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SPEECH TO ANNUAL BAR AND YOUNG BAR CONFERENCE 2017

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Thirty years ago, I began pupillage, not especially well-educated and not especially clever. I had a posh voice, but my family had no money. I had been on a full grant both at university and at Bar School. I thought I had big debts, but they look silly compared to the debts of those trying to get pupillage now. If I'd had to borrow the sums required now, I doubt I would have done so.

Pupillage was quite tough – but in a good way. I had to do some real work and I learnt a great deal from my betters, every day. I saw how hard everyone worked and how proud they were of what they did. The collegiate work ethic made a deep impression on me. I learnt about the ethos of the Bar – not overnight, but over time.

Most of us never stop learning. In recent years I have learnt that it is not just my chambers, or my city, or my circuit but the whole country – the whole profession – the Bar of England & Wales, who share the ethos. We work hard, we get better, we want to help those who want to excel, we want to lead by example, we want to teach: we want to raise the Bar.

Our ethos encourages us to be independently-minded. We try to be fearless in defence of what is right. From quite a young age we have to shoulder responsibility as individuals. Not as corporates, not in partnerships, not as committees, but as individuals. We can and should seek guidance, education and the views of others, but in the end we as individual barristers, time and again pin our colours to the mast and we say: 'There it is': a piece of advice, a submission, a piece of advocacy: sometimes appreciated but on occasion contentious or unpopular.

Sometimes we win plaudits but often there is nothing glamorous about it. Quite the reverse; golden advice given confidentially, sometimes valued sometimes ignored. Only we know and it has to stay that way.

It is of course a humbling privilege, but it is hard work. It often involves heavy responsibility. I mean *personal* responsibility, not corporate, not shared. Much of this is unsung by those who do not know.

This is the profession which has motivated me since I began 30 years ago. It is the profession that most of you care about very much – or you would not be here.

So we understand what motivates us as individuals.

What about us as a profession?

On days like today we put aside our cases, our practice, and we spend some time contemplating the bigger picture: the stage upon which our profession is set.

What questions should we ask, not as individuals, but collectively as One Bar?

Beyond what we do as individuals, what is our role?

What should we do when the *Daily Mail* brands our judges 'enemies of the people'?

What should we do when in other jurisdictions – like Malaysia - bar associations are threatened by their Governments?

Or when judges are impugned or criticised or undermined by the state and its leaders: as with Poland, or Hungary, or Turkey and America?

What is our role when a social media storm is unleashed and unfounded criticism or vitriol is heaped upon the heads of those upholding the rule of law and doing their duty as with the Charlie Gadd case?

What is our role when a succession of governments make the calculation that they can reduce the scope of legal aid provision in a way which has been happening since the 1980s?

What should those who believe in the rule of law do if court fees inhibit those who want to take their case to law?

What is our role when our own Government undervalues our profession and our sister profession so that a legal aid practice become unsustainable?

What should we do when we see the rule of law not upheld in our own backyard – when we lock up thousands of immigrants every year, very many of them vulnerable by any definition, and we fail to provide them with sufficient access to justice?

What do we do when, on a daily basis, unrepresented litigants with no legal aid support have to try to rectify for themselves decisions made by those in authority which unjustly turn their lives upside down?

Your national representative body, the Bar Council, in relation to all these questions and many others, makes the case you would want us to make. We ensure that the voice of the profession is heard. That is our duty and we take it very seriously. When we formulate the case, we listen to the Circuits, to the SBAs, to the Employed Bar and to individual chambers and practitioners.

We provide the dedicated staff, resources and leadership and all that often proves to be a powerful combination and so we are not just heard, but heeded. Sometimes we appear to make no impact, but in the end, when we persevere, firmly and politely, as with all compelling arguments that are self-evidently in the public interest we win the argument, or if not obtain important concessions that would not otherwise have been made.

Let us not pretend we always win. We don't. On Legal Aid for many years now our voice and the voices of many others has gone unheeded.

What should we do?

I began by talking about our ethos and our independence.

And in trying to answer, let me go back to that and think about the core of our duty as practitioners. In our work, we owe a core duty to the court to act with independence in the interests of justice.

Out of court, collectively, the duty becomes *our duty to society to defend the rule of law*.

Our professional duty to act in the best interest of our client, promoted fearlessly and by all proper means, without regard to our own interests becomes, outside our immediate casework, *our duty to further the interests of all who may seek justice, now and for the foreseeable future, without regard to our own interests*.

So if that is our role, how do we achieve it?

First, we must protect and enhance our own profession.

Fundamental to our profession is the overarching determination to be guided by the public interest. That I suggest is our strength.

We are not starting from scratch. Thanks to the endeavours of those that have gone before us, the Bar is a world-beating profession: A model which works and has worked for hundreds of years. Ours is a referral profession with a cab-rank rule and a chambers structure where we share overheads but not income, and where we foster a collegiate atmosphere.

These ideas have been with us a long time and they stand the test of time.

We should not become complacent, but on the other hand we should not waste time and energy by fiddling around and questioning these, our core concepts which work and which serve the public interest and which have given us the reputation we have won.

Second, we must move with the times. Preserve and defend what works but adapt.

We are good at adapting. Successful barristers are not those who are stuck in the past. We have taken to digital working much more readily than many, with their homely but outmoded Rumpolian caricatures, believed possible.

Based on my own experience of the skills exhibited within the profession, I have suggested not merely that we can adapt to digital working but that we can lead it and help shape it.

Our ability to adapt to the challenge of technology is not in doubt. One of the reasons the Bar is strong is that we are so competitive. We compete between chambers but also within chambers. Our fiercest competitions are often with roommates. Our constant desire is to improve, to get ahead, to lead by example. It is not merely more efficient than any other work model yet devised, by its very nature it produces excellence.

So I am confident that we will continue to adapt not as individuals but also as a profession. We must do so in the face of an exponential advance in technology. We must learn not merely to put up with the advance but to embrace it and to use it to promote what we do, to further our perpetual strive for excellence.

Third, we must call out ill-conceived reform when it is unveiled.

When we see a reform that saves money but demotes the quality of justice we should speak up. We are independent, not just of government but of the judiciary.

HMCTS is a partnership between the Government and the judiciary. It would be wonderful, but surprising, if the independent Bar thought that all that this partnership wanted to bring about was to be applauded. After all, HMCTS are constrained by a budget determined by the Treasury. The fact that the delivery of justice is undervalued by successive governments means that HMCTS is operating under significant constraint. The independent Bar does not accept the validity of those constraints. We do not accept that the Government has the balance right. We believe that justice is undervalued and the publicly-funded legal profession, which is central to its delivery across the country, is taken for granted. In terms of national expenditures, the amount of money we are talking about to put matters right is pitifully small.

Some who have suffered cuts to legal aid laugh at what they regard as the lesser problem of the judges' salaries and pensions. But they will stop laughing if the quality of the judges diminishes.

It isn't just about money. The morale of judges and of the Bar is affected by the way we are treated by officialdom in many guises. Sometimes, frankly, it borders on contempt. There are symptoms of low morale not merely amongst judges and lawyers but also critically, amongst court staff.

This is the landscape upon which the Government wants to make changes so as to reduce the cost of the court estate.

We do not like the sound of so-called 'flexible operating hours'. Sitting intermittent early and late shifts will deter those with caring responsibilities. Diversity is a recognised problem not just for the profession but for the judiciary largely drawn from our ranks. Instead of making it harder for women with caring responsibilities to remain in the profession, we want to achieve the opposite – to bring more consistency to the court day, which is why this year we published our Sitting Hours Protocol.

We are also concerned about the quality of court proceedings that become virtual. What is the impact on open justice? We suggest there has been insufficient research, particularly in relation to wider public confidence in the delivery of virtual justice.

And the 'Online Solutions' court sounds like it may be a partial solution in relation to straightforward money claims, provided that there is always room to get advice from someone who knows the law and has relevant experience – otherwise known as a lawyer - and room for challenging witnesses where veracity or accuracy is in issue.

Part of the duty of independence is speaking plainly.

While the Government, in the name of the reform programme, speaks of 'investment', 'customer service', 'user-friendliness', and 'convenience', it also speaks of 'rationalising' the court estate; closing courts that are inefficient or expensive to maintain.

Once a court building in the heart of community has been closed and sold off, which of us believe it or anything like it will ever be purchased again for use as a court where a local community can attend to see justice done?

And measuring capacity - how much we need the court buildings in a particular community- when crime rates are low, when the cost of commencing civil proceedings has never been so high, and when legal aid is not available to so many, seems a little rash.

But I want to underline this. The Bar Council, the Circuits and the SBAs have collectively engaged with the Government on the issue of court reform. The variety of proposals and the potential impact of them is much larger than many realise.

I want to emphasise that many of the proposals are uncontentious – some we support or want to accelerate. Digital Case Systems that are fit for purpose, are one such obvious example.

Inevitably and appropriately the public air-time is devoted to those issues which are contentious because the voice of the Bar - not merely on the ramifications for diversity but also the impact on others– our voice, initially at any rate, does not seem to have been heard.

All I say for the moment about that is this: if the service – and I mean the 'service' – that barristers provide day-in and day-out around the country equips us to speak with authority about the consequences of these changes, and that experience and expertise counts with you, then we expect you will want to listen harder to what we have to say.

Enough for the moment of Court Reform.

Susan Acland-Hood is addressing us later and in Susan the HMCTS have a very good ambassador. We commend her for her willingness to engage with the Bar on these issues.

What about ways in which we should reform ourselves – our own professions?

Here I am not talking about business models but about our culture.

As a profession we are changing, we change with the times and we follow the market. Our flexibility to the markets is one of our strengths.

However let me strike three notes of caution

First, the Bar is increasing in size, but the size of the junior Bar is shrinking. Our international income is increasing but our income for publicly-funded work is shrinking.

Although the research is incomplete, most believe the lack of confidence in public funding is partly what has caused chambers to recruit fewer junior members. The growth in the number of Higher Court Advocates (HCAs) is another. Our submissions to LJ Jackson on the proposed fixed recoverable costs regime focussed on the impact on the junior Bar and the resulting damage to the public interest. Our submissions to the Government on legal aid Crown Court fees are based on sustainability and rewarding career progression.

There is some sign this year that confidence may have returned and recruitment to the junior Bar may be heading back to a healthier place. But we are currently losing young barristers who see how hard it will be to pay back the debts they incur in training. We support the initiative taken by the Inns to design a professional course that is cheaper and that does something to stem the flow of those who pass the final exam but have very little chance of obtaining pupillage.

All this is work in progress, but it is vital that it is addressed. We will wither on the vine if we do not take care of the most junior barristers.

Second, some aspects of our culture need to change. The wellbeing work has begun to open our eyes to the danger of not looking after ourselves and each other in a way that is much more proactive.

One impact of technology is that many more work from home so there are fewer opportunities for those in chambers to encounter each other, to notice each other and to help each other. We need to respond to the consequences of this change and to think about how we can compensate for it so that the very thing that makes us strong – our ethos – is preserved.

But we are making strides in the right direction.

It is now a year since we launched the Wellbeing at the Bar website. It is clearly a great resource. (130,000 hits and counting)

In September, we asked for examples of what you were doing to support wellbeing at the Bar and the response has been genuinely inspiring.

Today we are recognising 29 chambers, Inns, SBAs and Circuits which have been prepared to share their stories - they will be online soon. Please do look at them, learn from them and then tell us your story as well.

Third, diversity. We have made gains in recent years but it is slow – too slow. We still do not have a profession that sufficiently reflects the society we serve and we must continue to tackle that deficit. I know how much Bar Council time and resources go into this effort of bringing about change. I know that most chambers believe they are tackling it themselves. But I think some of our predecessors have underestimated the conscious effort and depth of change that is required. If you do not know about what is on offer in terms of mentoring, please do ask us. I am proud of what my Circuit is doing. The Western Circuit Women’s Forum provide a shining example of what can be done. If you do not know about it please ask us. If you want to learn more about what you can do within chambers, or within your work place if you are an employed barrister, please ask us.

I referred earlier to unsung heroes. The employed Bar has many. They are a little less unsung this year because we held an event at the Tower of London where we acknowledged in public the contribution many had made, not just to the Bar but to the Rule of Law. Camilla de Silva, who is part of the legal team at the Serious Fraud Office, played a stunning role in the Rolls Royce deferred prosecution agreement resulting in more than half a billion pounds being paid to the Treasury in fines and so won our award as Employed Barrister of the Year.

[If the Treasury want to know how to spend the money, it might be pointed out that half a billion pounds is a third of the current total annual spend on Legal Aid and equates to the unintended ‘saving’ made by LASPO, if you ignore the social costs of that Act.]

I have seen myself this year how the employed Bar has contributed its expertise to one of our proudest boasts – our twenty four published *Brexit Papers* which are gold dust not just for civil servants and politicians who are grappling with consequences of exiting the Union but for anyone who wants to obtain objective, accessible expertise. I cannot tell you how proud I feel of the profession when I watch the impact of this work first hand.

Today ends with a speech from Keir Stammer QC MP. He is a politician but his prouder boast, no doubt, is that he is a member of the Bar. We expect him and politicians of every political hue to guard the Rule of Law as we exit the Union. Clause 6 of the Bill, if it remains un-amended, will imperil our judiciary by putting them in the political firing line because it provides insufficient guidance as to how judges are to regard decisions of the Court of Justice. Let us hear later, what the politician leading HM opposition on Brexit issues, has to say to us.

Shortly you will hear from a former Chairman of the Bar, Lady Justice Heather Hallett. Some of what we face will remind her of her time at the Bar. Some will be different. We are very lucky that she is here to share her thoughts. I am not going to pass up the opportunity to say in public simply that I know that Heather Hallett is, and always will be, an unparalleled inspiration to many of us, and to very many beyond our profession.

Before then I have a duty to perform on your behalf

In your delegate bag is a leaflet from the **Bar Pro Bono Unit** which captures 11 nominations for this year’s Bar Pro Bono Award. This is the 20th.

The panel led by Lord Goldsmith QC has struggled such is the quality of the contribution made by each. We have looked at commitment of time, the importance of the assistance given, the innovation and inspiration to others: we would like to make a special commendation to Kirsty Brimelow QC in her work as Chair of the Bar Human Rights Committee, and in particular her individual contribution to mediation in Colombia.

But the award this year goes to someone who has done outstanding work in Uganda, in particular in relation to her direct involvement with hundreds of individuals facing the death penalty. Having worked for years on this and related issues, and following a ruling which held that the automatic death sentence was unconstitutional, Tanya Murshed (IMCB Chambers) took a sabbatical from chambers to train others to advance mitigation on behalf of those previously subject to an automatic death penalty. Since then 243 who faced the death penalty have received other sentences. Some have in fact been released.

A stunning example of working for nothing to help those in desperate need and motivating others to do likewise.

So, One Bar: threats, opportunities and strengths

The shrinking junior Bar, our Wellbeing and our Diversity: those are three threats to our profession.

Our professional opportunities are limitless if we are prepared to stick to our core ethos whilst being intelligent about how we should adapt. Our international work increases and not only for the commercial Bar: the overall size of the Bar and its earnings continues to increase, confounding those who predicted our demise. Our demise has been prophesied since I was called 31 years ago, since which time we have tripled in size. Why? Because you can't keep a good idea down. The idea of independent referral advice and representation from fearless individuals who compete for excellence, is an idea that not only refuses to die, but gains traction wherever it is given the chance. It is highly prized, here and abroad and rightly so.

Our great strength as a profession is that we are motivated by acting in the public interest. So yes, as individuals we should look out for each other, and we should make the case for our clients. But a greater cause even than those two causes is the plight of those now and in the future who cannot mount a fair fight for themselves. We should put our collective effort into turning the tide which has been running against those who, without legal assistance, are unable to make a case for themselves.

Just before our lunch break, in here, Sir Henry Brooke, a veteran activist who puts the rest of us to shame, is going to talk to you about legal aid. Please be here and please give him a rousing reception when that time comes.

We have a great day ahead. Let us listen, learn and speak up.

ENDS

Notes to Editors

1. Further information is available from the Bar Council Press Office on 020 7222 2525 and Press@BarCouncil.org.uk.
2. The Bar Council represents barristers in England and Wales. It promotes:
 - The Bar's high quality specialist advocacy and advisory services
 - Fair access to justice for all
 - The highest standards of ethics, equality and diversity across the profession, and
 - The development of business opportunities for barristers at home and abroad.

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