

The Bar Association for Commerce, Finance and Industry

The Denning Lecture 2022

Wednesday 7th December at 6pm

at The Athenaeum, Pall Mall, London

To be given by

Sara Lawson KC

General Counsel at the Serious Fraud Office

The Future for a Changing Bar

discussing the growing fluidity between the employed and self-employed Bar, the public and private sector and new opportunities.

Chaired by Gaynor Wood

To be followed by the

BACFI Christmas Reception from 7pm – 9pm

Good evening. I am delighted to be here tonight giving the Denning Lecture. I am aware of the eminence of those who have spoken before me and I am honoured to be in such distinguished company. Thank you to BACFI for inviting me.

When I was an undergraduate our law society was named the Denning Law Society and little did I think that quite a few years later I would be giving a lecture in his name.

I read some of those speeches. I thought about whether to include the story I am about to tell you because it is not flattering to me but it is flattering to our judiciary and I was inspired by Lady Justice Gloster who told a story, in 2014, about having to admit a mistake to Lord Templeman in the Court of Appeal. I find it inspiring when people as successful as her admit to mistakes as it gives me hope that a certain amount of humility and an ability to admit mistakes mixed with steely determination can help you succeed at the Bar.

I had a similar experience in the Court of Appeal myself when I had to admit a mistake to Lord Justice Moses who was also extremely kind to me. I note that he gave a very amusing Denning lecture on the Reputation of the Law in 2013. But that is not the story.

The first time that I met a High Court Judge, or any judge, was as an undergraduate contestant at the final of the Observer national mooting competition. It was an annual contest which that year he had agreed to judge. The moot was on property law which I have to confess was never my strongest suit and I was quite nervous. My team came second but that was not the worst of it. We went for a meal with the judge afterwards where I sat next to him. He was delightful company but I was feeling a bit off by then and my stomach was making strange noises. It dawned on me that I needed to excuse myself but I did not want to interrupt him or appear rude so I waited longer than I should have to stand up. Suffice to say that I vomited over the shoulder of his suit and was mortified. I was immediately conscious that clearly I would never make it to become a barrister and contemplated the loss of all my dreams as I drafted my letter of apology the next day and offered to pay his dry-cleaning bill. In fact his response was as delightful as his company. He said that he quite understood, that we are all human and he wished me luck in my future legal career.

He went on to become a Court of Appeal Judge and I would sometimes see him at lunch in Lincoln's Inn where I guessed that he had told his luncheon companions who I was when I

saw them smiling at me. In a way it was a positive as no experience in court could be as embarrassing as that episode.

Of course Bacfi is the Bar Association for Commerce, Finance and Industry and I am an interloper of a criminal practitioner who has been asked to speak to you although I take comfort that I am not the first as last year's speaker, Amanda Pinto QC, was not only the Chairman of the Bar but also a criminal practitioner.

BACFI has 55 years of history and against the background of some of that history I want to look to the Future of the Bar. The title of my discussion tonight is "the future of a changing bar discussing the growing fluidity between the employed and self-employed bars, the public and private sector and new opportunities". Most of what I say is positive because I do see many positives but there are a few issues which might cloud the horizon.

We have an hour before drinks and I am conscious that I am standing between you and a festive tipple.

Before I speak about the future I want to give a little context with a quick look at the past and how we are doing now. I should point out that my background in crime means that I mainly work in the criminal sphere now. Although some of the legal work I do at the SFO is civil law, including judicial reviews and employment law and we do work with the commercial, financial and industrial world in the types of cases we investigate.

I was called to the Bar 30 years ago and the landscape has changed greatly since then. In my opinion that is largely for the better. When I was being interviewed for pupillage in Commercial sets of chambers, having chosen the commercial law option at Bar School, I was told at one interview that no good Commercial set would take on a woman (and indeed most did not have female tenants). I was told to do something more suitable for a woman like family law. Needless to say I did not do that but there was a sense of fighting all the way just because I was born what some people considered to be the wrong sex for a barrister. I am very pleased to say that I believe things have improved on diversity and I have been the lucky recipient of all the improvements fought for by those women who came before me; but there is a way to go.

I pause to note that the first female tenant in my set (who later became HHJ Linda Stern QC) was at first refused a tenancy because there was no lady's loo. She undertook to use the facilities in Inner Temple instead and she was eventually taken on. I was also lucky enough to be in the same chambers with Dame Linda Dobbs – the first black High Court judge. I have been lucky to have inspiring role models.

The SFO signed up this year to the Bar Council's Black Intern scheme, which was not as straightforward as you may think because we don't just prosecute people, we also investigate them, and so it was necessary to create protocols to allow someone who was not security cleared to have access to our people and material. It worked though and the intern enjoyed it and said that she had been given a new perspective on the possible work of barristers.

When Amanda Pinto KC was Chair of the Bar she and I worked on a blog where she told the story of how we had worked together on an SFO case and were of course the only women. We also worked to try to improve the diversity of counsel used in SFO cases. I refreshed the list shortly after I joined and we held outreach events beforehand. The previous requirement

to join the list was to have had experience of SFO work. In other words you had to have worked for us in order to work for us! A bit like a closed shop and the old rules on how you could join the Actors' Union Equity – you needed to have an Equity card to get an acting job and you could not get an Equity card until you had an acting job. I changed the criteria for SFO counsel to say that what we require is good advocates and not necessarily those who had done our cases before. We did slightly improve diversity but it will be a long haul. The SFO is now working with the Bar Council on ways to improve diversity further. I hope that it might eventually have some effect too on the defence solicitors in our SFO fraud cases and that they may start to use female barristers and ethnically diverse counsel more in fraud work.

Some of you may have seen recent publicity for the SFO on the guilty plea to Bribery by the company Glencore. This was the first time a company had been charged with paying bribes rather than simply failing to prevent the payment of bribes, and it brought in one of the largest ever Crown Court fines and penalties – over £250m. I mention this not just to boast about the work we have done at the SFO since I have been GC but to say that one of the reasons the press picked it up as a positive story was not because of new law being made, the huge fine or the impact on the legal world of fraud – but because it was an all-female team behind it. The Director of the SFO, the head of division, the two case controllers and I are all women. In the future I would like the story to be what a great job we did and not that it is exceptional to have an all-female team.

I am going to digress with another story – this time featuring another heroine of mine – Baroness Hale – also the only person to have given two Denning lectures I think. It shows that we have only come so far. When I took silk I was delighted and my clerk booked me in for a fitting at a famous legal outfitters to take measurements for my ladies court coat. All went well until I said that rather than the standard hook and eye fastenings I wanted to have buttons on my court coat. I was told that women couldn't have buttons and that legislation forbade it. This went on for some months. I told a friend of mine of my frustration and she asked if I minded her telling Lady Hale as she was interested in things like this. Imagine my surprise when I received an email the next day from Baroness Hale. She kindly offered to consider any legislation or convention not permitting buttons. I passed on her email to the outfitters. It all went quiet for two weeks. Then I received an email from the head tailor saying that if I wanted buttons I could have them. In fact the next year a number of my female friends took silk. One of them took a photograph of my outfit to show what they wanted from the outfitter. I thought she was joking when she told me that the outfitters had called the coat "the Lawson". Apparently it was quite popular. So if all else fails I have made my name in law, although not for the reasons I might have hoped.

Once we understand that diversity of characteristics can improve diversity of thoughts, ideas and strategies it starts to make people brave enough to try something new. I think that when people see this we can really move forward in a way that will benefit us all. I haven't even touched on disability and other protected characteristics.

One challenge for the employed bar is the silk process. If you are not working in a court environment it can be hard to achieve. The employed bar is not alone in this. Other areas of law have this issue and even as a criminal practitioner, when I looked at the form to see what I had to do, I was dispirited to see that one required references and examples from 12 cases in a two-year period. At the time I was in the midst of SFO fraud trials which involved taking a year out of court to prepare and one set of linked trials lasted 6 years and were all in front of the same judge. My advice would be to think about oral advocacy which is not in a court

room setting, and think about transferable skills. Advocacy is not just addressing a judge. It could be addressing the Board or other public speaking. I can't offer any kind of reassurance that it would work other than to say that I did not have 12 cases spread over 2 years in my application. I know that there are events and "roadshows" to assist people thinking of applying. Do go to them if you are interested.

I have to pause from my positive notes to mention the criminal Bar in particular the self-employed criminal bar. I have heard some say that it is dying from the bottom up. There are certainly issues. For example the recent strike this year over criminal legal aid was just for defence work. In my personal experience, when I was prosecuting someone from chambers in, for example, a rape case and they were on legal aid, they would be paid more defending than I was paid to prosecute. I understand that the backlog in the criminal courts is worse now than it was in the Pandemic and I have been told, when researching for tonight, that calls appealing for barristers to prosecute cases are not being answered, which may have added to the problem.

At the SFO we use criminal barristers in our cases and we sometimes find it a challenge to find enough barristers to work for us. There seem to be many fewer junior barristers working in crime and available than there used to be. I'm certainly aware of a lot of criminal barristers joining the employed bar and perhaps they, like me, are part of the problem. Could this be a downside of being free to work where you want with greater flexibility?

We sometimes instruct civil barristers at the SFO and I have not detected any similar problems at the civil self-employed bar. But I will leave that to others to define.

My legal assistant at the SFO is a law graduate who wants to become a barrister and go to Bar School, and she informs me that it seems to be harder than ever to get a pupillage. The number on offer seems much smaller than previous years.

She points out that law graduates leave university with more and more debt and that the prospect of having to build up a practice whilst potentially earning little means that some of her contemporaries are considering alternative routes to the Bar.

This includes doing paralegal work and the like while they think of their options.

I am on the Education Committee of the Inns of Court College of Advocacy which was set up by the Inns in response to the vast number of institutions offering the Bar Course at great expense. The new course, which is still being trialled, is virtual for the first six months and is offered at cost price. If students pass an exam they go onto the second part of the course which is offered in person with attendance required in London. This obviously costs more but not as much as a whole year in London and not as much as some of the other available courses. Those of you who are of a certain age will recall that there used to be only one Bar School in London run by the Inns which was closed down in the 1990s because the then Government said that it was anti-competitive. This new college is the long-awaited answer from the Inns. I am full of hope that it will help to reduce financial barriers to entry.

That takes me to pupillage and training. Last year I hosted an event for Inner Temple, where I am Master of the Employed Bar, talking about access to the Bar. It was noted that the Government Legal Department offered pupillages in-house – at that stage there were 6 on offer. I understand that the CPS and some other Government departments also offer pupillages. It is difficult for the employed bar to offer this and may need help from the Bar Standards Board. I know that this is something which BACFI has been particularly vocal

about. Historically pupils had to pay their pupil masters to take them on. Now we have pupillage awards but as the cost of living, especially in London, rises it could well become harder for pupils to manage on what chambers can afford to pay them.

Research reveals that the solicitors' profession have set up an apprenticeship scheme. (SRA website – solicitors' apprenticeship.) According to the Government website on apprenticeships there is funding available for firms signing up to the scheme (up to £1000). Instead of going to university and law school and leaving with debts, students leave school at 18 after A Levels and go straight into work for a law firm. They are paid throughout 6yrs and attend college for one day a week. They take exams which the firm also pays for. At the end of that students become a qualified solicitor. Some firms take paralegals who can do an accelerated apprenticeship in 3yrs to qualify. That has a great name - the "trailblazer apprenticeship".

In 2017 the Bar Standards Board launched a consultation paper on barrister apprenticeships but it has not yet happened. The BSB said at the time, "*the only credible providers of an apprenticeship scheme would be big employers such as the Government Legal Service or the CPS. The legal departments of large multi nationals might also be interested...we need a regulatory framework which permits more than one route to becoming a barrister*".

If the solicitors' apprenticeship scheme takes off it may make it more attractive to students to become solicitors rather than barristers. I think that we are going to have to be mindful to find a way to protect the future of the Bar by encouraging access to the Bar. It is in the interests of all of us that students still want to become barristers. If not then it really could start dying from the bottom up.

We, by which I mean the Bar, have to keep changing. It may seem odd bearing in mind that we all chose a profession with a 17th century uniform (and I love my wig and gown, especially as a useful disguise when prosecuting nasty gangsters) but if the Bar does not keep pace it may get left behind. The speed of change in the world around us is amazing. When I was called there were no mobile 'phones and no internet; now most people have at least four digital devices, each one containing information amounting to the equivalent of an old office server. I hope that we can keep the fundamental spirit of the Bar but much else might have to change.

I should add that the Inns have and are doing a great job in plugging some of the financial holes with the awards and scholarships which they give out each year. It is good to know that my Bench Commons are being put to such good use!

When I started pupillage most barristers stayed in the same chambers and the only acceptable reasons to leave were becoming a judge or dying. You can now move chambers for the benefit of your career and not just because you have been asked to leave due to some issue. Now it is more and more common for barristers to move between chambers.

The other complete change is that more and more counsel are becoming employed barristers – in private practice, in government and across the world. Now you really can join the Bar and see the world. There are so many opportunities.

(Although I did manage to be called to the Falkland Islands Bar in 2008 – that took me as far as Antarctica – but that is another story. If you like penguins I recommend you try it!)

Many barristers working in law firms are now regulated by the Law Society/SRA – again not that many years ago that was something which was not acceptable. I think attitudes have moved on. I think that every barrister can benefit from that. And let's not forget that the world of being employed brings with it regular guaranteed pay, guaranteed work (for most people), a pension and paid holiday. All of which were new for me when I became employed.

In a world where it is perfectly acceptable to move from being self-employed to employed, from private practice to public service, this emphasises the world of possibilities now. It is worth mentioning that my new Superintending Minister, the Attorney General, Victoria Prentis, was an employed barrister who spent many years in the Government Legal Service (in the Treasury Solicitor's Department) before going into politics. I believe this movement towards more employed barristers is making the career paths for barristers more fluid.

My former Assistant GC Rebecca Dix now works in a law firm. She made that change. I went from the self-employed bar to being employed in the public sector. We all know of high profile people who have made the leap both ways:- From the self-employed Bar to the public sector employed bar and then back to private practice as an employee and then as self-employed – Allison Levitt KC, former legal advisor to the DPP. From the self-employed bar to the public sector employed bar and then into private practice employed in a law firm – Sir David Green KC former Director of the Serious Fraud Office. From the public sector to private practice as an employee – Alison Saunders, former DPP. Various former heads of departments at the SFO such as Patrick Rappo (of BACFI fame) and Camilla de Silva to name but 2 have gone from the public sector to the private sector too. It is perfectly acceptable for solicitors' firms to employ barristers. You are not even required to cross-qualify anymore.

What about legal changes affecting the Bar? When I joined the SFO there had been 4 DPAs. I have overseen the further 8 deferred prosecution agreements (“DPAs”). For those of you not familiar with them, DPAs only apply to companies. They apply in cases of bribery or corruption occurring here or abroad. That can mean that a company itself paid or sanctioned bribes or that it failed to prevent it by not having good enough due diligence and training. The actual DPA is a legally sanctioned agreement which a court has found to be in the public interest in which a company agrees with the SFO to reform, to repay a sum representing the disgorgement of its profits from the behaviour, to pay compensation if appropriate, to pay a financial penalty and to prevent a re-occurrence. The company needs to co-operate and may even be required to replace its Board. In return the prosecution agrees that if the company keeps up the good work for the period of the agreement, which is usually 3 years, then the indictment will effectively be stayed and later withdrawn.

The sceptical sometimes describe it as a rich company paying not to be prosecuted but, bearing in mind that a company cannot be sent to prison, it helps the company become a good corporate citizen and allows staff to keep their jobs. It levels the playing field for other companies and raises commercial standards to prevent corruption.

In my view it offers more possibilities than a simple fine in the Crown Court and can be justified as an appropriate tool for the Courts. I think it will continue to progress and there seems to be an awful lot of work for defence law firms to work on these – from internal investigations for firms who may self-report a problem to the SFO, to taking part in negotiations and making the proposed agreement for the court to agree or disagree with. There may be a role for lawyers to act as monitors for companies subject to such agreements too, although we have yet to have monitors imposed in this jurisdiction. Whilst the SFO is the

only UK organisation to have had any DPAs so far, the CPS are also able to agree DPAs so the number might increase. This is a new type of litigation for the legal world.

And a possible new corporate offence of failing to prevent fraud is being considered. This might bring more work on due diligence and in investigations by lawyers. I should add though that the due diligence required would be little or no more than that required already by companies to prevent money laundering, death and injury, tax evasion and bribery and corruption. Anyone working in a small company would have very different requirements to a large company and the test, if it were the same as for Bribery and the other offences I named, would be a requirement to take reasonable steps to prevent fraud. It is all relative and a small company would not need a compliance department any more than it does today.

At the SFO I have been able to use my legal training for far more than was envisaged when I was at Bar School. I am on the Board. Most GCs seem to be on or certainly give advice to Boards and executive committees – much more scope to use legal skills than simply going to court. I prefer to think of it as a different type of advocacy. As a GC I advise on policy and strategy and Government matters as well as legal matters. So far as I can gather, having only been a GC at one organisation, the role of GC does seem to encompass a wide range of duties and skills. There may be something for everyone in the employed world.

There is the difference between the public and private sector of course, you don't need me to tell you that – mainly a difference of money, sometimes of accountability. The public sector has led the way in flexible working though. From part time roles, job shares, condensed hours – many of these have been taken on in the private sector including the ever popular hybrid working. This is a world away from the self-employed bar requirements (especially in criminal law) where you simply have to attend court and if skeleton arguments need to be done overnight or you need to work on the case over the weekend then it simply has to be done. Of course this can happen at times in the public sector but it is seen as unusual and is not encouraged. I suspect that it may happen more often in the private sector. The only way to work part time at the self-employed criminal bar is to take 3 months off. But when you are doing a case there can be no such thing as working part time. It seems to me that that is now something which is perfectly possible once you become an employed barrister. It may be that all of us could have need of that versatility at some point in our careers. With the added benefit of this flexibility and the free movement of barristers it may be that there is more movement both ways; although the idea of going back to being a tax collector in doing quarterly VAT returns does not immediately shout out to me as something I have missed.

The SFO along with lots of other organisations offers secondments. We have lawyers from private practice with us for a year or two and they work in the case teams gaining valuable experience about how we work. As we both investigate and prosecute cases this is a wide level of experience. Of course this makes the secondees from law firms better defenders in our cases when they leave, so you could on one view say that we are helping the opposition, but that is a benefit to the legal world as a whole. We at the SFO also get the benefit of a different perspective from them when looking at what to do in an investigation or a prosecution. Secondees give talks to our staff on points of law in the Legal Forum which I set up and they better inform our staff with their experience, which is always a good thing. It also helps our staff to build external contacts in firms in case they want to move on. That type of change and turnover is positive.

No talk on the future would be complete without a mention of the Pandemic. We are in a rapidly changing world which was probably spurred on for many by the changes which Covid lockdowns brought to our lives. The idea that barristers can now appear in court from their homes is a new and potentially exciting way forward (although I understand that Judges still have to travel to court). The flexibility should make it easier for those with caring responsibilities, whether they be childcare or care of the elderly, disabled or unwell. At a time when it is actually becoming hard to find qualified lawyers, retaining some of the legal workforce may prove to be invaluable.

Something to keep in mind though is that remote working may make it much harder for those starting out to build contacts, especially with an elite who are comfortable in their home office and don't spend much time in the real office. The chances of a chat or advice by the water cooler are negligible for some young barristers, especially those who are employed. Those of us at the more senior end of the profession need to make a special effort to think of ways for young barristers to make contacts and have mentors etc. Maybe BACFI is the perfect answer!

The Bar Council Employed Bar Awards will also help to raise the profile. I was privileged to be on the judging panel this year and the stories from the nominees were inspiring. Might this re-inforce the one Bar ethos?

Since I have been at the SFO I have set up a legal mentoring scheme where lawyers at all grades can spend time with me, read papers, prepare advice with me and see the meetings I go to concerning the whole running of the business. Of course this isn't just useful to them to see what it might be like to be General Counsel and to get an overview of the Office. It also helps me – hearing their views and getting a fresh perspective, getting feedback from different parts of the organisation, building contacts at all levels and of course having to explain things is always useful. I recommend it. Maybe a positive from the “cost of living crisis” will be that people will go into the office more if only to save on heating.

Judicial careers for the employed Bar used to be, and still may be, difficult to achieve but I am hosting an event at Inner Temple in January with the Bar Council and the Judicial Appointments Commission advising employed barristers how to apply to be judges and how to use transferable skills. The former head of the Attorney General's Office, who was a career civil servant (and a solicitor), now Dame Rowena Collins-Rice left the civil service to become a High Court Judge. Food for thought you may think.

What do you think the future of the Bar will be?

Good and bad?

What do we need to do to keep it or to make it good or better?

Thank you for listening.