



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RT HON THE LORD JUDGE

THE FUTURE OF THE BAR

THE ROLE OF THE JUDICIARY

INNER TEMPLE HALL, THE HONOURABLE SOCIETY OF INNER TEMPLE

10 JUNE 2010

I have 10 minutes.

I was called in 1963. I do not ever remember a time, ever, when the future of the Bar was not in doubt by someone somewhere. I attended a meeting in Middle Temple Hall in, probably 1964, just like this one, when the circuit system was said to be doomed because it was proposed to do away with Special Fee. That probably means nothing to most of you but it was the end of the world, if not the Universe, as we knew it.

What is more, in the whole of my time in practice different areas of work have waxed and waned. Family law, or divorce as it was, and most divorces were undefended but heard before Deputy High Court Judges, was filled with busy practitioners, then matrimonial law was amended, and that part of the profession was in heavy doldrums, but it has flourished once again, and now well...new areas of work have appeared. I do not remember anyone doing an administrative law case back then. Administrative law did not exist in 1963: nor for all effective purposes, did employment law. Look at it now. Now both attract large numbers of specialist members of the Bar.

That is the past. Now for the future. There will never ever be a time when we – by we, I mean the community at large shall be able to do away with the profession of advocacy, now largely but not exclusively, the profession of the Bar. The advocacy profession is integral to our adversarial system, but it would be no less essential if the adversarial system became inquisitorial. There would be a different form of advocacy. As a community we would still need high quality advocates.

As it seems to me, and for reasons I addressed in some depth in the Kalisher Lecture, for the publicly funded Bar – which of course covers crime and family - the times now are the most turbulent of times in the entire period since I began in practice. And this turbulence began before we appreciated the depth of our national financial crisis. This has increased the turbulence, and is likely to increase it further. I still find it hard to imagine, but it is the case, that pupillages are reduced, and that good, high quality criminal sets of chambers are unable to take pupils. I find it deeply alarming that people want to do family or crime but cannot find a pupillage. Equally troublesome, to me, is to appreciate that such good quality criminal sets up and down the country are in real difficulty. But, I am afraid, that as judges we have no magical solution.

Changes are in the wind inevitably. Just consider for a moment what, only a few years ago, we would have thought of a barrister's clerk being described, rightly, as a practice manager, or for that matter, of direct access. Our predecessors would have been incandescent. No

doubt some of our contemporaries are too. But incandescent would be an under-statement at the mention of the F word – the flexibility Nick Green has spoken of.

For my part, virtually the beginning and the end of my position is that our system of justice requires a high quality profession of advocates, men and women of integrity and independence of mind and complete dedication to the interests of the client, but sometimes with great difficulties of conscience, honest to responsibility to the court and to justice. Judges at every level – juries – Magistrates depend on this profession. Any judge will tell you how much easier it is to do justice according to law if the case is well argued, and how difficult it is when it is not. And in the longer term our judiciary must be filled by men and women of proved integrity and proved independence of mind.

In this context therefore our role is to do everything we can to maintain a profession of high quality advocates, and to promote such a profession. The judges are no longer responsible for discipline, nor even for that matter for rights of audience. The profession is regulated. The judges do not regulate it. And perhaps most important of all, judges do not either organise or fund the Legal Aid system any more than they assess the brief fees in non-legally aided cases. But the profession has to address the needs of the young and must encourage the bright young men and women who are the future to take on criminal and family work.

The reality is that what judges can do is of limited direct assistance. I do venture to suggest however that, and each of these points is worth 10 minutes on its own, but I shall give the headlines:

- The judiciary should be involved in quality assurance for advocates, whatever their professional training and background and qualification. I simply cannot see any argument the other way.
- A single code of ethics should bind every advocate whatever his or her professional training and background and qualification.
- Along with a single code of ethics, there must be much closer assimilation of training in advocacy.
- The way in which the profession is paid for its advocacy should be much more focussed on rewarding efficiency. Fees should be assessed for the quality of the work done, and not for the length of time the case has taken. Rewards should be based on the efficient discharge of responsibilities and those who are efficient should enjoy reasonable and commensurate rewards.
- Perhaps, finally this, we must proclaim the contribution made to the administration of justice a high quality advocacy profession which must attract and continue to attract men and women of quality and character in to its ranks.

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