



JUDICIARY OF
ENGLAND AND WALES

LADY JUSTICE RAFFERTY

THE BAR CONFERENCE 2012

10 NOVEMBER 2012

It is a truth universally acknowledged that a single professional in possession of a good practice must be in want of a better one.

There are perhaps five hundred of you in this hall, most of you members of the Bar of England and Wales. You strike me as of widely differing seniority and I imagine your areas of practice differ too. Not to mention your incomes. Not to mention your level of interest in this keynote speech. Thank goodness for the enduring politeness of today's legal audience. Or so I very much hope.

Had you and I been in the Roman forum centuries ago, chilling, speaking of triumphs and of jubilation, of the problems of getting and keeping staff, of gladiators being bigger when we were at school, of fun in the arena not being what it used to be, on one thing we would have been *ad idem*. We would have been *ad idem*, rather than of one mind, because, remember, we are in Rome and speaking Latin. Undoubtedly we would have yearned to be one of the elite. Had we hung out together in Athens in the days of the republic, as well as swapping gossip about excess in all its forms – some more striking than others but all worth a chat – we might have vied with each other to name friends and relatives who were of the elite.

Fast forward to the twenty-first century. In the business pages days ago we could have read: *£100,000 a day for hedge. Elite traders at one of London's most secretive hedge funds have shared more than £200m.* I'm not surprised they're secretive.

During the summer we read about, watched on television, and if lucky watched live the London 2012 Olympics. Who ran, swam, hurdled, threw, rode, rowed, sailed, boxed, cycled and so on and so forth? Elite athletes. Would Mo Farrah or Jessica Ennis say they are not part of an elite? Did you spot criticism of any athlete on that ground alone, that they were members of one? No, neither did I, and I had this speech in mind so I was watching and listening for it.

Mind you, one body enthusiastically embraces the epithet elite. It's the College of Law, across all eight of its provider centres. But before you get too excited, let me tell you that it has also mastered the acronym. Elite stands for Electronic Legal Interactive Training Environment. Of course it does. And it's not what I mean at all.

Martin Shaw last month gave the Kalisher Lecture. His title was "Excellence is Through Industry Achieved" – hands up if you can name the play from which the quotation comes. You need to be one of the educated elite to manage that. Mr Shaw, a classically trained actor acclaimed in theatre as well as in television, is a thoughtful reflective man of considerable insight and he is completely fearless. He will stand up to be counted and say what he thinks. He is both a Bencher of Gray's Inn and, like me, a trustee of the Kalisher Scholarship Trust.

Set up in 1996 to commemorate the outstandingly able and irreverently amusing Michael Kalisher QC, it looks for talent - from any background - which would otherwise find the costs of training for the Bar prohibitive. For four students every year it pays the Bar Professional Training Course fee. It awards bursaries, ranging from textbooks to a £5,000 essay prize.

Mr Shaw supported the existence of a top layer of the best, rising through the ranks, recognized by virtue of star quality honed in the arena – the courts. He said:

The 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.

All the examples you and I have considered have one thing in common. The metaphoric head of the individual is tilted upwards. It is unlikely a competitor would gain entry to an elite by seeing a career in terms lateral rather than vertical.

The Bar is a profession of competitors. Against one another, against the odds, against the individual's own notional 100%.

Martin Shaw again: *Competition is the one sure guarantor of excellence. Resources are poured into telling youngsters that the law is a good career and open to all irrespective of social background or family money.*

And Aristotle was with him. *Excellence is an art won by training and habituation. We do not act rightly because we have virtue or excellence, but we rather have those because we have acted rightly. We are what we repeatedly do. Excellence, then, is not an act but a habit.*

That noble and achievable aim, you would all say, I imagine, encourages aspiration. I haven't heard one voice in recent times say that it advocates entry to a profession which embraces an elite. What puzzles me is why with one breath the profession winces at the word elite but with the next embraces aspiration. How are those positions reconciled?

May I pose to you this question: imagine yourself in Skegness Grammar School, there to persuade 35 youngsters aged 15-17 that the cast of mind of a lawyer is useful across the piece. Lawyers think analytically, express themselves clearly, are careful bordering on the pedantic, and aim to get it right the first time because they know that clearing it up means the Court of Appeal. And time spent in the Court of Appeal is miserable. I should know. You're telling them that in 2012, when so much of society is dumbed down, they are at risk of not expressing themselves well, or sometimes at all, let alone attractively – texting and social networking militate against it. But if they can think, write, and speak clearly they can skilfully advance or oppose a proposition.

It is the mark of the educated mind to be able to entertain a thought without accepting it. Aristotle said it first but there's no harm in your repeating it.

Skills you have at your fingertips, which by now come naturally to you, will help them pass exams, get jobs, and do well in any interview. It means that when they speak they are unconsciously an ambassador for the life they have chosen.

So your Skegness audience is ignited. When the sparky 17 year old asks you to tell him the difference between aspiration and an aim for the elite, what will you say? That aspiration is laudable but “elite” divisive and of an age long gone? You might have to be ready for the follow-up from an even sparkier pupil. [She’ll be a girl, naturally.] If aspiration is lofty hopes or aims, and membership of an elite implies consciousness of being the pick or flower of anything, surely the one leads into the other?

It will be a smart question. When you address any sixth form and tell it to aspire, you’ll be telling it to aim at or strive for high things, to tower up. You’ll probably add that aspirant means ambitious and that all this is good. Aspiration is indeed eager desire, lofty hopes and aims. An elite is indeed a chosen or a select part, the pick or flower of anything.

Skegness Grammar School, a David Ross Education Trust Academy, is exactly where the Kalisher Trust betook itself in late September. We are on the way to more schools if they’ll have us. If you support outreach work, prepare yourself. The sparky youngsters I described are out there waiting for you to justify all your assertions. They’ve done so in Skegness, and in another David Ross Academy more of them will be doing it in early 2013. I can see many of you looking interested. You can come too. To Grimsby.

So why the silence? Or why the use of vocabulary which for whatever reason is cautious?

Do you not see yourselves as an elite? If you don’t, why don’t you? What is it about that word which makes you want to avoid it as a label?

One major difference, may I suggest, between membership of an elite and the embracing of aspiration is that aspiration is the starter, for everyone. Membership of the top layer comes later, for some. If the Bar is in shape pyramidal – you may have noticed I’m moving through a range of ancient cultures and we’ve now reached the Pharaohs. Just the Aztecs Ottomans and Chinese to go - if the Bar is in shape pyramidal the base will be a lot broader than the top. Most professions are like that. The young entrants will form the supportive bottom, having aspired and arrived, but at the tapered top we should be seeing the tested and successful competitive winners.

I wonder, when you are explaining and lauding the profession, how clear it is to your listener that there are two things in play. Aspiration will catch the energetic young. Lots of them. But there has to be something in it for them when they aren't youngsters any longer. It's membership of a merit-based top tier they want. They're on to it, they see the difference.

If you want to stay loyal to the standards of the Bar, maintaining them not just by the entry of but by the celebration of talent, your stance and your reasoning will be examined. Your contentions will be unpicked. It's what you do – you can't complain when it's done to you. You can't hide from the Ross-educated fearless teenagers. With beautiful manners they'll escort you to the car park, but they'll still be testing you – “Before you go, can I just ask you

They know what they want. They were, in spirit, listening to the Kalisher lecture:
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.

To endure, an elite must maintain standards, try to raise them, and bring along behind it the junior but steadily advancing ranks. Top performers must give back. Whenever you generously devote your time and energy to outreach programmes formal or informal, you're giving back, so we know that's happening.

Your profession stands proud in a world of mediocrity.

Who said that? The interested and informed observer Martin Shaw. One wonders if Aristotle would once again back him up.

So, little beats the Socratic method of posing questions. I would suggest that everyone with an interest in or who is involved in the future of this profession needs to know how to respond to these points:-

Should more voices be saying the same – that you shine against the ordinary? If they should, my question is why you shy away from the proud claim to be an elite. Youngsters get it; aspiration is good. When one of those from Grimsby, ten years on, comes back to you and asks “I’m older. I’m at the Bar. I’ve finished aspiring – I’ve arrived. Where do I go now?” - what answer, I wonder, will that promising young barrister hear?

There you are - Martin Shaw, Aristotle, Socrates, Shakespeare - and me. It doesn’t get much better, does it?

Oh, and the origin of “Excellence is through industry achieved”? Two Gentlemen of Verona.