THE DENNING LECTURE

The Bar Association for Commerce, Finance and Industry

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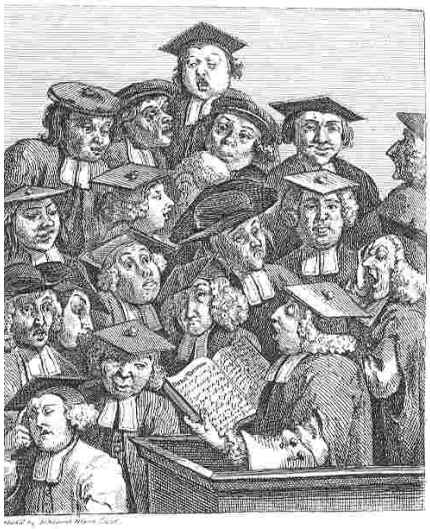

We hear it often, so frequently, indeed that it takes on the tone of a mantra or prayer and like many oft-repeated phrases in the law… they become so trite and so banal as to be deprived of any useful meaning at all. Well, what am I talking about? Or more to the point, what am I *going* to talk about? It is the celebration, the proud boast, that the reputation of the law in this country is *second to none*. This banner is flourished vigorously by successive Lord

Chancellors, Presidents of Supreme Courts, Lord Chief Justices, Masters of the Rolls…like so many street criers, pedalling their wares. Like many an attempt to blazon an elixir or hawk a prophylactic, the cry that the reputation of the law is second to none are words of doom. Such empty boasts clang with the dissonance of those words of praise with which all advocates are so familiar and which they dread: when the judge tells you that you have argued with conspicuous clarity and persuasiveness, or that you have said all that could possibly be said, you know that those words are messengers of defeat, and they herald no more than bitter failure and unacceptable loss. So, too, on the wider plain of generality, when our leaders tell us that the reputation of the law is second to none, they are about to tell you what has gone wrong and, wait for it, how the legal system and its lawyers may be improved. It's no good hoping for a period of inactivity, for a time of peace and quiet; those days are long gone; when you hear the words 'the reputation of our law is second to none' you know you are in for a dose of reform.

Lawyers have, I fear, been condemned to a period of intense scrutiny and change, leavened or perhaps weighted down with public expressions of faith in the quality of our services, designed to ensure that our reputation amongst those who seek, and are prepared and above all able to pay for the privilege of invoking our jurisdiction, remains sufficient to entice them. Our courts, like

Saville's, Jackson Stopps or Strutt and Parker at Knightsbridge and Westminster, must continue to attract the wealthiest to come here and settle in, so as to engage in healthy and vigorous disputes with their former commercial associates, their former friends and their former wives. They must be encouraged, as if in the streets and crescents of Notting Hill, to dig down into a succession of basements and fill those apparently bottomless pits with welcome and lucrative litigation.

Encouragement to import the smart and commercial (the qualities are synonymous) litigation and arbitration is, of course, not to be knocked, least of all on this occasion and in this company. But when our leaders celebrate the qualities of our legal services, they surely mean more than that…the reputation of the law is more profound, rests on a more secure foundation than the indisputable success we, or rather you, have in attracting valuable imports and the dissemination of our finest legal brains in offices abroad. Or does it, does it really? Does it have any meaning at all? If we can understand what it really means, might we not preserve it or even enhance that reputation?

We must, however, start with a caution or, if you like, a caveat. There is nothing particularly attractive about an institution which praises itself; it smacks of the smug and the self-satisfied. Rashdall wrote of mediaeval universities…*ideals pass into great historic forces by embodying themselves into institutions. The institutions*

which the Middle Ages have bequeathed to us are of greater and more imperishable value even than its cathedrals. But there are great dangers when, as so often, at the moment of self-congratulation the institutions begin to suffer from a hardening of the arteries, coagulation of their life blood…in short they become sclerotic. Fifty-six years before Rashdall, in 1839 when, in those far off naïf and unthinking days we were contemplating the bizarre notion of invading Afghanistan, General Wade wrote: *there is nothing more to be dreaded or guarded against than the overweening confidence with which we are too often accustomed to regard the excellence of our own institutions…*

What is remarkable is that the words of congratulation at the respect in which our legal system is held, *the envy of the world…*or some such pabulum, do not merely herald bad news, change, and dismay but they are often uttered by those whose actions demonstrate that they do not share the sentiments of the world at large. Let me explain what I mean. Reputation is built on trust, and vice-versa; those who hold an institution, a system or a person in high repute do so they because they trust them. Equally, they place their trust in those professions and in those people whose reputation is believed to be untainted.

The changes, the radical changes in our profession stem from a lack of trust; our masters responsible for regulation and for public funds no longer believe that our profession is to be trusted, not to be

trusted to regulate our standards, not to be trusted to charge a fair fee for the expeditious and efficient conduct of a case, not to be trusted to avoid the fanciful and outlandish argument.

And so it is that driven by that lack of trust, we have seen the application of austerity and of stringency to the distribution of public funds for litigation, the introduction of written standards to measure the performance of oral advocacy in criminal courts (and we are promised similar quality control in all fields of litigation) and the thrust and slash of the butcher's knife to judicial review in those cases where it is believed over-optimism has triumphed over realistic appraisal, or the applicant, be he a prisoner or a non-resident (neither of whom deserve the bounty of legal aid) should be deterred from taking up time in court.

The point I am making is not directed at the merits of these changes, it really is not, no, it is seeking to recognise their root cause. In all these respects the trigger for all these changes is the belief that the lawyer and the legal system is no longer to be trusted; not to be trusted to claim a fair fee, not to be trusted to do the case properly and not to be trusted to give rational advice as to the prospects of success.

The consequences of the absence of trust are plain; they are the subject of continuing dispute and already well, if not too well, rehearsed. Let me deal with three of those consequences before I

seek to disinter its foundations. First, an absence of trust in those dependent on public funds has had the consequence of reducing their fees. I suppose we cannot deny that greed motivates some lawyers as it motivates some human beings. As Skidelsky, father and son, have so convincingly and conclusively demonstrated, no-one has devised how much is enough…But few lawyers, and least of all those whose pay depends upon the assessment of others, the criminal and matrimonial lawyers, are greedy…but the pay for legal aid is necessarily in the gift of the executive, and it is hard to resist the principle of control whatever the dispute as to how the power is to be deployed… But the dangers are all too obvious if a government uses its control of the fisc to manage the type of work it feels should be encouraged and the type of work it seeks to deter, or to control those who should have access to the courts and those who may not.

Second, an absence of trust in quality has led to an attempt to impose quality on criminal advocates and soon all the rest of you. No-one can sensibly deny that some method of ensuring quality is necessary, now that in publicly-funded cases it is not possible for the advocate to be accompanied by a solicitor sitting in front or behind to monitor and assess the performance of those whom they have engaged, and on the other side there is frequently an employee, engaged not because he or she has shown a particular aptitude for a type of case, but by virtue of the fact that he or she

has chosen employment, and the case forms part of his or her weekly dossier… I am not, for the purposes of this argument, going to re-engage into the discussion as to the propriety of obtaining the services of the judge to act as quality-control monitor. I merely wish to point out that quality control has arisen because Government has lost trust in the ability of the institutions of the law or of the market to deploy the best and disregard the foozler. Although, contrariwise, that is not always so. From time to time, it has perceived a problem in over-qualification that in certain cases, as assessed by the Executive, of course, you don't need the most professionally-skilled, and that if you leave it to the market or the institutions of the law you end up employing the over-qualified. This was to be found in the Impact Statement when first mooted that lawyers would be licensed according to the prices they were prepared to tender for…. proposal now abandoned, though how it ever came to be suggested was perhaps unnerving. Unnerving because it leaves it to the Executive the ability to lay down the standard of lawyer who should be engaged in publicly-funded cases. The problem with accountability, as Onora O'Neill establishes back in 2002 in her Reith Lectures…A Question of Trust is…to whom does the new audit culture make professions and institutions accountable?…not to the public but to regulators, to funders and to departments of government.

Third, an absence of trust in the ability of the courts to filter cases taking up the time and resources of the courts and summarily dismiss those which should not, or rather which the executive believes should not, has led to the proposals to deny access or affordable access to certain classes of litigants, prisoners or non-residents. No-one can sensibly deny the importance of keeping the courts free for meritorious cases and preventing access being clogged with the unmeritorious. But the problem is, which is which? How can you tell which merits further time, money and consideration? And who is to tell? If you do not trust the lawyer, do you trust the government to do so? The dangers of leaving government to choose which type of case they wish to encourage and which they wish to deter, what type of litigant should have access and what type of litigant should be barred, would be almost too obvious to mention were they not dangers which are now so imminent.

Do you even trust the judge? All those in power, government or judges believe it is necessary to cut out the hopeless cases, all those in power, executive or judiciary believe they can spot the hopeless case…but the history of the courts and the course of litigation should teach them that they cannot. Reliable prophesy is not one of the most striking attributes of either politician or judge; if the paths of the law are strewn with those cases believed to be open and shut (*John v Rees)*, it is perhaps better if before following

or perhaps meandering down such hollow ways both politician and judge discard the mantle of Elijah. A system which attempts by the advance identification of rigid categories (according to category of case or category of litigant) to identify those cases which are more likely to turn out to be hopeless is, I suggest, doomed to failure, or worse, doomed to exclude some that are meritorious. The price of vindicating those who have suffered injustice must, I suggest, allow for the cost of permitting at least some artful dodgers to have a go…at least at first instance (just as librarians always appear reluctant to lend books so appeal judges, you must understand, don't like too many appeals).

If these dramatic changes of which I have given three examples stem from a loss of trust, how firm a foundation is that for such radical alteration? How do we assess the extent to which trust has been lost, whether that loss is justified?

There is a problem in any analysis of trust in an institution such as the law. Part of the problem is, as in so many spheres of life, the problem of measurement. How do you measure trust? How do you measure whether people's trust in the law is waxing or waning? Particularly in the process of litigation, where there must always be winners or losers. How, in short, do you measure the reputation of the law? I suppose you could rest content with the opinion poll and observe that judges come higher than journalists, not a difficult competition, and even higher than politicians, but lower than

teachers, nurses and doctors, at the moment. But if we are to be serious we must surely look beyond the Gallup poll.

For a start, most people become reluctantly involved in the law; no-one in his right mind becomes involved with lawyers or the law and there is sadly a raft of those, usually with a legitimate grievance lodged in their heads long, long ago, whose litigious pursuits have caused them to have lost their mind when enmeshed in legal process. But they have no choice whether to place their trust in the law and its processes. Trust has little part to play as they are swept along in one jurisdiction, say crime, or another, say family. People may say they have lost trust…but if we cannot choose if we must, failing any alternative, place trust in our legal institutions, there is simply no means of assessing whether people have lost trust or whether that loss is justified. As Onora O'Neill so convincingly argued…people constantly place trust in many of the institutions and professions, not least the law, even when they profess not to trust them. It is often impossible not to place our trust in others. Besides, people want to trust…Samuel Johnson…*it is happier to be sometimes cheated than not to trust.*

Every generation believes that the old certainties have disappeared, that the deference of a golden age that is somehow always just before the experience of anyone living has been replaced by a

disconcerting absence of faith. This so often lies at the root of lack of trust, and our legal system and its institutions do not escape this recurring malaise. It is all very well invoking the trust a judge has in the advocates, the trust that opponents and colleagues on the other side should have in each other, but these are not features that members of the public or their political representatives appreciate because they have no need to do so.

But if, as we must, we acknowledge that there is a pervading sense of loss of trust, even in the absence of a yardstick or even verification, do we not look to the reputation of the law, to bask in its reflected glory; in hopes that some of the reputation of our law and legal system will rub off onto each one of us? But we must be fearful: reputation comes and goes…in lawyers and the law as in everything else. Trollope: *To apply the thumbscrew, the boots and the rack to the victim before him was the work of MR Chaffenbrass's life….He was a little averse to this toil as the cat is to catching mice. On the whole Mr Chaffenbrass is popular at the Old Bailey. Men congregate to hear him turn a witness inside out….Therefore Mr Chaffenbrass bullies when it is quite unnecessary to bully…His business is to perplex a witness and bamboozle a jury. Mr Chaffenbrass is a little man, and a very dirty little man…He is always at work upon his teeth, which do not do much credit to his industry…His linen is never clean, his hands never washed and his*

clothes apparently never new…Such is Mr Chaffenbrass in public life (Three Clerks)

It wasn't much better in France…Daumier's drawings of Les gens de justice hardly enhanced their reputation. Though I'm not sure Feliks Topolski thought much more of the English equivalents.

Reputation is the Big Dipper; those who seek to ride on its crest are destined for both swoop and plunge. We do not need fiction or theatre to make that good. You have only to look at the reality of reputation…let us take what might be regarded as a useful measure…the reputation of judges. You might think, and with some cause, that the reputation of the law depends to a substantial extent upon the reputation of the judge. Every judge is, after all, on trial in every case on which they sit. But they are an ephemeral lot: those terrifying figures of our youth are long forgotten and those who linger in the memory find their luminous dicta rephrased, replanted and even rejected by some modern judicial tearaway. Their mores are pooh-pooed, their fustiness fumigated and we are left wondering only at the awe in which they were once held.

Take one of my favourites, Darling J. In 1927, the editor of the Trial of Armstrong, in the Notable British Trials Series, Filson Young described Darling J as "*undoubtedly the greatest criminal judge , as well as one of the most distinguished men of his day. The firmness and certainty with which he handled a most difficult case were*

exemplary; but the unconventional common sense of some of his utterances, and the piercing and clean-cut analysis to which he subjected the essential evidence could only have safely been employed by a judge equipped like him with immense experience, the most lucid mentality and the clearest understanding of the ultimate character of justice". And so on and on and on, one wonders quite what the editor was after. What Filson Young called piercing and clean cut analysis is nowadays called a wholly improper judicial descent into the arena. Armstrong was in the witness box for 7¼ hours before the judge cross-examined him, making clear where he thought the truth lay…and as for the summing up described by Martin Beales, a solicitor, in his attempt to exonerate Armstrong 72 years later in The Hay Poisoner: *It would be hard to find a judge's summing-up in the annals of crime that was more perverse and damaging to any prisoner. Darling was a hanging judge and in the trial of Armstrong he excelled himself.*

Darling was called to the Bar without having to take any examination. He was elected Conservative MP in 1887 and when it was rumoured that the Lord Chancellor intended to make him a High Court judge ten years later the Times wrote a leader: *he has shown no sign of legal eminence…if he is raised to the Bench, it will be on political grounds;* the entry in the DNB describes his behaviour in the *Pemberton Billing* case in 1918 as a shocking

example of the way, through levity, he lost the respect of the judge and, so the entry reads, *went far to lower the status of the bench.*

The exciting if toxic mix of political and judicial appointment probably found its apogee after the Marconi Scandal in 1913, relating to the purchase of shares by Sir Rufus Isaacs, A-G from his brother Godfrey, a director of the American Marconi company, after the British Government had contracted with the Marconi company to connect British territories to the mother country. He sold some of the shares to Lloyd George and another member of the government, the Master of Elibank. Samuel and Isaacs sued Le Matin, a French daily, for libel when it cast doubt on the propriety of the tender arrangements and the purchase of shares. The judge was…Darling J. Isaacs was represented by Sir Edward Carson and Herbert Samuel; the PMG responsible for the contract was represented by FE Smith. Both FE Smith and Carson came under attack for acting for liberals when they were members of the Tory party. In those days MPs appreciated the success and fame of the celebrated practitioners amongst their number. They could understand the cab-rank rule and liked the law because the Commons' own reputation was enhanced by the reputation of its heroic silks…

A Select Committee questioned Ministers and Sir Rufus was cross-examined as to his belief as to the separate nature of the American and English. I need not go into the details since, for my purposes,

sufficient to note that the Prime Minister Asquith told King George V at an audience that he thought the behaviour of Isaacs and Samuels “lamentable” and “so difficult to defend”. But defend it they had to, for fear of losing two Senior Ministers and one of the leading silks of his day, apart from being Attorney-General. It was less than a year before…how quickly reputation collapsed even in those pre-twittering days…that Rufus Isaacs had made a popular name for himself, in his only murder case. In March 1912 he had led for the prosecution in the trial of Seddon the poisoner, defended by his friend Marshall Hall. It was the case which it was said demonstrated the lack of wisdom in the passing of the Criminal Evidence Act 1898 which permitted a defendant to give evidence on his own behalf. Rufus Isaac’s unhistrionic cross-examination, all the more deadly because of the unfailing courtesy of his beautiful voice, was such that Seddon’s greed and callous behaviour to the woman he poisoned was revealed to an extent that an onlooker said *never have I seen a soul stripped so naked as that*. Darling sat in Seddon’s appeal in the Court of Criminal Appeal. So it was only a year later that the Attorney found himself so hard-pressed by those who thought they could recognise a series of insider-deals even if the Chancellor of the Exchequer could not…unfortunately for the Liberal Government, the Lord Chief Justice Lord Alverstone chose to resign. The Government was faced with the dilemma of whether it should adopt the practice of appointing the Attorney-General to be the Lord Chief Justice…in those days they didn’t have to write an

essay…or break that tradition and thus demonstrate their lack of faith in those Ministers and their famous law officer…Rufus Isaacs became Lord Chief…spent part of the time as Ambassador to Washington after USA, joined war in 1918….what a good idea for our senior judiciary, and the reputation of HM judges remained unsullied….perhaps it was only Kipling who risked that reputation when he wrote that poem of anti-semitic hate, *Gehazi,* on learning of Isaac's appointment to the Bench.

In my legal youth and days at the Bar it was Lord Denning who dominated the field…a reputation second to none, clear and passionate in his pursuit of justice, and in his condemnation of lapses in sexual morality…but Richard Davenport-Hines' popular account of the Profumo affair…*an English Affair*, vilifies him for his conduct of the enquiry, berating him for his views of adultery and homosexuality and states that Denning did lasting harm on his country…the merits of the proposition would be discourteous to debate at the Denning lecture…lawyers tend to remember his belief in doing what he perceived to be justice rather than a slavish obedience to precedent (it is always better to look up the authority on which Lord Denning relies rather than rely on his lordship's sometimes imaginative use of the propositions for which he says it stands). But Lord Denning's case illustrates the shifting sands on which reputation must rest. How easy it was when there were certainties, when the morals of a nation were the morals of its

establishment, in short when the upper crust went to one church and it was usually of the same denomination.

A belief that the reputation of the law depends on its quest for justice is itself problematic: we all want to live in a just society but few can agree where justice lies. This gives rise to a paradox: the more the law intervenes to cure injustice, to promote and to achieve justice, the greater the risk to its own reputation. This paradox results not just from the very nature of litigation but from the boundaries to which the reach of the law now extends. Each time the law stretches its scope to vindicate rights regarded as fundamental by some and as a foreign interference by others, there will be a majority, at least it must be assumed to be a majority judging by the noise it makes, who see the law as over-reaching itself, as trespassing beyond its legitimate boundaries. What sort of reputation can you expect a trespasser to retain?

Let me seek to show what I mean. Extradition and deportation afford popular examples…Occasionally the sympathy of the crowd is excited, in a case such as that of *Gary McKinnon...*the alleged hacker wanted by the US, or the odd banker whose extradition and treatment in US is publicly and loudly deplored, only miraculously to be silenced once they plead guilty. But in general the inordinate delays deployed by those who seek to avoid their extradition cause public dismay. How can the law, how can the judges, tolerate such blatant attempts to resist a merited trial in Jordan…all the more so

when the requested person seeks to shelter behind protections which his political views would so strikingly deny to others? The delays, the endless litigation in the *Abdul Hamza* case seemed to demonstrate what an ass, in the eyes of the public and the government, the law had become. And what is more, what a lackey the law appeared to be, subservient to foreign judges…why even the judges here had seemed to surrender their sovereignty. And yet, and yet, slow though the process was, there was in its interminability at least a pursuit of justice, a pursuit of a justice free from execution and free from torture, even for those who seemed in their persistent condemnation of the country from whom they sought shelter to deserve no such freedom. Difficult to escape the view that there were few prepared to give any acknowledgement or reminder that the aim, however slow its achievement, was just and did the law credit. And if few were prepared to say it, even fewer were prepared to listen. In such litigation the law clings with difficulty to any reputation, for it has no champion to speak for it in the public swimming bath of national opinion where, as you know, there is an awful lot of noise at the shallow end.

The work of the Court of Appeal continues to be dominated by Immigration Appeals; to the public and to most politicians, an Immigration Appeal is no more than a last ditch attempt to overcome the illegality of the immigrant's presence here. There seems little regard to the rational and careful attempt of the courts

to ensure that there would be no violation of rights, so fundamental that they would nowadays be recognised whether we were signatories to the European Convention on Human Rights or not. By intervention, by its conscientious anxiety to ensure protection for those whose freedoms are threatened by executive power, the law only damages the trust the people have in its processes and in its decisions.

We were brought up in a legal tradition that all those who came under our jurisdiction and were affected by it could, in the event of a breach in the law, seek to claim legal protection and even redress. Thus, those awaiting deportation must not be detained unless it can be demonstrated that their detention is necessary pending their removal. If they are children or suffer from physical or mental disability they should be detained only in the most exceptional circumstances. If such rules, often conscientiously applied, are broken then even after deportation the victim may sue for damages for false imprisonment and there are a number of examples of successful claims for compensation by those who have long since ceased to be resident here.

In addition, the courts and enquiries remain concerned to protect those detained during our armed intervention in Iraq and Afghanistan. Decisions such as *Al-Skeini* and *Maya Evans v MOD* have stretched our jurisdiction to cover detainees in UK administered detention and stretched the public's faith in our legal

institutions to act within reasonable boundaries. Following those decisions, the courts will seek to protect those injured in the custody of our own troops and will go so far as to prevent our armed forces from releasing those who have been detained into the custody of Afghan officials in circumstances where it is feared they will be tortured. Thus our armed forces have been faced with the invidious prospect of detaining those suspected of insurrection in over-crowded compounds in Helmand and an aggravation of the dangers they face as they over-stretch their resources to protect those they suspect of terrorism. You can appreciate that the freeze imposed on such release hardly endeared ourselves to the Afghan authorities, assistance to whom was the very justification for our being there in the first place. I very much doubt whether such cases do anything but damage the reputation of the law. The desire to prevent legal aid for non-residents probably is no more than a reflection of public dismay that public resources, whether in the form of legal aid or court time, should be devoted to those who reside in a far-away country. Nowadays, few if any countries can be described as far away and there are few if any people of whom we can say we know nothing, but…what Chamberlain described as *a quarrel in a far away country between people of whom we know nothing* has now been translated into the unnecessary use of limited public-funding resources resolving the grievances of people in a far away country of whom we know far too much.

All of these issues mystify a public, to whom nobody seems prepared to explain how their law and their legal institutions have found themselves involved, still less involved at public expense. The reputation of the law founders on foreign rocks; the law, so it is believed, has grown too foreign altogether, deploying principles culled from alien jurisdictions and even allowing itself to be overruled in foreign courts. Even at home, the history of the law since the 1960s is replete with accusations that the judges have been parking their tanks on inappropriate lawns.

Jonathan Sumption QC, in his FA Mann Lecture *Judicial and Political Decision-Making, The Uncertain Boundary*, in 2011 called for a coherent principle to mark the boundary between political decisions to be resolved by the democratic process and those fit for judicial determination. Underlying his call for a cogent principle rather than piecemeal decision-making lay his belief that it was no business of the courts to make good any perceived deficit caused by the *declining public reputation of Parliament and a diminishing respect for the political process generally*. To do so is profoundly undemocratic. Lord Justice Sedley's riposte in the London Review of Books denied any judicial interference with matters of policy. The argument will run and run. And will continue, European Convention or no.

It is difficult to find a champion to argue that the reputation of the law is enhanced by appreciation and understanding that occasional

forays over the border may be forgiven, if in so doing the boundaries between justice and executive power are patrolled and preserved. Too defensive an approach to justice may have as ill an effect as too defensive an approach to medicine.

No-one will speak for the reputation of our law when it occasionally over-steps the mark. Indeed, there is a notable absence of any real attempt to explain to the public why the reputation of the law should matter at all. The disputes between the executive and the courts seem far remote from everyday lives. Perhaps the problem is a question of focus. If we praise the law and its institutions we are in danger of losing sight of the lawyers. Lord Radcliffe in the last Reith lecture given by a judge in 1949, said: *the British have formed the habit of praising their institutions which are sometimes inept and of ignoring the character of their people which is often superb. In the end they will be in danger of losing their character and being left with their institutions, a result disastrous indeed.* The problem is that we do not talk enough about the lawyers. We are too often stilted and hesitant in drawing to the attention of the public that our courts are growing to depend on the Pro-Bono work of young lawyers. The Bar Pro-Bono Unit has so far this year conducted some 717 cases, 19% of them in the High Court and a similar number in the County Court, and the rest in Tribunals all over the country…who will speak of the third six pupil who amongst the three leaders two weeks ago faced with a County Court Judge

who believed the case hopeless, who, instructed by the Pro-Bono Unit on Friday night, spent 24 hours over the weekend producing a skeleton argument of such sophistication and persuasion that the error of the judge below became clear and what had seemed to us hopeless and futile turned out to be of substantial merit? Who speaks of this? The lawyers cannot, for fear that their objection to reduction in public funding will only be met by the response that there seems no shortage of lawyers prepared to do the work for free.

Perhaps some bright spark thought that reputation could be confused with image: that we could rescue the reputation of the law by the introduction of the courts into day-time television, Ready Steady Judge alongside Ready Steady Cook. The problem of image however is not to be solved by some controlled televisual shot of Lord Justice Pitchford in the middle distance. Viewers only want to see the face of the judged, preferably at the moment of conviction and sentence, and not the judge. Television only disappoints and distorts. But there were those who understood the importance of image in the reputation of the law and built around it.

In 14th Century Siena most of the legislative and judicial functions of government were undertaken by the Nine. They understood the importance of the image of Justice and the Law and those images could reinforce the reputation of the law. In the 1330s they commissioned Ambrogio Lorenzetti in the Sala della Pace to depict

the consequences of fulfilling and ignoring their obligations in the Allegory of Good and Bad Government. It was they, the Nine Governors and Defenders of the Commune and People of Siena, who wished that both they and the public they served be reminded each time they met of the importance of Justice. They entered the Salla beneath Justice, alongside five other Female Virtues. On either side was a wall painted on the right as you faced their dais, Good Government, and on the left, Bad Government. Justice is the only Virtue painted twice…on the right-hand wall she raises her eyes to Wisdom: the Wisdom holds the words *Love Justice You who judge the Earth*….Justice holds her scales. From those scales hang two chords, bound together by CONCORDIA and then handed from citizen to citizen. And the rewards of justice are shown in the dancers and a tambourine player and the prosperous countryside. All of which is due to Justice…look how many good things flow from her, says the motto beneath. Whilst on the left wall the Bad Wall Justice is subject to Tyranny, soldiers lay hold of a woman. The streets are deserted and the hilltop town laid waste.

The Allegory reminded both governor and citizen that only by keeping justice in mind can power be successfully restrained. The hand of the artist preserves the reputation of the law: not just in 14th Century Siena but today. You can see how tyranny works as much in drawing as in the grainy black and white film of the McCarthy Hearings by Arline Simon…Roy Cohn, Chief Counsel, and if

you really want to know what Trust in the Law and what the Reputation of the Law demands you need look no further than her drawing of Joseph Welch, Chief Counsel to the Army. And that is the image with which I would like to leave you. It was he who brought about the end of the tyranny of McCarthy and that end was brought about by a breach of trust. It had been agreed that if McCarthy didn't mention the fact that in Welch's own law firm there was a young lawyer called Fisher who had been a member of the National Lawyers League, Welch would not mention Cohn's service record…to avoid the Korean War he had sought nomination to West Point three times and continued to fail his exams until the war was over. McCarthy broke that agreement and told Welch in public that he should check on Fisher who had belonged to what the A-G had called the legal mouthpiece of the Communist Party…

Welch said this in reply: *Until this moment Senator I think I never really gauged your cruelty, your recklessness…Let us not assassinate this lad further Senator. You've done enough. Have you no sense of decency, sir at long last? Have you left no sense of decency?*

And McCarthy simply didn't understand…"What happened?", he said to Cohn, was gone within months, censured, and dead within three years. And next time someone invokes the reputation of the law, I'll just think of the lawyer Welch.