



**The Political Lawyer**  
**Professor Thomas Grant QC**

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If you are a lawyer, acting for the wrong client can be dangerous, indeed it can be deadly. In early January 1649 John Cooke was appointed the solicitor-general and instructed to draft the indictment of King Charles 1, a task he accomplished over a particularly stressful and cold weekend. When the attorney-general, William Steele, who was meant to lead the case, fell conveniently ill (an eventuality every junior barrister lives in fear of), Cooke manfully stepped into the breach and conducted the prosecution himself, having to withstand the annoyance of the king prodding him with his cane and imperiously interrupting his opening address. We all know what the king's eventual fate was, but Cooke's is not quite so well known. After the restoration he was tried for treason at the Old Bailey and was executed at Tyburn. Passing sentence, the judge, the appalling Orlando Bridgeman, said "The profession of a lawyer will not excuse treason".

On the scaffold Cooke is reported to have told the crowd that he was not, and I quote, "convinced of anything I have done amiss." This might be counted pretty brave for a man about to be hung, have his genitals cut off, his entrails removed from him with hot tongs, and then have his body quartered. As for Steele, he died peacefully in his bed in 1680. Sometimes it pays to "pull a sickie".

Move forward closer to the present and we still find lawyers suffering for choosing the wrong client. Fernand Labori, who was Alfred Dreyfus's advocate at his court martial in 1899, was the subject of an assassination attempt during the trial. The Israeli lawyer, Yoram Sheftel, who defended the Treblinka extermination camp guard John Demjanjuk at his trial in Jerusalem for mass murder had acid thrown in his face in 1988 by an enraged Holocaust survivor. Sheftel later recalled that at the time he was probably the "most hated man in Israel."

And last year there was a good deal of coverage of the Harvard criminal law professor Ronald Sullivan, who was also the faculty dean of one of the university halls which provided accommodation to some 400 undergraduates. Sullivan was retained by Harvey Weinstein to act on an aspect of the multiple criminal proceedings against him. A furor ensued with some of the students in Sullivan's charge demanding his ejection, alleging that his decision to act for Weinstein was nothing less than "trauma-inducing." Notwithstanding support from the law faculty Professor Sullivan was removed as the faculty dean. Being the lawyer to an alleged sexual abuser and rapist (of course Weinstein was subsequently convicted) and being a faculty dean were apparently incompatible activities.

All these disparate examples demonstrate that court proceedings are often perceived by the world at large to engage far wider issues than purely legal ones relevant only to the parties to the litigation. They also show that law is not conducted in a vacuum and can have real life consequences not just for litigants but also for the lawyers who act for them. The law can be – and often is - political not in a narrow party sense but in its original sense of relating to the polis, the governance and organization of society.

And with that introduction I come to the subject of this lecture: the political lawyer. What does it mean to talk of a political lawyer? Are Cooke and Sullivan, Labori and Sheftel political lawyers? It might be objected that these are not meaningful questions, at least in England. A lawyer is simply a voice. He or she should have no view on the ethics of their client's behaviour. Their personal opinions are irrelevant; indeed, it would be professionally wrong to express them to a court. They should simply present their case to the best of their ability. It is no business of a lawyer to further a particular political viewpoint, at least in their professional sphere.

But I think that they are valid questions and to try to answer them I want to propose four versions of the political lawyer.

The **first** version is the widest and in one sense is simply a description of the English barrister fulfilling their professional obligations.

You may have noted that I earlier used the phrase "choosing the wrong client." To an English lawyer that will strike a jarring note. One of the central ethical foundations of the English Bar is the so-called cab-rank rule. It features in the current Bar Code of Conduct and can be stated as follows: if a barrister receives instructions from a professional client and the instructions are appropriate taking into account their experience, seniority and/or field of practice, the barrister must accept those instructions irrespective of:

The identity of the client;

The nature of the case to which the instructions relate;

Whether the client is paying privately or is publicly funded; and

Any belief or opinion which the barrister may have formed as to the character, reputation, cause, conduct, guilt or innocence of the client.

Dr Johnson said something similar 250 years ago:

*"A lawyer has no business with the justice or injustice of the cause which he undertakes, unless his client asks his opinion, and then he is bound to give it honestly. ... If lawyers were to undertake no causes till they were sure they were just, a man might be precluded altogether from a trial of his claim, though, were it judicially examined, it might be found a very just claim."*

When the great advocate Erskine defended Tom Paine in 1792 he was widely criticised for so doing. His reply was:

*"If an advocate refuses to defend from what he may think of the charge or of the defence, he assumes the character of Judge; nay, he assumes before the hour of judgment, and in proportion to his rank or reputation puts the heavy influence of perhaps a mistaken opinion into the scale against the accused in whose favour the benevolent principle of English law makes all presumptions ..."*

The cab-rank rule has been subject to criticism in recent years for two main reasons: first that it is in practice very easy to evade it; and secondly that there is so much competition at the Bar now that in reality it addresses a concern which is of no substance: that is that there are plenty of lawyers out there who will be very pleased to take on any case, however unpopular, in order to earn a crust.

Speaking for myself I think that the cab-rank rule, since it was developed in the late eighteenth century, has served to shape the fundamental character of the English Bar for the better in two ways.

First, it has meant that in the public mind barristers are rarely identified with their clients. When you read that Ms X has been instructed by some notorious alleged murderer nobody thinks Ms X's moral compass is in doubt. With few exceptions, such as the unfortunate John Cooke, English barristers have largely escaped censure for acting for unpalatable clients. I have myself never known anyone at the Bar suffering professionally on account of the identity of a client they have represented. I don't think that anyone in England in the position of Professor Sullivan would ever find that their university career was threatened because they acted for the wrong defendant. Indeed, if one looks at the current make up of Oxbridge College heads one finds that they are dominated by lawyers who have in various ways stuck their neck out.

There is, or at least until recently, was, a common consensus that representing clients fearlessly – however unattractive they might be - was a supreme value in itself and was deserving of praise.

Secondly, it has created in the mentality of English barristers a profound professional value of not judging their clients or refusing to act for particular types of defendant. There was a time recently when a chambers took a collective decision not to defend in rape cases. That was rightly called out and the policy reversed. The cab rank rule has meant that when some particularly egregious person has found themselves in the dock, they have usually had the benefit of first class representation. I would not want to be too misty-eyed about this. When Sir Roger Casement was prosecuted for treason in 1916 his solicitor found that not a single English silk was prepared to defend him; he eventually had to instruct an Irishman, Serjeant Sullivan to take on the job.

But when 30 years later William Joyce – otherwise known as Lord Haw-Haw and then perhaps the most reviled man in Britain - was prosecuted for treason in 1945 he had the benefit of representation by a venerable Kings Counsel called Gerald Slade, along with two juniors who would go on to become leaders of the criminal bar. Slade doggedly argued his client's case over many days all the way to the House of Lords.

It has always seemed to me that Slade epitomises the concept of the apolitical barrister who fulfils precisely the ideal of the cab rank rule. The year before he had been instructed by the Imperial Hotel in Bloomsbury defending a civil claim brought by the great West Indian cricketer Learie Constantine who had made a booking but had been turned out because American soldiers objected to sharing a hotel with a black person. I am glad to say that Slade lost the case, though I am sure he fought it tenaciously. The year after he acted for Joyce Slade represented the then chairman of the Labour Party, the socialist and intellectual Harold Laski. Laski had brought a libel action against a newspaper which had alleged that during the 1945 Laski had election advocated violent revolution. And the year after that Slade was appointed to the High Court bench: his preferment was not marred by any of his recent briefs for a racist hotel, a Nazi propagandist or a left-wing revolutionary.

Let me give one more example: it is well-known that a lot of barristers become members of parliament, on all sides of the House of Commons. Yet again one never finds conservative or labour parliamentarians shying away from acting for unattractive clients. I always think it a remarkable fact that the serial killer Dennis Nilsen – recently played by David Tennant on television - was represented by Sir Ivan Lawrence, a MP on the right wing of the conservative party for many years, or that Peter Rawlinson, who went on to become the Attorney General in Edward Heath's government, defended Ruth Ellis.

I referred to Slade epitomising the concept of an apolitical barrister. You might ask what relevance has such a man to a lecture about the political lawyer. My answer is that in fact my first version of the "political lawyer" is a concept of a person who offers their services to whoever seeks them out without judging them and who, irrespective of the identity of the client, will work tirelessly and fearlessly on their behalf. That, it seems to me, is in a sense a political position. It is a collective statement about the rule of law and the societal value attached to the ideal unhindered access to

justice. It is a statement of the importance we ascribe to the right to everyone to get a fair hearing, whoever they are. That is a political stance and a political ideal. And it is one which has been embraced in the United Nations Basic Principles on the Role of Lawyers which states that: 'Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions'.

And that value was for some time one which commanded pretty much unanimous approval. So it was to many rather dispiriting to hear, just two weeks ago, the Prime Minister echoing earlier comments made by the Home Secretary in asserting that his government were, and I quote, "stopping the whole criminal justice system from being hamstrung by...lefty human rights lawyers". As I far as I can see these lawyers are being criticized for doing nothing more than representing their clients to the best of their ability, taking advantage of legal avenues available to them, and so fulfilling their professional obligations.

The **second** distinct version of the political lawyer is one I might call the lawmaker and the law-shaper. There are of course a series of very well-known barristers and solicitors who have become known as political or campaigning lawyers. Many of them have become household names and are justly celebrated: John Mortimer, Helena Kennedy, Michael Mansfield, Geoffrey Robertson, Edward Fitzgerald, Gareth Pierce, Ben Birnberg to name just a few. Indeed, I would also mention Gresham College's recently appointed Professor Law, Leslie Thomas QC.

But in what way can they be political in a more active sense while at the same time fulfilling – as they certainly do - their professional obligations? It is a pertinent question because it might be objected that a lawyer doing their job cannot be political.

After all a lawyer owes a primary duty to the court which transcends their duty to their client: so they cannot mislead the court, or suppress evidence, or take knowingly bad points, or disrupt the court, whatever the wider issues that may be in play in the case. The lawyer is absolutely not permitted to express his or her personal feelings; they can only make submissions. The lawyer is not entitled to use a case as a platform for political grandstanding.

And yet there is room for a version of the political even within the context of the ethical code to which every barrister or solicitor must adhere. There are undoubtedly different ways of doing cases. The common law is not a dead letter but a living instrument. But it generally moves forward and improves itself not because judges suddenly have bright ideas but because inventive and committed lawyers build arguments and present them sometimes to hostile tribunals and over time, they actually change the weather. And in this sense, I think there is a real case for saying that lawyers can actually be responsible for changing not only the law, but also judicial and jury attitudes. Let me take three well-known examples.

The law of provocation was traditionally understood as an act caused by a "sudden and temporary loss of self-control, rendering the accused so subjection to passion as to make him or her for the moment not master of his or her mind". That formulation was undoubtedly deeply prejudicial to women defendants for whom provocation generally occurs in different ways to men. It was a formulation which seemed to be tailor made to excuse and justify the male temper. I am not here to give a lecture on the law of provocation, but the approach to that formulation has been changed over the years via the introduction of the concept of what used to be known as the battered woman syndrome: that has been done not by legislation but by lawyers actively putting expert evidence before initially skeptical judges and slowly affecting a legal shift.

The second example is the law of obscenity. In the 1950s juries habitually convicted writers and publishers for obscenity in relation to what today would be perceived to be entirely innocuous material. When the Obscene Publications Act was enacted in 1959 the public view of obscenity did

not alter overnight. Public perceptions changed, and jury acquittals mounted, because lawyers worked hard to develop arguments and place expert evidence before courts at prosecutions up and down the country. Jeremy Hutchinson, John Mortimer and Geoffrey Robertson were at the forefront of that effort. Robertson's book on Obscenity is one of the best, and most entertaining, textbooks I have ever read. I suspect it is also one of the most influential.

A third example is attitudes to police brutality and mendacity. If one goes back to the 1960s and 70s the word of a police officer in a witness box was treated as gospel truth by judges and juries. To challenge the word of a police officer was almost to commit an act of lese majeste. It was largely through the appeals which were brought in the Irish terrorism cases – the Guildford Four, the Birmingham Six, the Maguire Seven that that perception changed. That required real effort, commitment and bravery.

We are fortunate to live in a country where the rule of law is, broadly speaking, adhered to. But in other countries and at other times the concept of the political lawyer carries with it different meanings to the ones I have discussed so far.

And here I come to my **third** version of the political lawyer: the one who is willing to break the rules towards a perceived higher goal. This third version of the political lawyer is somebody I might call the disrupter, the lawyer who seeks to use the trial, with or without their client's consent, to continue some larger political project or protest.

In this regard English legal attitudes are notably different to those of other jurisdictions. One finds both in France and Germany in terrorist trials and holocaust denial trials, to take two examples, that the lawyers are sometimes aligned with the views of their clients and have no compunction in publicizing that alignment. And the greatest example of this third type of political lawyer is the famous, or notorious, depending on your point of view, Jacques Verges.

Verges was born of a Vietnamese mother and French father. He made his name defending Algerian members of the FLN and apparently developed a visceral hatred of French Imperialism in the process. One of his most high-profile clients was Djamilia Bouhired, convicted in the 1950s of the murder of 11 people in a café where she left a bomb. She later was portrayed in Pontecorvo's classic film *Battle of Algiers*. After her death sentence was commuted to a term of imprisonment Verges married her.

But the high, or low, point of his career (depending on your point of view) was his defence in Lyon in 1987 of the Gestapo officer Klaus Barbie, who had been based in the city during the war, accused of crimes against humanity for his involvement in the torture and murder of members of the French Resistance and the deportation of forty French Jewish orphans to Auschwitz.

A communist himself, Verges headed a defence team which included a Congolese and an Algerian advocate; united in defending an unrepentant Nazi. It was an odd coupling. Verges' approach to the defence of Barbie is almost incomprehensible to the English lawyer. It involved seeking to deny the French state's right to prosecute Barbie on the grounds of its own supposed moral turpitude in relation to its recent colonial history, which made it incompetent to judge Barbie. One might describe it as the hypocrisy defence. One of his submissions was as follows: "Why are the German atrocities in France crimes which must never be forgotten after 40 years while French atrocities in Algeria are under amnesty after 20." He sought to call as witnesses Algerian victims of French state torture. He also tried to argue that members of the resistance had been complicit in the capture of Barbie's most famous victim, Jean Moulin, as if that had any bearing on Barbie's own culpability. Although Barbie was convicted and sentenced to life imprisonment Verges felt able to say about the trial that "On a political level I have won." If by that he meant he had succeeded in turning himself into the world's most recognisable lawyer, then he was right.

Verges went on to defend the terrorist Illich Ramirez Sanchez, better known as Carlos the Jackal, Tariz Aziz, former Deputy Prime Minister of Iraq, and Cambodia's former head of state during the Khmer Rouge era, on charges of genocide. A celebrated documentary was made about him titled "Terror's Advocate."

I suspect that Verges' modus operandi would sit very uncomfortably with most English lawyers, whoever they may be. Not, I emphasise, because of the identity of his clients, but because Verges saw it as permissible to treat a trial not as a legal enquiry into guilt or lack of it but as a forum for the pursuit of propagandizing and what he described as rupture. I sometimes think that the most important skill of a lawyer is, when faced with a vast welter of undifferentiated fact, the ability to understand what is legally relevant and what is not: to cut out all the dross to get to the essence. I am sure Verges knew all about legal relevance; but he made a decision, for his own political and possibly for self-promotion reasons, to rip up questions of relevance.

The **fourth** version of the political lawyer I wish to discuss is what I would describe as the moral icon. That phrase may excite a certain amount of derisive laughter. But as we have seen performing the role of a lawyer can involve bravery and sacrifice.

The person I want to talk in this context was a South African barrister called Bram Fischer. He was a conundrum: he had been born in 1908 into an established Afrikaner family – his grandfather had been the prime minister of the Orange River Colony and his father a judge. Yet he became a dedicated communist and committed Anti-apartheid activist and lawyer. Throughout the 1940s and 50s he maintained a dual existence both in and out of court; he maintained a flourishing commercial law practice while at the same time he was representing members of the ANC. He became Chairman of the Johannesburg Bar and universally respected as an advocate; at the same time, he was leading a secret existence as the chairman of a rather difference organisation, the banned South African Communist Party. In the late 1950s Fischer led the defence in the celebrated Treason Trial, which ran for several years: a mass prosecution of the leading members of the ANC which, remarkably, given that the case was heard by three judges appointed by the National Party government, ended in acquittals.

The case for which he will best remembered is the so-called Rivonia Trial. Rivonia was the suburb of Johannesburg in which Liliesleaf Farm, the hide-out of the South African Communist Party and the ANC's paramilitary wing Spear of the Nation, was located, where most of the defendants were arrested in July 1963. In the trial that started later that year Nelson Mandela, Walter Sisulu, Ahmed Kathrada, Denis Goldberg and many other now legendary figures were prosecuted for the capital crime of sabotage. Many of you will remember that that was the trial where Mandela gave his famous four hour dock speech in which he proclaimed his willingness to die for his cause; it was the trial at the end of which he was sentenced to life in prison, a sentence from which he emerged in 1990 to change the face of South Africa.

But for Fischer this trial was much more than a purely professional undertaking. The people he was defending were his close political associates. As the de facto head of the South African Communist party he had actually been a regular visitor at Liliesleaf Farm and many of the documents which were seized there by the police were in his own handwriting. In fact, it was only through luck that he was not a defendant in the dock alongside his clients. In the immediate aftermath of the police raid on Liliesleaf farm Fischer helped to organise the escape from South Africa of various comrades now at risk of arrest themselves as a result of the evidence found.

During the trial workers at the farm were called as prosecution witnesses to identify the various defendants; Fischer felt obliged to absent himself on those days for fear that they would also identify him, sitting in leading counsel's row, as also having been present at Liliesleaf Farm alongside the

defendants. There were other terrifying moments when the prosecution would show the court a document written in his own hand. Dr Percy Yutar, the notorious prosecutor, would say to the court, “and here is a document, my Lord, in somebody else’s handwriting...”, looking meaningfully at Fischer.

Leading for the defence in a capital trial is stressful enough without living in permanent fear of being implicated in the alleged crimes you are defending. And yet somehow Fischer managed to conduct the case through to its end, and to do so with impeccable self-restraint and respect towards the Court. Unlike Verges his technique was not rupture. He was well-known for his impeccable manners in a trial. He certainly knew the meaning of legal relevance. But still he managed to turn the trial into a forum in which the defendants explained and justified their actions, so that their voices were heard across the world: the Rivonia trial is perhaps the most famous political trial of the twentieth century.

Fischer’s achievement in saving Nelson Mandela from what many assumed would be an inevitable death sentence was one of the crowning achievements of his life. I think in the end, although Fischer had misgivings about participating in the trial, ultimately he felt obliged to take the brief: at the time he was the leading member of the Johannesburg Bar and only a person of his standing and - equally importantly – background as an Afrikaner could hope to save the defendants from the gallows.

Now, according to the English Bar Code of Conduct what Fischer did would have been in breach of his duty of independence. Rule C.21 provides that a barrister must not accept instructions in a particular matter if there is a conflict of interest, or real risk of conflict of interest, between your own personal interests and the interests of the client. Fischer’s role in the Rivonia Trial seems to me to demonstrate that there are limits to the relevance or applicability of such codes. Sometimes doing the right thing can and should take precedence over such rules. I will return to consider later other ethical implications of Fischer’s conduct.

After the Rivonia trial ended in mid-1964 Fischer found himself as a target of the state. In September he had been arrested and charged himself with membership of a banned organisation under the Suppression of Communism Act and the remarkable offence, at least to our eyes, of “committing acts calculated to further the achievement of the objects of Communism”. Despite this he was granted bail to allow him to travel to London to argue a patent case before the Privy Council. Fischer himself gave evidence to given the court a solemn assurance that he would attend his trial.

The judge granting bail had said that as a “son of the soil” – a reference to Fischer’s Afrikaner heritage - he was confident that Fischer would not abscond. Still, once he arrived in London many South Africa exiles – including his colleague Joe Slovo - urged Fischer not to return home: he would surely be convicted and sentenced to a lengthy term in prison.

But return he did and Fischer’s own trial – with him now in the dock rather than sitting on counsel’s row - started in late 1964. Here the story of his life gets even more complicated: halfway through his own trial Fischer disappeared. He left a letter to his counsel – who now found himself without a client - explaining that:

*“By the time this reaches you I shall be a long way from Johannesburg and shall absent myself from the remainder of the trial...I have not taken this step lightly. As you will no doubt understand, I have experienced great conflict between my desire to stay with my fellow accused and, on the other hand, to try to continue the political work I believe to be essential. My decision was made only because I believe that it is the duty of every true opponent of this Government to remain in this country and to oppose its monstrous policy of apartheid with every means in his power. That is what I shall do for as long as I can.”*

One may imagine the thoughts of Fischer's counsel as he read that out to the judge. He was duly convicted and sentenced in absentia to several years in prison.

Bram Fischer QC, the leading advocate of the Johannesburg Bar, now commenced his life underground, adopting disguise, living incognito, moving from safe house to safe house, and seeking to revive the South African Communist Party, which had been shattered by multiple arrests. The authorities carried out a huge manhunt but, extraordinarily, Fischer continued to evade capture.

While Bram Fischer was living underground the Johannesburg Bar Council commenced disciplinary proceedings against him, its former chairman, seeking to have him struck off. It was alleged against him that in failing to attend his own trial he had breached the conditions of his bail and the undertaking he had given to the court, which constituted "conduct unbecoming that of an advocate". This step came as an enormous blow to Fischer. He was defended by his friend and colleague, Sydney Kentridge, who would later come to England to become the greatest advocate of the last 30 years in this country. For Kentridge it was a remarkable experience: acting for a client who was on the run and from whom he could not take instructions other than in the form of letters sent from an unspecified location.

Kentridge's argument was founded on the principle, which had been recognised by previous South African courts, that political offences, committed because of a belief in the overriding moral validity of a political principle, do not themselves justify the disbaring of a person from practising the profession of the law. His conduct did not have any bearing on his profession as an advocate. It did not impinge on the quality of integrity required of an advocate to carry out that role.

In a letter Fischer wrote to Kentridge which was read to the court Fischer explained himself as follows:

*"Where an advocate does what I have done, his conduct is not determined by any disrespect for the law nor because he hopes to benefit personally by any 'offence' he may commit. On the contrary, it requires an act of will to overcome his deeply rooted respect of legality, and he takes the step only when he feels that, whatever the consequences to himself, his political conscience no longer permits him to do otherwise. He does it not because of a desire to be immoral, but because to act otherwise would, for him, be immoral."*

The court was not persuaded. The judge, Judge President De Wet, the very same judge who had presided at the Rivonia trial a few months earlier, said in his judgment:

*"The Respondent in effect admits that his political beliefs are such that he is not prepared to conform to the laws of his country. It is the duty of the Court to uphold and enforce the laws of the country duly enacted and promulgated. It would be inconsistent with that duty for the Court to allow an advocate to remain on the roll when he is defying these laws and instigating others to defy these laws."*

So Bram Fischer's name was erased from the roll of advocates.

And there lay the conundrum. The laws of South Africa at the time were an abomination. Yet they were properly enacted by a duly elected government, albeit where the suffrage was confined to the minority white population and the vast majority were disenfranchised. Fischer refused to accept their legality. But the Courts had to abide by and apply them and took the view that so did the lawyers practising before them.

The story did not end there. A few weeks after this judgment, Bram Fischer was discovered. Remarkably he had managed to evade arrest for 11 months. He was tried again for fresh offences,

now carrying a potential sentence of death. Sydney Kentridge defended him again, though in truth the outcome was a foregone conclusion. In early 1966 Fischer was convicted. Kentridge remembers as one of the most shocking incidents he ever witnessed in a courtroom the prosecutor actually standing up at the end of the case to demand the death sentence against Fischer. Even the judge was appalled by this: Fischer was sentenced to life in prison. He died 9 years later, still a prisoner.

When Fischer had been in London, he was warned that were he to return his career might be in jeopardy. He apparently retorted "F.... my career." And he suffered the professional disgrace of disbarment. Whether as a lawyer you are English, South African, or probably from any nationality, your reputation and standing amongst your peers are probably the greatest treasure you possess. Bram Fischer's decision to sacrifice that for what he perceived to be a higher good is perhaps the supreme sacrifice and perhaps the greatest political act one can take as a lawyer.

In death Fischer's rehabilitation has been complete. He is now rightly venerated as one of iconic lawyers of the twentieth century. His name was posthumously restored to the roll of advocates. He has been the subject of books, films and has even lent his name to an international airport. In 1995 President Mandela gave the first Bram Fischer Memorial Lecture. He recalled an extraordinary statement which Fischer had made:

*"Shortly after his arrest that led to him being sentenced to life imprisonment, Bram Fischer was asked whether his sacrifice of family and legal practice, being hunted as an outlaw and the inevitable harsh punishment that was to follow, was worth the gains of leading the underground struggle for less than a year. He was offended by the question. He replied sharply "Did you ask Nelson Mandela, Walter Sisulu, Govan Mbeki or Kathy Kathrada or any others that have already suffered this punishment? If not, why do you ask me?"*

And yet the question of whether the court had acted properly in disbaring him was a hotly contested one at the time. I have spoken to South African lawyers whose liberal credentials are entirely impeccable and yet who believe the court could not properly have done anything other than disbar Bram Fischer in the circumstances which the judges were confronted with. Sometimes morality and legality come into an insoluble conflict.

The courtroom is a place which necessarily breeds conflict and contention. But the question of the extent to which the courtroom is a proper place to do politics is a vexed one. As I hope I have shown professional obligation can come into conflict with political conviction. But more importantly simple fulfilment of professional obligation can itself carry consequences. Today, around the world lawyers are attacked simply for carrying their duties: in states in a number of East European states we see systematic attacks on judicial and lawyer independence. In Azerbaijan lawyers active in human rights are threatened with disbarment, and so destruction of their right to practice and their livelihood. In September of this year the President of Turkey gave a speech in which he warned that lawyers deemed to have links with terrorist organizations could be dismissed from the profession and declared that: "We will do what is necessary to cut off the bloody path from attorneyship to terrorism." Sure enough, two weeks later lawyers representing clients charged with terrorism related offences were themselves taken into custody for "assisting a terrorist organisation." Earlier in the year another set of lawyers were similarly incarcerated later given travel bans.

I started this lecture with four examples of the price four lawyers from different countries have paid for representing a particular client. None of them related to the England of the twenty-first century. I expressed the view that it was a rarity for lawyers in England to suffer opprobrium on account of the identity of the clients they represented. Yet just last week it was reported that four days after the Home Secretary's remarks about so-called "lefty lawyers" a man entered the offices of a firm of immigration solicitors bearing a knife and carrying a confederate flag and far-right literature. One

person was seriously injured. The firm believes that the attack was directly inspired by her remarks. Other law firms have reported receiving threats and abuse. Words have consequences.

Thank you.

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Further Reading

Geoffrey Robertson, *the Tyrannicide Brief* (Chatto and Windus, 2005)

Tom Bingham, *Dr Johnson and the Law* (Inner Temple, 2011)

Geoffrey Robertson, *Obscenity* (Weidenfeld and Nicolson, 1979)

Alain Finkelkraut, *Remembering in Vain: The Klaus Barbie Trial & Crimes Against Humanity* (Columbia University Press, 1992)

Joel Joffe, *The State vs Nelson Mandela* (Oneworld Publications, 2007)

Stephen Clingman, *Bram Fischer* (University of Massachusetts Press, 1998)