


representations to the government? These are issues on which Bar leaders need to take soundings at their Bars without delay so that properly considered debate can take place within the advocates' profession and in our discussions with the attorneys' representatives. In this debate colleagues will do well to ponder the words of Sydney Kentridge QC quoted on p 40 of this issue.

### The Bench

It cannot be gainsaid that we have reached a state of affairs where very few leading silks are prepared to accept nomination for the High Court Bench. Why

this should be so is not altogether clear. Is it because of the widely held perception that questioning by certain members of the Judicial Service Commission ("JSC") is not always fair, even-handed or relevant? Or is it because many leading white counsel hold the view that they have no chance of being appointed in the face of the inexorable movement to appoint more black judges, not all of whom may have anywhere near the same credentials? Or is it because leading black counsel are in the fortunate position – albeit relatively newly experienced, because of the circumstances of the past – that they have flourishing practices which

they do not wish to forsake for the relatively meagre income of a puisne judge?

Whatever the reason, something must be done about the current situation. It does not bode well for the independence of the judiciary, which cries out for the cream of the advocates' profession to be appointed to the High Court Bench, and thereafter to courts of even higher jurisdiction. Hopefully the JSC in its deliberations will come up with some ideas about how to address this problem. The GCB will always be available to discuss this issue with representatives of the JSC or with the Commission itself. 

## Letters to the editor


### Is the Constitution our bane?

Saber Ahmed Jazbhay  
Attorney, Qualbert

Permit me to respond to Judge Van Dijkhorst's article entitled *The criminal justice system in jeopardy. Is the Constitution our bane?* (1998 November *Consultus* 136), an article I find most engaging. But is the Constitution to blame for the lingering malady that he laments about at great length? I submit that for the reasons that follow one cannot blame the Constitution.

Decades of human rights abuse, with the judiciary being the handmaiden of successive Nat-dominated governments, made the birth of the Constitution with a Bill of Rights a logical, but inevitable extension of the UN


inspired International Declaration of Human Rights whose fiftieth anniversary was celebrated on 10 December 1998! Yes, our gaols are overcrowded with awaiting-trial prisoners and our streets are infested with crime, but to lay blame on the Constitution is too simplistic and escapist in its logic.

What is the alternative? Judge Van Dijkhorst does not provide any and yet, with respect, with his years on the Bench one would expect him to explore alternatives with the view of promoting a culture of human rights for all South Africans! Except for one pearl of wisdom, namely that change can only come about "with a change of attitude and basic judicial thinking", his article subliminally reflects a kind of kafkaesque abandonment to forces of injustice and anarchy and, as such, cannot go unchallenged! After all, I am reminded that a country without a sense of its past is bound to repeat it in the future. 

### Conference on advocacy

Mr Justice H G Squires  
High Court, Durban

The report by Bertelsmann SC on the conference on advocacy refers (1998 November *Consultus* 131).

If the Eminent Person who opened the conference was the Lord Chancellor, he would not have been Lord Bingham. If, on the other hand, it was Lord Bingham who did so, he is not the Lord Chancellor. The Lord Chancellor is Lord Irvine of Lairg. Lord Bingham is the Lord Chief Justice, and as far as one can gather, there is an important difference between the two. It's almost like mixing up the Minister of Justice and the Chief Justice. I wonder who would be the more upset? 

### Aan medewerkers

LESERS word uitgenooi om artikels en briewe aan die redakteur vir publikasie in *Consultus* te stuur. Die tydskrif se hoofstrewes is om nuwe gesigspunte aangaande die regsberoep, regshervorming en die regsbedeling in die algemeen na vore te bring en gedagtewisseling daarvoor te stimuleer.

In Bydrae word vir publikasie oorweeg met dien verstande dat die redakteur dit aan die redaksiekomitee voorlê vir evaluering, en die manuskrip ter wille van stilistiese konsekwensie, helderheid, taalkundige juistheid, samehang of letterkundige sierlikheid mag verander.

Dit word aanvaar dat die bydraes oorspronklik is en nie ook elders voorgelê word vir publikasie nie.