



Speech to the Bar Conference

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Ladies and gentlemen, I am proud of the Bar. I am proud to be a barrister. I hope that you are as well.

Our profession has a long history. There have been barristers in this country since at least 1466. For over 500 years, members of the Bar have been appearing in our courts, defending the rights of the individual, upholding the prerogatives of government, and helping businesses to resolve their disputes.

I wrote recently that we can be proud that members of the Bar represented the slave, James Somerset, when in 1772 his former owner asked the Lord Chief Justice, Lord Mansfield, to treat Somerset as an item of property rather than a human being. The argument of those barristers prevailed, and Lord Mansfield's judgment put an end to slavery in this country.

And in 1944 members of the Bar acted for Learie Constantine, the gifted West Indian cricketer. They were successful in arguing that the common law did not permit a hotel keeper to refuse Constantine a room because of the colour of his skin.

I could go on and list any number of cases in which barristers have argued points which have helped to shape the society we live in. But time does not permit me, and in any event, the theme of our conference is the Bar as it is today.

Nevertheless, before I turn to the Bar of today, please forgive me if I make three points about our 550 years of history.

The first is that I do not ignore the fact that there were barristers on the other side in cases of the kind I have mentioned. On the contrary, I want to take this opportunity to stress how important it is that all parties who find themselves before the courts should be able to have their case properly presented, however popular or unpopular they or their case may be. This is a fundamental feature of the role of the advocate. Indeed, it is a question of constitutional significance.

What concerns us as a profession is that both parties' cases should be properly presented to the court, so that everyone has had a fair trial and the court is in the best position to reach a just decision on the matter in issue.

In a criminal case, for instance, the fact that I as the barrister might take the view that the evidence against the defendant is very strong, or that the crime with which he is charged is a particularly unpleasant one, is no reason for me to refuse to represent him.

I am not the judge, and I am not the jury. The jury decide whether my client is innocent or guilty. I do not. That is not my job. My job is to ensure that the evidence which the jury hear is properly tested, and that such arguments as can properly be advanced on behalf of my client are put before the court.

And it is vital that someone who is properly qualified by their training and experience does that job, especially in a case where a member of our society is at risk of being sent to prison.

My second point about our profession's history is that it provides us with many examples to look to and draw inspiration from. And we are better lawyers for that.

For instance, I am proud to be a member of the same profession as Sir Edward Marshall Hall. This does not mean that I ever could, or would, address a court or tribunal in the same flamboyant terms he might have used. But every day, I am conscious that I am carrying on the tradition of which he, and many others I could name, were such shining examples.

And I don't even need to go back to the days of Marshall Hall. There are many advocates we have all known personally or have seen in action who continue to inspire us. In my case, I could mention my old heads of chambers, Lord Neill QC and Richard Southwell QC. I am sure that everyone in this room could name someone they have known or seen in court who is an inspiration to them in a similar way.

And this tradition, strongly reinforced by the Inns of Court, is part of what helps to inspire excellence, rather than merely competence, in what we do.

And my third point about our profession's history is that we are still here. Much has happened since 1466: the reformation, the dissolution of the monasteries, the civil war, the bloody assizes, the slow progress towards democracy, the world wars, the permissive society, and the technological revolution. And through all of that we have not only survived, but gone from strength to strength.

We have survived Oliver Cromwell, and we have survived Judge Jeffreys. And I believe that we will survive anything which this or any other Government throws at us.

And I am confident about this for three reasons.

The first is that the job which we do has to be done. Every day, in courts up and down this country, difficult, but important, questions, have to be answered. For example:

- Will I go to prison?
- Will my daughter's killer be punished?
- Will I be able to see my children?
- Will something be done about the parent who abused me?
- Will I be made bankrupt, or my business be made insolvent?
- Will I ever get paid for the work I did?

Our job is to not to answer these questions, but to see to it that, when they are answered by a judge or a jury, the judge or jury is fully aware of all of the evidence, and all of the arguments, which might make a difference for the person we represent.

Whichever political party is in power, and whatever the state of the country's finances, that job has to be done, and it has to be done well.

That brings me on to my second reason. We don't just do our job, we do it well. Examining or cross-examining a witness takes skill. Developing a legal argument takes skill. And helping a judge or jury to see and understand the question they have to decide from the perspective of the person you represent takes skill.

It is no accident that the overwhelming majority of complex, difficult and important cases which come before our courts are conducted by barristers. Twenty-five years ago, when I first became involved in the affairs of the Bar Council, I was encouraged to do so by Richard Southwell, whom I have already mentioned. And his view was that the one thing above all others which we should cherish, maintain and do our best to enhance was our reputation for excellence. I agreed with him then, and I agree with him now.

My third reason for believing that our profession will continue to flourish is that we are prepared to adapt. Practice today is not the same as it was in 1466. If we had clung doggedly to the ways of 1466, we might not have made it to 2014. As the Romans said, over two

thousand years ago, *tempora mutantur, nos et mutamur in illis*. Times change, and we change with them.

That is not to say that all change is good. It is not. All too often, proposals for change would make things different, but no better, and probably worse. It is our duty to oppose ill-conceived proposals for change. And much of my time, and that of the Bar Council, over the last year has gone into just that. I will come back to this.

But change happens, and we have to deal with it. And we do. Lord Judge reminded us, in a speech in June, that there had been a huge change at the beginning of his legal career, when we saw the end of old style undefended divorces. A class of cases which had kept many barristers busy for a long time simply disappeared.

Did we despair? No. Did we sit down and cry? No. We dealt with it, and we moved on. And there are now many more practising barristers, and many more barristers practising in the field of family law, than was the case in the 1960s.

And, contrary to the rather tired stereotype, today's barristers are willing to consider, and have in many cases adopted, innovative approaches to their work. For example, many sets of chambers have a more business-like manner of organising and presenting themselves than might have been the case in the past. This often includes employing a chief executive and supporting staff as well as the traditional clerks. Chief executives were an innovation when I was a pupil, but they have now become the norm.

Likewise, many barristers have undertaken the training necessary to enable them, when appropriate, to offer their services direct to members of the public, and not merely on the instructions of a solicitor. And increasing numbers are making use of BarCo, the escrow account established by the Bar Council.

But developments like this are only worthwhile if they go hand in hand with a continued commitment to excellence. And excellence is behind one development which I believe has received insufficient notice in recent years. I refer to the fact that English barristers are regularly the advocates of choice in international criminal cases, whether they concern the former Yugoslavia, Rwanda, Lebanon, Sierra Leone or anywhere else.

This international dimension to the criminal Bar serves to complement the work of, for instance, the commercial, chancery and construction bars which is done overseas or for overseas clients. Any notion that the English Bar is insular would be completely false. Barristers are regularly instructed to advise foreign clients, to represent foreign clients in English courts, or to assist or represent parties appearing before foreign courts or arbitral tribunals.

So much so that one eighth of the Bar's total income comes from overseas clients. And this has been a growth area in recent years.

The growing export of English legal services is one of the United Kingdom's success stories. And the Bar has played a full part in that, encouraged by the Bar Council, which organises overseas trade missions and works with organisations such as TheCityUK and UKTI. Next

February's Global Law Summit will be another opportunity to demonstrate the Bar's strengths to potential clients from abroad.

But I cannot mention success stories without also referring to the very different situation facing those barristers who appear in our family, criminal and other courts day in, day out, often representing some of the most vulnerable people in our society, and who are instructed under what remains of our legal aid system. They work hard, and their commitment to justice in their field is to be admired, but they could be forgiven for feeling that their efforts are not adequately appreciated.

The fact is that we are living through the biggest sustained onslaught on access to justice through legal aid that there has ever been. The Government's own figures show this.

- In the year before the Legal Aid, Sentencing and Punishment of Offenders Act, known as LASPO, came into effect on April Fool's Day 2013, there were 573,000 new cases of individuals receiving some form of legal help on legal aid.
- Yet in the year after LASPO came into effect, there were only 172,000 such cases.
- So the effect of LASPO was to deny legal help to over 400,000 people a year, or over 1,000 people every single day.
- Over 160,000 of those 400,000 people a year are husbands and wives involved in family disputes.

- And nearly 230,000 of them are individuals confronted by housing, employment, social welfare or similar problems.
- And when it comes to representation in cases which go to court, there are over 5,000 people a month who would previously have obtained representation on legal aid, but who no longer do. No wonder we are seeing so many more litigants in person in the courts, and especially in the family courts.

In June I gave evidence about these matters to the House of Commons Justice Committee and in September we published a report on “LASPO: one year on” which set out the results of our research.

Then, only last week, a family court judge, Her Honour Judge Hallam, spelt out in clear terms what the effect of these cuts will be. She said: “If legal aid is being refused to people such as this, I am satisfied that injustices will occur.”

On the criminal side, we obtained access to the Government’s figures last year, and we were astonished to learn that the cumulative effect of recent cuts to the Advocates Graduated Fee Scheme had been that, on average, the fee paid to a barrister or other advocate for presenting a defendant’s case in the Crown Court had fallen by 21% in the six years from 2007/8 to 2012/13. Allowing for inflation, that is a 37% cut in 6 years. I am not aware of any other area of public expenditure where individuals have been asked to, and have, put up with cuts on this scale.

It is no wonder that barristers were not prepared to put up with the further cuts proposed by the Government in April 2013. It is no wonder that in the first quarter of this year they took unprecedented steps to show how strongly they felt.

It is a good thing that in the end the Government decided that there would be no cuts this year to the Advocates Graduated Fee Scheme, and I hope that there will be none proposed in future years either. None would be justified. Indeed, the most recent figures published by the Government show that the cuts already implemented by this and the previous Government have already resulted in a massive reduction in expenditure on Crown Court defence advocacy.

In this context, it is sobering to note that three years' defence advocacy in every Crown Court in the country costs the Government significantly less than the amount of £754million which the Government overspent last year on two aircraft carriers.

People sometimes ask what the Bar Council does for them. Let me give three examples. We led the discussions with the Government which culminated in the announcement on 27 March that there would be no cuts to the Advocates Graduated Fee Scheme this year. We helped ensure that all parts of the Bar were speaking with one voice.

Secondly, when, in May, the impasse highlighted by the decisions in the Operation Cotton case threatened to derail the process of negotiation with the Government, we led the way in brokering a solution to that problem.

Thirdly, we continue to lead the discussions with the Government about the review of the Graduated Fee and VHCC schemes and about broader issues, such as the findings made by Sir Bill Jeffrey in his report published in April.

On each occasion, it has been a pleasure to work with the leaders of the Criminal Bar Association and the Circuit Leaders to ensure that the Bar's views were and are communicated clearly and effectively. The profession has every reason to be grateful to them for the leadership which they have displayed during difficult times.

I am sure that, like me, they would all agree with the man who said the following: "It is very important that the independent criminal Bar has a good future." What you may not know is that the man who said that is the right honourable Chris Grayling MP. He said it on 9 July when he gave evidence to the Justice Committee. I for one am glad that we have achieved at least that much common ground.

Let me give you another quotation on the same subject. Sir Brian Leveson said as follows on 21 May in the Operation Cotton case:

"We have no doubt that it is critical that there remains a thriving cadre of advocates capable of undertaking all types of publicly funded work, developing their skills from the straightforward work until they are able to undertake the most complex."

Mr. Grayling commissioned a report on the market for criminal advocacy services from Sir Bill Jeffrey, a retired civil servant with no axe to grind. That report tells us that the market is not working. Sir Bill said that “as it exists now, the market could scarcely be argued to be operating competitively or in such a way as to optimise quality.”

Sir Bill explained that; “The group of providers [by which he meant barristers] who are manifestly better trained (if not always more experienced) as specialist advocates are taking a diminishing share of the work, and are being beaten neither on price (in a system where fee rates are fixed) nor on quality.”

Sir Bill found when he visited Crown Court centres and spoke to circuit judges that “the main area of concern” was: “relatively inexperienced solicitor advocates being fielded by their firms (for what were presumed to be commercial reasons) in cases beyond their capability.”

Sir Bill described the judges’ views as “remarkably consistent and strongly expressed” and said that: “It would in my view be a mistake to discount them.”

Action must be taken to ensure that the best advocates are retained for defendants in legal aid cases. This is in the interests not only of the defendants themselves, but also of the public as a whole, both because effective advocacy lies at the heart of our adversarial criminal justice system and because the public money spent on legal aid should be used to secure the best quality advocacy. We will continue to press for action on this issue, and we are grateful to Geoffrey Rivlin QC for chairing our Criminal Justice Review Working Group, which is tackling the many issues now facing the criminal bar.

The legal aid changes to which I have referred have had a predictable effect on recruitment to the Bar. The number of pupillages has fallen in recent years, particularly in chambers doing family and criminal work, areas of the Bar which have traditionally been among the most diverse. This is yet another external factor, along with the loss of student grants, the introduction of university tuition fees and increasing levels of student debt, which is not of our making, but which increases the challenge we face to promote diversity and social mobility at the Bar.

The Bar Council takes that challenge seriously, and is taking a range of measures to reach out to students from different backgrounds. For example, we work with the Social Mobility Foundation to arrange Bar Placement Weeks in London, Manchester and Leeds. Students identified by the Foundation get the opportunity to spend a week in barristers' chambers and to see whether the Bar is the profession for them. We are also introducing a Bar Mentoring Scheme to allow students to have a contact at the Bar to whom they can turn for advice, encouragement or inspiration.

There are many people at the Bar who give the lie to lazy stereotypes about who we are and where we come from. I myself come from a mining village near Barnsley, where most of my family worked down the pit. I am sure that there are plenty of you in this room who could tell similar stories.

Another aspect of the Bar which is too little appreciated is the amount of time and effort which barristers give for free to help members of the public with deserving causes who cannot afford

to pay for legal representation. Later today, we will be presenting the Bar Pro Bono Award. There is in your conference papers a booklet which tells you about the nominees for that award and the remarkable lengths to which they have gone to help victims of domestic violence, human trafficking, discrimination, oppressive treatment by employers and similar misfortunes. I urge you to read it and I particularly encourage the journalists here present to read it and to spread the word.

Pro bono services are not, of course, a substitute for a properly funded legal aid scheme. Only last week, in the context of a dispute about whether a child should be taken away from his parents, the President of the Family Division, Sir James Munby, endorsed the following words of Mr. Justice Baker: "It is unfair that legal representation in these vital cases is only available if the lawyers agree to work for nothing."

As Edward VIII said when he saw what life was really like for his subjects, "Something must be done."

The Bar Council has been campaigning, and will continue to campaign, on all of the issues I have mentioned today, and on many other issues, such as law reform and also the Government's attempts to restrict access to judicial review, in relation to which the Government was defeated three times last month in the House of Lords.

And the Bar Council is seeking to make its own operations more efficient and more effective. Last year, we employed a new Chief Executive, Stephen Crowne, who has led the way in streamlining our efforts and seeking to maximise the use which we make of our resources.

The representative side of the Bar Council has been reorganised so as to place greater emphasis not merely on the work we do on policy matters, but also on the services which we provide to our members. And at the beginning of this year we achieved a significant reduction in our expenditure by giving up three floors of office space in our building in High Holborn. Over the next five years, this will result in millions of pounds of savings.

Of course, a large part of the fees which we pay go to pay for our regulation. But I don't propose to say anything about regulation today, as I will be delivering a separate speech on that subject later in the month.

In addition to trying to keep the cost of the Bar Council down, we are also proposing to introduce next April a more equitable way of apportioning that cost between the members of the Bar. In future, the practising certificate fee which we pay will not be determined by our seniority, but by which of several broad income bands we fall into. This should restore what I believe was once the original intention of the current system, namely a greater correlation between the amount payable and ability to pay. When consulted on this, a significant majority of the Bar were in favour.

Ladies and gentlemen, as I look back on the past year, I believe that we may have reached a turning point. Previously, we had year after year after year of cuts to advocates' fees. There have been no cuts this year in criminal legal aid for crown court advocates. Things reached the point where members of the Bar felt obliged to take unprecedented steps: days of action and the no-returns policy. Now our communications with the Government take the form of

positive and hopefully constructive dialogue. In the civil field, people are coming to see that the cuts have gone too far, and that something must be done.

I hope that this means that we have reached a position where the Bar will be able to concentrate on doing what it has done for the last 550 years. Because it is important that the Bar does so. I say that for the reasons given by Sir Bill Jeffrey, and let me finish by quoting his report:

“The particular strengths of the English and Welsh criminal Bar – intellect, expertise, independence, ability to represent both prosecution and defence – may not be unique; but they are a substantial national asset which could not easily (or perhaps at all) be replicated, and they contribute significantly to the high international reputation of our legal system. There is also a distinct national interest in having available sufficient top-end advocates to undertake the most complex and serious criminal trials. Although senior judges have traditionally been drawn from all areas of legal practice, and ability is the main criterion, there is a persuasive argument that criminal law is an increasingly specialist area and that the High Court benefits from having on the Bench judges with deep criminal experience.”

I couldn't agree more, but let me add this. Although Sir Bill was only concerned with the criminal Bar, what he said was equally applicable to every part of the Bar. After all, we are one Bar, a single profession of advocates, united in our commitment to excellence and to playing our proper part in promoting justice for all.