THE NECESSITY FOR LAWYERS AND THE LAW SOCIETY IN ENGLAND—A LESSON FOR THE AMERICAN LEGAL PROFESSION

By Harry Cohen*

I. Introduction

As a former President of The Law Society put it, solicitors have been the subject of virulent attacks in the past few years and, in spite of a survey of the British public showing that nine out of ten people who use a solicitor are satisfied with the service they receive, there have been calls for abolishing lawyers, at least in certain areas of practice such as conveyancing. There have also been calls for opening the courts to appearances by nonlawyers in a representative capacity.

The legal profession in the United States has been the subject of similar outbursts with the most vociferous attacks coming from

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3. Mr. Michael Joseph, the author of the book The Conveyancing Fraud is quoted as declaring “Abolish lawyers” in the Daily Mail of 1 August 1984, by a retired solicitor, J.D. Miles. Id. Besides making many good suggestions about what the profession should do in the future, Miles observes that many members of the public have an “in-built prejudice against lawyers, Id. at 1774, and that opponents of the legal profession are “on the warpath” and they must be combated. Id. at 2551; see Cohen, Unpopularity and Criticism of Lawyers, 123 SOLIC. JOUR. 931 (1979).
4. Independent Solic., Jan. 1, 1986 (editorial). Mr. Michael Montague, Chairman of the National Consumer Council, a British government body, in a speech in Glasgow on November 15, 1985, stated that advocates and barristers who argue client’s cases in courts in Britain should not have these monopoly rights as this legal profession privilege is not in the public interest. Id.
5. TIME, July 25, 1968, at 18. Many years ago in July of 1968, Senator Strom Thurmond in his questioning of Justice Abe Fortas, who had been nominated as
academics who question the intellectual objectivity and honesty of lawyers.  

This phenomena is not new in England or the United States. Dean Roscoe Pound in his work *The Lawyer from Antiquity to Modern Times* pointed out that every utopian and revolutionary scheme has been designed to dispense with lawyers. Colonial America had visions of a new world society without lawyers and there was continuous legislation hostile to the practice of law from the middle of the seventeenth century to the middle of the nineteenth century. In England the barristers seemed to have become entrenched at an early date and by the fourteenth century there seemed to be a developed profession which enjoyed the esteem of the country. Solicitors, in the sixteenth century, on the other hand, were called epithets like “pettyfogging sophister” and were described as being as different from lawyers “as a shrimp from a lobster, a frog from an elephant, and a tom-tit from an eagle.” Later on, although solicitors were much maligned by barrister textbook writers in the seventeenth century, they were not the subject of general abuse.

Lawyer critics historically and presently are really questioning the necessity for lawyers as a separate organized profession with a legislatively and judicially protected monopoly over the content of law practice. The intent of this article is to discuss why society tolerates having lawyers and why English solicitors, in particular, have an organized profession and a monopoly over some aspects of law practice. It is believed that there are lessons for American lawyers in the experience of the solicitors in England, which ignored, could adversely affect the legal profession in the United States.

Chief Justice, asked “What difference does it make if there is a lawyer present or not? What difference does it make if you get the truth?” Fortas replied that the difference might be the Constitution. Id. A few years later President Jimmy Carter in a speech before the Los Angeles Bar Association said “… we are over-lawyered and under-represented.” Powell, The Organized Bar Under Scrutiny, A.B.A. Research Rep. 1, (Spring 1980).

8. Id. at xxvi, 132.
9. Id. at 136.
10. Id. at 82-83.
12. Id.
13. Id. at 16.
II. Why Lawyers? Why Solicitors?

Some years ago in an article titled Unpopularity and Criticism of Lawyers the various types of American and English critics of the legal professions were discussed. Journalists and academics seem to lead the parade of critics and generally the legal profession is derided and insulted just as in Shakespeare's and Keat's time. Yet in England and the United States, lawyers are individually held in fairly high esteem by the clients they represent. There may be good reason for this apparent contradiction. In a letter received in 1979, a practicing solicitor in Somerset, England said that after thirty years of practice, one cannot generalize about the public's attitude toward lawyers and "much depends upon the relationship between a particular client and a particular lawyer." The point was well taken. People intuitively and instinc-

15. In an article titled Solicitors do Well in Survey the Times of London said Nine out of 10 people who use a solicitor are satisfied with the service they receive, and two out of three think the fee charged is reasonable, according to a survey published yesterday.

The survey also shows that although solicitors are not regarded in the same esteem as doctors, they are looked on more favourably than accountants or estate agents.

But the survey is not entirely comforting for the profession: it shows that overall, although most people would choose a solicitor for a house transaction or a will, young people are increasingly inclined to look elsewhere.

Commissioned by the Law Society from Research Surveys of Great Britain, the survey is based on a sample of 1,688 adults in England and Wales.

Of those who were aware that there were alternative sources of advice on wills and trusts, 69 percent claimed they would first choose a solicitor for that service, as opposed to only 12 percent who would choose a bank.

Nine out of 10 people who have used a solicitor (65 per cent of those questioned) were satisfied with the service, and 63 per cent very satisfied.

The Times of London, April 17, 1986 at 3.


17. In 1979, the author received a letter from Mr. David C. Allen a practicing solicitor in Somerset, England who told me that after reading my article about criticism of lawyers, and after thirty years as a Solicitor, he had two points to
tively know that conscientious lawyers serve a valid purpose. They may not understand law and lawyers but they recognize that someone must do the job lawyers do and it is better to deal with the advisors whom we know rather than the unknown.

Dean Pound, one of the few who have ever discussed this question, thought that organized society must have lawyers because the alternative would be economically and socially wasteful. "The task of law is to adjust relations and order conduct so as to give the most effect to the whole scheme of expectations of man in civilized society with a minimum for friction and waste."18 Persons cannot adequately try their own cases, and "proper presentation of a case by a skilled advocate saves the time of the courts and so public time and expense."19 Advocacy, he said, demands "professional spirit."20 This professional spirit prevents "misuse of the machinery" and "waste of public time in useless wrangling."21 In addition, lawyers act as advisers who prevent or forestall controversy, "preventing needless resort to the courts, and keeping enterprises and undertakings to the straight paths prescribed by law. Everyman his own lawyer is even more wasteful than everyman his own advocate."22

Dean Pound did not go far enough in his analysis of why we have and need lawyers. Lawyers serve as a go between for their clients in their relationship with the State. Although this has connotations of the criminal law situation, and the legal profession does stand alone between those accused by the State and the State itself,23 that side of the lawyer's work is only part of a greater whole. In countries such as the United States and Great Britain, the legal profession serves as a reservoir of knowledge and understanding of the order and stability of those cultures. As the political left is fond of saying, lawyers preserve the free enterprise sys-

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make (1) that generalizations are of no value and (2) much depends upon the relationship between a particular client and a particular lawyer.

19. Id. at 26.
20. Id.
21. Id.
22. Id. at 27-28.
23. As Lord Brougham put it in his representation of the Queen in Queen Caroline's Case, the advocate's duty is like unto that of the patriot. A modern statement of the lawyer's ideals is found in Professor Monroe H. Friedman's Lawyers' Ethics in an Adversary System (1975) especially at pp. 9-26.
tem by aiding clients in transmitting individual wealth and property. Without lawyers the system would collapse. It is submitted that this is exactly as it should be. The efficient and knowledgeable lawyer analyzes issues and provides answers for clients which only study of, and experience in, the legal system can create. In the socialist systems the same type of professionals serve the same purposes as lawyers in our system.

Imagine a system of government without lawyers and a legal profession. Conflict resolution beyond the most simple situations would be left to whim. Imagine a system where agreements are drafted without knowledgeable persons acting as the drafting agencies.

An example exists in the family law field. Recently there has been a great deal of talk about prenuptial agreements. It has been said that often people want something in writing about their private and personal lives before marriage. There are all kinds of postnuptial agreements and these make up a significant aspect of legal work. Consider the plight of persons without a knowledgeable lawyer in any of these situations. A young lady comes to a marriage with an inheritance. Unless she is protected by a lawyer, it is quite possible that these funds will be lost forever.

We also have the fact of so-called no fault divorce in the United States and Great Britain. Without a lawyer to protect each party, dire consequences can result. Take the woman who is led to believe that lawyers are not necessary in the no fault divorce situation. After the divorce is final, she may find that she is responsible for the debts of the marriage, she has furthered the education and/or career of her spouse and has received nothing financially in return. She may even find herself without a job or support because of the marriage breakup.24

The controversy in the United States over whether one lawyer could represent both parties to a no fault divorce proceeding is also indicative of why people need lawyers. English lawyers have seen the same problem in vivid detail in the arguments for and against a single lawyer representing both buyer and seller in a real estate

24. It is possible for a lawyer to be sued for malpractice in the United States where he or she has represented both parties to a marital conflict. See Lange v. Marshall, 622 S.W.2d 237 (Mo. App. 1981); Ishmael v. Millington, 241 Cal. App. 2d 520, 50 Cal. Rptr. 592 (Cal. Ct. App. 1966).
Many American authorities have held that a single lawyer may not represent both parties in either of these transactions. It is argued that a divorce situation is not an adversarial proceeding, it is only a dissolution of the marriage, but many hold that although there is little controversy about the dissolution of the marriage, nevertheless

the new “no fault” divorce law has in no way changed the potential conflict nature of the proceedings between the spouses in the area of division of property rights, alimony, child support, custody, etc. Thus, a lawyer cannot represent such potentially divergent interests merely because a new divorce statute dispenses with the necessity of alleging and proving fault or guilt as a condition precedent to the dissolving of the marriage contract. . . . The problem, of course, is that the spouses as laymen never fully appreciate all of the complexities inherent in matters dealing with alimony, child support, custody, visitation, property rights, retention of jurisdiction, etc.

It is difficult to discuss the question of why we have, and need lawyers unless one confronts the issues raised by some lawyers and law teachers who call themselves radical lawyers. These people profess not to believe in the necessity for the existence of a viable legal profession. They characterize lawyers as protectors of the rich, powerful and elitist. Many radical lawyers do not ascribe to the adversary system and do not aspire to be independent of the habits and attitudes of revolutionary clients. They are often con-


The Necessity for Lawyers

One answer to this group was given by Professor John D. Ayer in his article Do Lawyers do More Harm than Good? by demonstrating how complex such a question is and by showing that perhaps too much is expected of the legal profession and lawyers in any society or system. In a legalized society, he says, it is difficult or impossible to move without the intercession of a lawyer and therefore all persons have some claim to legal services. However, having more lawyers does not make our society any better. Lawyers are a "costly nuisance," but still they may be "constructive citizens of a high order." There is a profound public ambivalence toward the place of lawyers.

[W]e perceive of law as order, as regularity, as control—a conservative view that sees law as a conservative force. We have another tradition, just as deeply held, that sees the tradition of lawfulness as the core of revolutionary action. This is law as an engine of creative change, the law of Lord Coke and the English Revolution (and our own, as well).

. . . .

. . . . the solution to the problem of legal services in our society is to resolve a complex choice process in which we all—lawyers and others—share. . . . If we are paying excess costs for the excess use of lawyers, it is at least in part because we have excessive expectations of the potential of the law. If we choose to make a different allocation, we undoubtedly will give up something that we now have and seem to value.

On the other hand, we may receive rewards, as well. We may get a new sense of realism—a new sense of the complexity of our own affairs, not as made complex, but as inherently complex. Finally, we may get a new sense of ourselves as actors and choosers in a democratic society.

In both England and the United States lawyers have been in the forefront of societal change and as a whole they cannot be easily temptuous of the political and legal system.

31. Id. at 130-131.
33. Id. at 1056.
34. Id. at 1057.
35. There is another group of lawyers who believe that one of the major reasons for the existence of the legal profession is to foment change in the legal system and society at large. These people believe they should be social engineers and not radical revolutionaries who believe in a sort of "intermediate radicalism about the law . . . a kind that considers altering the institution itself rather than either
categorized, politically, socially or otherwise. Because it seems that there is an inherent need for trained people who do what lawyers do, to say that lawyers should not exist as a separate profession is either talking nonsense or a request for some other group to do what lawyers do. The suspicion here is that some other group would be more politically homogenous than the present legal profession.

II. The Law Society in England: Why Have an Organized Legal Profession and Its Monopoly?

(a) English Lawyer Organizations Historically

Assuming the necessity to have an occupational group who do what the legal profession does, the question arises as to why we rejecting or embracing it," Wasserstrom, supra note 30, at 133, and this seems to typify most of those who consider themselves "radical" or "revolutionary."

Although it was originally part of a unique problem, the essentially black law school of Howard University in Washington, D.C. had a forceful Dean and Professor, Charles H. Houston, who admonished his students that lawyers should become "sentinels guarding against wrong." For a black lawyer, he said, commitment and skilled advocacy were most important and "a lawyer's either a social engineer or he's a parasite on society" T. SHAFFER, supra note 29, at 547-48. Legal revolutionaries are often people who wish to work within the system and use "law against order" Id. at 541. Some are "self limited rebels" who are dealing in "relatively immediate, relatively concrete reform" Id. They are tolerant and civil persuaders. Another group, less civil and tolerant, are basic revolutionaries and often utilize apocalyptic rhetoric. These are the people who see little value in the social institutions of the day and are mainly interested in overthrowing the present legal institutions, if they could. Id. at 571-72.

It is doubtful that a lawyer can be a revolutionary and still remain a lawyer. No matter what their intuitive and felt attitudes toward the system, lawyers find it difficult to further radical ideas while at the same time creating case law and legislation which causes a new kind of status quo. The very essence of the lawyer's role encourages an "uncommitted state of mind." Wasserstrom, supra note 30, at 130.

Through all the rhetoric and bluster, even the radical lawyers inherently realize that though all lawyers are not alike and there are different professional roles, clienteles, skills and remuneration; there is a necessity for some group to do the myriad tasks which the legal profession presently practises. One solicitor recently wrote that there were many "solicitors' professions" and he was very close to the mark. See Geffen, What are Solicitors For?, 129 SOLIC. JOUR. 626 (1985). The writer is author of an article called Pluralism in the American Legal Profession, 19 ALA. L. REV. 1 (1967), which argued for different codes of ethics for various types and groups of lawyers.
have an organized legal profession and its insistence on a monopoly over many forms of legal work. Historically, the concept of a profession and its attributes came rather late. In England, the so-called established professions—law, medicine, and the church—did not become entrenched until the eighteenth century. Classification of an occupation as a profession usually means society's protection to the group and its members. If the group earns the respect of the public by giving a valid and necessary service, the resulting prestige is rewarded through the granting of a status in society, usually at least, a monopoly over a job or occupational jurisdiction. The monopoly also leads to self-regulation and control.


Very likely, the eighteenth century marks the true beginning of the professions. During the first half of the century, both doctors and lawyers suffered heavy lampooning in plays, pamphlets, and novels. They were quacks and pettifoggers, exploiting other people's misfortunes for their own betterment. They were conniving untrustworthy rascals. The English clergy, beset by patronage, non-residency, pluralism, and poor livings, was treated without much respect. Incumbents were either well-meaning, dedicated, starving wretches, or rich, pleasure-seeking, avaricious men who did not seem to take their vocation very seriously. The Church, law, the army, the navy, and the civil service functioned in an infested state of patronage and complex sinecures. Over the century, respectability and public estimation developed for the professions, probably owing to increasing involvement of practitioners in local affairs.


To earn a monopoly, an occupational group must first do a job that others either cannot do or will not do. They then serve the public unselfishly with high quality, competent work. A devotion to the client's interests which at least appears to be more important than personal gain or profit called a service ideal must be demonstrated. W. MOORE, THE PROFESSIONS: ROLES AND RULES, 15 (1970). Those occupations become professions who gain legal protection for their job jurisdiction, i.e., a monopoly. C. GILB, HIDDEN HIERARCHIES 53-54 (1964). Some professions exist as they are today because of acceptance by the public who believe they serve well and because of the pressures exerted by the professional associations which were created to further the goals of the group. The service ideal must be acted out to the satisfaction of the majority of people who use the services of the professionals. W. Moore, supra, at 15. The lawyer's clients, for example, are peculiarly vulnerable. They are both in trouble and ignorant of how to help themselves out of the problem. If clients generally did not believe that the service ideal were not operative "he would be forced to approach the professional as he does a car dealer demanding a specific result in a specific time and a guaranty of restitution should mistakes be made. He would also refuse to give confidences or reveal
by the occupational group over its own affairs.

Insofar as English professional organizations are concerned, lawyers were the first English secular profession to be organized.38 But it was the barrister's side of the profession with the Inns of Court being the first professional organization in England.39 Professional organizations, however, were slow to develop.40 The Inns of court functioned merely as exclusive clubs.41 Early on, solicitors had formed provincial societies as a convenient method of maintaining some social and business contact.42 By the nineteenth century, English professional organizations changed from discussion groups for middle-class elite amateurs into meeting grounds for trained specialists who relied on the facilities for communicating new information.43 A new type of professional organization emerged, one to improve professional status, working conditions and the nature of the profession.44

The solicitor's profession in England and Wales, to some degree, had started by 1877 what has been called the "process of professionalization"46 when it obtained control over entrance to the profession. Professionalization was slowly completed over a long period of time when monopoly status over job jurisdiction was attained and The Law Society was authorized to exercise substantial

potentially embarrassing facts. The service ideal is the pivot around which the moral claim to professional status revolves." Wilensky, supra, at 140.

High status professionals develop a professionalism based on a "sense of brotherhood in a self-regulating fraternity dedicated to codes of honor and service." Id. at 141. They develop professional associations who gain legislative and judicial support for their job jurisdiction. Once these associations and societies create their own schools, they have completed a "process of professionalization" Wilensky, supra, at 141 or "stages of evolution," C. GILB, supra, at 53, which in effect was the pattern they used to control their own destiny as distinguished from being controlled by outside forces and groups.

38. Barristers were the first lawyers to gain prestige in England. G. MILLERSON, supra note 36, at 16. While solicitors, forced into compulsory examinations thirty six years earlier than barristers had a longer path to professional prestige. Id. at 6.

39. Id. at 17.

40. Id. at 19.

41. Id.

42. Id.

43. Id.

44. Id.

45. Wilensky, supra note 37, at 141.
control over, and concerning, solicitor discipline,46 education and entrance into the profession.47

(b) The Modern Law Society

One major reason for the existence of unified professional organizations like The Law Society is the instinctive need professionals have to join together to achieve status and some control over their own destiny.48 The legal profession, much like other professions, has found that the older the organization, the more the possibility that through membership apathy and lack of time in busy professional schedules, the association will be controlled by an oligarchy.49 This is not to say that the oligarchy is necessarily some specific type of aristocratic group, but it becomes an oligarchy nevertheless. Along with the modern development of large, paid, permanent professional staffs, who must of necessity assume responsibilities, professional organizations create power elites.50 The consequence of professional self-regulation are thus not necessarily the same for those in power and the individual professionals who make up the organization. One observer has said that a professional organization’s admission, licensing, and disciplinary powers may be made the basis of a kind of “genteel terror. . . . Collective autonomy and individual autonomy may turn out to be inconsistent goals. Identification with peers may become subservience to peers.”51

The Law Society has grown to fit this mold. From numerous solicitors, some of whom have sat on The Law Society Council, the governing body of the organization, an opinion emerges describing The Law Society as secretive, aloof, unresponsive and


The Law Society was founded in 1825 as “The Society of Attorneys, Solicitors, Proctors and others not being Barristers practicing in the Courts of Law and Equity of the United Kingdom.” G. Miller, supra note 36, at 24. At this time the Law Society was a voluntary organization “aiming to improve the state of the profession.” Id. After declining to act as an examining body for many years, in 1877, the Law Society became fully responsible for all solicitors examinations. Id.

47. Id. at 24-25.


49. Id. at 129-130, 169.

50. Id. at 172-173.

51. Id. at 130.
bureaucratic.

Many solicitors say that they have listened for years to officials who tell them that solicitors generally do not understand the necessity for the methods The Law Society utilizes to conduct its affairs. Many solicitors over time requested The Law Society to systematically ascertain the views of its membership so that priority could be given to reform of professional folkways, relationships with the bar, and service to the public generally. These pleas

52. H. KIRK, supra note 46, at 45. A stinging analysis by the Young Solicitors Groups, similar to the statements made herein appear in The Law Society-Time For Change, 83 LAW SOC’Y GAZETTE 2092 (1985). In this memorandum they said: Although the public sees The Law Society as the protector of solicitors, members of the profession have a different view. The Law Society is notoriously reluctant to express opinions on the interpretation of its own disciplinary rules. Solicitors are unable to turn with confidence to their professional body for help and advice when that body is also responsible for enforcing the rules of conduct. The profession has also expressed much concern at the inadequacy of The Law Society’s presentation of the profession’s viewpoint to the media.

3.2. If the existing system serves neither public nor the profession adequately, it is time it is changed. It is the unanimous view of the National Committee of Young Solicitors that the representative and disciplinary roles of The Law Society must be separated so that the conflicts of interest are removed and the public can see that their complaints are being dealt with independently. We therefore advocate the setting-up of an independent body to deal with complaints and discipline. The Law Society may then concentrate on the advancement of the interests of the profession and the interests of the profession and will also be in a position to offer advice and assistance to a solicitor against whom a complaint is made.


Nineteen solicitors met at Leamington Spa last weekend and resolved to form an association of solicitors for the purpose of the advancement and protection of the solicitors’ profession and that the name of the association should be the British Legal Association. The chairman of the meeting was Mr. Arnold Wexler of London. So far about ninety solicitors have said that they wish to join the association and have paid a subscription. The meeting was concerned about the difficulty of maintaining a standard of living appropriate to professional men and women without overworking and there was dissatisfaction with the way in which the Council of The Law Society have dealt with various complaints . . . . Those who are dissatisfied with what the Council are doing or not doing have opportunities to say so at meetings of local law societies, at the annual July meeting of The Law Society and at national and regional conferences. It is rare for controver-
were ignored and finally a new organization was created to try to deal with some of the problems The Law Society evaded. The British Legal Association (BLA) was formed.\textsuperscript{64} It was an organization born of the frustration of its founding members. Their goal was to improve solicitor's remuneration and working conditions and to represent the interests of individual solicitors generally.\textsuperscript{65} The early leaders of the BLA were not saying that The Law Society was evil or that they wanted to usurp its power. They were saying that The Law Society was too elitist in their dealings with their members personally and with their professional problems generally.\textsuperscript{66}

Social matters to be debated on these occasions and the new association could perform a useful service by focusing and bringing into the open any dissatisfaction which exists and the extent of which is now uncertain. Only when the existing methods have been found wanting would it be justifiable to think of forming some rival body.

54. Id.
55. Id.

... More fundamental was the suggestion that the profession should get away from the obsession with conveyancing costs and that we should press for a review of our whole financial structure. It was suggested that in many practices litigation is subsidised by conveyancing, probate and other work and that this is wrong. There was some apprehension about the effect of the Working Party on Conveyancing Practice.

Id.

56. Id.

There was a difference of opinion about whether the new association should be a rival to The Law Society or should work within it as a ginger group, for example, by putting up candidates for the Council in opposition to those sponsored by "the Establishment." In our view it would be a great pity and a waste of time and energy to try to set up a body which would rival The Law Society.

The following correspondence is a good example of the attitude toward any kind of opposition to an official or representative of the Law Society. Mr. Anthony Parker was the person most responsible for the creation of the British Legal Association, and Sir Thomas Lund was the long time Secretary General of the Law Society. One should note that it took Sir Thomas seven months to answer Mr. Parker’s letter.

Sir Thomas Lund,
The Secretary General,
The Law Society,
113 Chancery Lane,
LONDON W.C.2.

3 December, 1964

Dear Sir Thomas,
Perhaps the most significant example of the historical and

_British Legal Association._

As the Honorary Secretary of this Association I have now re-
ceived the Minutes of the inaugural meeting, and I note that I am
asked to inform you that “an association of solicitors has been formed,
that it is called the British Legal Association, and that its general ob-
ject is the protection and advancement of the solicitors’ profession”.

This information is merely formal, because you already know
about the project. The editorial comments made by the Solicitors’
Journal in its report about the meeting are agreed; in fact there was
no supported suggestion that the British Legal Association should at-
tempt to ‘rival’ the Law Society. This would not only be an imperti-

nence - it would be impossible, owing to the Law Society’s statutory
powers.

The idea is instead to suggest certain improvements for the Law
Society’s professional union functions; many solicitors feel at present
that the Law Society simultaneously bites and wags its tail. It is often
not possible for solicitors to approach with the knowledge of whether
a bitten hand, or a greeting will be the result.

Since publication in several national papers of the outline of the
association’s aims, I have received quite a flood of letters from solici-
tors complaining that the Law Society does not act as their friend, but
rather as an inflictor of discipline.

I hope that you will not take offence from the contents of this
letter, and that you may allow the British Legal Association to make
suggestions which the Council may consider and possibly answer the
points made - not secretly but in the Law Society’s Gazette.

Yours sincerely,

Anthony Parker.

4th June, 1965.

My dear Sir,

THE LAW SOCIETY

I have received a number of letters from members of the Society
as a result of their receiving an invitation, by circular letter, to join
the above Association which has apparently been set up partly to act
as a “ginger group” and partly to undertake many of the functions
which The Law Society, itself, was created to perform.

The Council have considered what attitude the Society should
adopt with regard to this new body and have decided that it would be
a mistake to change, in any way, the present channels of communi-
cation. They are of opinion that, with the whole country now covered by
local Law Societies, the ordinary and proper way for representations
to be made to The Law Society ought to continue to be through local
Law Societies, Grouped Societies and specialist groups or by individ-
ual members of the Society direct as at present.

If, therefore, the new Association desires to make representations
on a particular point, the Council propose to tell it that such of its
The Necessity for Lawyers

traditional Law Society posture is the story of a client named Leslie Arthur Parsons and a solicitor named Glanville Richard Davies. Davies agreed to act as solicitor for Parsons on June 26, 1970. The matter dealt with agreements Parsons had with Mather & Platt Ltd. relating to the development of a machine which had been patented by Parsons. Parsons was granted an emergency Legal Aid Certificate while Davies conducted the litigation. The hearing on the case started on January 14, 1975 and the case was finally settled before the plaintiff's case was concluded on May 9, 1975. Davies arranged a settlement whereby Mather & Platt would pay Parsons £400,000. by way of damages and £130,000. for Parsons's shares in a joint venture company.

Parsons made complaints against Davies to the Law Society in

members as wish to do so should bring the matter in the first instance before a local Law Society for consideration.

The Council do not believe that it is wise to seek to divide the profession in the way in which the new Association will inevitably tend to do. Nor do they think that it is desirable to separate or “hive off” some of the functions of the Society. The great strength of our branch of the profession lies in the ability of The Law Society in consultation with the local Law Societies to settle the overall policies in the best possible way for the profession in the light of the knowledge and experience gained of all the manifold activities which are involved.

One cannot divorce the interests of the profession from those of the public. The welfare of the profession depends upon such matters as the education and training of the future solicitor, the integrity and efficiency of the profession as a whole and its relations with the Government and the public.

I am, therefore, asked by the Council to suggest that if your members enquire of you whether or not they should join the new Association, they should be discouraged from doing so not because there is any wish of the Council to stifle criticism but because it is best that any criticism should come from informed and representative quarters.

Yours very truly,

Secretary-General.

57. The facts of this case are copiously and vividly described in the “The Law Society Committee of Enquiry” which was created to examine The Law Society's treatment of the complaints of Mr. Parsons against Mr. Davies. The Report was published as a supplement to the Law Society's treatment of the complaints of Mr. Parsons against Mr. Davies. The Committee's findings were published as a supplement to the Law Society Gazette titled, Report of the Law Society Council's Committee of Enquiry into The Law Society's Treatment of the Complaints of Mr. L. A. Parsons against Mr. G. Davies and Mr. C. Malim. 81 LAW SOC'Y GAZETTE (Feb. 22, 1985 Supp.) [hereinafter Report].
one form or another from May 1976 to 1982. During this time officials at The Law Society found many reasons to deny his right to make his complaints in an effective manner. An action was finally filed in court and a judgment of McCowan, J. was rendered against Davies on November 18, 1982 in favor of Parsons. The judgment reduced the fee Davies had charged Parsons from £197,000 to £67,000. On October 24, 1983 Vinelott, J. entered an order striking Davies off the Roll of Solicitors.

Parsons claimed that Davies had handled his matter in an incompetent and ineffective manner, and that there was gross overcharging in the matter. Throughout the entire situation, the Law Society people, Council, Staff and Committee members, appeared to act, as the Report of the Committee on the matter said, as though Davies should be given the benefit of the doubt. On November 9, 1978 The Professional Purposes Committee of the Council decided that there had been no improper or unprofessional conduct on the part of Mr. Davies. It was not until Davies was found guilty by the court of gross overcharging that The Law Society began to realize that Mr. Parsons had been wronged by a solicitor. Davies had been a Law Society Council member since 1967 and resigned the office in December of 1982. At the time he was struck off the Rolls he was 60 years of age.

There were three lengthy documents produced after the fact, all published in The Law Society's Gazette - The Lay Observer's Letter to Mr. Leslie Parsons Regarding Mr. Glanville Davies, [hereinafter Lay Observer], Report of the Law Society Council's Committee of Enquiry into The Law Society's Treatment of the Complaints of Mr. L. A. Parsons against Mr. G. Davies and Mr. C. Malim, [hereinafter Report] and Response to the Reports of the Lay Observer and the Internal Enquiry on Parson v. Davies. [hereinafter Response]. All three have certain conclusions in common. All admit that The Law Society staff procedures for the handling of complaints were inadequate and to some degree unsympathetic. All assumed that the senior officer in charge of the

58. Id. at 18. "We can quite understand Mr. Parsons' description of the Council's resolution as a 'whitewash,' but we do not think that it was seen in that light by those at The Society who knew the facts."
59. 80 LAW SOC'Y GAZETTE 3202 (1983).
60. Report, supra note 57.
complaints "was under extreme pressure of work at the time." As the Lay Observer said: "... that seems to me to be an important reason for his failure then to see your [Parson's] complaints in a sufficiently broad perspective." In fact the Response to the Report, said that the "disastrous errors" in the handling of Parsons v. Davies stemmed from serious flaws in the initial agenda note before the Committee in November 1978. "It failed to summarize the essential issues of conduct and contained no recommendations ... ."

The problem of complaints against Council members and their firms came up for discussion in the Response. It suggested that these be handled differently than other complaints and by a different committee. It was felt that the issues were much wider than the issue of complaints against Council members. They said that

The Society is accused of putting the interests of the profession and of individual solicitors before the interests of the public when dealing with complaints. At worst the accusation is that The Society is "whitewashing" members of the profession; at best there is unease on the part of responsible critics that justice is not seen to be done because The Society is judge and jury in the profession's own cause.

The Response declared that these were old problems and what was needed are more lay participants in the process. There was now a need, they said, not only for better public relations but also for better professional relations with solicitors generally.

Individual solicitors are, by and large, in awe and even fear of the Professional Purposes function. They are, however, suspicious of it because, by its very nature, it operates confidentially and discreetly, and even more suspicious of what they regard as its secretive methods. In consequence they judge by its reported, or wrongly perceived, appearance and not by its reality. Co-option of non-elective members to the Committee should diminish these groundless but widely held fears and suspicions." [emphasis added].

62. Lay Observer, supra note 59 at 3205.
63. Id.
64. Response, supra note 61 at 941.
65. Id.
66. Id. at 945.
67. Id. (emphasis added).
Although The Law Society Report and Response were self critical, they were not contrite. The Report admitted that Mr. Parsons was “seriously wronged” and found “administrative failures, mistakes, wrong decisions, errors of judgment, failures in communication, highhandedness and insensitivity on a scale that must have done great harm to The Law Society.” They called the episode a “disgrace to The Law Society.” But, they only blamed a retired senior staff member and the procedural apparatus of The Law Society generally and said that changes should be made so that “criticisms of this magnitude can never again be levelled at The Society.”

The Law Society’s Council published a statement of “apology” and “sincere regret” to Mr. Parsons on February 22, 1984. The Council also said that the treatment of Mr. Parsons “fell short of what Mr. Parsons was entitled to expect.” Yet they went on and said, “in spite of the case being exceptionally heavy and complex, it should nevertheless have received correct and timely treatment.”

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68. Report, supra note 60, at 20.
69. Id.
70. Id.
71. Id. (emphasis added).
73. Id.
74. Id.
75. Id. (emphasis added). This short statement which appeared under the title in large letters Mr. G. R. Davies was preceded in a relatively terse manner in a half page statement under the title (in relatively small letters) which read:

Following the judgment of Mr. Justice Vinelott, The Law Society announced that when the Law Observer had completed his examination and reported, it would make a further statement. The Law Observer has now sent a written report to the complainant, Mr. L. A. Parson, with whose permission the full text of the Lay Observer’s report is reproduced below.

The Society accepts the criticisms of the Lay Observer. Indeed, fault was admitted in the statement (see [1983] Gazette, 26 October, 2646) published immediately following the judgment of Mr. Justice Vinelott. Nevertheless, as the Lay Observer points out, these criticisms need to be seen in context. He has emphasised in his recent Annual Reports to Parliament that there has been a steady and marked improvement, since the period to which these events relate, in the handling of complaints. He has only once before disagreed, and then but marginally, with a decision of the Professional Purposes Committee.
As one reads through the documents on this affair it becomes more and more apparent that those who shape the affairs of The Law Society do not see the Law Society as it appears to thousands of solicitors and outsiders. Even when it was to the advantage of the spokespersons for the Law Society to be contrite, as the italicized statements above demonstrate, they nevertheless, endeavored to exculpate and defend the organization. Much blame was placed on a now retired senior staff member, and individual solicitors who “wrongly perceived” the Professional Purposes Committee. An excuse for the wrong to Parsons was blamed on the case “being exceptionally heavy and complex.”

As was announced in [1983] Gazette, 23 November, 2962, the Council have already nominated three of their members (Mr. Philip Ely (Chairman), Professor Aubrey Diamond and Mr. Michael Churchouse) to examine The Society's treatment of Mr. Parsons' complaints. They will also consider the Lay Observer's report and the lessons to be learned from it. They will then report their findings to the Council. 80 LAW SOC'Y GAZETTE, 3202, 14 December 1983.

76. Response, supra note 61 at 945.
77. Supra note 72.

More excuses are found in the President's Address, in The Law Society Gazette, 1411-1412, 23 May 1984.

I suppose that the one matter which has done most damage to the prestige of The Society has been the Glanville Davies affair. I make no excuses for the admitted failures which took place in relation to that unhappy episode, and which have been fully canvassed in the findings of our internal report which the Council had the courage both to commission and to publish. Unfortunately, however, that report has given rise to the common perception of complete disarray in Chancery Lane. That is not the true position. Unfortunately, the council is inevitably judged in the light of hindsight, a luxury which was denied to those members of the committee who had to judge the facts at the time. As Mr. Parsons' solicitor, Mr Willoughby, has recently written in the New Law Journal, Mr. Glanville Davies was penalised, not for overcharging, but for his conduct in and around the taxation of the bill (described by a High Court judge as 'gross and persistent misconduct'), and it was this which led to his downfall. Quite so; but as the internal inquiry found, Mr Parsons' solicitors were told in November 1980 “that further consideration would be given when the taxation of the relevant bill of costs was completed.” Moreover, even as late as 1981, when they made a further complaint and reserved the right to raise more when the taxation was completed, they were told once more that the matter would be considered at the conclusion of the taxation, at which time they would be expected to finalise their complaints.
What is involved here is a history of aloofness and inattention to others not closely involved in the affairs of The Law Society. The Law Society's staff and officials have been unresponsive to solicitors over a long period of time. The organization has had an ingrained sense of condescension toward the public and the average solicitor. Part of this was admitted in the Report when there was a discussion of Mr. Davies' position as a Council member. The Report said that "Davies may have benefitted, not from being a Council Member as such, but from being known to the staff and the Committee members concerned. Davies was well-liked, and we cannot exclude the possibility that in making decisions the fact that Davies was involved may, perhaps unconsciously, have influenced those decisions."\(^\text{78}\) In his lecture before the University of Liverpool Faculty of Law, Sir David Napley, who has been closely involved with the Law Society over the years,\(^\text{79}\) in discussing the Glanville Davies affair said, in effect that, the situation was an isolated incident. "Just as one swallow does not make a summer, so one storm does not make a winter."\(^\text{80}\) This exemplifies the attitude

The Society was not told at any time before the judgment of Mr. Justice McCowan was received in December 1982 that the taxation had been completed, nor were the complaints finalised, and by that date the s.51 proceedings had been lodged and the matter taken out of the hands of The Society. Although the Committee can be rightly criticised for finding as they did in 1978, when they knew that the bill had first been reduced but was still subject to review, that allegations of misconduct had not been substantiated, and The Society can be criticised for not actively pursuing the reasons for that reduction instead of waiting for formal notification from the taxing master concerned once the taxation had been completed, it would be quite wrong to accuse The Society in the light of hindsight that it condoned 'the gross and persistent misconduct' which was ultimately found against Mr Davies.

Id.\(^\text{78}\).

of many who are intimately involved with The Law Society over the past years.

Many solicitors who were interviewed by the author from January to June of 1986 said that for years those involved with The Law Society took little note of solicitors who practiced outside of London or of ordinary general practitioners in London, until the Davies affair. Now, it is said, there is a rush to create new approaches involving different processes. Of course, this remains to

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81. In June of 1984, The Law Society commissioned Coopers & Lybrand, a management consultant firm, to investigate and report on the various facets of the Law Society, and this process has continued up to the present time. The background and purpose of the inquiry was described in the Management Consultant's Steering Committee's Third Report as follows:

1. In June 1984 the Council of The Law Society set up the Steering Committee with terms of reference to select management consultants to consider the organisation, management and administration of The Society's affairs, to settle the terms of reference of the consultants, to receive their reports and submit recommendations thereon to the Council through the Council Coordinating Committee. At the same time the Bye-Laws Revision Committee was set up to review The Society's constitution and Bye-Laws and both Committees were instructed to keep in close contact with each other's activities.

3. The background to the establishment by the Council of these two committees was a feeling within the profession and outside, that substantial changes needed to be made in the operations of The Law Society because of disquiet over a number of issues. Many felt that The Society was wearing too many hats and that its role as spokesman and representative of the solicitors' profession was perhaps not consistent with acting as the Government's agent to administer legal aid and possibly, in the eyes of some, with responsibility for handling complaints from the public about solicitors.

4. So far as the profession was concerned these anxieties were voiced at a meeting of presidents and secretaries of local law societies, which was held on 23 May 1984 and attended by over 300 people. The then President announced that the Council had decided that outside consultants should be engaged to look at the organisation of the Council and its staffing. He said that the review should include a consideration of whether the work of the Professional Purposes Committee should be separated into two parts, one dealing solely with the complaints and investigations, perhaps under a separate name and umbrella, and the other concerned with the making of practice rules and the performance of the pastoral role of The Society. Consideration should also be given to the role of The Society in relation to legal aid.

be seen. One solicitor, aware of all of these occurrences, and himself a onetime member of The Law Society Council said that it is doubtful if things can change at The Law Society.\textsuperscript{82} It is a large and unwieldy thing and perhaps no group can be run by a Council of seventy people. The Law Society, he said, does many things, some very well. But it is doing too many things at the same time, such as discipline, compulsory insurance, Legal Aid, the twenty-four Hour Duty solicitor scheme, etc. and it has little time or inclination to act as a protective umbrella for individual solicitors and the profession generally. This solicitor said that Davies was a busy, reputable lawyer who was overburdened with the weight of practice, and although the Davies case may never happen again, conditions surrounding the Law Society's handling of the matter will surface in other forms.

Another example demonstrates the truth of this conclusion. Within a few months after the reports and discussions of the Davies matter, the editors of \textit{The Law Society Gazette} and their solicitor colleagues who are very active Law Society members openly quarrelled with one of the non-London solicitor members of The Law Society because he had the audacity to propose a change in the voting procedures for membership on The Law Society Council at the annual general meeting of the Law Society.

One letter which appeared in June of 1984 by the solicitor, Mr. Stanley Best, ran one column, while the editor's annotation ran for a column and a third.\textsuperscript{83} In another column written by someone called "Enobarbus," Mr. Best was castigated as one who has "only a tenuous relationship with reality"\textsuperscript{84} and others were quoted as saying that the lawyer's performance at the annual general meeting was "a bumbling exhibition of incompetence and confusion."\textsuperscript{85} People mentioned in the article were those who had been in positions of influence in The Law Society for some years.

Thereafter a letter writer described \textit{The Law Society Gazette}

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\textsuperscript{82} This interview took place at solicitor's office in London, England on April 23, 1986. Many other interviews were conducted during the months of February, March, April and May of 1986 and the insights gained are integrated into this article.

\textsuperscript{83} 81 LAW SOC'Y GAZETTE 1963 (1984).

\textsuperscript{84} Enobarbus, \textit{What's Happened in Chancery Lane}, 81 LAW SOC'Y GAZETTE 2269 (1984).

\textsuperscript{85} Id.
treatment of the lawyer as "sensationalist and deplorable . . . "86 He and his supporters, it was said, are entitled to "some courtesy from their own professional body. I begin to see Mr. Best's antipathy towards the Council of The Law Society . . . "87 The Editors annotated this letter by saying that the letter writer was referring to a "factual account of the proceedings at the AGM . . . published in the issue of 1 August at pp. 2186-2192."88 The editors of the Gazette were mistaken. The writer of the letter was referring to Enobarbus's column of 29, August 1984 page 2269,89 and once again demonstrated their deep seated antagonism to any form of intervention in the affairs of Chancery Lane by individual solicitors, especially those connected with the BLA.90

(c) The Law Society As a Protective Association? Is It Capable of Protecting The Solicitor's Monopoly?

It has been suggested that there are three types of professional organizations—the "prestige" association, the "qualifying" associa-

87. Id. full text of Summers' letter:

I was astonished to read the report of the annual General Meeting in [1984] Gazette, 25 July, 2116-7.

Mr. Best may have lost his motion but it is not for The Law Society to canvass its evident pleasure at the result in such a sensationalist and deplorable manner.

Mr. Best and his supporters are entitled to receive some courtesy from their own professional body. I begin to see Mr. Best's antipathy towards the Council of The Law Society is well founded and I believe that he and his supporters are entitled to an apology.


Id.

88. Id.

The report to which Mr. Summers refers was a factual account of the proceedings at the AGM. The minutes of that meeting were published in the issue of 1 August at pp. 2186-2192. Editor.

89. Enobarbus, supra note 84.

90. There is much more to what could be called the "Stanley Best Saga" but only examples can be used. In July of 1984 Mr. Best wrote to the Gazette explaining his request for a motion on proxy voting at the annual general meeting. The editorial staff of the Gazette apologized to the readers of the Gazette for dealing with one of the solicitor members of the Law Society. The condescending attitude of these employees of the Law Society is painfully demonstrated in the annotation to Mr. Best's letter. S. Best, Letter, 81 LAW SOC'Y GAZETTE 2036 (1984). See also a similar performance by the editors, in 82 LAW SOC'Y GAZETTE, 6 (1985).
tion, and the "protective" or "occupational" association.\footnote{91} Prestige associations are so-called because membership therein is not automatic and the group involves itself in image-creating symbolism. Membership is usually an exclusive, selective one, although large numbers of professionals in a profession may be involved. These groups often take on aspects of a club and congeniality is placed above other attributes in determining not only membership but also leadership.\footnote{92} In the legal profession such groups are formed for a wide variety of purposes but they arise to demonstrate to a suspicious public that each member of the group is a "true professional" as distinguished from a mere "practical craftsman."\footnote{93}

The qualifying association, as its name implies, has as its fundamental aim to examine and qualify for the practice of the profession, even though the organization may engage in the entire scope of activities appropriate to professional associations.\footnote{94} They may contribute to, or engage in training and education, also acting as a research organizer in order to publish articles and books to re-educate or guide the practitioner. Another attribute of qualifying associations is the authority and power to create rules of ethics and the possibility of disciplining members, although in England and Wales very few qualifying associations have structured formal codes or disciplinary procedures.

The protective association has been a category which is difficult to assess.\footnote{95} It can be defined as "an association of qualified professionals working in a comparatively wide professional area, which provides an organized means of exercising pressure to protect and improve the working conditions and remuneration of the individual professional."\footnote{96} Some appear to act only as trade unions, but others, like the British Medical Association, engage in a broad range of public activities in addition to that which is purely for the good of the individual professional.\footnote{97}

It can be readily seen that The Law Society is the embodiment of all of these categories, being not only the legally sanc-
tioned qualifying association for solicitors but also operating its own college and research facilities. The Law Society is deeply involved in the disciplinary process, and when we think about it this is part of the symbolism and/or image the Society seeks to project. Not only is The Law Society a legislatively sanctioned qualifying group, it believes itself to be (and rightfully so) a prestige association as well as a protective association. The Law Society long ago accepted all of these responsibilities because there were no alternatives to it doing so. The question today is whether The Law Society can carry out all of its responsibilities and still remain a protective association for the benefit of all solicitors.

Whether the legal profession needs or deserves a monopoly over all legal practice is an impossible question to answer categorically. In the United States, the question is never completely answered except in the courtroom representation situation, and whether there is valid competition by non-lawyers (unauthorized practice) is always a vexing problem. The significant point as to whether lawyers should have a legislatively and judicially protected monopoly concerns the quality and reasonableness of the service provided. It is the job of the protective association of the profession to communicate the necessity for the monopoly to the public. This must be done with delicacy and understanding.

The conveyancing field is a good one to use as an example. Long ago, American lawyers lost their monopoly over title examination to abstract and title companies in many of the nation's cities, while the English solicitors had retained a monopoly. There

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[I]n answer to the arguments put forward by the UK Government, American experience shows that conveyancing by mortgage lenders increases cost, deprives the parties of needed services and protections, and involves inherent and unavoidable conflicts of interest. On the issue of increasing competition experience also contradicts the Government's position. Because the banks and building societies control the supply of mortgage money they can dictate the terms of the loan. If given the power they will, like their American counterparts, inevitably demand that they carry out the conveyancing. They will thus create a new monopoly dedicated to their own profit rather than to that of the seller and the buyer-mortgagor. That they will exercise such a monopoly benevolently is contrary to all human experience since the institu-
are good reasons to believe that the solicitor’s monopoly over conveyancing has resulted in a valid independent and reasonably cheap service to the English people, and it can be argued that solicitors do not profit greatly from the practice of conveyancing. However, the vast number of solicitors in England do rely on the conveyancing practice as a foundation for their general work and it has been instinctive for most solicitors to react negatively against those who propose changes in the conveyancing monopoly. It is understandable, therefore, that The Law Society would make some kind of effort to act as a protective association in trying to protect the conveyancing monopoly. As to whether it has acted effectuation of usury. Certainly it is unrealistic in the light of what has taken place in America, and the UK Government’s view that the results can be otherwise nothing short of naive.

Id. at 2131.

100. Id.


102. Id.

It can be observed that an “issue” which becomes a matter for public concern, promises distortion on both sides. In the great conveyancing debate The Law Society went to some lengths to stress the difficult and responsible nature of conveyancing, while those for competition (who seem not to have noticed what has happened to estate agents’ commission since they joined the free play of the market) sought to debunk what they took to be professional myth-making. While The Law Society produced lists of the 180 (or was it 280?) steps in a transaction, their opponents said it was all a simple matter of form-filling, for the most part carried out by secretaries.

So we had on the one hand the lawyers defending their professional monopoly the only way they knew how — stressing the public interest, complexity, responsibility — and on the other the unqualified contenders — emphasising the simplicity of the thing if only you got the lawyers out of their entrenched positions and, coincidentally, their willingness to fill the breach with a more efficient and much cheaper service.

Id. Mr. Graham Lee, while he was still with the Law Society wrote an article titled The Professions - Expensive Monopolies or in Need of Defense in which he discussed two lectures by eminent people on both sides of the issue. A point made concerning the conveyancing situation that although it is arguable that a separate and specialized profession could be created and carefully regulated, . . . why create a new profession if there is one which has the skill and experience to do what needs to be done.” 80 THE LAW SOC’Y GAZETTE 3042 (1983).

The following appeared in a regular column of the Gazette called From All Corners of The Office by someone calling him or herself Sebastian Cullwick in
tively is a matter of opinion.

In late 1983 and early 1984 a bill in Parliament called the "House Buyers Bill" was debated\(^{103}\) and finally withdrawn.\(^{104}\) The bill had been introduced by Mr. Austin Mitchell, a member of parliament who is also a journalist. The bill provided that only property on the Land Registry would be subject to the legislation and that provision of the relatively "easy and straightforward"\(^{105}\) services to consumers need not be performed by a solicitor as the present statutes dictated.\(^{106}\) In the debate on the bill Mr. Mitchell described solicitors as the

"Sinn Fein of the legal profession," with The Law Society behaving like the 'Provisional wing,' Mr. Mitchell suggested that The Law Society's role in the matter should have been 'to lead, to tell followers what the reality is, to help them to adjust to change when change becomes inevitable and not to demonstrate a backwoods, instinctive, negative reaction to change.' The service provided by lawyers is on the whole good, and if it is that good it will survive, but people should use solicitors through choice.\(^{107}\)

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106. Id.
107. Id.
Mr. Mitchell, a journalist by trade, was overstating his case, a not unusual trait in his occupational group. Although the House Buyer's Bill was withdrawn, soon thereafter Parliament passed the Administration of Justice Act which included extensive sections on "licensed conveyancing." A licensed conveyancer does not have to be a solicitor. A body to be known as the "Council for Licensed Conveyancers" is to establish the standards of "competence and professional conduct" for licensed conveyancers.

It is thus obvious that a part of the solicitor's monopoly has been adversely affected. In spite of this, a President of The Law Society demonstrated a year before the passage of the bill that the inflexible solicitor's monopoly was going to be abridged and giving the lie to Mr. Austin Mitchell's appraisal of The Law Society. After the withdrawal of the House Buyer's Bill the then President of The Law Society said that

It would be my own view that the advent of licensed conveyancers subject to proper safeguards may have two advantages. First, the public will choose rather than feel compelled to go to a solicitor for conveyancing and, provided they are competing on fair terms, I believe this choice poses no threat to an efficient solicitor. And secondly, there would be a real prospect of more effective sanctions against unlicensed practice which would remove what has been a running sore for the profession ever since the emergence of NHOS in the late 1960s. The virulence of the attacks on the profession and the ultimate second reading of the Bill fostered the general feeling that people other than solicitors should be allowed to undertake conveyancing and, if that is the will of Parliament, it is not for the profession to obstruct that wish but to continue to press for proper safeguards.

It seems strange to an American observer that a Law Society

109. Id. at ch. 61, § 11 (2).
110. Id. at ch. 61, § 12 (2).
111. The following statement has been issued to the profession by the President of the Law Society, 81 THE LAW SOC'Y GAZETTE 475 (1984).

Once again, this demonstrates an attitude toward solicitors which says, in effect, that it must be recognized that we cannot fight the emotionalism and even impracticality of the opponents of the solicitors. However, we must, as they have been saying at the Law Society, fight the Building Societies becoming their own conveyancers because it is "contrary to the interest of consumers that building societies and banks be permitted to under take conveyancing." Id.
president would defend even a Parliamentary abridgment of the
conveyancing monopoly. Protective associations do not act in this
manner.

Whether it realizes it or not, The Law Society's very existence
depends on its being engaged in protecting the lawyer's profes-
sional attributes. It will not do for The Law Society apologists to
say, for example, that only the "left wingers" in Parliament are
trying to "take the powers to deal with complaints against solicitors
away from the profession and into the hands of a statutory
independent body." There is much more to these parliamentary
declarations than this. And to answer that "Would his time not be
better spent in promoting such a body to deal with the public's
complaints against their Members of Parliament?" is not con-
fronting the reality of these attacks on the solicitor's profession.

Only in the recent past has The Law Society made any real
effort to represent the entire solicitor's profession. In its earlier
history, The Law Society had an "innuendo of exclusiveness" about it. As late as 1905 it was felt that "[t]he Council was a
remote body of London solicitors who knew nothing of and wished
to have nothing to do with the country solicitor."

112. Napley, supra note 80, at 825.

The latest attack on the profession comes from some left-wing
Member of Parliament. He has promoted a Private Member's Bill
designed to take the powers to deal with complaints against solicitors
away from the profession and into the hands of a statutory indepen-
dent body. Would his time not be better spent in promoting such a body to deal with the public's complaints against their Members of Parliament?

Here is a body of people, of whom, on entering politics, no train-
ing, skill, learning or expertise is required; who are not required to
demonstrate or maintain particular standards of integrity; who are
subject to no disciplinary process for the management of either their
constituents' affairs, or the public generally, and, in practical terms,
the theory that under a democratic system the public can remove
them at a general election is, outside of a limited number of marginal
constituencies, wholly unrealistic.

113. Id.

114. Id.

115. H. Kirk, supra note 46, at 34.

116. Id. at 35.

In its early days, The Law Society and its predecessor, Id. at 23-24, did not
purport to be or become a professional organization of the profession as a whole. Id. at 23-26. The organization had an "innuendo of exclusiveness" to it. Id. at 34.
In order to survive, professional associations must preserve a solid front to the public and represent all members of the profession.\textsuperscript{117} To protect solicitors from unfair competition and to fend off lay controls generally, The Law Society must be highly sensitive to public disapproval.\textsuperscript{118} The essence of the Law Society's problem is an ingrained lack of sensitivity to the individual solicitor's problems.

III. Conclusions

It is a bit presumptuous of Americans to make suggestions about the workings of a foreign legal profession. Be that as it may, the author has been closely viewing the solicitor's branch of the English legal profession for at least fifteen years, and it is quite apparent that the American and English lawyer organizations have some things in common. It is only a matter of luck that the American version of \textit{Parsons v. Davies} has not hit the front pages in the United States.

Lawyers in the larger firms, both in England and the United States have felt that they were immune from discipline and rules. Recently a popular business magazine in the United States raised the question of arrogance at the so-called elite law firms,\textsuperscript{119} pointing to the number of cases involving relatively unsavory conduct...
by large law firms.\textsuperscript{120}

The Law Society’s consultants Coopers & Lybrand have suggested that The Law Society’s disciplinary function be separated from other activities.\textsuperscript{121} It is suggested that an independent investigatory body comprised of mostly lay people be created.\textsuperscript{122} In this body it is hoped that investigations of complaints against solicitors will be objectively processed. An adjudicative committee would be maintained but it would still be comprised of solicitors.\textsuperscript{123}

The suggestions might work to forestall, for the present, another Parsons v. Davies and distasteful public scenes. However, the atmosphere and ambiance of the old Law Society still exists. Very little will change unless a new system is created whereby the solicitors themselves are able to directly elect the Council and the officers of the Law Society.

That change will be slow in coming is demonstrated by the Stanley Best saga. Within a few months of an apology to Mr. Parsons, the staff of The Law Society continued its old condescending attitude toward Mr. Best. The Law Society staff merely reflects the

\textsuperscript{120} The following fact situations were used as leads in the Business Week article:

Item: A Rogers & Wells lawyer wrote himself a note in 1983 about one of the firm’s clients, J. David Dominelli: “Ponzi scheme. Love to have the business but want to sleep at night.” It would be months, however, before the firm severed its ties to the lucrative client.

Item: As Maryland’s thrift industry hurtled toward disaster last spring, regulators turned for advice to a bright young lawyer from Venable, Baetjer & Howard, a top Baltimore firm. What most of the regulators didn’t know was that while the lawyer was advising them, his law partners were representing the very people whose wheeling and dealing at the edge of the law filled the agency’s agenda at nearly every meeting.

Item: In April 1981, a lawyer from prestigious Cravath, Swaine & Moore quietly made a trip to Geneva with orders from Cravath chief Samuel Butler. The mission: to get back $1.3 million that client Ashland Oil Inc. had paid a confidant of the Sultan of Oman. A shareholders’ suit claims the trip was part of a scheme Butler helped devise to circumvent U.S. antibribery laws by retrieving the original payment in exchange for a new $3 million “finder’s fee” to the Sultan’s confidant. Butler denies the charge.

\textsuperscript{121} Coopers & Lybrand, supra note 81, at 583, 590, 593; see also Third Report of the Management Consultants Steering Committee, supra note 81, at 580, 581.

\textsuperscript{122} Coopers & Lybrand, supra note 81 at 593.

\textsuperscript{123} Id. at 590.
leadership and no change seems apparent there, unless changes are made in the methods and processes in which the organization operates. Mr. Best was trying to excite some interest in such by suggesting procedural reforms in the group’s electoral practices. The present system which bases the membership of the Council on the local law societies and so-called specialist members, is removed from the general membership of the profession. Mr. Best wanted more direct elections and wanted the Council reduced in size from 70 to 40 members.124 (One Council member interviewed said that no organization can function effectively with a Board of Directors of 70). Just as many lawyer associations in the United States conduct balloting of their membership by mail, so could The Law Society. The Law Society conducts its operations similar to the American Bar Association (ABA), a voluntary group, which is not intended to be democratically operated.

It is submitted that The Law Society can only survive and prosper as an effective solicitor representative if a new regime is created. A new atmosphere and spirit is necessary. The old condescending aloofness of the organization must be abandoned.125 The Law Society must become a protective association in the style of the British Medical Association, and communicate effectively with the public and Parliament.

124. 81 THE LAW SOC’Y GAZETTE 1805 (1984) (One council member interviewed said that no organization can function effectively with a Board of Directors of 70).

125. The Young Solicitors Group in their The Law Society-Time for Change? have realized that there is something here much deeper than merely a joust between the Law Society and some members of Parliament and unlicenced conveyancers. They have shown that the Law Society is constantly in a conflict situation between its representative role and its other roles. Of course, this is exactly what the BLA has tried to show for some twenty years.

... Appearances of Law Society spokesmen on television in particular have given rise to the belief that The Law Society is defensive about its position and generally complacent in its approach... Young Solicitors, supra note 52.