis, Missouri, on September 21, 1983.

LITIGATION IN ENGLAND TODAY: BENEATH THE SURFACE¹

Sir Robert Megarry

What I shall attempt in the time available is to give you some picture of how things go in England in ordinary civil litigation and what lies behind what you can see in the courtroom. In doing this, I hope to offer a glimpse of the contrast between what happens in England and what happens in the United States. There are many similarities, of course, but also a number of contrasts.

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1. Despite misgivings, the lecture, though revised, has been left in its original informal style.

Let me take you on an imaginary visit to the Royal Courts of Justice in London, in the Strand. We will arrive in the morning at about ten o'clock one weekday, because the courts sit at ten-thirty and I want to get you into a courtroom to see just what it is like. The Law Courts are a fine building in the Strand, just a hundred years old, a Gothic structure with many turrets and pinnacles and spires in grey stone. There is a huge entrance hall rather like a cathedral: it's 240 feet long, 50 feet wide, and 80 feet high— an enormous entrance hall, used for practically nothing. Once a year, at the beginning of the legal year in October, there's a solemn procession of all the judges in all their robes down the center of the hall, followed by barristers in their robes. Apart from that, the hall is used for very little.

In this hall, Queen Victoria opened the building in 1882. The judges had a certain amount of difficulty in composing the address that they were going to present to Her Majesty. It was an address of loyalty and gratitude, and so forth, and one of the sentences of the original draft was, "Your Majesty's judges are deeply sensible of their many shortcomings." When the judges held a meeting to discuss this, one of the judges, Sir George Jessel, strongly objected to this sentence. He said, "I'm not conscious of any shortcomings." And so Lord Justice Bowen, who had a pretty wit, suggested an amendment. He said it ought to read, "Your Majesty's judges are deeply sensible of the many shortcomings of each other." But it was, alas, the original version that was presented to the Queen and duly printed in the law reports.²

After you have come into this big central hall, you make your way up the little staircases at the side to the first floor up, and there the courtrooms are arranged round the outside of the central hall. As you stand outside a Court you'll see a little notice board that will give the name of the Judge who is going to sit there. Underneath the Judge's name will be a list of the cases that he is going to try that day. So you look and you see that it's *Charles Jones v. Henry Brown* that you are going to hear, and that it is Mr. Justice White who is going to hear it; and you go into the Court and sit in the back.

The courtrooms themselves are small. Most of the American courtrooms I have seen are a good deal larger than the ordinary English courtrooms in the Strand. These are about thirty feet wide and thirty-five feet long, or about half the size of a tennis court. Round the walls,

2. See Memorandum, 8 App. Cas. 1, 3 (1882).

which are panelled in oak, there are many volumes of law reports; and you'll see these being used during the course of the case. When counsel starts reading from a volume of the law reports, the usher will hand the judge the corresponding volume. You sit at the back, and you'll notice that there's nowhere for a jury to sit, because in civil cases we don't have juries. In one or two special types of cases—if it's defamation or if fraud is alleged—then a party can ask for a jury and usually get one. There are a few courtrooms that have a space for a jury, but as the great majority of cases are tried by a judge alone, most have no room for a jury.

Then you'll notice that there are no tables or chairs for Counsel. Instead, there are rows and rows of tip-up seats with flat desks in front of them; and Counsel are confined to these rows. There's no question of a Counselor advancing toward the witness box in a menacing manner and asking the witness a question three feet from his face; for counsel are pinned down in Counsel's row. If they get very excited there's a certain amount of lateral room, so that they can move a little sideways; but that is all. They're stuck in their rows in the Court, and most of them remain pretty stationary while asking questions of the witnesses.

That's probably all that you would notice, but you will have it explained to you that at the front of the Court two rows are reserved for Counsel; the other rows are available for anyone. The front row is for Queen's Counsel, called "Q.C.'s," or "silks," because they wear a black gown made of silk, or usually artificial silk in these days. The second row is reserved for Junior Counsel, those who aren't Q.C.'s. Any member of the Bar, whatever his age, even if he is seventy, will be a Junior Counsel unless he becomes Queen's Counsel. So you have the segregation of Counsel, with the Q.C.s, the silks, in the front row.

Ten-thirty is the time when it starts, and just shortly before that you will see various people coming into the courtroom. Some fairly young man will come in, carrying with him twenty or thirty volumes of law reports. He will dump these in Counsel's row—Junior Counsel's or the Q.C.'s row, according to whose books they are. These are the books that are going to be referred to, or may be referred to, during the argument of the case. It doesn't matter whether it is a trial or an appeal to the Court of Appeals: the whole thing is done by word of mouth from beginning to end. There are no briefs provided for the Court. It's all a matter of argument: the impact of word upon ear, the impact of mind upon mind, spoken in the Court. Anyone who is in Court can follow

and understand the whole thing, because anything that is going to be used is going to be spoken aloud. If it is a document, it will be read out.

Counsel will arrive, wearing wig and gown. In a moment, I'll say a word or two about wigs and gowns, which always seem to excite a good deal of interest on this side of the Atlantic. And then there will be the Associate, a court official who sits just in front of the Judge. He'll also be wearing a wig and gown. He is a sort of clerk of the court; he swears the witnesses and gives the Judge assistance if some technical rule arises and so forth. Then the Judge comes in. Everybody stands, and there is a polite bowing of the Judge to Counsel and Counsel to the Judge. They all sit down and the case begins. The Associate gets up and says, "Smith v. Brown," and then Counsel for the plaintiff begins to make his opening speech, explaining what the case is all about.

In Court, Counsel wears a wig covering the top of his or her head, though not with the long flaps down the side that you sometimes see in illustrations; these are reserved for ceremonial occasions. Then there's a stand-up collar and white "bands" (or tabs) in place of a tie. Also there's a black gown, and this covers most of the suit that Counsel is wearing. I haven't a great deal to say in defense of the wig. Maitland, the great English legal historian, once said that the wig is the silliest adornment that the human head has ever invented for itself. I think one can subscribe to that proposition. But I think that I can say something in favor of the wig. Sitting on the bench, it is quite extraordinary how little you see of Counsel or his clothing except his face. Is he bald or has he a fine head of hair? You can't tell: he has a wig on top of it all. Is he given to loud ties? Well, you don't know, because he doesn't wear a tie; he has to have these white bands. What sort of a suit is he wearing? You can't see much of that because it's all covered by the black gown. So everything is concentrated on the face—the words that come out of the mouth, the expressions on the face. All the rest is covered up. Of course, this covering is so effective that sometimes you're uncertain about the sex of Counsel; but that, of course, is not uncommon these days, and the English wig and gown are not special in that respect. But there you are: wig and gown produce a uniform effect and a concentration on what really matters—what is being said by Counsel.

Well, let's go back to the Court, and ask the question: "How did all these people in Court get there?" There are the counsel and solicitors on each side. Counsel are there because the solicitors have chosen

them for conducting the case, whereas the solicitors are there because the litigants have gone to them. Before saying something more about this, let me summarise (in broad terms, for there are many exceptions) the requirements for qualification. A solicitor has to have a law degree. He has to spend a year passing the solicitor's exams. And then he has to serve an apprenticeship, working under articles of clerkship for two years. At the end of that time, if he has served satisfactorily as an apprentice, he will be admitted as a solicitor. But he is not then allowed to practice on his own. For another three years he can only practice as an employee of a firm or in partnership with a senior solicitor. So, in effect, it's nine years before he can be on his own, but six years before he can practice as part of a firm.

What about the barrister? His time is rather shorter. He needs a three year law degree, and in these days he also has to have gained at least second-class honors; a third-class degree will not suffice for practice at the Bar. So he needs three years for his degree, then a year passing the Bar examination, and then another year doing an apprenticeship called a "pupillage." He has to go to a barrister of at least five year's continuous practice who is on the approved list of barristers—a respectable, experienced barrister—and then he spends all his time in the chambers of that barrister, going with him from court to court, doing preliminary work, sitting in on all the conferences with the clients, and seeing how the work is done. In each branch of the profession we attach a great deal of weight to the two years' apprenticeship of the solicitor and the one year's apprenticeship of the barrister. By seeing how it is done in practice by experienced and reputable people, there is some chance of the recruit starting off on the right lines when he practices himself. The total for the barrister is thus only five years—three years for his law degree, one year for the Bar examinations, and one year's pupillage; and then he is free to practice on his own.

Why is it less for the barrister than it is for the solicitor? The crux of the whole operation of the English legal system is the dominant position of the solicitor. If you go to a law firm in this country for a matter involving litigation, normally that firm will employ one of its staff to conduct that litigation on your behalf. You, the layman, have gone to that firm for all sorts of possible reasons. You asked your friends or you asked your bank manager: "What's a good firm of lawyers for me in this sort of case?" And on good advice, bad advice, or no advice at all, you have gone to this particular law firm. So the lawyer who is

going to represent you in court will be someone who may be chosen in a fairly haphazard way.

What happens in England? Well, going to a solicitor, again, is the same random process. You ask your friends or your bank manager. But when you have chosen your solicitors, you still have not chosen your advocate. Your solicitors will not argue the case in court themselves, even if they have someone who specializes in the law involved in your case. Their job is to choose for you the barrister who, for the money available, is best fitted to argue your case; and your solicitors have the whole range of the Bar to choose from. Every good solicitor will have a range of thirty or forty barristers whom he normally goes to, and many are fairly specialized. One group of barristers mainly does landlord and tenant cases, another group of barristers does patents and copyrights and things of that kind, another big group does crime, and so on. So the solicitor's job is to choose the right sort of counsel to conduct this case for this particular client. The choice of the advocate is made by a skilled lawyer namely, the solicitor. This is the heart of the whole thing: the dominant position of the solicitor.

Not only does the solicitor have to choose counsel for the particular case, but the choices made by solicitors generally will determine which barristers are going to succeed and which barristers are going to fail. You see, in every case there will be at least two solicitors. Suppose the plaintiff's solicitor has chosen Mr. A to conduct the case for him. Mr. A wins the case, but the judge helped him a good deal and he made some mistakes, and so forth. When they go away from court, the solicitor who briefed Mr. A may not be very pleased with him, and may hesitate to go back to him. On the other hand, he has noticed Counsel for the loser—what a splendid fight he put up, how ingenious and resourceful he was—and so the solicitor will think: "Next time when I have a case of that kind, I'll think of going to Mr. B." So Mr. A is on the way down, and if other solicitors think the same, he will get less and less work. Mr. B, on the other hand, has impressed not only his own solicitor, but the solicitor on the other side. There's a saying at the English Bar that the real triumph for a barrister in a case is not so much winning the case as winning the solicitor on the other side. If three weeks after a barrister has done a case, the solicitor who was on the other side comes to consult him on a new case, that barrister feels that he is really making some progress at the Bar.

This is a winnowing process, a "weeding-out." Many people start at

the Bar; many succeed, and many do not. Those who fail usually do so because they have been weeded out by solicitors in the daily practice of the law. The whole thing is based on actual performance in actual cases, and has nothing to do with politics, or social position, or anything of that kind. It is a test of sheer ability, judged by professional lawyers.

I pause here to say one further thing. Our firms of solicitors are in many respects very like firms of lawyers over here. They're in partnership and they run an office, and so on. But the barrister is completely different. There are no partnerships at the Bar. A barrister is not permitted to be in partnership with anyone else. He is on his own from the start. He has his own career to make. He sinks or swims by his own abilities and by the extent to which his performances in court satisfy the solicitors who observe them. And so, to some extent, you take your professional life in your hands if you go to the Bar. Whether you do well or badly, you usually have nobody to thank except yourself. That is one of the vital differences between the two branches of the profession.

Now, what about sizes? We are somewhat "under-lawyered" in the United Kingdom, as compared with the United States. The total number of lawyers in England and Wales, for a population of about 50 million, is about 50,000. Roughly speaking, that is one solicitor for every 1,000 people and one barrister for every 10,000. That is not a very high proportion of lawyers to the population. I won't attempt to go into why we are perhaps rather less litigious in England than you are in the United States. You seem to have a very satisfactory volume of litigation, satisfactory, that is, from the lawyer's point of view, though perhaps not the public's. All I need say is that in considering the English legal profession one always has to remember that, relatively, it is small, and that there are ten solicitors for every practicing barrister.

That, I think, gives you some indication of the relative position of the barrister and the solicitor. And I come back to the point that for a barrister every trial is, in a sense, not merely a trial of the actual case: it is also a trial of that barrister by the solicitors who are engaged in the case.

Let me then return to say something more about the early days of the barrister. Let us go back to his pupillage, the period after he has done a three year law degree and one year for the Bar examination. He spends

his twelve months in the chambers of a practicing barrister. This is enormously revealing. Suppose you have a pupil. You send him off to do this job or that. He comes back and reports to you that he has found nothing on this, nothing on that. You say, "Did you look in so-and-so?," and you name a well-known book. "No, I didn't think of that." Immediately you are beginning to see that he is not the dogged sort of person who explores everything before he gives up, who is likely to make a success of the Bar. On the other hand, suppose he comes back and says that he has found nothing. "Did you look in so-and-so?" "Oh, yes, it looked as if it was going to bear on the point, but when I read the cases they didn't really help at all." "Well, did you try so-and-so?" "We've got this point, but that's rather against us"—and so on. And so a pupillage reveals a very great deal about the pupil to his pupil-master. That's vitally important for the barrister. It constitutes the initial stage of the weeding-out of barristers, before we even get to the solicitors.

What will happen at the end of that twelve months? The barrister has to find a place in a set of chambers, a group of barristers—fifteen or twenty of them—who employ a clerk (a sort of business manager), a typist, and so on, to do their work, not in partnership, but individually. If your pupil is somebody who has shown great promise, you'll try to make room for him in your set of chambers. Every set of chambers is anxious to keep up the standard of practitioners in those chambers. Many solicitors go to a particular set of chambers because they know that there is a reliable, high standard for all the barristers there, and if the one they want is not going to be available for the case, then there will be somebody else who can do it. If somebody shows real promise, the chambers, however crowded they are, will somehow find room for him. On the other hand, if he's stone-cold hopeless, then you will say to him, very politely, "I'm afraid chambers are very full. It doesn't look as if there is any prospect of being kept on here." Then he will have to look round and try to find some other set of chambers to take him on. Wherever he applies, someone in those chambers will telephone the applicant's former pupil-master and ask, "What was so-and-so like?" And the pupil-master will be very frank, and say, "Well, I found him quite useless. He seemed very pleased with himself in wig and gown, but he never did an honest stroke of work." His chances of getting into any chambers anywhere and getting started at the Bar are virtually nil. But, in the middle, there are quite a number of people

who are not outstandingly good, but are quite promising. There, a kind word will be said, and possibly, in a set of chambers where there is a vacancy, he'll be thought good enough and will be taken on.

So, the weeding-out process of the Bar starts with the pupillage. Suppose the former pupil is kept on in chambers, or suppose he finds a seat in another set of chambers. At first, no solicitors will know of his existence. How does he get any work? He exists by a system known as "devilling." That is, he works for some of the existing members of his chambers who will pay him a certain amount for helping them. As with the pupillage, so with devilling: it is a wonderfully revealing process. The main difference between pupillage and devilling is that the pupillage is a continuous twelve months without pay with one barrister, whereas devilling is done for any of the fifteen members of chambers who are overpressed with work, and it is usually paid. So you do get some means of keeping body and soul together until solicitors gradually get to know of your existence. One unhappy day a barrister who is due to appear in court has a car accident and can't appear, for example. There is a frantic rush around to get someone at the last minute. You're the someone, and you don't do badly under the circumstances. The solicitor remembers you with gratitude as someone who stepped into the breach; and you are beginning. After two or three years at the Bar, it is usually possible to see whether there is a real future for any particular barrister. Life at the Bar is much more risky than life as a solicitor. If you succeed as a barrister, your income goes rocketing up. If you become a solicitor, your income usually increases comfortably, but it doesn't go shooting up in the way that a really successful barrister's income does.

I pause at that point. At the Bar, there is this threefold process of winnowing: first during pupillage, then during early days in chambers, and then by solicitors on your performances in court. Suppose that you've been very successful. What happens next? The answer is that you begin to think of applying for silk, of asking to be made a Queen's Counsel. Now what does that mean? Well, when the institution of Queen's Counsel began, soon after 1600 (it was King's Counsel then), you really were a counselor who appeared for the King or Queen in important cases. But over the years it gradually changed, and today there is no formal obligation to appear for the Crown. It is simply a rank in the law. Nearly 200 barristers apply to become Queen's Counsel every year. They don't usually apply much before they are forty,

though there are some exceptions who get it before then. They don't usually apply before they've had at least fifteen year's busy practice at the Bar. If you do become a Queen's Counsel, the broad result is that you do rather less work for a great deal more money. You give up doing the smaller cases and the smaller work, and you concentrate on the bigger cases and the bigger work. There is public recognition that you are a barrister of outstanding competence, and that recognition is accorded by the general public and by solicitors. So you really change pace, you change gear in mid-career, when you become a Queen's Counsel. As I said, nearly 200 apply each year and about forty-five or fifty get it. If you fail, you can apply again in subsequent years. There are some unhappy barristers who have been applying for years and years without success, and in the end they will give up.

Who decides whether one should become a Queen's Counsel? It is treated very seriously. The applications have to be in by the end of the year. Then, usually in January or February, the Lord Chancellor holds a meeting with the four "Heads of Division"—the Lord Chief Justice for the Queen's Bench Division, the Master of the Rolls for the Court of Appeal, the President for the Family Division, and the Vice-Chancellor for the Chancery Division. This group goes through the list of names of those who have applied. Some are obviously non-starters, and some are obviously deserving of silk. Then there are the really difficult cases in the middle. There are those of whom it may, for example, be said: "Well, he might be all right, but do we really need another Chancery silk?" If there are very few Chancery silks that year who have died, become judges, or retired, there will be a frank discussion whether there is any vacancy, and whether he or she is the sort of person who ought to be made a Queen's Counsel. Out of these discussions emerges the final list of about forty-five or fifty a year. Probably, during the year, something like that number of the existing Queen's Counsel have died, or retired, or have become judges; so the number remains more or less constant at about 450. Of course, they are also specialized. There are the Chancery silks, the patent and copyright silks, the revenue silks, the criminal silks, and so on, each dealing in their specialties.

Once you get silk, you again may have an anxious period. You had a big practice as a junior, doing all sorts of work for relatively modest fees. But now you are a Q.C. You have to give up all the small work that provided your bread and butter. You charge larger fees for the

important cases. Many solicitors will think, "Well, he was all right as a junior, well worth the money, but I'm a bit doubtful about him as a silk. Is he really up to that standard? I think we'll stick to so-and-so." And they go off to an existing Q.C. rather than the new one. So for quite a number of Q.C.'s there is a drop in income after they have taken silk. They then achieve a success in this, they do well in that. The legal world is fairly small, and the word goes round that Jones Q.C. is a very promising young silk. He's only forty-two and he has done a couple of cases very well, so he is on his way, and his clerk will begin to think of charging higher fees for Jones' services. There is thus a second barrier, as it were. You not only have to get started at the Bar and do well as a junior, but you also have to meet the questions in your forties: are you going to get silk? And if you get silk, are you going to be a success in silk? Again, the one test is performance: performance as judged in court by solicitors, and for that matter, of course, by the judges. So that's a very important step in the life of anyone practicing at the Bar.

I turn to judges. There are not many judges in England. The total number is small, even if you include certain people like Masters whom we don't call judges, though they perform judicial functions. I don't think there are more than 500 or 600 judges in the whole country. There are roughly 30,000 in the United States, so *Life* told me some years back. In England, there are only 105 judges in courts of unlimited jurisdiction—the High Court, the Court of Appeal, and House of Lords—so there aren't many appointments to make each year. If you take the High Court, there will be five, six, perhaps seven appointments a year. Enormous trouble is taken about appointing judges. Again, the thing is entirely in the hands of the legal profession, of the Lord Chancellor and the four Heads of Division. There will be the same sort of meeting as there is for silks, very carefully considering all those who are possible new judges to take the place of Mr. Justice Jones and Mr. Justice Smith, who have both retired. In the end there will probably be general agreement on the two new names, though the actual decision is the Lord Chancellor's, and his alone, as it is for silks. Very few are appointed judges before they're in their late forties or early fifties. In this century, the youngest age on appointment to the High Court is forty-two, and the oldest sixty-eight. Most judges are in their early fifties when appointed. They serve until they're seventy-five, the compul-

sory retiring age. Many of them are then invited to go on sitting to help out with accumulations of cases; some of them do and some do not.

That, then, is the process of appointing High Court judges. Politics? Well, at one time, politics loomed pretty large. On the 19th of September, 1897, the Prime Minister wrote of the "rule that party claims should always weigh very heavily in the disposal of the highest legal appointments." Party politics continued to play a large part in the appointment of judges pretty well up to the 1914-18 War. After that, there were signs of change. The surest route to the High Court bench had been very much a matter of going into Parliament, becoming a Q.C., and then claiming the next vacant judgeship, saying that your services to the party and Parliament, and your standing at the Bar, justified your being appointed a judge. But then, between the two wars, there came hopes of change. The Lord Chancellors of the day, who had the appointment of new judges, stressed the need for merit, for going for the best man available. If he belonged to the right party—the party in power—so much the better; but go after merit, and not politics. After the 1939-45 War, there came the real change. You can pinpoint it: January 21, 1946. The existing Lord Chief Justice, the highest permanent judicial appointee, retired. The question was, who was going to be his successor? A Labor Government was in power, and the appointment of Lord Goddard, a career judge, was made. He had dabbled in politics in his youth, and though they weren't the politics of the Labor Party, he nonetheless was appointed to be Lord Chief Justice. The old idea that the Attorney General of the day had the first claim on the vacant Lord Chief Justiceship was pushed to one side. And so the appointment of a career lawyer was made. That was followed, when the Conservatives were in power, by the successive appointment of three career judges—not Conservative politicians—as Lord Chief Justice. The general reckoning today is that politics have gone right out of it. In fact, the politics of most judges on the bench are almost completely unknown, if they have any politics at all. The process of appointment is simply a search for the person best qualified to fill the vacancy that has arisen, utterly irrespective of politics.

Then there has been one further change. "Leaps" are out. In the old days, it was far from unknown for someone to be appointed straight from the Bar to the Court of Appeal, leaping over the High Court. In one or two cases, someone was appointed straight from the Bar to the House of Lords, the top court of all, leaping both the High Court and

the Court of Appeal. That's now dead. Not for over twenty years has anyone been appointed except by promotion from a lower court. One has to find out what sort of a judge the man is, and see how he performs as a trial judge. After five years or more, if he's good and if he has the sort of caliber for the Court of Appeal, he's likely to be promoted to the Court of Appeal, and perhaps thereafter to the House of Lords.

Time marches on, and I must now confine myself to some miscellaneous points. I have already mentioned that proceedings in the English courts are entirely by word of mouth, even on appeals. The whole appeal is argued before the judges and is not decided on written briefs with half an hour's argument; we have oral argument the entire way through, with no more than a skeleton of the rival contentions being submitted in writing to the court on appeals. What happens if you get a long-winded member of the Bar? I think judges have become fairly experienced in curtailing an argument when they've heard enough. They do it very politely: "Mr. Jones, I think we have your point." And if Mr. Jones goes on with that same point: "Mr. Jones, we have that point now. What is your next point?" Mr. Jones probably doesn't have enough fortitude to go on wrestling with that point, and will turn to something else. Yet once there was a very loquacious counsel of unrelenting tenacity. Despite all efforts by the judges hearing his appeal, he went on and on and on; and then at last he came to a new point, and complained in great indignation that when he had tried to put forward that point in the court below, the judge had stopped him. The presiding judge saw his chance: "Tell me, Mr. Jones, how *did* the judge do that?" The reply was fierce and prompt: "By falsely pretending to be in my favor, my Lord."

Let me turn to legal aid. What about somebody who hasn't much money? We have a system in England dating from 1946, which has since been widened, extended, and improved. I can give you only a brief indication of its nature. First of all, you have to be within the necessary financial limits. Those limits are reasonably generous. About seventy-five percent of the population of England and Wales is eligible for legal aid. That doesn't mean free legal aid. The bottom slice does get free legal aid, but the intermediate slice, though it gets legal aid, doesn't get it free. A maximum contribution is fixed at the outset, so that from the start you know the most that you will have to pay. That removes the main worry for the litigant—the open-ended

liability to the lawyer. But the litigant will be warned that if he recovers or preserves any money or property in the proceedings, the Legal Aid Fund will have a first charge on it for all his costs.

You get legal aid by going to a solicitor, who helps you to complete a form. You have to disclose your means, of course, and if those are satisfactory, then your application is put before a Legal Aid Committee. The Legal Aid Committees up and down the country consist of three solicitors and one barrister. They go into the details of your case to see if you have a reasonably good chance of winning or defending the proceedings in question. They adopt the standard of a reasonably prudent solicitor: if this man were going to have to litigate on his own money, not being a rich man (but not impoverished), would we advise him to take these proceedings? If the answer is yes, then he'll be given a legal aid certificate. Armed with his legal aid certificate, he can go to any solicitor who operates the legal aid scheme; and ninety percent of solicitors do this. The solicitor can then brief any barrister who takes part in the legal aid scheme; and most of them do. The legally aided litigant thus has a virtually free choice, very nearly as free as the ordinary private litigant. After that, the proceedings are carried on much the same way as any other litigation, and the lawyers will receive their normal fees out of the Legal Aid Fund. There is one important qualification: both barrister and solicitor are under a duty to report to the Legal Aid Committee if in the course of the proceedings they discover anything which would make it unreasonable for them to be continued (for instance, if the other side has some document that would blow your claim out of the water). Then, you are obliged to report that to the Legal Aid Committee, and they'll withdraw the legal aid certificate; and then the litigant cannot go on unless he is going to finance himself. We have no problems with contingent fees because they are prohibited; and the Legal Aid Scheme removes any real need for them.

Finally, let me attempt a summary. What are the main features that I hope have emerged from this discourse? The first is the structured nature of the legal profession—the division into barristers and solicitors, the division of barristers into juniors and Q.C.'s. The second is the ready availability of specialized skills. Solicitors tend to be general practitioners, though naturally they divide work up according to their specialities within their firms. When they need further specialized help, they can readily turn to the Bar; for there are many highly specialized sets of chambers there. Thus there may be three landlord and tenant

sets of chambers, four sets of tax chambers, and five sets of company chambers. There you get an accumulation of specialized knowledge, not only of what is in the books and cases, but also of much that has never been reported, including the current attitudes and approaches of judges during argument that have not appeared in any judgment. This accumulation of specialized knowledge is available to any solicitor who cares to go to the barristers in those chambers and ask their advice.

Then there is the weeding-out process of the Bar: the incompetent members of the Bar are weeded out during pupillage, or by devilling, or by solicitors throughout their career. Then there is the absence of politics; the small size of the profession; and the process of continuous assessment which is applied to and governs the whole career of a barrister.

Next, there is the hope of nearly all barristers of appointment to the High Court bench in due course. It is very rare for an offer of a seat on the High Court bench to be refused by a barrister. The possibility of ultimate appointment reinforces a barrister's natural desire to have an unblemished record and to achieve high standing at the Bar; and this is valuable as discouraging any questionable behavior or lowering of standards.

The profession is also centralized. Although solicitors are widely distributed throughout the country, three-fourths of the Bar practices in London; the other one-fourth practices in about twenty-four cities, the main cities of England outside London. It's no great hardship that the great majority practice in London. Very few people live more than 250 miles from London. With a small and densely populated country like ours (we have some 860 people to the square mile, compared with the U.S.A.'s 63), a centralized legal profession is indeed manageable.

I don't want you to think that everything in the English legal profession is perfect. It isn't. The rose has many thorns; but there is a central core of efficiency that is due to some extent to the structured, divided nature of the profession. The idea that barristers and solicitors should be merged was considered recently by a Royal Commission. The left wing was well represented on it, but it unanimously recommended that the existing system of division be continued. All that I can say is that whatever the merits of a unified legal profession in other countries, the divided profession still seems to us to be the best for England today. And there I must stop.

