

Baroness Deech, Chair of the Bar Standards Board

“The Future of the Bar”

Guest Lecture at Middle Temple

22 February 2010

Good evening Treasurer, members of Middle Temple and above all, welcome to students. I am here to share my thoughts with you before you enjoy a reception. Socialising together, students with established barristers, old and young, is one of the great features of being a barrister and a member of an Inn, the collegiality of the profession. Many of the faces you see here tonight will be your friends and colleagues in decades to come as you make your career at the Bar, with the respect and affection for each other, even when you are against each other, that is characteristic of the ethos of the Bar. Tonight I want to share with you my predictions about those future years and the ethos that you have begun to develop.

I am Ruth Deech, Chair of the Bar Standards Board. The Bar Council is the representative body for all barristers, the trade union as it were. But the Bar Standards Board, although it was set up in 2006 by the Bar Council, is different; it is your regulatory body, and throughout your professional life you will be subject to regulation by us. Don't let that put you off – we are here with a passion to supervise your education, to make sure you get the best, whether it is at the Bar Vocational Course, or pupillage, or continuing professional development. We set standards of entry and keep an eye on undergraduate law courses. We draft the Code of Conduct to which you will be subject and in the unlikely event of a complaint or your breaching that code we administer the discipline. We also determine the way in which barristers conduct their professional work, that is, as self employed barristers in chambers or as employed barristers in organisations, but more of that later.

I am especially pleased to meet students because I was once a law student myself and then I taught law and sent many of my pupils to the Bar. I did not pursue the career myself because I was not cut out for this profession – I tend to take sides too quickly

– and also I thought, quite wrongly in retrospect, that one needed contacts and money to be able to go to the Bar, and I had none.

My experiences gave me one insight which has been valuable in my post as chair of the BSB. It is that access to the Bar must be kept open. Many of my contemporaries who succeeded in the law were from modest homes, but they benefited from grammar schools, scholarships and free university education, all gone now. When I was a tutor at Oxford in the 1970s and 80s, I recall students coming to me, sometimes really distressed, saying that they passionately wanted to go to the Bar, but that their families were in straitened circumstances and they could not afford it, but instead took up well paid articles with city firms of solicitors. I have no doubt that a generation of bright students, many of them women, were lost to the Bar.

The BSB is proud of the great strides towards diversity and equality that have been made at the Bar; we will respond to the government’s social mobility initiatives, but the record of the young bar speaks for itself; there could not be a more diverse group. 23% of pupillages go to black and ethnic minority students and women are at least as well represented as men. I know how difficult it is to get a pupillage. If at first you don’t succeed, build up your experience and your CV and try again. When you do get one, the chances of gaining a tenancy in chambers or a post at the employed bar are very high. You can assure yourself that you are the cream of the crop – whether you work in chambers or elsewhere you will also always have the hallmark of quality that is being a barrister of the Middle Temple.

The qualification of “barrister” is invaluable in other walks of life too, and barristers are to be found in influential positions in politics, the civil service, finance, academia and in other areas of employment. Barristers who have studied here and gone overseas have spread the rule of law all over the common law world and it is a matter of pride that when there are difficult political situations, say in S Africa under apartheid or when judges were under attack in Pakistan, the barristers with great courage have stood up for the rule of law. Together with the Inns, the BSB works under the banner “One Bar”. No matter where your career may lead you or what type

of office you work in, you will always be a member of this Inn with all that that entails. You are embarking on one of the most honoured and respected professions in the world.

You have the problems of tuition fee debt and finding pupillage. But unlike earlier generations you will have many more choices and opportunities ahead of you when you start work. The BSB has opened up the ways in which barristers may work, and the bar will never be the same again. By the time you are starting your career, you will be able to choose between the existing self employed and employed barristers' posts; but you will also be able to be a partner in a firm composed of barristers, solicitors and, possibly, other professionals, known as alternative business structures, facilitated by the Legal Services Act 2007. You might in the fullness of time be able to set up a barrister only partnership, instead of working individually. You will be able to switch from one to the other, for example, while starting you might find it convenient to work as an employed barrister in a government organisation for half the week and as a self employed barrister the rest of the time. There will be increased direct access to your chambers, cutting out the solicitor intermediary in some situations.

These changes will come about because the Bar Standards Board, after much reflection and consultation, took some momentous decisions last year; and these rule changes will come into effect soon, when approved by the super-regulator, the Legal Services Board. We hope that the LSB will not block the new barrister-only-partnerships that might be what the Bar wants. Why did we make those changes? We did so in part because the law requires that any unnecessary restrictions on the way that barristers work should be removed, and the profession must move on. We also decided to promote change in order to help the public and barristers fight against the financial and competitive forces that are threatening to overwhelm them.

Now for the politics. This government professes to believe in social mobility, access to justice and affordability of legal services. It wants, we all want, bright young people to be able to serve the most vulnerable in our society as their legal advisers,

and we want those people to be represented. Why then has the Legal Services Commission, which controls the grant of legal aid, come under such fire that its future is unassured? It is proposing to cut £6m from its family law allocation; and it is tendering for criminal legal aid work at the lowest price available, so that there is competition amongst those who do criminal law work to pitch their prices unrealistically low. There is also competition from the solicitors who do high court advocacy and from the Crown Prosecution Service, taking up work that years ago was available to young criminal law barristers. But when the Bar tries to form new procurement vehicles, designed to tender for legal aid from the LSC, the LSC apparently rejects those new companies because they do not fit the traditional mold that the LSC is used to dealing with. Thus does the tail of legal aid wag the dog of British justice. I used to think that higher education was the most overregulated sector of our society; now that I am in the law I think it is the Bar.

One understands that there is a need to make savings in our economy, but there has to be commonsense in all this. A couple of weeks ago I watched Panorama on TV to learn that the new Independent Safeguarding Authority, with 200 employees, will soon be registering 9.5 million people who work with children, in case they pose a danger to those children. This will be at a cost of £64 per registration and £200m to the taxpayer over the next 3 years. These days you find you are forbidden to take pictures of children playing school games or take them on outings. But when you want to find a barrister to take care of the children who have actually been harmed, the vital and very low funds available for the most altruistic of barristers, has been cut in such a way that young people will be deterred from taking up this branch of the law. The BSB is not concerned with barristers' earnings as such, but with the preservation of the Bar as a separate profession, wide open to talent from all quarters, available for the protection of families, immigrants, alleged terrorists and criminals and other vulnerable needy cases. The Legal Services Act requires the regulatory authorities, like the BSB, to take into account the impact of our decisions on access to justice, the interests of consumers, protecting and promoting the public interest, supporting the rule of law and encouraging a strong diverse independent legal profession. At the same time the cuts that the LSC is making, at the government's

behest, will mean that a growing number of young practitioners, particularly women and BME who largely practise in publicly funded areas of law, will be unable to pursue a career at the Bar because they will have no prospects of supporting themselves. This will also undo much of the good work done by the profession, and the Inns in particular, to broaden the types of people coming to the bar. The Inns have done this by funding studies to the tune of £4m a year, and the profession as a whole has been implementing the outreach recommendations made by Lord Neuberger in his 2007 report. Neither the cuts nor the Legal Services Act itself have been assessed to measure their impact on young people coming to the Bar, nor on women and BME barristers already embarked on the profession.

Nor has the government considered the impact on the overall administration of justice in the future. Where are our judges and senior criminal silks to come from if their early careers are stymied? The solicitors report similar issues, so we are not alone in this. The number of pupillages and training contracts is falling, and high street solicitors too are at risk when new Alternative Business Structures – or Tesco law as they call it – undermine their existence, in the same way that the out of town supermarket crushes the corner shop. The government's priorities should be investing in and protecting the rule of law; acknowledging that family law issues and criminal law offences are growing because of societal problems and the thousands of new criminal offences created by the government in recent years. They risk the reputation of British law around the world. So the BSB has been guided by two principles: one is to keep the Bar distinct and avoid fusion; the other is to make barristers' services available in ways that will assist that aim and the public.

We know that despite the changes, the Bar will continue to be what it always has been because of you, the new intake of students. You are here because you are attracted to the independence of the Bar and the quality advocacy which is the hallmark of the bar. You appreciate its ethics and the cab-rank rule. You know that the Bar is the only profession whose availability in all circumstances ensures that any government can be challenged in court on human rights, on terrorism on bureaucracy, without fear of retaliation, without needing to place the interests of the

client and the rule of law behind that of an organisation. The Bar will supply advocates for the most unpopular of alleged criminals, again without fear or favour, because of the cab-rank rule and the duty owed to the court. To summarise the famous rallying call of Lord Erskine (Bencher of Lincoln's Inn) 250 years ago, if the advocate can choose not to defend someone, the liberties of England are at an end. I know that you will inherit this devotion to liberty through advocacy.

The Bar is known for its advocacy, but concerns about the quality of advocates have been gradually growing, emerging from many different perspectives. As the funding shrinks, so one must be sure that standards are preserved and that the driving down of costs does not result in poor service. In conjunction with the Solicitors' Regulation Authority and the Institute of Legal Executives we have issued a consultation on advocacy assessment. We propose to have a scheme to assess advocacy, starting with criminal practice, perhaps involving judges and setting standards common to all advocates. Do please respond to the consultation, which is on our website. Your views are essential to our decisions.

I have been hearing the views of hundreds of barristers as the joint BC/BSB road show travels around the country seeking the views of barristers about their response to the new working structures that we are introducing. The next stage in our thinking is a decision about whether the BSB should regulate entities. That is the most boring word in the English language! I prefer calling it the New Bar. Any group of lawyers working in partnership has to be regulated as a group under the LSA 2007, in addition to the individual regulation of barristers as we know it now, under the Code of Conduct. We need to know whether barristers want the BSB to regulate Barrister only Partnerships and other groups including solicitors, barristers and other professionals working together. If we do not do it, they will fall to be regulated by the SRA or be unable to form a BOP at all. Do barristers want to become employers if they set up such partnerships, with all the rules and regulations that that entails? Are they aware of the dangers of being conflicted out of work, if they enter a partnership because once one of them has been instructed in a particular dispute, nobody else in the partnership will be able to take on work from other parties to it,

whereas now barristers in the same chambers can appear against each other without conflict. Will they want to pay for regulation? Note that at present barristers are actually cheaper than solicitors because their overheads are less than half, and their hourly rate is almost always less than that of say a partner in a Magic Circle firm. Maybe the Bar, at one extreme, would like to stay as they are, individual practitioners with little regulation; or at the other end, should the BSB take on the regulation of all advocates, solicitors or barristers, wherever they are, because that is our expertise? I know however that there is an appetite for change, not only from publicly funded barristers but also from the more established, some of whom fancy an international career as an advocate and a partner in a large firm, with the benefits that may be entailed.

The Inns have a part to play in all this, because over hundreds of years they have become the repositories of professional pride and standards, and the experts in advocacy and training in it. If the Inns play their part wisely, they will keep the Bar alive and show to those who would prefer a fused profession that their existence is a massive support of the rule of law here and abroad. In an ideal world, the Inns will become the home of all advocates, including the best solicitor-advocates, and move to the centre of the skill of advocacy.

Education, as I said, is at the heart of the BSB, and the BSB has already played a vital role in your being here. A major review of the Bar Course took place in 2007-8 and a major review of pupillage is underway at present, chaired by Derek Wood QC, former Treasurer of this Inn. I can foresee a time when the education of would be solicitors and would be barristers draws closer together, with specialism being decided on after a few years of varied practice. You who are students are at the end of the academic stage. 4 years ago when your lecturer asked you a legal question, you could say in all honesty, "I don't know". Now you can say with great authority "It all depends." You too can be Attorney-General.

In sum, in ten years or so I envisage a profession that is still One Bar, but where individuals operate in a variety of structures, some employed, or partners or self

employed, and some spending their time in more than one capacity. The younger bar will move from the CPS, local authorities, government departments and the SFO to self employment and back again, they will be subject to too much regulation, I'm afraid, both individual and entity. Quality assurance will be driven by partners across the legal profession and led by the Inns. The Inns will be thriving and will hold the profession together.

You students are here today because you want to put your idealism and talents to work. It is also the case that you will be the source of the next generation of judges, although as you look around you, you may wonder how that can be. I happened to be in the House of Lords last year when it said goodbye to the Law Lords on the occasion of their last appearance there before departure to the Supreme Court across the Square. It was an unexpectedly moving occasion, not only because of the loss of the presence of judges of distinction and wisdom, whose judgments added lustre to the House, but also because of the keen realisation that their distinction is recognised worldwide, and is the apex of the global respect which is paid to the English legal profession, one with a unique and valuable history. We have to cherish this reputation and the supply of students who will be those judges one day. Like your Treasurer, whom I have known since we were both students, rising through the ranks by sheer merit, he and I both in our different legal careers, dedicated to the same end. The quality of the Supreme Court and the law that it makes is and will be inextricably linked to you who join the profession. It is therefore in the public interest, indeed in the interests of the rule of law internationally, that you should be keen to join the profession and that you should be of the same high aspirations as your predecessors. The established members of the Inn whom you see here tonight may look old and finished to you – but believe me, they care passionately that you should succeed and take up the great causes for which they themselves have fought in their careers. They have chosen you to join them and your success will be their success, carrying forward the great traditions of the Inn. The best of luck to you.