A strong, independent Bar

We still have an independent legal profession ready and willing to take on a case for the individual against the state or large organisations.

But which client? The ordinary person in the street does not need the commercial and costly skills of the big law and accountancy firms. Large corporations may find such a system convenient, until they discover that one department of their professional megastore has acted for another party in a particular matter.

Where will ordinary people go for their legal advice when they face a criminal charge, the loss of their home, the breakdown of their marriage or they wish to claim damages or enforce their rights? They do not want to travel to the legal equivalent of the out-of-town superstore. Will they still be able to find a local solicitor?

The Bar provides for them a pool of specialist advisers and advocates that they could not possibly afford to employ in-house. I do not object to solicitors developing advocacy departments, provided their advocates are properly trained and regulated, and they do not threaten the high standards of independence and integrity currently demanded by the courts. It cannot be in the public interest to reduce qualification requirements. We should be raising standards not lowering them.

Legal aid

I was astonished to read in the Legal Aid Board's paper on the Public Defender system to be piloted in Scotland that such systems operate successfully in other jurisdictions. They cannot have spoken to the same people we have: the judges and practitioners. I wonder if they have spoken to the New Orleans public defender who sued himself, because he was being forced to take on three times the number of cases each year than the recommended maximum. We hear complaints of underfunding, inexperience, complacent and inadequate staff and public defenders entering into arrangements with prosecutors and the local judiciary to dispose of cases for the benefit of the court and the system rather than the defendant or the victim.

Endangered

Many wonder why the English Bar expresses so much concern about the future. Other countries produce lawyers of excellent quality who do an excellent job. But, as the leader of a national Bar association, I am considered rather an oddball in international circles. The British system is, or is fast becoming, unique.

We still have a system whereby some of the best advocates in the world can be seen day in, day out, in our criminal and civil courts all over the country acting for the state and for the ordinary man and woman, prosecuting one day, defending the next, acting for the injured plaintiff one week, the insurance company the next. We refine our advocacy skills on a regular basis and where it matters, in court.

Fighting for survival

Of course an independent Bar can survive in the brave new world, but what form will it take? We do not want to become a small cadre of highly specialist commercial practitioners available to just the few. We want to remain as specialist advocates and advisers available to all. It is in the public interest that we should remain so. We may, as sole practitioners and answerable to no-one, become the only truly independent lawyers left in the world.

Extracts from the address of Heather Hallett QC, chairman of the Bar of England and Wales, at the 1998 Bar Conference, published in 1998 November Counsel *3.*

Naming of judges

The Minister of Justice, Mr D Omar, has asked all interested parties to debate the use of the term "magistrate" and to consider whether all judicial officers should be referred to as "judge". Also, Mr D Omar said that the time had come to abandon outdated modes of address that served no purpose "other than artificially to glorify judicial officers".

He explained: "The Constitutional Court has set an admirable precedent. In its first practice direction it advised that the presiding officers of the court should be addressed simply as 'judge' or 'Justice So-and-so'. Addressing members of the court as 'my Lord' or 'my Lady' was strictly prohibited. This is not a matter for legislation. It is a matter with regard to which judges must make a decision and give direction."
1998 October *De Rebus* 7.

A candle in the dark

"During the years of apartheid in South Africa, there were frequent threats from government to place the Bar under the control of a central council with government nominated members. This proposal was consistently and successfully resisted by the whole of the Bar, including those many members who normally supported the government in policies and legislation. It was well understood that to remove the control of the profession from the provincial Bar Councils and the General Council of the Bar would have meant the end of the independence of the profession. What was also well understood was that the independence of the Bench was inextricably linked with the independence of the Bar.

This does not mean that rights of audience are not a matter of legitimate public concern, still less that the practices of the Bar are not subject to control in the public interest. The question, not answered by the consultation paper, is why that control should be removed from the hands of the judges. I may add that any anti-competitive practices which cannot be justified might be invalidated in term of domestic and European Competitive Law – but that would result from a judicial hearing, not from an executive decree."
Sydney Kentridge QC "A quiet revolution?" (comments on the constitutional aspects of proposals set out in a consultation paper of the Lord Chancellor for extending the rights of audience in the higher courts) in 1998 December *Counsel* 24.