MANATEE COUNTY BAR ASSOCIATION

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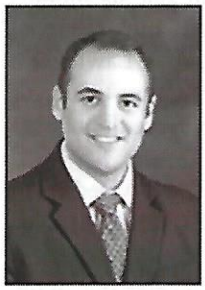
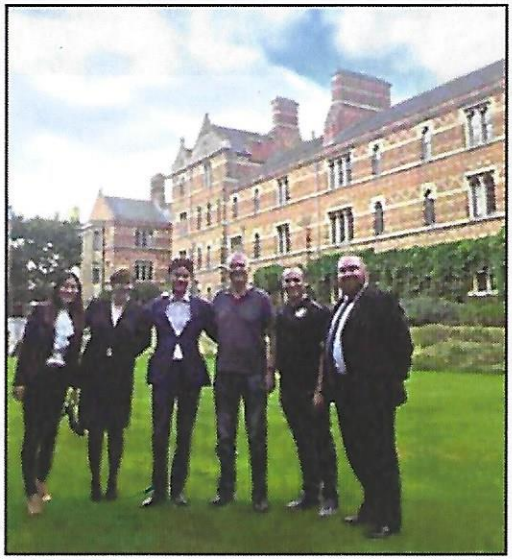
A Barrister For A Week

by James "Jay" Horne, MCBA Director



This past August, I was fortunate to represent the Florida Bar Trial Lawyer's Section at an advanced trial advocacy course at the University of Oxford. The University of Oxford is a collection of 38 independent colleges in Oxford. The course was held at Keble College, which is relatively newer in the system, having been founded in 1870. The oldest college dates back to the 1300s. The course was attended by barristers and attorneys from the US, the UK, Ireland, Hong Kong, New Zealand, South Africa, the Caribbean, and Australia. The course was divided between civil and criminal practitioners.

Throughout the week, the course participants ate three square meals a day in a dining hall that resembled Hogwarts. Those meals led to many conversations comparing the practice of law in England to Florida. In England, the practice of law is bifurcated between solicitors and barristers. Only barristers are members of the bar and allowed to represent clients before the various Courts. Solicitors give legal advice and draft legal documents, but their practice is confined to their office.



Most barristers in private practice are organized into chambers. The barristers in the chamber share overhead expenses, but do not share profits. It is exclusively an eat-what-you-kill business model. Interestingly enough, the public generally does not get to pick who will represent them in Court. It is typically decided upon by the person's solicitor and the chamber's "clerk." The clerk is employed by the chamber, but they steer the cases to individual barristers based on a number of factors. The barristers in the program told me at Christmas time, the clerk's office overflows with gifts from the barristers because their incomes depend upon getting good, lucrative cases from the clerk. At the conclusion of the case, it is the clerk who negotiates the barrister's fee and ensures payment. Until recently barristers were not allowed to sue the solicitor or client for unpaid fees.

When I received the welcome letter from the program director there was the acronym "QC" behind his name. It stood for Queens Counsel and was more commonly referred to as a "silk." It is a merit based designation, which is conferred on about 10% of the barristers. They do not have board certification, but rather one strives for the QC designation because it means higher fees, a fancy silk robe for court and the ability to address the court from the podium. Yes; non-QC barristers or "Juniors" have to address the court from counsel's table.

The differences are also apparent in the English courtroom. The second day of the course was dedicated to "examination in chief." Many of the barristers in my group admitted that after 5 years of practice, he had never conducted a direct examination. The reason they had never done a direct examination was that each witness must draft a witness statement, which covers the material that would be elicited on direct examination. For a vast majority of civil cases, only a judge hears the case and, it is they who read all the witness statements before trial to shorten the proceeding.

The rules of evidence are also different regarding hearsay. The barrister, if planning on relying on hearsay evidence, must only give notice to the other side. The learned judge will weigh the hearsay evidence appropriately and the other side can certainly argue that the court disregard it based on their inability to cross examine the individual who made the statement.

Another theme that kept coming up in conversations comparing the practice of law on both sides of the pond was the (mis) conception that US attorneys coached all of their witnesses. At first blush, I was offended because I said we don't tell our clients to lie on the stand. The barrister explained their definition of coaching is when a barrister meets with their client before the trial to discuss their testimony or do a mock cross examination. I replied that it would be unimaginable for a US trial attorney to not meet with your client before trial to prepare them for direct and cross examination.

On the last day of the course, the participants put everything they just learned into action during a mock trial. The claimant in its statement of particulars alleged a former employee left the company and wrongfully poached clients and customers. The defence[1] counter-claimed the company wrongfully withheld the former employee's bonus. The author of the case study carefully crafted it so that neither side had any smoking gun evidence. After half a day trial, the learned District Judge Murch handed both sides a partial victory dismissing each other's respective claims. I guess split decisions are just as common in the UK as the US.

I strongly encourage any young litigators to join the trial lawyer's section and apply next July for this scholarship. It was extremely rewarding and aimed at taking your advocacy skills to the next level in an international forum.

[1]Spelled intentionally the British way.