

THE OFFICE OF RECORDER OF THE CITY OF LONDON

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Origins

It can be asserted with some confidence that Geoffrey de Norton is the earliest known holder of the Office of Recorder of the City of London, although he was not so described. In 1298 the Mayor and Aldermen made him a grant of £10 and his fee for making records of deeds and wills in the hustings for the year ending Easter in the 27th regnal year of King Edward I, so from Easter 1298. The fee was 20d. each. If he had any predecessors, they have not hitherto been identified.

Norton was already an Alderman, but only with about one year's seniority. He was, however, a man of some consequence, for he was one of the two Chamberlains of the City, whom the Mayor designated when he travelled to Lincoln in April 1298.

That was a significant year, since after 13 years of suspension the King restored the City, with its mayoralty and liberties, to the citizens "for the good service they had done him". This enabled the Mayor to resume functions as a criminal judge, which had been taken from him in 1285, when he refused to attend the justiciar's sessions at the Tower. This fact has nothing directly to do with the Recorder, since the Court of Hustings was a civil court. But conceivably the recognition of the desirability of records stems from it. The title of Recorder comes from the initial duty.

For the history of the Recordership an important event occurred in 1303. The grandson of a sometime castellain of the City made a claim to deliver the judgments of the City's courts. This claim was rejected. To ensure that no similar claim would be made, the second Recorder was sworn in on a wider basis in 1304. Dates at this period are difficult to understand today; the swearing in was on Monday next after the feast of the Conversion of St. Paul in the 32nd regnal year – clearly it was 27 January 1304. Names are also difficult; he was John de Wengrave (or Wangrave).

Wengrave was required not only to make and keep records; he was also given the overall rule of the Hustings and the Mayor's Court and, most

significantly, the duty of bearing the City's records orally. He was required to declare the City's customs and usages. This made him the repository of the City's privileges; for the City is a Corporation by prescriptive right, having a constitution established from time immemorial, i.e. pre 1189. The unique competence of the Recorder to declare what those privileges are was displayed in 1410; was upheld by the House of Lords in the 1830s; and was recognised by the Court of Appeal as still existing in the 1990s.

It has not been possible for me to discover the background of early Recorders. The first nine were all Aldermen at the time they were sworn in, but for one this was only just true: he was admitted to the freedom and sworn in as Alderman and Recorder on the same day. Wengrave (no. 2) is unique; he went on to become Mayor. It is not clear that he relinquished the Recordership, but he may have had a deputy. He was the first of many to become a Member of Parliament.

Gregory de Norton (1329-38) was the son of Geoffrey (no. 1); he was the first to be promoted from Common Serjeant. Thomas Ludlow (?1361-65) was the first to be promoted to a higher judicial office, becoming Chief Baron of the Exchequer. The early records of the Inns of Court are too inadequate to establish whether any one except Ludlow was a barrister, although a Common Serjeant probably was.

After 1376 the situation changes. No later Recorders became Aldermen, but it seems that they were treated as members of the Court of Aldermen and the Recorder sat, as he still does, immediately to the right of the Mayor, with seniority above all those who had not been through the Chair. From then on the Recorder was a junior barrister, who continued to practise, for the appointment was a part time one, but the Court of Aldermen was reluctant, at least until the sixteenth century, to allow any Recorder to become a Serjeant while in office.

One reason may have been a practical one. Thomas Billing, appointed Recorder in 1450, was created Serjeant in 1453; the next year he resigned the Recordership, because he found that his workload as a serjeant prevented him from properly fulfilling his duties as Recorder.

Liber Albus

The earliest and most authoritative account of the nature of the office of Recorder is the *Liber Albus*, written in Latin by the then Town Clerk and dated 1419. He states, in the translation of H.T. Riley in 1861: "The

Recorder of the City of London should be, and of usage has been, one of the most skilful and most virtuous apprentices-in-law in the whole kingdom. His duty is always to be seated at the Mayor's right hand, when recording pleas and delivering judgments, and by his lips records and processes holden before the Mayor and Aldermen at St. Martin's le Grand in the presence of the Justiciars ... ought orally to be recorded. And further the Mayor and Aldermen have been accustomed commonly to set forth all other matters touching the City in the presence of his Lordship the King and his Council and also in all the royal courts by the mouth of such Recorder, as being a man more especially imbued with knowledge and conspicuous for the brilliancy of his eloquence".

The reference to apprentice-in-law requires explanation. He was a barrister of less than 16 years' standing and under the degree of Serjeant. The knowledge with which he was imbued related both to the common law and to the City's customs and usages. At this stage there is no reason to suppose that the Recorder exercised a judicial function; what he did was to declare the judgment of the Mayor and Aldermen. He would, however, advise them on a point of law. In 1389, for example, the question arose whether the City could quash a bill after the jury's verdict had been taken. The Recorder was instructed to consult with the Common Serjeant and with one who was probably under-sheriff before delivering the court's judgment.

The Recorder in question, William Cheney (1379-90), is the first to whom a personal utterance is attributed. In 1388 the authorities wanted to charge a former Mayor, Nicholas Brembre, with treason, but they did not have enough evidence. The *History of the Grocers' Company*, published in 1995, gives this account. "The mayor, aldermen and recorder were then summoned, and, desperate for a verdict of guilty, the Appellants changed the charge to misprision of treason. They were asked whether they believed Brembre had knowledge of the treasons laid against him. They replied pusillanimously that Brembre was more likely to be guilty than not, and the recorder said that if he were guilty the punishment should be death." The author was kind enough to say that she would have expected a different attitude from the Recorder of 1995. A footnote to this disgraceful story: the death sentence was pronounced in Parliament on 20th February 1388 and was carried out on the same day. This was swift but not just.

Liber Albus also refers to the Recorder's function at the election of the Mayor. "The Recorder announced to the people the name of the person elected Mayor for the year then next ensuing, giving notice also to the

people to hold themselves in readiness to accompany their Mayor on horseback to Westminster on the morrow of the feast of the Apostles Simon and Jude [28 October] then next ensuing and so uphold the honour of the principal city.” It is not clear from what date the Recorder presented the Mayor for the Sovereign’s approval, but it is a long-standing and continuing duty, which involved presentation to the Barons of the Exchequer. The speech of Recorder Fleming in 1594 is preserved and is probably the earliest surviving example. Today there are three presentations; the first is to the Lord Chancellor in the House of Lords for the royal approval; the second to the Lord Chief Justice on Lord Mayor’s Day for the Lord Mayor to declare his willingness to perform his obligations; and the third, a few minutes later, to the Master of the Rolls – a courtesy call on the senior Civil Judge.¹

Judgeship

The Recorder’s status was greatly enhanced by a Charter of King Henry VI, dated 1444, which decreed: “The Mayor, Recorder and Aldermen past the chair are made *ex officio* conservators of the peace”, and the Recorder thus became a Justice of Gaol Delivery at Newgate. A Judgeship can be asserted from that date. It is arguable that this was merely public recognition of an existing role but I do not seek so to declare. There is, as already pointed out, no reference to any judicial appointment in Liber Albus, written 25 years earlier.

A higher status may well have affected the quality of those who were interested in accepting the appointment. Up to 1442 there were 22 Recorders, of whom only 4 were promoted to the High Court Bench, whereas the incumbent in 1444 and a substantial majority of his successors up to 1772 attained either high judicial office or the Speakership of the House of Commons. Clearly the Lord Mayor and Aldermen showed perspicacity in selecting those barristers who merited elevation. For the last 200 years the holder of the office has tended to be someone who is nearer to the end of his career.

A Judge in the City in the fifteenth century did not sit alone; he was usually one of four; the Lord Mayor presided, if he attended; the others were Aldermen. The Central Criminal Court is unique, in that the Lord Mayor and Aldermen are still entitled to sit, but they must have a Judge

¹ Since this paper was written, there has been a change. There are now only two presentations. Those to the Lord Chief Justice and the Master of the Rolls have been amalgamated.

with them. This right was specifically retained when the Crown Court was instituted by the Courts Act of 1971. It is symbolically asserted when the Lord Mayor formally opens the Court 3 or 4 times a year.

Seventeenth Century

The advance of the Recorder is best exemplified by considering the achievements of one holder of the office. Robert Heath (1618-21) is not one of the greatest names, but a biography of him by Paul Kopperman, published in 1989, gives a clear account of what he did in the City during a tenure of 26 months. The Recorder was then the chief lawyer. An important role was as legal advisor to the Lord Mayor and Court of Aldermen and he gave some advice to the Common Council. He was a referee in respect of numerous petitions to that Court.

He was the City's principal judge. The Lord Mayor's Court (civil) was his preserve; he acted as sole judge there. He was expected to attend the Hustings to advise on legal points. Eight times a year he joined the Lord Mayor and selected Aldermen in constituting the Court for the Conservancy of the Thames. He served as a Justice of the Peace for London, Middlesex, Westminster and Southwark. He served as a judge at sessions of oyer and terminer and of gaol delivery. It was he who, when the Privy Council asked whether a condemned prisoner was fit to be transported to the colonies, supplied the information: Heath consistently favoured transportation. When no clemency was forthcoming, it was he who issued death warrants.

For all this, the Recordship was still part-time. In 1621 some hot-pressers, then in Newgate, petitioned the Commons, complaining that they had been imprisoned 15 days by Sir Robert Heath, then Recorder of London, notwithstanding he was at the same time Counsel for Sir George Douglas, who was proceeding against them. In a dispute between Livery Companies, on which he was helping the Court of Aldermen, he did not scruple to give advice to one of the parties.

The Stuart Kings tried to play a considerable part in the selection of the Recorder. The City resented this. In 1619 there was a declaration of the Lord Mayor, under seal, that by ancient custom and usage of the City the Recorders have been and are elected and chosen by the Lord Mayor and Aldermen. That situation still exists and was reinforced by legislation in the nineteenth century; it is subject only to royal approval of the choice.

There was one interruption. In 1683 King Charles II suspended the City's charters in what are known as the Quo Warranto proceedings. This meant that the City's choice of Recorder was displaced, as was their Lord Mayor, and the King imposed his own nominees. Fortunately his selection of Recorders was adequate. Sir George Treby was reinstated in December 1688.

Crime

In the eighteenth century the Recorder's criminal work took up most of his time to the exclusion of civil work. The City had built the first criminal courthouse in 1539, immediately to the south of Newgate Prison. A new Sessions House was completed in 1774. The Central Criminal Court was created by Act of Parliament in 1834 and the Recorder was named as one of the Judges. The Act also provided that the Under-Sheriffs were to be Commissioners at that Court, but their principal task was to deal with civil work in the Sheriff's Court. The increase in the criminal work had justified the appointment in 1737 of the first official shorthand writer to any court, namely Thomas Gurney. His great-grandson, Russell Gurney, was Recorder 1856-78.

Under the Courts Act of 1971 the Central Criminal Court is designated a Crown Court, but the office of Recorder of London is preserved. In all other cities, even Liverpool and Manchester, the Recordership is an honorary post. In the City this is not so. The Recorder is not only appointed by but is paid by the City.

Today

The duties of the office in 2000 are these. First and foremost the Recorder is the senior Judge at the Central Criminal Court, dealing with serious crime; this is a full-time appointment. He was the first Circuit Judge to be invited to sit in the Court of Appeal, Criminal Division. I have already referred to the Presentation of the Lord Mayor; the Recorder is in charge of his election and declares the result. He is legal advisor to the Lord Mayor and the Court of Aldermen. He is called upon to settle Bills for the Corporation (meaning draft legislation, not outstanding accounts). He is spokesman for the City if there is an address of welcome to a visiting Head of State. In the absence of the Common Serjeant he is in charge of the election of Sheriffs and has to present them to the Queen's Remembrancer at the Quit Rent Ceremony.

By statute he is the Returning Officer at the election of the Verderers of Epping Forest. He is a co-trustee with the Lord Mayor and others of two charitable trusts, established in the seventeenth and eighteenth centuries. He is Vice-President of the Sheriffs' and Recorder's Fund. He is ex-officio on the Commission of Lieutenancy, and on the courts of the Irish Society and the Honourable Artillery Company. For the last 200 years (with one gap) it has been customary for the Recorder to be appointed by the Court of Aldermen as High Steward of Southwark, which requires him to preside over three Courts Leet.

The office is unique. Long may it survive.