

Speech for CBA Seminar 10 June 2023

The criminal bar may be at something of a crossroads at the moment. I have been a Presiding Judge for three-and-a-half years and there is no denying that this has not been an easy time. Frankly, it has felt like we have been through one crisis after another. The way the criminal courts have kept going has been a testament to all involved and I know that it has involved, and continues to involve, the bar putting in an enormous amount of hard work.

You are all busy and the pressures are real. I can tell you that judges feel the pressures too. Like the criminal bar, the judges of the Crown Court do the job that they do because they care. Everyone in the criminal justice system knows the importance of the work and so will repeatedly go the extra mile. It may not always feel that this is appreciated. What I can tell you, without breaching Chatham House rules, is that the mood of the [recent] Resident Judges' conference was, without exception, very supportive of the criminal bar. I feel like I have spent a lot of the last three-and-a-half years saying "we can all only do what we can do". We do have to remind ourselves of that. More than ever, we need to pull together so that collectively we are doing what we can to make sure the criminal courts are running as efficiently as possible.

My personal crossroads came when I was pregnant with my third child. I loved practising in crime but my family circumstances at the time meant I was very much the primary carer and without family support around, I found it hard to juggle. I am not going to talk about remuneration generally. I don't need to tell members of the CBA that there are proper processes to deal with that issue and you will realise it is not a topic I can comment on. But from my own experience, I acknowledge the challenges of managing good quality childcare without regular, predictable daily income. My practice also included personal injury work which I enjoyed too and in time I realised that I just had too many balls in the air and that I needed to concentrate on one area for a while. Civil work was a bit easier to slot in with my home life. I found my practice grew in that direction and rather than being a short detour, I ended up concentrating on PI and clinical negligence work and eventually taking silk in that field.

You may be wondering why I am telling you this. It may not sound a hugely inspirational story for the Criminal Bar Association. I am certainly not here to tell you all to jump ship and cross over to civil. The truth is though that for all I enjoyed the work I did, I always missed being at the criminal bar. I missed the camaraderie and the collegiality of the robing room. I

missed juries. I missed being in court, because most of my PI work was conducted out of court. And while I knew that the work I did made a real difference in the lives of seriously injured people, I always retained the sense that the work that was most valuable for society as a whole was crime. We all have to make choices based on a combination of circumstances. I am very conscious that we don't all have the same choices and everyone must do what is right for them at the time. I am in a very privileged position where I can look back and say I did make the right choice for me at the time. But if I have one professional regret it is that I didn't become a criminal silk. Having returned to the Crown Court as a judge, I still find myself looking at the silks who appear before me with admiration and I do wonder if I could have found a path that allowed me to retain my criminal practice.

I will always encourage someone with a real interest in criminal law to follow that path. A downside of publicity about the pressures of the criminal jurisdiction is that students are discouraged from entering the field and young barristers may understandably wonder what the future holds. The continued trend for specialism at the bar perhaps makes it harder to practise in more than one area than was once the case. For my part, I have long believed that barristers specialise in advocacy and that there are real advantages of maintaining more than one string to the bow. We need talented people to choose to practise in crime. Part of that, I believe, is to acknowledge the real talent that I see when sitting in the Crown Court. It is also worth reminding ourselves from time to time that more lucrative options may be less rewarding in other respects. Having reached a certain age, I have been struck by comments from friends who have always worked in the commercial sector and who are now seeking higher meaning. Now I know "higher meaning" doesn't pay the bills in quite the same way as salaries on offer in the City do but, as I have said, we all make choices and just occasionally it is worth reflecting on why we made the choices we did and what it is that they bring.

It is a real privilege for me that my judicial career has brought me back to the Crown Court, first as a Recorder where I really got back to my roots sitting on the Northern Circuit and dealing with the sort of work I had done as a junior barrister. As a High Court Judge, I enjoy the mix of work I do. It is really interesting to sit in different jurisdictions and to see different sectors of the bar. I remain very impressed by what I see from the criminal bar. I know I am fortunate that I get to see the very best criminal advocates. Beyond the hard work that I have already mentioned, what are the attributes that these stars of the criminal bar display? From my perspective, I see a real sense of pragmatism and a desire to keep things on track. There

have been times when something has come to light at trial. Counsel have asked for a bit of time, discussed things and found a way to deal with it that is fair to all. That mental agility to flex and respond immediately is not to be underrated. In civil cases, far more of the evidence goes before the court in written form. There are fewer surprises. Not so in criminal trials. You have to be able to think on your feet and respond to the evidence that actually emerges. Then there are what might be called “softer skills” but in fact that would be a misnomer. Empathy and resilience are two such skills. Whichever side you are on and whatever the accusations, there is a need to treat people with fairness and respect. To be able to do that and to retain good humour even in the most challenging cases is impressive. All these things do place a strain on any human. That is one of the reasons why the camaraderie and collegiality of the criminal bar is a huge strength. I confess I worry a little that the impact of the pandemic and the move to more remote working risks undermining that. I know how important it was to me as a young barrister to be able to return to chambers after a hard day in court and to decompress with colleagues who understood. An event like today’s is important not only for the learning you will take from the valuable lectures to follow but for the opportunity to come together and build on that collegiality.

On the subject of coming together, I have talked about the importance of bench and bar pulling together. Our collective efforts are always greater than the sum of the parts. I am a great believer in collaboration between the bench and the bar. Good dialogue is important. I know there will be times when you think that judges have forgotten what it is like. Just occasionally that may be true. But I hope and believe that so-called “judgitis” is less common now than when I was starting out 30 plus years ago. 2023 has seen the publication of the Statement of Expected Behaviour for all judicial office holders. Judges can now expect to be held to account against this standard. Some of the points are fairly obvious. Treating others fairly and respectfully is a fundamental aspect of the judicial oath to do right to all manner of people without fear or favour, affection or ill will. Other points may be a little more subtle and require judges to really think about things from other perspectives. We need to remind ourselves to be mindful of our authority and aware of how our words and behaviour can affect others. It is in fact easy to forget the imbalance that arises simply through occupying the seat on the bench. Problems can and do arise through differences in perception. In holding the privileged position that we do, judges also hold the responsibility to recognise that. The last bullet point is an important one “be open to feedback if we have done something that may have caused discomfort or offence.” Feedback is the way we all

learn and avoid making the same mistakes. A lot of judges are now pro-actively seeking to foster a more inclusive and positive working environment. There is a huge amount of diversity and inclusion work going on throughout the judiciary. Like many other judges, I am taking part in the judicial reverse mentoring scheme and learning valuable lessons from lawyers with diverse backgrounds. But I know I will on occasion make mistakes. Of all the skills the Judicial Appointment Commission tests, mind-reading is not one. My experience as Presiding Judge has been that problems are often down to a lack of dialogue and misunderstanding, which is why feedback is so important. It is hard when we are all as busy as we are but if we all work to build the dialogue and to consider different perspectives we will strengthen relationships and be able to work even more efficiently. Presiding Judges and Resident Judges will always be open to discussing problems if you feel that it is difficult to raise things directly. I should stress that we are not the route for complaints about judges. The Judicial Complaints Investigation Office exists for that purpose. But I am always happy to have conversations with practitioners and to receive feedback on what we might do better. Indeed, I have had some really interesting discussions which have influenced my own conduct and my leadership of the judges on this Circuit. I hope those conversations will continue and become easier the more we embed this spirit of collaboration and dialogue into the culture.

I am going to end on a positive note. For all the difficulties that the criminal justice system has faced and continues to face, I believe that we can all be proud of the part we have played in keeping the show on the road. If we could travel back in time to 2019 and drop into a Crown Court robing room and recount our tales of conducting jury trials when no person could be within 2 metres of another, those present simply would not believe it. On behalf of the judiciary, I thank you for all you have done and all you continue to do.