

Reflections of a criminal barrister

By Anthony J Bellanto QC

I always cringe when I hear the expression 'criminal barrister'. It arouses within me something unsavoury. I prefer the description 'a barrister who does criminal work'.

It sounds passé but it doesn't feel like 44 years. That's the wonderful thing about the law – every case is different, every client is different, each judicial officer is different and our opponents are different. There are always new challenges, which sharpen one's mental processes and there is the never ending quest to do your best. Against this canvas, the necessary hard work is all part of the finished product that enriches and invigorates.

Of course all this doesn't overcome the three questions that are seared into a barrister's soul.

- Will I be as busy next year?
- Why hasn't the phone rung?
- I've just lost – I'm a failure – will I ever get another brief?

My admission as a barrister was moved by my late father and seemed at the time a seamless transition from law school. There was no real discussion or debate – it was assumed that a barrister was my lot in life which was a far cry from the stony faced and impatient careers adviser who my late mother took me to in 1957 at the age of 15 after failing exams. 'Put out of your head being a lawyer or a doctor. You won't survive. Try a trade instead.' This was a defining moment for me which I have never forgotten, and it helped me carve out my career path, determined to succeed, however long it took and strange as it may sound, I am still learning. One thing I have learned is with common sense, honesty and hard work you can attain the seemingly impossible.

I entered my first chambers with the fresh anticipation of a new barrister at Phillip Street in 1967. The building is now demolished but it was on the northern side of Martin Place.

The days, weeks and months passed with an empty desk and empty shelves until I salvaged superseded books and loose parts all to create the appearance of a half-busy barrister. Now we have moved full circle with the paperless office and electronic libraries.

I received my first real break from Sam Wolfe, a solicitor for the NRMA whose son Terry became a crown

prosecutor. Sam gave me their traffic work appearing for members summonsed for traffic offences. This and tenancy work gave me exposure around the Magistrates Courts which I think is so important for a new barrister. It put me into the cut and thrust of litigation at a basic level.

For my first few years at the bar I did Legal Aid work appearing for clients who were mostly in custody. Instructions were difficult, very rarely made sense and acquittals were rare. I took advice from my pupil master Neville Wran (as he then was) to take whatever came my way, whatever it may be, and in whatever jurisdiction. This was good advice although there were testing times – the fear of the unknown was ever present.

One forgettable experience was at a country sitting of the Supreme Court. Vin Wallace QC was the prosecutor, a formidable opponent determined to secure a verdict of guilty. I was called into chambers before the empanelment and the judge, as was his custom indicated the benefits of a plea of guilty, however my client was determined to fight on, which we did. The prosecutor opened to the jury alleging murder in these terms, with a hint of warm approval from his Honour, and pointing to my client:

This court being the most superior trial court in this state has come to your beautiful town, whose peace and tranquillity has unfortunately been ruptured by the criminal conduct of this man.

It didn't get any better.

After nine months or so I purchased a room on 9th Floor, Wentworth Chambers from Ken Torrington (Stuart's father) who had been appointed to the District Court. My room was opposite Phil Woodward QC and Lester Meares QC who later went on to the Supreme Court and from whom I learnt career building lessons. They showed me courtesy and gave me the encouragement that a young barrister needs. I would often attend court and watch them in action together with other senior silks at the time such as Michael McHugh, Clive Evatt, Tom Hughes, Jack Smyth and Alec Shand.

Next door to me on Wentworth Chambers was Gordon Johnson whose career before the bar included jackeroo, labourer, beekeeper, oyster farmer, glassblower and builder. The NSW District Courts became his area to cajole, intimidate, incite, enrage and get paid for these

talents, provided he avoided being arrested. He was quite fearless.

Gordon and Lester Meares introduced me to hockey which I played regularly thereafter in a team comprising barristers and solicitors known as the Legal Eagles, although we played under the colours of Gordon. There was also the annual Barristers v Solicitors hockey match where Anna Katzmann (as she then was) performed so well as our goalie and saved the bar from many defeats. These games were not for the fainthearted. On one occasion Peter Graham (as he then was) (also from the 9th Floor, Wentworth Chambers) broke Justice Kevin Holland's nose (without malice). On many Saturdays the team would meet at the Green Gate Hotel at Killara enjoying a beer and talking about what might have been. We did better as we all got older even though we were playing ever younger opponents – something about experience over age.

In the early days when I had nothing to do I would often go around the courts and listen to cases. I have seen two silks on opposite sides of the bar table actually kicking each other in a fit of pique. I saw Clive Evatt QC on his hands and knees with white socks showing, using a crumpled pocket handkerchief to wipe up water that he had spilt on the floor during his opponent's address.

The three years I spent in Hong Kong from 1975 to 1978 gave me an opportunity to prosecute as a member of the Attorney General's Chambers. When I left Australia, the general advice was 'not a good move'. When you come back no one will know you and you will have no practice. After my return people would often say 'I haven't seen you around for a few months. Where have you been?' Although the decision to go was weighed up with many factors in mind, at the end of the day it was an intuitive feeling that made the difference. So, with many decisions in life, I think if one is true to oneself you know in your heart what the right move is and once you make the decision everything seems to fall into place – the intuitive synthesis as it is now described; *Cameron v The Queen* (2002) 209 CLR 339.

On my return to Australia I accepted an appointment as a crown prosecutor and the following seven years again brought me enormous satisfaction and a different perspective on the practice of criminal law. I replaced John Nader at Penrith District Court when he was appointed to the Northern Territory Supreme Court.

Most new judges to the District Court were required to do a term at Penrith and in those days one of them was a judge who had a hyphenated name who spoke with a rather cultured English accent although I don't think he was English. One of his favourite pastimes was to identify somebody in the public gallery in the back of the courtroom who was chewing and he'd ask: 'You there, are you masticating in my court?'

The startled recipient kept chewing and looked down to his groin. This brought the judge much pleasure.

My time with the crown was extremely enjoyable and I made friends with many practitioners with whom I still have a fond association today.

One of my most memorable moments as a crown prosecutor was when I called an offender for sentence and my father came into court and announced his appearance on his behalf. It was *not* a duel at twenty paces, though. He knew how to get his way when he referred to me as 'the very learned and fair crown prosecutor'. He had never spoken to me in such glowing terms before.

I joined 5th Floor, Selborne Chambers in 1984 and on arriving I immediately caught up with my old mate Dennis Wheelahan QC and thereafter we shared many enjoyable times as members of the floor. It was whilst on a conference in Darwin that we met Justice Ian Gzell who at that stage was looking for chambers in Sydney having decided to move from the Brisbane Bar where he had chambers with David Jackson QC. Our floor had a vacancy and was anxious to have such an eminent silk.

Having returned to the private bar in 1984 I had a case in Campbelltown with Peter Kintominas as my junior. There was substantial pre-trial legal argument. We prepared our authorities and Peter was to have a copy of the cases for the bench available on the Monday morning. I arrived at court and he had lined up the reports from one end of the bar table to the other. I said, 'Why didn't you simply prepare photocopies?' to which he replied, 'I love the smell of leather in the morning.'

I once aspired to be a Carson asking Oscar Wilde 'Did you kiss him?' or Burket in the burning car case requesting the unhappy metallurgy expert to oblige him with the co-efficient of expansion of brass. But there are few early stumpings for the cross-examiner. The process

in its true form can be lengthy and complex. Like a great musical composition, the introductory passage, its largo, accelerando, marcato and its artfully devised climax. Whilst this is the theory, the volume of work going through the courts today denies most aspiring advocates the opportunity to fully hone such skills.

My goal is to keep trying and keep improving. I am enjoying what I do as much today, if not more than earlier in my career. The acquiring of wisdom is a wonderful thing. To draw on experience introduces that something extra to a case which I have been privileged to impart.

Ada Evans Chambers deserves recognition. Opened by Justice Mary Gaudron, the first female Justice of the High Court of Australia in November 1998, the chambers are a testament to the feminist struggle of Ada Evans, the first woman to be admitted to the New South Wales Bar (in 1921). Her admission was the result of a change in the law to recognise her as a 'person'. Section 2 of the *Women's Legal Status Act 1918* reads 'A person shall not by reason of sex be deemed to be under any disability or subject to any disqualification ... d) to be admitted to practise as a barrister ... of the Supreme Court of New South Wales ... any law or usage to the contrary notwithstanding.'

I was privileged to lead the floor for ten years. Mary Gaudron returned for the tenth anniversary. The chambers stand as an avenue for young and aspiring barristers who may not have the financial backing to have a room on the more established and expensive floors.

I strongly believe barristers should be members of chambers. Chambers life brings many rewards, not only of a collegiate nature but the opportunity to discuss legal issues, talk about one's victories, judges, magistrates and opponents, and to gloss over the losses. The 'aspirational bar' at the southern end of town provides many advantages. Close proximity to the courts, ease of parking, and a vibrant city life. The Commonwealth and state DPP are close at hand and the Supreme, Federal and High Court are a pleasant walk through Hyde Park.

I have been fortunate and honoured to lead three sets of chambers. Samuel Griffith Chambers is a fine example of the burgeoning talent downtown.

Reflecting on the changes in legal practice, in one sense there has been no change at all. There is still relatively limited input into addressing the causes of crime. I believe the views of experts in the field, researchers, practitioners, etc should be given more weight, rather than populist reactive responses.

I lament this lack of foresight and the failure to 'break the cycle'. I also lament courtroom design and function. One repeatedly enters court with DVDs to be played only to find the equipment malfunctions or is in limited supply. I lament the media scrums outside court in high profile cases and the oft asked question to victims of crime – 'How do you feel?'

I have serious concern, not only as a lawyer, but as a citizen of Australia that we are not addressing in meaningful terms the causes of crime and implementing programs to address it. I firmly believe that education is the key and it should be part of any school curriculum, e.g., how to live in society and the consequences of antisocial conduct, whether it be drug related (including alcohol), gratuitous violence, fraud or traffic offences.

I also hope we will never see the end of trial by jury in criminal matters.

I am concerned that there is currently a move to mandatory sentence for the murder of a police officer. This approach as research indicates has no deterrent effect and only makes more complex the already difficult task of sentencing.

Until the human race works out how to respect each other and follow a moral code (which seems unlikely) then we face the prospect of criminal conduct. The answer is not to legislate for and impose heavier penalties and build more gaols, but to address the causes of crime in respect of which in my experience there has been lamentable inaction.