It is a truly wonderful honour and privilege for me to be given an opportunity to address you in the Casus Omissus Inaugural Lecture. The establishment of the Aberdeen Law Project is a success story, and in the present times there are precious few of those to enjoy. So let us not hold back in celebrating today.

The project has taken the efforts of many to achieve its success but it is plain that the driving force behind it and the mainstay of its institution has been Ryan Whelan. I have little doubt that without his vision and energy and determination this project would have withered on the vine. In reality however, he has invested so much energy and enthusiasm that he has fired the imaginations of the most important people in any such venture- the students themselves. That he has, along the way persuaded others more established in the legal world to become involved is a testament to his powers of persuasion as well as his wisdom in creating a solid and experienced base from which to launch the Aberdeen Law Project's work.

Lawyers get a bad name. There is no doubt about it. It has always been that way. It is still the case.

Indeed my own son, when he went to school for the first day with his friend Tom was acutely conscious of that. The teacher was going round the class asking each child what his father did for a living. Tom said his father was an accountant, but when my son was asked, Tom was astonished to hear him tell the teacher that his father played the piano in a house of sin. ‘But your father is a lawyer’ whispered Tom. ‘I know’ replied my son, ‘but how could I admit to something like that!!’

The famous American General Ulysses S Grant was a very shabby dresser and of very unprepossessing appearance. One dark wintry night he arrived at a tavern in Galena, in the state of Illinois. The circuit court was in session in the town and a group of lawyers was huddled around the blazing fire. One of them noticed Grant

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and said jokingly, ‘Here's a stranger, gentlemen, and by the looks of him, I'd say he's travelled through hell to get here!’

‘I have indeed’, replied Grant good naturedly. The other lawyers chuckled and the one who had spoken first said ‘And how did you find things down there?’

‘Much the same as here’ replied Grant with a smile. ‘The Lawyers are all closest to the fire’.

The earliest people who could be described as ‘lawyers’ were probably the orators of ancient Athens. However, Athenian orators faced serious structural difficulties.

First, there was a rule that individuals were supposed to plead their own cases, which was soon circumvented by the increasing tendency of individuals to ask a ‘friend’ for assistance. Right from the start therefore, lawyers operated under a cloak of dishonesty and disingenuity. However, around the middle of the fourth century, the Athenians almost, but not completely disposed of the pretence.

Second, a more serious obstacle, which the Athenian orators never completely overcame, was the rule that no one could take a fee to plead the cause of another person. This law was widely disregarded in practice, but was never actually abolished, which meant that orators could never present themselves officially as legal professionals or experts. They had to uphold the legal fiction that they were merely ordinary citizens generously helping out a friend for free, and thus they could never organise into a real profession—with professional associations and titles and all the other pomp and circumstance—like their modern counterparts.

The whole business of being a lawyer and charging a fee created for lawyers a reputation for shady dealings and money grabbing which has haunted them ever since.

If one narrows the definition to those men who could practice the legal profession openly and legally, then the first lawyers would have to be the orators of ancient Rome.

A law enacted in 204BC barred Roman advocates from taking fees for their efforts, but the law was widely ignored. The ban on fees was in due course abolished by Emperor Claudius, who legalised advocacy as a profession and allowed the Roman advocates to become the first lawyers who could practice openly—but he also imposed a fee ceiling of 10,000 sesterces. This was apparently not much money; the Satires of Juvenal complain that there was no money in working as an advocate.

Like their Greek counterparts, early Roman advocates were trained in rhetoric, not law, and the judges before whom they argued were also not law-trained. But very early on, unlike Athens, Rome developed a class of specialists who were learned in the law, known as jurisconsults (juris consulti). Jurisconsults were almost always wealthy amateurs who dabbled in law as an intellectual hobby; they did not make their primary living from it. They gave legal opinions (response) on legal issues to all comers (a practice known as publice respondere).
Roman judges and governors would routinely consult with an advisory panel of jurisconsults before rendering a decision, and advocates and ordinary people also went to jurisconsults for legal opinions. Thus, the Romans were the first to have a class of people who spent their days thinking about legal problems, and this is why their law became so precise, detailed, and technical.

By the start of the Byzantine Empire, the legal profession had become well-established, heavily regulated, and highly stratified. The centralisation and bureaucratisation of the profession was apparently gradual at first, but accelerated during the reign of Emperor Hadrian. At the same time, the jurisconsults went into decline during the imperial period.

By the fourth century things had changed in the Eastern Roman Empire: advocates now really were lawyers. For example, by the fourth century, advocates had to be enrolled on the bar of a court to argue before it; they could only be attached to one court at a time, and there were restrictions (which came and went depending upon who was emperor) on how many advocates could be enrolled at a particular court. By the late fourth century, advocates were studying law in addition to rhetoric (thus reducing the need for a separate class of jurisconsults); in 460AD, Emperor Leo imposed a requirement that new advocates seeking admission had to produce testimonials from their teachers; and by the sixth century, a regular course of legal study lasting about four years was required for admission.

Claudius's fee ceiling lasted all the way into the Byzantine period, though by then it was measured at 100 solidi. Of course, it was widely evaded, either through demands for maintenance and expenses or surreptitious barter transactions. The latter was cause for disbarment if discovered. Again the lawyer is a cheat.

The class of legal person called notaries (tabelliones) appeared in the late Roman Empire. Like their modern-day descendants, the civil law notaries, they were responsible for drafting wills, conveyances, and contracts. They were ubiquitous and most villages had one. In Roman times, notaries were widely considered to be inferior to advocates and jurisconsults. Roman notaries were not law-trained; they were barely literate hacks who wrapped the simplest transactions in mountains of legal jargon, since they were paid by the line. Once again members of the legal profession had found a way of creating distrust and loathing by their desire to maximise their own return from any problem or business of their clients.

After the fall of the Western Roman Empire and the onset of the Early Middle Ages, the legal profession of Western Europe collapsed. From then until the mid twelfth century, no one in Western Europe could properly be described as a professional lawyer in anything like the modern sense of the term 'professional'. However, from then onward, a small but increasing number of men became experts in canon law, but only in furtherance of other occupational goals, such as serving the Roman Catholic Church as priests. At the end of the twelfth and
beginning of the thirteenth centuries, however, there was a crucial shift in which some men began to practice canon law as a lifelong profession in itself.

The legal profession's gradual return in these Middle Ages was marked by the renewed efforts of church and state to regulate it. In 1231 two French councils mandated that lawyers had to swear an oath of admission before practicing before the bishop's courts in their regions, and a similar oath was promulgated by the Papal Legate in London in 1237. During the same decade, Frederick II, the emperor of the Kingdom of Sicily, imposed a similar oath in his civil courts. By 1250 the nucleus of a new legal profession had clearly emerged throughout Europe, and more than ever before, the focus was on their training and regulation.

The University of Aberdeen has played a distinguished part in the history of the law and in the training of lawyers in Scotland. As Dorothea Bruce wrote in 1996:

It must be remembered that for centuries the study of Law was a branch of Philosophy. Law as taught in the universities was not a vocational training.

Bishop Elphinstone had brought to his foundation the ideals of the universities of Italy and France, where the study of law had flourished. Law meant the application of two systems - Canon Law and Civil Law. Canon Law was taught by the Church. The study of Civil, or Roman Law, was regarded as a most effective organ of intellectual and ethical training, and the universities treated it as a necessary part of a liberal education.

King's College was founded as the 'Schule of Art and Jure', and was intended by its founder to be pre-eminently the school of Law for the whole of Scotland.

The Faculty of Law at King's College prospered until the Reformation, after which its fortunes sharply declined. During and after the Commonwealth there was a brief revival, but the Union with England in 1707 caused an immediate reversal. Thank goodness for a renaissance in fortune!

In Scotland this development occurred too in the development of the Faculty of Advocates whose records are dated from 1532 but whose activities certainly pre date that. Similarly a number of different associations of lawyers, who approximate to our understanding of solicitors, and who were called different things in different parts of the country, came to be recognised.

So it is then that over the centuries the Society of Advocates in Aberdeen was established in the sixteenth century. The Royal Faculty of Procurators in Glasgow in the seventeenth century, and throughout the country autonomous local Faculties regulated the admission, practice and professional conduct of lawyers.

Like its European counterparts the profession in Scotland became more and more ordered, coordinating with the universities and the courts in the regulation of members of the 'Legal Profession'.
The Law Society of Scotland, fulfilling a somewhat controversial role as both professional body and disciplinary regulator of solicitors, was established in 1948 amid some disquiet in the local faculties.

Recent debate and mass resignations from Law Society officialdom appears to show the disquiet as to its twin and some might suggest conflicting functions remains.

But what more of reputation? It was not and has not been all plain sailing here or in Europe amongst the new profession. Hostility towards the legal profession has always been a widespread phenomenon.

Such was public antipathy towards lawyers in the late eighteenth century that in the wave of general social reordering which took place, the legal profession was entirely abolished in Prussia in 1780 and in France in 1789, though both countries eventually realised that they needed a judicial system, and that system could not function efficiently without lawyers. Complaints about too many lawyers were common in both England and the United States in the 1840s, and in Germany in the 1910s. In more recent times the same complaint has arisen in Australia, Canada, the United States, and even recently in Scotland in the 1980s.

The complaints are many and varied, but it is hard to get away from the preponderant idea that lawyers are seen as self serving money grabbers. Humorous though these many jokes and stories are, they do betray the awful truth that lawyers are held in contempt because of their greed and self interest.

That is the perception. But for generations in many countries of the world, including our own, the truth has been somewhat different. In Scotland, the provision of legal advice and advocacy services to the poor has been a concern which has been addressed in the provision of a state funded 'legal aid' scheme.

The first shoots of such a scheme was the ‘Poor’s Roll’, which came into being in 1424 in Scotland, and which provided:

\[
\text{and gif there bee onie pure creature, forfaulte of cunning, or expenses, that cannot, nor may not follow his cause, the King for the love of GOD, sail ordain the judge to purwey and get a leill and a wise Advocate, to follow sik pure creatures causes.}
\]

In 1587, the Scots Parliament passed an Act that gave

\[
\text{quhatsumever lieges of this Realme accused of treason, or for quatsumever crime... full libertie to provide himselfe of Advocates and Praeloquutoures, in competent numbers to defend his life, honour and land, against quhatsumever accusation.}
\]

The legal profession readily accepted these obligations as a duty to poor prisoners.

The Poor's Roll remained the basis for providing free legal assistance, with various refinements over the centuries, until the 20th century.

In 1937, the ‘Committee on Poor Persons' Representation in Scotland’ recommended, among other things, that
- legal aid become the responsibility of the General Council of Solicitors, with a grant from the state
- there should be a 'Public Defensor' in the police courts
- sheriffs and judges should grant legal aid in the criminal courts.

It was to be some time before anything came of these recommendations.

By 1950, major changes in social conditions following the two world wars generated much business in the courts. The Poor's Roll arrangements were no longer satisfactory, and the system required overhauling. There had been changes to the arrangements in England and a committee was set up to consider a similar scheme for Scotland. As a result, the Legal Aid and Solicitors (Scotland) Act 1949 became law.

Civil legal aid came first. Under the Act, the Law Society was responsible for setting up a central committee to manage the civil legal aid scheme. They had to decide whether applicants had a legal basis for their cases, and it was reasonable to give them legal aid - that is, for them to receive public funds to raise or defend court proceedings.

The National Assistance Board assessed whether applicants were financially eligible.

Solicitors and counsel received 85% of the fees fixed by the auditor of the relevant court for their legal aid work. Significantly, though some may think somewhat modestly, this meant the individual solicitors were subsidising the scheme by 15% as their contribution to the provision of advice and representation to the poor. The Government abolished this automatic percentage deduction in 1984, but introduced new rates of pay for legal aid cases, which were about 10% lower than the rates for privately funded cases.

The effective financial contribution of the solicitors and counsel to the operation of a scheme of assistance was still important.

In 1964, under the Criminal Justice (Scotland) Act 1963, criminal legal aid became available in the High Court and sheriff courts. Then in 1975, further legislation extended it to the district courts.

In 1972, the Legal Advice and Assistance Act 1972 introduced a new comprehensive scheme of advice and assistance for matters of Scots law.

In the first full year of the legal aid scheme (1952), the Law Society made about 4,400 grants of civil legal assistance.

In 2004, the Board granted 12,322 civil legal aid applications, grants of criminal legal aid reached 87,955, and solicitors granted advice and assistance in 303,019 cases.

In 1952, just under £80,000 was spent on legal aid. By 2004, it had risen to £146 million.

It is only right that the state contribution to the assistance of its citizens of modest means should be acknowledged and appreciated. For all the criticism of the system which we as practitioners have, for all the complaints of MPs as to who gets legal aid and who doesn't, and who should and who shouldn't, the fact remains
that our legal system provides a means by which the people who may need help
the most have at least a chance of getting it. In that we must be the envy of the
enlightened world, and we must be grateful for the visionaries who have created
that situation.

The fact remains however that whatever the arrangements may be in any
jurisdiction, there will always be areas of work in which there is a real need for the
availability of legal advice and assistance and no means of funding it from public or
private resources. There will always be areas of legal work which generate no
public debate or excitement but which truly touch the core elements of the
existence of many people of modest means. So it is that elemental issues like
housing, state benefit, educational provision, and employment, which are
fundamental but often not fee generating, attract little interest from the legal
profession who acquire little expertise in these fields to allow them to provide the
advice even when asked for it.

It is in these circumstances that the legal profession must now show that its
own core values as a profession include an awareness that the duty of a
professional is to provide service to those who need it, regardless of their means.
It is the duty of a true professional to be above and beyond the limitations of
being a hired gun.

The true professional must realise that duties to his fellow man must rank
high on his list of priorities. One would like to think that a doctor would not walk
past a man injured in the street. Should we as lawyers walk by when we have the
means of helping, whatever his means?

The professional and moral duties of lawyers in providing such help have
long been recognised. But it is perhaps a shame to have to admit this but it may be
that having made a good early start, our own legal profession in Scotland has in
recent years been slower than many elsewhere in embracing the responsibility and
duty of providing free legal services to those in need. There have been various
schemes organised with variable success, amongst both Advocates and solicitors.
The Poor's Roll was a good start following upon the example of the earliest
Athenian model, but there have more recently been such schemes as the Faculty of
Advocates Free Representation Unit (coincidentally organised for a number of
years by Lord Woolman during his own career at the bar) which have sought to
meet an otherwise unmet need.

The provision of free legal advice and assistance remains though, I fear,
something of an afterthought for practitioners in Scotland. I suspect that few
would deny the general moral desirability of giving help to those who otherwise
would not get it. But the practicalities of providing that help often elude
the profession and good thoughts are frequently not translated into good
deeds.

Compare that somewhat haphazard approach to that of the American Bar.
This is what the American Bar Association says:
Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

1. persons of limited means or
2. charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

1. delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
2. delivery of legal services at a substantially reduced fee to persons of limited means; or
3. participation in activities for improving the law, the legal system or the legal profession.

Whilst these recommendations are made within a legal system that beyond a somewhat questionable ‘public defender’ role has no substantial legal aid scheme, can you imagine the transformation there would be in the provision of legal services in Scotland if each practitioner worked for fifty hours a year for the assistance of the poor and in addressing an unmet need?

Just imagine every lawyer working for no reward in a law clinic for a week. It will never happen, I hear the cries. Indeed it is hard to imagine high powered commercial lawyers with hourly charge out rates in excess of two hundred pounds an hour giving up their valuable time.

But in the United States (not a country to which I would often look to provide social models or direction) it appears the scheme actually does work, and where no substantial state funded arrangements exist, the legal profession itself has engaged with law students and academics to provide advice and assistance where none was previously available, and not only has that advice been of value to the clients. It has also been found to be enriching to the professionals, students and others involved.

As the American Bar comments:

Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association
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urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule.

Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

Now just imagine each of those high powered commercial lawyers writing a cheque for £10,000 to give towards the provision of pro bono legal services!

In this matter we must too look to our professional colleagues in England; The Attorney General coordinated the establishment of a voluntary scheme of pro bono legal advice providers under the banner LawWorks. The foundations of that organisation are these:

- At all stages throughout their career many lawyers regard Pro Bono Legal Work as an integral part of being a member of the legal profession, in providing access to justice and meeting unmet legal need.
- When we refer to Pro Bono Legal Work we mean legal advice or representation provided by lawyers in the public interest including to individuals, charities and community groups who cannot afford to pay for that advice or representation and where public funding is not available.
- Legal work is Pro Bono Legal Work only if it is free to the client, without payment to the lawyer or law firm (regardless of the outcome) and provided voluntarily either by the lawyer or his or her firm.
- Pro Bono Legal Work is always only an adjunct to, and not a substitute for, a proper system of publicly funded legal services.
- Pro Bono Legal Work should always be done to a high standard.

That means in particular that:

- The availability of appropriate publicly funded legal advice or representation should always be considered before a lawyer undertakes Pro Bono Legal Work; and
- When a lawyer is requested to agree to undertake a piece of Pro Bono Legal Work the lawyer should give his/her decision within a reasonable time.
The Pro Bono Legal Work should only be undertaken by a lawyer who is adequately trained, has appropriate knowledge, skills and experience and, where necessary, is adequately supervised for the work in question.

The lawyer undertaking a piece of Pro Bono Legal Work (and where appropriate his or her supervisor) should have no less than the minimum level of legal expertise and experience as would be required if the particular work in question was paid work.

In no case should the client be misled as to the lawyer's skill or ability to undertake the Pro Bono Legal Work.

Once a lawyer has agreed to undertake a piece of Pro Bono Legal Work the lawyer (and if appropriate his or her firm) must give that work the same priority, attention and care as would apply to paid work.

In the establishment of Casus Omissus; The Aberdeen Law Project, the University of Aberdeen should be very proud that its students are organising and taking a lead from the best of practice from England and abroad. They have persuaded the student corpus to provide the human resource. They have persuaded the local professionals to provide the technical support and supervision. They have persuaded the establishment to lend its weight to the organisation and to embrace the ideal.

It is my fervent hope but confident belief that the vision shown here, drawing on moral duty and social imperative, but also mindful of the poor public perception of lawyers, serves to demonstrate that lawyers are not all money grabbers driven by self interest.

Casus Omissus is giving a lead which I am sure many will follow when they see its success, and witness its personal rather than its financial rewards. So good luck young people who now go out to provide the advice and to answer the unmet need. To help those who may otherwise have no voice. I know that I speak for the Board of Management in expressing our pride in being associated with you.