

On Tax—Mike Lane of Slaughter and May

Len Teti:

Welcome to On Tax—A Cravath Podcast. I'm Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City. On each episode of On Tax, I talk to professionals in the Cravath network about their life and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make the space such a fascinating and dynamic area of practice. I hope you enjoy this episode.

On this episode of On Tax, we're joined by Mike Lane, a partner and the Head of the Tax Department at Slaughter and May, the London law firm. Mike tells us about his training in the U.K. as a lawyer and how it differs from American legal education. He also tells us about the culture of his department, where they encourage junior associates to take ownership of their matters as part of their training.

Today, On Tax is going international. Mike, thanks for joining the podcast and welcome.

Mike Lane:

Thanks for having me, Len.

Len:

It's a pleasure to have you here. Mike, you're probably familiar with our podcast at this point. We like to talk to people about how they got into tax in the first place. And so, I wondered if we could start there. And, in particular, it might make sense for you to give a little bit of background on how the legal education system in the U.K. differs from that in the U.S.

Mike:

Sure. I think the primary difference is in the U.K. you can study law as an undergraduate, which is what I did. And if you do that, you do a three- or four-year law degree, and then a one-year more practical course called the Legal Practice Course.

Or you can do something totally different. So, my wife, who's also a lawyer, read biology and then you do two years. So, a one-year legal conversion course, where you study the basics of law, and then you do the same one-year sort of practical course. And then, on going into a firm, you don't start off straight as an associate. You start off as a trainee. So you do two years as a trainee, where you rotate around different seats in the firm before you decide where you want to qualify.

Len:

So while you're an undergraduate in the U.K., do you have to have the sense that you're going to be a lawyer in order to sort of plan your way into becoming a trainee at a law firm or are there other ways to a law practice?

Mike:

So, funny you should say that, because I would say I didn't and I ended up as a lawyer and a tax lawyer by accident.

I wanted to be an RAF pilot and fly fast jets. And I wanted to do that until I was about 17. And then I started to look into it properly and realized you had to sign your life away until you were 38 if you wanted to do that. And that seemed a long, long way away at that stage. So I got cold feet. Thought I might want to be a barrister. In the U.K., we have the distinction between solicitors and barristers. And barristers were the guys wearing wigs, standing up in court, and I thought they looked pretty cool on T.V. So I thought maybe I'll do a law degree.

And then I started doing a law degree and I think, as a lot of people do, there are a lot of other interesting things to pursue at university—all different sports and clubs and everything else. Got sort of carried away with those, as well as enjoying the law degree.

And then got to about Christmas-time in my second year, when I realized that lots of my fellow students had applied for, effectively, summer vacation schemes—so like your summer associate schemes—at various different London law firms. Knew nothing about it at this stage.

By good fortune, realized I had not missed the deadline for two of those, which were Slaughter and May and Linklaters. Dashed off some hasty applications. Got places at both and then did two weeks in Slaughter and May and four weeks at Linklaters that summer.

Len: And how did you find your way to a tax practice? Was it that summer?

Mike: No. You don't get that specialized that early. So I, having turned up and done the summer schemes, thought this looks like a fun job I could see myself doing. So applied for jobs at both. Got Slaughters.

Turned up to Slaughters and then did four six-month seats. I did a couple of seats in corporate, then a tax seat and, actually, a seat in New York. We used to have a little New York office. And on qualification, I was really torn. I was torn between being a corporate lawyer and torn between being a tax lawyer. There were aspects of both I really enjoy. But, ultimately, I decided that I enjoyed tax law and the sort of challenge, the problem-solving aspect of it a little bit more and applied for tax.

Len: When you started as a tax lawyer at Slaughters, what kind of jobs did they have you doing? What kind of things were you working on?

Mike: You sort of go in at the deep end, really. So, I qualified in 2002. At the time, there was a lot of structured finance deals going around, a lot of tax-based leasing. So, we jumped straight in on some of those. You'd go in as the junior associate on some M&A transactions, both private and public. Started off with a bit of a portfolio, working for different tax partners across the department.

Len: Do you remember what sorts of reactions you had to the work you were seeing and what sorts of impressions you had about the profession as you started off? Were you intrigued by the work that you saw the more senior people doing? How did you envision your career trajectory at that point?

Mike: Very much so. So very intrigued and really enjoyed working with some of the senior partners, seeing the kind of things they were doing. What I really enjoyed about it most was how frequently the law changed. So, you know, you could have a transaction structure that worked this week. Somebody wants to repeat it a few months later and the law's already moved on and people are just saying, "Hey, can we do this again?" It's like, "Well, there's some new regulations. We've got to think about this. We might have to do this bit in a different way."

And just that sort of fast-paced nature of it I thought was really interesting. Plus, coupled with the fact that you're jumping off and getting straight into deals that, you know, you wake up and you see the next day in the headlines and the commercial buzz around that and sort of thinking, you know, this is interesting. I can see where the work I'm doing is going and piecing into this bigger picture and the deal that the client is trying to do.

Len: If you've listened to some of our episodes, and I know that you have, you've learned that many of our guests started at law firms and then left the firm at some point as associates to do other things. And that's yielded some pretty interesting episodes, as we hear about the other ways that people can use a sort of tax background in professional life. But, of course, you've stayed at Slaughters and you've become a partner and you are now the head of the group. Can you talk a bit about why you decided to stay, to the extent that that was an active decision? What sorts of thoughts you had, as you moved up the ranks as an associate, and the other opportunities that I'm sure were presented to you? And why you decided to stay and do what you were doing?

Mike: Sure. It's something I'm used to explaining because I do a fair amount of graduate recruiting.

And, you know, if you talk to a 20-year-old university student these days, the idea that you've been in the same place for—it will be 21 years now this summer—is completely anathema and they look at you like you must be utterly mad. And I explain to them it's a number of factors, but part of it is the fact that I don't need to change jobs because the job always changes. So we're really lucky in terms of, you know, the clients we have. They're on a continual journey.

To take one example, I've worked for Whitbread for 20 years. So, Whitbread started life hundreds of years ago as a brewer. So, some of my first jobs as a junior associate were selling off portfolios of pubs, of bars. So, you know, parcel them up at 500 at a time; sell them off. It then got itself into a position where it's sitting there, and it had a hotel business. So, it has a really successful U.K. hotel business, and it also owned Costa Coffee. So, then, it's looking at it thinking, okay well, you know, we were looking at de-merging Costa Coffee. Then, we sold it to Coca-Cola a couple of years ago. So, you go on journeys with clients where you're constantly doing different things. Then there's the fact that the law is always changing.

So, people trying to do different types of transactions; people looking at new opportunities. You know, if you're advising financial institutions, the way you can issue regulatory capital—tax laws change around that, solvency rules change and so on. So, you get this sort of thing where, actually, I think if I had been doing the same thing day in and day out for the last 21 years, I would have got bored and moved on. But, actually, I can come in today, come in tomorrow and know that I could be looking at something completely new for the first time, and that's what really keeps you interested and refreshed, I think.

Len: It's a neat observation. It's one that I hadn't really made about my own practice, but certainly the types of transactions we're working on in the U.S. now differ in material respects from the types of transactions we were doing five or 10 years ago. It's a great answer.

So, you moved up the ranks, and then you made partner at Slaughters and, very recently, you became the Head of the Tax Practice in the group. One of the things we learned from Steve Gordon, who just stepped down as the Head of the Tax Department at Cravath, on his episode, was the thought he put into developing a culture in the Tax Department. And I wonder if you could speak about that, from your perspective now. I've, of course, spent a lot of time working with you and visited your firm several times, and I know that your firm and ours are similar in terms of the culture that the firms themselves have. I wonder if you could speak about cultural issues, with the firms and then in particular with the tax groups.

Mike: Yeah. I really enjoyed listening to your conversation with Steve. And a lot of what you said resonates with me, particularly a lot of the things around, the sort of, the safety elements and actually being allowed to go as far with the transaction as you're able to go, but knowing there was the safety net there. And that's something I'm very conscious of, because there's a book I really enjoy, by an English journalist called Matthew Syed, called *Black Box Thinking*. And it's black box in the sense of a plane's black box. So, you know if you have a plane crash, you go and find the black box recording and you find out what went wrong.

But one of the interesting things they found out: in a lot of plane crashes, particularly involving airlines from cultures where there was a sort of great deference to seniority, is that what went wrong was often something very simple. So there'd be something else that went wrong, you know, like a switch broke or there was a faulty gauge or something. And the captain and first officer would be totally engaged with that. Somebody else junior in the cockpit would meanwhile notice the plane was running out of fuel, but, due to the deference, they didn't want to say to the captain, "Hey, have you noticed we're running out of fuel?" Because that was just thought inappropriate, so they would keep quiet until the plane crashed. And you see the same in hospitals as well where, actually, again, you know, a nurse, who sees things day in, day out, might notice something really simple, doesn't want to point it out to the consultant who hasn't spotted it.

So one of the things I'm really conscious of, because law firms traditionally can be quite hierarchical places, is that you don't have that. If you have a, partner who's doing something—you know we all make mistakes. We all get distracted. You move something around to solve another problem. If you're the trainee or the junior associate, if you look at that and go, "But, hang on, you've just moved that cross-border, doesn't that give us a withholding tax problem?" Don't be afraid to say that, because it may just be something somebody's overlooked. And, similarly, don't be afraid to admit you don't know things. One of the things I'm really keen on in the department is people, sort of, sending round what are called help links—that are emails. Just if you come across something and you're not sure, just-ping it round, see if anyone's got any experience of it. And it's something I like to do to sort of demonstrate, look, I've been doing it, sort of, 20-odd years. I've got one of my partners, Steve Edge, who's been doing it twice as long as I have.

Because things are always changing, there's always stuff that we don't know either. And there's no shame in admitting that, saying, "Look, I don't know. This is what I think. What do you guys think about it?" And trying to encourage that as a culture and a way of talking about things.

Len: This is an excellent lesson and it's one that junior lawyers really should internalize, and I have found that the sooner you internalize this as a junior lawyer, the sooner you can become a truly effective member of the team. Annually I give a talk, with one of my partners, to the summer associates about how to be an effective summer associate. And I always start it by saying, "Look, I'm the same as you. I was sitting in these seats 17 years ago. All I have is more experience. And I know that there is a deep inclination to feel like, 'Oh, well this is Cravath. It's been around since 1819, and I'm just going to jump on this moving train and if, you know, my partner gives me something to do, I'll help. But, otherwise, I just want to try not to get into too much trouble.' And that's a perfectly natural way to feel, but it's also perfectly wrong for a place like ours." And I suspect like yours.

Instead, I try and encourage the summer associates to feel like, “This is my deal and the partner is helping me. This is my responsibility and the resources that the Firm has are here to help me do my job well.” Now, that doesn’t mean you’re going to mute a conference call when the partner’s talking and tell the partner that they’re wrong or correct the partner in front of other people. There are, I think, some social norms that you’re going to have to become attuned to, but it does mean that everybody on the team has something to contribute, notwithstanding experience or lack of particular experience. And the fact that the law is changing, as you say, helps to amplify that. Because several years ago in the U.S., in 2018, when the laws changed, I now knew nothing about this new regime that had been put in place. And the first- and second-year associates, who really had to do a bulk of the research, became expert on them much faster than I did.

Mike: I think that advice about taking ownership is almost the best bit of advice you could give a junior lawyer: to think about it as your transaction and your responsibility. That’s not to say I’m divesting myself of responsibility. It’s more to say, “Look, you take it forward. You do as much as you can with as much support as you want and, obviously, if you reach a place where you can’t and you want support, or I think you need support, then I’m going to step in. But, otherwise, take it on as yours and run with it.” And that’s the best way to learn and develop.

Len: Another aspect of a U.K. tax practice, at least as I’ve heard you and your partners describe it to me over the years, is that you do probably more tax controversy work, than we do in the U.S. In the U.S., roughly speaking, tax lawyers who practice at large firms are sort of divided into groups of lawyers who do deals, transactional lawyers, and tax lawyers who litigate tax matters in front of the IRS or state taxing authorities, who join clients against the IRS or taxing authorities and audit examinations. I do some of that in my practice, but my practice is primarily transactional. Can you talk about how your practice includes both, to maybe a greater degree than mine does?

Mike: Sure. I suppose part of that stems from what we set our stool out to be, which is trusted advisor to a particular client on tax matters. So wanting to be there for them, whether it’s the transaction, the inquiry, the dispute. And part of it might also come back to our solicitor-barrister distinction in the sense that although we have solicitor advocates—we can do a lot of the work on an inquiry—but if we get to court, generally we’ll get a QC or somebody else involved to actually stand up and do the advocacy. So, there’s a skill set there that you, kind of, outsource.

I think it’s really interesting. I think it actually really helps to be involved in some dispute work with the transactional side of things. So, at the moment and for the last, sort of, three or four years at least, we’ve been seeing the revenue open a lot of what we call unallowable purpose inquiries. So, in the U.K., if you want to deduct interest on debt, essentially it has to be for a good business purpose. And a lot of people will just kind of assume, “Oh, I’ve done a reorganization. This company’s borrowed to acquire subsidiaries. That’s in the board minutes. That must be a good commercial purpose.” And the revenue will spend a lot of time looking at the drivers that the group had for doing the transaction, particularly if it’s not an external acquisition, but you’ve reorganized to create a new European holding company or similar.

And it’s really interesting to see the levels that they will go to find evidence on that. So, yes they’ll start with a contemporary and its written board minutes. But they’ll also find out the relevant individuals involved. They will look at all of their emails for the relevant period. They’ll go through all of that information to ensure that they’ve got the full factual picture.

And I think it’s really helpful for people to have gone through an inquiry and understand what evidence is required effectively to substantiate it or successfully defend an inquiry. Because then when you get to a transaction, you’re less blasé about it. You kind of go, “Okay, we know we got a good purpose here.” But in the back of your mind is, “If it’s just an internal reorganization, how would that look to a tax authority looking at it? What would I need to be able to show in the future if somebody inquires?” Because, yes, everybody in the room now might know why we’re doing this, and it’s a good business purpose. And, yes, that might be recorded in the board minutes, but is that going to be enough? What else should we be thinking about? And it’s quite interesting how those sort of two marry together, and I think that sort of inquiries and dispute experience, in some ways, then makes you a better, sort of, transactional advisor.

Len: I've had the same experience on some of the tax controversy matters I've touched. I certainly see the extent to which the taxing authorities want to see evidence that you wouldn't have expected. And it really helps on the front end to anticipate how you're going to prove this out, you know, five years down the line when you get a request for information from a taxing authority. And it helps inform the client about how to prepare for a transaction. Increasingly, clients will say, "Well, if I do this will you still be able to opine that this works?" Or, "If I don't do this, will you still be able to opine that this works?" And a lot of times I'm eager to explain to them, "That's not really the point. I mean, you're not going to do this unless there's a high level of confidence that it works." But the point is not "Can you get through the next two weeks to closing?" But, rather, five years from now, "How are you going to be able to demonstrate the reasons why it works?"

I would encourage U.S. lawyers who don't do a lot of tax controversy to at least familiarize themselves with it and ask their clients to be more involved with it. Because it can really help you on the front end.

Mike: That's also the point—that it's just really interesting because some of the other inquiries we do are transfer pricing related. Now, at heart, a lot of transfer pricing is common sense. It's being curious and understanding what's really driving a business. Now I think curiosity is a really important characteristic in any tax lawyer, whether you're doing transactions or inquiries. But you have to get to know, "How does this business run? How does it make its money? I don't understand that. OK, well, why? What are the drivers, the key actions that derive value here? Why is that person getting a payment? He doesn't own the asset to which that payment relates. Is that really the right person to get it?"

And once you start asking those questions, you can answer a lot of transfer pricing questions as to whether something is sensible, make sense or not. But it comes back to transactions. You can look at it and kind of go, "OK, I get why, from your perspective, commercial guys, this makes sense because you're seeing two groups. So the fact that the payment goes from this group on this side to that group on that side makes sense." But the way it's set up in the docs, it doesn't make sense. You know, "Can somebody talk me through why we've done it this way?" Because actually that's going to look really odd to a tax authority. And they're going to come along and say, "Look, that payment's turning up in the wrong jurisdiction or it's being made by the wrong person. Why should I give a deduction if actually it should be borne by this other person?" It's that curiosity, I think, is really important.

Len: You mentioned curiosity is a skill that you feel like is critical for a tax person, and I agree with that. One of the questions we've been asking our guests is what characteristics of tax lawyers make them particularly effective? Can you think of some others that you've seen either in yourself, or your partners or associates, that you think are critical skills for tax lawyers to focus on and master?

Mike: If I think of the people who I regard as really, really good tax lawyers, a couple of the additional skills you need: really good commercial awareness. So, keep your eye on the ball. What is the client trying to achieve? If somebody comes to you and says, "Look, this, this is what we want to do." You look at it and kind of go, "OK, I think there are problems with the way you're going about it." But nobody is going to come back to you for advice if you just keep telling them there are problems in the way of what they're trying to do. What are they trying to achieve?

"Yes, I think it will be problematic if you do it this way, but what about if we did this? Would this work?" But you've got to understand the commercial objectives and parameters so you're not suggesting something totally off beam.

The other great skill, I think, is communication. This job is so much about communication. It could be communicating to the client. How do I distill the advice? What's my audience? What's the right level to pitch it? Am I talking to the Head of Tax who's quite detailed, techy, nervous, wants to know we thought through all of the nuts and bolts and wants to see all of the workings? Am I talking to the CFO, or the chief exec, who just wants the potted summary just to know it's all OK, doesn't want to see beneath the hood? Am I talking to one of my corporate partners? What do they want to hear? Am I writing to shareholders? Am I negotiating with the other side? How do I communicate it to them? Coming back to the inquiries work, OK, I'm now sitting opposite a tax authority. They've asked these questions. How do I get our point across to them? How do I best explain why we've done the transaction this way? How is it going to be received? So, I think communication is a really vital skill.

Len: You've touched on themes that other guests have mentioned as well, and it is important to emphasize them. But on your point about commercial awareness—I often ask my clients, “In a world without tax, what would you do?” And that helps them, sort of, strip out anything they've heard about tax, anything they think they've been told about tax, and just tells you what they're trying to achieve and that allows you to really get to the core of the client's goals. And then, of course, your job is to layer on what you know and understand about tax.

I also tell my clients, “This is really complicated stuff. I'm going to try and simplify it for you, but I can tell you if you understood this fully, kind of the way I do—all the nuances and lots of experience and stuff—I think you would probably conclude that you should do X rather than Y. I'm going to give you some choices, but here's where I think I would try and lead you.”

And it's important sometimes to tell the clients that at the beginning of a conversation. So it's not a mystery story: “Well, where are we headed? Why is Len telling me all of this? What is this tortured road we're going down? What's the destination?”

Mike: You know, your hypothesis there is actually a statutory one. So your hypothesis about what would you have done if you hadn't been thinking about tax, if tax didn't exist. So, in 2015, we brought in something called diverted profits tax. So, in the media, it's known as “Google tax.”

And, in it, it has something called the RAP or relative alternative provision. It basically says, “What would you have done if you hadn't been thinking about U.K. tax or tax anywhere else?” And then it compares what you actually did with what you would have done in this alternative universe.

Len: Hmm. Interesting. And I suppose that there's not a lot of guidance about how that universe is supposed to be structured or understood, so that must be pretty mysterious for people.

Mike: Correct.

Len: Mike, one of the things we like to talk to people about at the end of our episodes is what you do in your spare time, when you're not working on tax stuff. Over the years, you and I have talked about our shared interest in the musical “Hamilton.” And, I have to say, it's always been fun to talk to you about it from a U.S. versus U.K. perspective. I think how one views King George III in that particular show is interesting. And I wonder, besides that, what else you're doing with your spare time these days?

Mike: Yeah, well, I have to thank you for almost, sort of, putting me on to “Hamilton” and, you know, since then, it's become a regular feature in the car. We always have the CD on and all three of my kids learned the lyrics and love them.

Aside from that, I know you've talked quite a bit on your podcast about running, and I'm also a keen runner. I think I am one of the few people I know who really missed my commute in lockdown. So I live about, 12 kilometers—I suppose six miles for your side of the pond—away from the office ...

Len: Thank you.

Mike: And I usually run one way, cycle the other way. So, for me, actually losing commuting time was just losing exercise time that you'd then sort of replace some other way. So if I look at me over lockdown, I'd move an awful lot less because ideally I try to get out for a run first thing in the morning, but I didn't have quite that same impetus of “Ah, I've got to get from place to place.”

So, if I've got to get from home to the office, it's not as though I think, “Oh, I could just start work on this a bit earlier or do something else that might put me off going for a run.” You know, I've got to do the commute, so I'll lace up my trainers or I'll get on my bike and go. And it's the same—you finish the day, I've still got to get home. So you jump back on the bike or lace up your trainers and go. Whereas, of course, if you're already at home, you finish and you think, “Do you know what? I'm pretty tired. It's time for bed or time for dinner or whatever else.”

Len: This is fascinating because—and I want to come back to some of your logistics in a second—but I had the opposite experience, of course, because I have this long commute into the city, an hour and a half or so one way. And I lost that during the pandemic and, therefore, I used that time to run a lot. So I had it kind of exactly the other way around. I'm curious about your logistics. So if you have to run six miles—I like to speak in miles, thank you—to the office, so for me that's like an hour, but for you that's probably 45 minutes. What happens when you get there? Is there a place for you to shower and change? And do you have, like, a whole wardrobe of things in your office for when you arrive?

Mike: Yeah, we're pretty well set up. So we've got shower rooms and lockers in the basement. So we've got an awful lot of people in the building who either run or cycle and, you know, particularly—I was going to say our traffic's bad. It's like New York—but it's actually a pretty good way of getting around. And, we've installed some new cycle lanes recently and really tried to encourage people to cycle if they can. And then, yeah, I leave a bunch of suits and shirts in my office. Get them laundered at the dry cleaners 'round the corner and you're good to go.

Len: That makes perfect sense. But I'm sure it takes a little bit of planning ahead of time. And then, I have to ask, on the bike side, do you do one of these share bike things? Or do you have your own bike that you end up kind of bringing back and forth in one direction or the other?

Mike: I do have my own bike. I have used the shared bikes in the past. They're, actually, quite useful if you just want to sort of nip across to a client meeting and not have to worry about where you've put the bike and picking it up again afterwards. But, again, we've got some cycle storage downstairs and it's all pretty safe.

Len: Fascinating. Well, Mike, it's been a pleasure to have you join us. Mike Lane, the Head of the Tax Department at Slaughter and May in London. Thank you for joining us.

Mike: Thanks for having me.

Len: It was a pleasure.

And with this episode, we close out Season 1 of On Tax—A Cravath Podcast. Look out for a special recruiting episode of On Tax later this summer, where we'll connect with Cravath Tax Head Lauren Angelilli and with our Corporate Recruiting Partner, Ting Chen.

This fall, On Tax is back with Season 2, where we'll chat with more folks in the Cravath network and continue to highlight the people, connections and stories that make the tax practice such an exciting space. You can find us online on cravath.com/podcast, and don't forget to subscribe on Apple Podcasts, Google Podcasts or Spotify. I'm your host, Len Teti. Thanks for listening.

CRAVATH, SWAINE & MOORE LLP