

Excellence is through industry achieved.

W Shakespeare, Two Gentlemen of Verona.

I imagine you are asking yourself why I enjoy the privilege of giving this speech. I have been asking myself the same question.

Part of the answer is that during the last decade I have grown to respect and admire this profession more than I had ever imagined possible. I have been to court so that I might study styles and understand the drivers for barristers' articulacy. I have listened to technical advice on presentation. I have become friends with many of the Bar through my Kalisher work - the Trust supports youngsters keen to come to the criminal Bar but struggling financially to do so.

In my work I function on integrity of performance and without it I would crumble both professionally and morally. If my prime objective is to enhance my ego, or if my attention is on myself rather than the portrait I'm employed to create, my audience will know it, by instinct or perspicacity, and my effectiveness will be reduced.

I have come to understand that the need to hold up one's metaphoric head is at the core not just of my but of the barrister's work ethic. Your profession stands proud in a world of mediocrity. But one need do no more than pick up a newspaper, listen to the wireless, watch the television, talk to advocates and to concerned observers to see the perils ahead. I fear the Bar is in very real danger – now.

It is a danger that will not be averted if, as Edmund Burke probably said “*good men fail to speak*”. History does not allow us to be certain he used those precise words, but never mind his syntax – he meant the message, and so do I.

I am, of course, here to speak to you - members of the Bar, Judges, Bar students.

But, in a very real and urgent sense, I speak in the hope that others beyond these walls will listen.

Although I am an actor and– perhaps I should explain - not a real Judge at all- if the very novelty, indeed the hubris, of a pretend judge giving a legal lecture makes people sit up and listen, then I will have played my part.

Martin Shaw has more in common with you than you think.

- I am self-employed and hired for one part at a time.
- There is much ‘down time’ in between parts – especially in the early days.
- The financial risks are great.
- Like all of you at the Bar I have no pension, no holiday pay and no safety net
- I have to spend long periods living out of a suitcase in a provincial city, miles from home, often lonely, always missing my family
- The work is demanding
- I may never be able to retire.
- It is a life in which performance and reputation is everything.

- It takes ten years to build a reputation and ten seconds to lose it.
- I am only as good as my last part.
- Preparation is everything – work, work, and more work so that it is perfect on the night.
- I cannot afford to make a mistake – the stakes are too high.
- I have one shot at it, in public
- There are days when nothing will go right
- The wig sometimes doesn't fit.
- My well-crafted delivery can be interrupted from the gallery.
- The audience is not always quiet respectful and unreservedly admiring.

- The skills are largely learned by watching others, and learning from them, but the art is to be yourself and play to your strengths.

- And your most brilliant late night inspirations are often ignored, overruled, or otherwise rubbished by the Eminence directing the proceedings. Having worked with Sir Peter Hall many times, I've learned not to be instantly submissive when we disagree, but generally find a week or so into the run of the play that he was right all along.

Recognise the job description? Thought so.

Perhaps because of the things we have in common I have a natural empathy with the criminal barrister. Additionally I've come into contact with many of you because of the roles I have been asked to play.

In a sense, I have been allowed to peer behind the curtain

I have had a privileged view which the general public rarely, if ever, sees.

And that has led me to think about the parts you all play

- Their importance
- The stresses and strains
- The myths and the realities

It is a connection which has led over the years to my becoming a trustee of the Kalisher Scholarship Trust. And to the very great honour of being elected an Honorary Bencher of Gray's Inn. I have to pinch myself. A Bencher of Gray's. I could give an entire lecture entitled "What that means to me". But Shakespeare says it best: "Now does he feel his title hang loose about him, like a giant's robe upon a dwarfish thief."

And to cap it all – my own stepdaughter has begun the long and arduous struggle to become a member of your profession.

I am quintessentially the informed outsider, and it is sometimes useful for all of us to pause, step back, and consider how others see us. It gives us a view of ourselves we do not normally have.

How does the informed outsider see the criminal advocate?

Yours is an ancient profession. It is full of tradition, and to the man in the street some parts may seem arcane.

Grown men (and women!) celebrating the pinnacle of their careers by parading the streets of London in wigs and stockings. Bravely, some would say foolhardily, risking the suggestion they might present some manner of caricature. Heaven forfend.

But like many professions yours has a top-dressing, and what I gently and affectionately mock is no more than that. It reflects little of the muscular practice beneath and certainly not the altogether less glamorous day-to-day practice of the criminal courts.

In your small but collegiate profession, the trust and confidence of one advocate in another is crucial.

It demands and polices a reputation for high ethical standards – “being as straight as a die”- is key. The Circuit system has long been astute to identify and to shame the very few whose conduct is below that benchmark. The sharp, the dodgy, the “don’t turn your back on him” cannot hide at the Bar of England and Wales.

Everyone relies on this deep-seated tradition of probity, not least the Judges. They have neither opportunity nor time nor inclination to descend into the well of their court to unpick the behaviour of counsel. They must be able to consider the arguments, not concern themselves as to what manner of man or woman advances them.

But the public leans with complete confidence upon your profession. It absorbs information in part from the factual and in part from the fictional – me playing a Judge, by and large – but the public must be sure that without question it may rely on you.

Without that building block of mutual comfort – the profession aware the public values it, the public aware the profession serves it - the system simply could not function.

- When did you last hear – or ever hear, for that matter – of a prosecution conducted by a crooked barrister?
- Or of defence counsel lying to the court, or concealing evidence, to secure a wrongful acquittal?
- Or of a judge taking a bribe?

When there is a disaster, when there is a difficulty, when hard questions must be asked in the national interest, what is the instinctive, unquestioning reaction? “This needs a judicial enquiry. Let’s hear a distinguished QC put these people through their paces”.

This is a state of affairs we take for granted.

Your profession, as well as our courts, has an unrivalled international reputation

Why else do Russian oligarchs want to fight their legal battles here? Why does Mrs Litvinenko as she prepares for the inquest into her husband’s death say “I believe we will get justice in Britain”? An inquest to be conducted by Sir Robert Owen, once a distinguished QC now a distinguished High Court Judge.

Why else are criminal barristers in such demand in the international courts and tribunals?

What is it which is common to all these practitioners? What created that confidence worldwide? It’s their training at the Bar of

England and Wales. They knew and know that there is one way and one way only to create and then to retain that reputation for excellence. Practice. There is a reason for that noun. Let's examine the context.

The strengths of the Bar extend well beyond strong professional discipline and ethical standards. It is the way in which the profession is structured which is key.

It is a referral profession of specialist advocates. Counsel is available to any prosecution, or to any accused, in any part of the country. These are highly skilled advocates who prosecute or defend, or both - day in and day out. They are independent of each other, and independent of those whose case they argue. They have a strong sense of duty fearlessly to advance their client's case BUT an even stronger duty to the court, and to justice. They are sturdy enough to give strong advice to whoever they represent, even if unpalatable.

They are not commercially tied to the outcome. Not for them the fee linked to "success". Quite the reverse. The verdict or sentence will not dictate payment. The independent Bar lives or dies in an

immensely competitive profession in which every individual must prove him or herself to get work.

Having got it, she or he must compete with every other advocate, on quality and performance. Lack talent and you will not work. This too we share.

That strong figure of the fearless and independent advocate has inspired so much literature and theatre. The Merchant of Venice, Dock Brief, The Winslow Boy, a Few Good Men. A Matter of Life of Death, Witness for the Prosecution

It has also made folk-heroes of fictional characters – long live Horace Rumpole. And someone mentioned a chap called John Deed. I've not heard of him, myself, but I don't get out much.

That blend of courage, independence, and rugged individualism largely defines the popular image of the advocate. Driven by the need to do right, to see justice done, to protect against injustice.

The public loves Peter Moffat's "Silk" on the television, set in chambers in the Temple. Martha Costello QC, beautifully played by Maxine Peake, is one of the nation's favourite heroines.

- It is no accident that Martha has become the model for many modern young women.
- The country wants and expects to be defended by her.
- It cannot imagine anything less.

And because of its long and powerful tradition, yours is a profession which has attracted some quite remarkable individuals into its ranks.

It is not just the fictional characters who are colourful, or larger than life, as you know.

The criminal court is a stage on which, from time to time, giants have walked.

Men and women of exceptional ability, and extraordinary talent and commitment.

We could all name a few – even in the present generation.

- It is that sort of profession.
- A magnet for the talented, and for the passionate.
- For those who want to see justice done.

And the strength of the profession is that these strong, educated, trained, battle-hardened, fearless practitioners are available to all who need them. They take work as it comes. They do not refuse even the most distressing case, or the most unpleasant or dangerous client.

Commit a serious offence in Grimsby, or any corner of the land, and you can have one of them to fight your corner. You can have the best to defend you, the straightest and truest prosecuting you.....

Currently.

Let's look for a moment at the value of what you, this small profession, do and at the importance of what you take on when you join.

What more socially important work could there be for a lawyer than to participate in the criminal justice system?

- To play a part in seeing the guilty punished, and those wrongly accused walk free?
- To ensure that justice is done.

It is vital work

- It requires commitment
- It requires dedication
- And it requires excellence.

How do we continue to find and to promote excellence?

We live in very challenging times

- Public finances are in a mess
- Publicly funded services are under the most enormous pressure
- There appears to be a feeling in Government that legal services are well down the pecking order of priorities
- Fees for lawyers are not a popular cause – you may have spotted that.

You are by now well used to stiffening your sinews, summoning up the blood, and trying to cope with the pincer movement which has seen you face lower fees over the years whilst the bedrock of the profession you love seems increasingly less solid.

That strikes me as one pressing problem. Here's another.

Deregulation.

Government loves the idea of large commercial entities. And I'll leave it to you to ponder the effectiveness of the NHS, Transport, and so many others. I recall with fondness London Weekend Television, Thames Television, ATV, Yorkshire TV, Anglia, Tyne Tees, Border, Grampian, and before it swallowed all, Granada. All these produced in-house drama, documentaries, and light entertainment, employing actors, writers, directors, and all the associated professions. An inherently precarious profession was more sustainable because there were so many competing entities, and their measure of success was excellence. A producer was the controlling mind, and his or her vision would bring writer, director and cast together without the necessity of passing every minor decision upward through an executive chain whose understanding was in inverse proportion to its salary.

When that independence of approach began to change one consequence was that "ratings" became confused with excellence, and the slide to dumber and dumber began. Those who would pay upwards of £20 a month for cable or satellite, and a hefty percentage towards the advertising budget on anything they buy, will complain of the £145 for their TV licence. When the BBC is thus compelled to enter a ratings Derby, The Winners' Enclosure is likely to contain more X Factor than Shakespeare. I

hope you will forgive this personal rant, but I believe there are very real parallels for your profession in this plunge to The Lowest Common Denominator.

What will happen if proposals for your future are not halted? Big beasts, of differing hue, will bid for publicly funded work – your work - at fixed prices

Industrial scale rather than personal service will be the order of the day. Never mind the lament for the High Street butcher, cheesemonger, baker, ironmonger. You'll struggle to find a High Street solicitor before long. How is he going to survive if BeastCoLegal can offer advocacy on the same basis that Tesco sells sugar?

Commerce will mean low-cost in-house advocates. When I say “low cost” I should be more careful and say “apparently low cost” – we'll come back to that.

As I speak, competition between individual independent practitioners keeps up standards. The criminal court is an unforgiving crucible in which the competent survive, the inadequate dissolve, but the good are burnished.

You all remember or still experience the toiling into the small hours mastering the brief, slogging to court, coping with someone unappealing, hostile, and less intelligent than you – and as well as the Judge, the defendant. Those are your training grounds. The attritional honing of the individual's skills and style, in the arena, against an opponent.

If “scale” becomes the motif for the profession, it takes little imagination to see the direction of travel. Hardy souls hungry for advancement and for recognition – and every one of them self-employed – will become historic, and not in a good way.

What is contemplated would be a no-frills, cheap and cheerful bulk legal service.

Tesco Law, Asda Legal, and, if you need the cachet of a Silk, Waitrose Lex.

And this risk, this real risk, the profession rightly views as deeply suspicious and damaging.

Your referral profession of specialist advocates will simply wither and die.

- Choice? Gone. It will be “allocation”.
- Independence of mind? What would that achieve? Why battle it out with an unsympathetic court or an unrelenting opponent or an unrealistic instructing solicitor? That won't, any longer, advance your career. Remember those hours spent checking and double-checking that you were up to date with the latest convoluted sentencing provisions? Not any more.

No, the new career path will feature a practitioner's ability to master regulations. Regulations about you. Not about criminal justice legislation, but you.

- It is case-by-case referral of work which drives competition.
- Competition is the one sure guarantor of excellence.
- Excellence produces justice.

Bulk commerce on the other hand trades in adequacy, not in excellence. It will not genuflect to you. That's not how profits are

made. Consider the irresistible rise of the Soap Opera - useful and entertaining as chewing-gum television, but deadly if the artistic palate is flattened and overwhelmed by an excess of it. Or if the viewer accepts that normal life is being portrayed, several times a week and with an omnibus edition at the weekend.

Changes are already having this effect

- Good solicitors are leaving the profession.
- Those who remain are under intense commercial pressure
- They survive only by bringing more and more advocacy in-house
- It is misery for the young Bar
- It is strangling training
- One generation is becoming disillusioned and giving up
- Another generation is being turned away

It is no less than disaster for the criminal justice system

A potential catastrophe of which the general public is presently completely oblivious.

Of course you do not need me to tell you all this.

But your arguments, like mine for my profession, will be insulted, called special pleading, reflecting self-interest, and finessed away.

It needs outsiders to recognise the danger and to speak out.

And it needs the public to hear, to understand, and to hold on to you whilst as a profession you are here to be held.

A very important institution – you – is well on the way to being lost. Once they are compromised it's exceedingly difficult to bring back standards. I know what I'm talking about. Remember repertory theatre? My career path is shared by most actors of my generation. After studying at one of the great drama schools I went into rep as an assistant stage manager, and learned every aspect of theatre, from making tea for camp and unappreciative

leading men, to hanging precariously from the grid 40 feet above the stage forcing rope through pulleys. No Health and Safety then! Through this experience, and watching actors both good and bad, I questioned, absorbed, imitated, but most of all learned. A different play every 2 weeks, rehearse the next offering during the day, perform the current in the evening and twice on Wednesday and Saturday. Learn lines instead of sleep. Local communities expected to see quality and to watch emerging talent. A marvellous training ground, tough, unforgiving, sifting out the barely adequate, celebrating the talented.

Recognise that job description too? Thought so.

The criminal Bar is very important to all of us – in one way or another

- As victims of crime
- As witnesses, or jurors
- Or as people accused, sometimes wrongly accused, of crime

This is a profession vital to the protection of our liberties.

A profession we abandon, or “dumb down” at our peril.

The public can currently be absolutely confident in those who prosecute and defend.

- It can, rightly, take for granted the superb service you offer.
- It is woven into the grain of our life in this country
- It is that confidence, that public confidence, which will be lost.

The excellence on which you rightly pride yourselves serves not to massage your collective ego but to provide the public with a service it deserves. When I go into hospital I don't want surgery by someone whose claim to expertise is an ability to empathise with me. I want someone trained AND PRACTISING for years, so the apparently straightforward, when it all goes wrong, he or she can cope with. And when I'm having my hip replaced, I don't want it done by a dentist.

When I think about your profession, what do I want? I want a trained specialist who knows the job because he or she has been honing advocacy skills for years.

I want criminals prosecuted by ethical and able practitioners. Fearless, stout-hearted, nobody's yes man. I want to know that the person representing the Crown is not there "to get a conviction". I want someone with the true confidence born of understanding the subtleties of courtcraft and with a complete grasp of the law. Someone who can – and will - say "This is wrong. This goes too far. This is inappropriate. Stand back and reflect. I will not be a party to excess". And who will say it even if the outcome – shortened proceedings, reduced earnings – is against personal interest.

I want those wrongly accused protected from a miscarriage of justice. I want those rightly accused to be sentenced proportionately.

I expect and am willing as a taxpayer to fund your services on all those fronts. Like any fair-minded individual I cannot be fobbed off with "In-house advocacy is cheaper and just as good" It will not be cheaper. Things will go wrong. The Court of Appeal is an

expensive place. One of the things we taught aspiring barristers, on the Kalisher advocacy and presentation course, is “Get it right the first time”. Criminal law is stratified, difficult, ever-expanding, hard to master and very hard to keep abreast of. That enviable seamless presentation which distils three Acts of Parliament, five cases which at first seem contradictory, and comes up with the compelling argument which turns the court – that comes after years of standing up, on your hind legs, in public, prepared prepared prepared, ready to take on your opponent, your opponents, the Judge – the whole lot of them – because you have been trained to do it, you’re there to do it, and it’s the only standard you know. You don’t learn that, nine-to-five.

This profession needs to be viable and to continue to offer a quality we all expect. There is a grave risk that unwise unwary change plus commerce will make this impossible.

The best and brightest must be recruited, from every background, and from the widest possible talent pool, irrespective of social status. Women and members of ethnic minorities have spent long enough raising their eyes and seeing, above them, in better positions, only men. Glass ceilings have no place in the legal

profession. But breakthrough have come only by hard work added to talent added to sheer gritty determination.

Funding is now so tight that the allied risk is that once again it will only be the moneyed who can get to, and stay at, the criminal Bar.

Why, on these two fronts – glass ceilings and privileged backgrounds - are we preparing to watch the clock go back forty years? Why? When we've come so far?

Why am I a Kalisher Trustee?

Mike Kalisher QC was at the top of the profession. He was fiercely independent, he worked all the hours he needed to master the brief – no nine to fives for him, he was well acquainted with two in the morning working on the cross-examination for the next day – and he understood two vital, linked propositions. If an independent professional is to rise to the top, that ascent requires good remuneration – not riches, but good, fair remuneration – and it requires the bestowal of status.

In his memory, and drawing upon the wisdom of that approach, we open opportunities for youngsters with talent but limited means who without us could not come into the profession. That's why I'm

a trustee. That's why Maxine, year after year, turns out with the Kalisher Players to burnish our reputation at the annual Staged Reading.

Maxine, had she really been Martha Costello, would have been the classic Kalisher Scholar. No family in the profession. No private income to cushion progress. But talent, vision, determination, grit.

My own Inn – I'm so proud of that phrase. I'll just say it again – my own Inn - works to nurture the young. We give, annually, scholarships and bursaries. We educate. We teach advocacy. We know about high standards and we do everything we can to make them endure.

But in a sense all of us spend too much time talking to each other. It's the public who must see what is at risk and make its voice heard.

You must not give up the fight. We must, together, win it.

Not for the first time, William Shakespeare encapsulated what we all feel but sometimes struggle to say. In Two Gentlemen of Verona he wrote "Excellence is through industry achieved."

So it is. So shall it ever be. Your excellence, our shared industry,
Yours as you do your job, ours as we stand behind you to be
counted.

Now you know why I am here.

The government must pull back from proposals which will so
erode the Bar as to destroy it.

This lecture contains no jargon. I have stayed clear of technical
terms. I have said nothing grandiose or florid. I have avoided
statistics. “An honest tale speeds best being plainly told”. I have
wanted only to explain to a thoughtful, questioning, loyal public
that at its peril it lets the independent Bar of England and Wales
founder.

I told you Shakespeare understood. In Richard II the Duke of York
says:

As in a theatre, the eyes of men,

After a well-graced actor leaves the stage,

Are idly bent on him that enters next,

Thinking his prattle to be tedious.

Now is not the time for prattlers. Now is the time for you to hold
the stage and grace it.

I am your profound admirer and your willing servant. I offer you
my small voice, but I invite, on your behalf, the fair-minded British
public to bellow its support - for you, and for the noble virtue of
justice which is at the core of your hearts.

Thank you.