

**SHAMI CHAKRABARTI, SHADOW ATTORNEY GENERAL:  
SPEECH TO THE CRIMINAL BAR ASSOCIATION**

**Saturday 17 May 2019**

Many thanks to Chris and to all of you for welcoming me here today. As eagle-eyed criminal barristers you will have noticed that even though it is first thing in the morning, your conference is already not quite as advertised.

My apologies for not being Geoffrey Cox but merely his Shadow. In fact, I am perhaps a shadow of his shadow, a mere soprano to his deep booming baritone. On a recent trip to Brussels with my boss, this role caused some much needed amusement to a raft of EU officials and dignitaries who repeatedly quizzed me on the Attorney General:

“Who is Cox? Tell us about Cox. Everyone tells us that Cox must bless the deal!”

“They don’t want a blessing”. I replied. “They are looking for a miracle and even a lawyer with his lifetime earnings remains a lawyer and not a magician.”

And forgive me for saying so, but for all your combined education, training, experience, empathy and dedication, you are not miracle-workers nor magicians either.

In preparing to meet you this morning, I have read some of your Chair’s Monday messages. As I expected, they are full of evidence and erudition, but they present an even more depressing picture of life at the coal face of our criminal justice system than I imagined. And it is a picture mirrored by the experiences of judges, police, probation and prison officers, by the vulnerable people who come into contact with the system and the wider public who must retain faith in it, if the Rule of Law and democracy itself are to sustain.

It seems that every other day brings a new headline to shake that vital faith.

First we hear of rape trials collapsing on account of gaps in disclosure. Then of the blanket “digital strip searching” and mobile phone retention of complainants, purportedly “by consent” or more accurately, of investigation made conditional upon such disproportionate consent, without any obvious statutory foundation, and in likely breach of articles 3,6 and 8 of the Convention on Human Rights. Both scandals it seems to me, are ultimately down to the ideology and practice of austerity that has strained all our public services to breaking point for the last decade.

Properly resourced and trained police, prosecutors and defence lawyers would be able to judge the true relevance of digital material to a case before demanding it and proper investment in state of the art technology should remove the need to access mobile phones for more than a few hours, in cases where some of the data is truly likely to be relevant. Snow storms of disclosure are no good to anyone without the resources to sift through them, and all the forms in the world are no substitute for the support and representation to which both complainants and suspects are entitled.

The current “digital device extraction” form is misleading, discouraging and quite possibly unlawful. It brings the feeling of being treated as suspect not victim, profound and debilitating practical inconvenience and the fear of having one’s entire personal life trawled. In this day and age the searching of a mobile phone may be more intrusive than the search of one’s home, giving a far more wide-ranging and intimate insight into one’s health, wealth, private life and even thoughts. To take mobile phones from complainants

automatically, for long periods or without independent legal advice reveals a system almost as Neanderthal as the one that used to allow women to be cross-examined by their assailants in person for days on end before ECHR challenges forced a change in the law.

The form is an embarrassment that should be withdrawn and replaced by something more targeted and proportionate, after proper consultation with both criminal lawyers and victims groups and with a sounder basis in law. Scaring and demeaning victims is the last thing we need right now with trust in vital institutions at such a low ebb.

According to Ministry of Justice figures published last week in the Telegraph: prosecutions are at their lowest level since 1970. Prosecutions for robbery and theft have halved over the last decade.

Fraud offences have increased seven-fold over the last year but the number of prosecutions have fallen by over 7,000 in the same period. Violence is on the rise but the prosecution rate is only 3 per cent.

And prosecutions of sex offences fell by a third between 2017 and 2018 to a record low despite women's organisations reporting an increased demand for relevant support services. As I have said about the embattled Prime Minister in the past, unveiling statues and wearing t-shirts do not a feminist or feminist Government make.

And Chris's Monday messages reveal women practitioners bearing the brunt alongside women victims of crime. Sick court buildings and antiquated listing arrangements, some of the less enlightened behaviours of some judges and brother barristers alongside a disproportionate diet of sex cases will inevitably lead to sick, disillusioned and departing lawyers who should be the more diverse judiciary of tomorrow.

Probation privatisation lies in tatters, but not yet it seems the Cabinet career of a Minister whose contributions to public life include legal aid cuts, illegal court and tribunal fees, an abortive bid to "train" Saudi prison officers, banning books in our own prisons, contracting for imaginary ferries, and railway chaos that brought misery to thousands of commuters for months on end.

Of course if probation fails, so does faith in non-custodial sentencing, leading to overstuffed and failing prisons that devour increasing portions of the too small Justice budget and the revolving doors of miserable human traffic that you must prosecute and defend with less and less by way of resources time and time again.

And whilst we are on the subject of privatisation, I have no problem at all with business and enterprise but not at the expense of Government constitutional responsibility and accountability for the rights of people within the justice system and wider public safety.

This is a Government that loves the private sector of outsourcing corporate giants like Serco, G4S and Sodexo but not it seems, the private sector of public service that is the independent criminal bar.

Politicians of all stripes have talked a good game on law and order for years. But talk is cheap and justice more expensive. I know that dedicated and highly skilled criminal lawyers are being driven to ill health or out of the profession by rates as low as £50 a day in court when even the current too low legal minimum wage would provide £65 for an eight hour working day.

No caring professional ever wants to strike. But criminal barristers have to feed their families just like doctors, nurses and teachers. The twenty year fee freeze is a national disgrace and if the Government and CPS do not act, you will have my solidarity on the picket line.

Proper remuneration for prosecutors and defenders is as vital to improving access to the bar as it is to maintaining the Rule of Law. You have been sorely let down for far too long and the next Labour Government will act to rebuild your trust and a criminal justice system on its knees.

That means re-investing in both legal aid and effective prosecution, in modern court buildings and the technology that can assist skilled professionals but never replace them. So much is said about the new AI revolution that is happening before our eyes and there is much I agree with.

I have no doubt that as with previous industrial revolutions, a great deal of work that is currently being done by humans will be done by machines, computers and algorithms in the future.

But there are three vital caveats:

Firstly, the ethics, politics, law and regulation must catch up with the science and technology if we are not to enter an even braver new world where democratic and legal authority provide no practical ballast to corporate power over every sphere of our lives.

Secondly, people need work and people need income. If robots do everything, who will be able to afford to pay for what robots do?

Thirdly, there is some work that humans will always do or at least lead and supervise better than machines. I do not want to see a justice system where the super-rich get real and human lawyers to hold their hands and voice their interests through every trial and tribulation and the poor and middling are always sent to a website or portal or digital court if they can manage to access and use it.

We need more and real human lawyers to come into the public service (including the criminal) end of the profession. This is good and rewarding work for our present and future public-spirited young people.

They need to be undeterred by student debt, cripplingly high bar school fees and low fees once they finally get to work.

We need a more diverse judiciary, by improving access to and retention in the junior profession, and if necessary by reform of the process of judicial appointments.

And it would be some comfort to a waiting public so disillusioned in vital institutions with all the danger such disillusionment presents in turbulent times for democracy and the Rule of Law.

But first of course, we need a voting public to punish the wrong-doers and defend the children of the poor.

Thank you for your public service and for listening.

ENDS