

Journalist's speech to women lawyers ends in tears

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If one were in search of evidence of the way in which sections of the legal profession are damaging their own profession and our society, it was recently handed to us by the Women Lawyers Association in the ACT.

For its recent gala dinner to celebrate the contribution of female lawyers to the law, this group chose ABC journalist Louise Milligan as its keynote speaker. The event, held on October 21 at the National Museum of Australia, turned into a public humiliation for many lawyers.

Some women at the gala dinner were in tears, many more were hurt and upset, as they sat through an address they say shamed female barristers and lawyers who defend people accused of sexual crimes. Female defence lawyers who attended that evening, from senior members of the profession to more junior ones, claimed to The Australian they felt under attack by Milligan's address. They spoke of the public humiliation they felt as other female lawyers applauded Milligan's attacks on their work as criminal lawyers.

Lawyers present at the gala dinner have claimed to The Australian that Milligan railed against the incompetence of prosecutors and criminal defence lawyers, citing suicide by complainants and claiming that the way victims were treated in court caused long-term trauma worse than the actual sexual assault they suffered.

Milligan, say these lawyers, claimed that women would not lie about sexual violence and that they should be called victim survivors, not complainants.

After the address, many lawyers present wondered whether, on the Milligan measure, we needed a justice system at all. Should we simply go from allegation to jail?

Contacted by The Australian, Milligan said the claims relayed to The Australian by women at the dinner were “a complete distortion of my speech and contain multiple allegations that are demonstrably untrue”. She specifically denied describing prosecutors and criminal defence lawyers as incompetent, suggesting that cross examination could be more traumatic than sexual assault or saying that women would not make false allegations of sexual assault.

The Australian asked for audio or a transcript of the speech. None was forthcoming. The ABC told The Australian it was not an ABC event.

Not up for dispute is that many female lawyers who heard Milligan’s speech were deeply upset, with some lodging written complaints with the WLA. Some have cancelled their WLA membership. In response to complaints, the WLA said “we are reviewing our process for selecting speakers”.

One female criminal lawyer at the event wrote to the WLA on the following Monday: “In attendance on Friday were a significant number of female criminal practitioners, some defence (like myself) and others prosecutors. All were insulted, hurt and disappointed by the speech of the keynote speaker and the sentiment of other lawyers who spoke afterwards. While it was sickening to have to sit through an hour of being lectured about the supposed failings of my profession by someone who does not possess a practical knowledge of our system (yet voiced her outrage when she was accused of something ‘without evidence’), what rang in my ears all weekend was the applause at the end, which was raucous from all except the criminal law community.”

The Australian has been told of other written complaints to the WLA about Milligan’s address.

One offered the WLA executive “some of my observations of the aftermath”. After detailing the distress she witnessed among female lawyers after Milligan’s address, the lawyer wrote: “And so the evening went, with one after another of my colleagues raising the tenor of the evening in bewildered hurt. Criminal law is a close community, so I know that it was not only myself who was upset all weekend with how our hard work is perceived.

“All of these women are clever, kind and fierce advocates who were brought down by an evening supposed to lift them up.”

Another female solicitor whose practice includes defending people accused of sexual crimes told *The Australian*: “I like to think I have a pretty thick skin given the area of law I work in and the nature of our work, but it really, really got to me. And it’s very rare that things do, but it felt like a personal attack on our profession.”

Milligan’s views about the prosecution of sexual abuse allegations are well known. Her reporting is on the record. As this newspaper has reported, her coverage of rape allegations against Christian Porter omitted critical material that would have allowed viewers of her television journalism to better evaluate the problematic nature of the allegation. Instead of trusting viewers with more relevant information, Milligan and the team at Four Corners picked what suited their story. Milligan’s journalistic treatment of Andrew Laming was equally lamentable.

As for Milligan’s role in the matter of George Pell, that is a matter of public record.

While Milligan reportedly claimed she understood the law because she had a law degree, this wasn’t apparent to many criminal lawyers who spoke to *The Australian*. As one said, it is one thing for the ABC journalist to deliver an address that makes no mention of why our system has legal protections for an accused person – protections such as the presumption of innocence, the right to silence, due process and a fair trial. It is another matter for female lawyers, who have sworn an oath to uphold the rule of law, to applaud the pitiful legal vacuum at the core of Milligan’s address. When sections of the legal profession celebrate this ignorance, it points to their legal illiteracy. That, say the lawyers, is what upset them the most.

Katrina Musgrove was at the gala dinner. A criminal barrister, Musgrove was part of a team of lawyers acting for Bruce Lehrmann, who pleaded not guilty in the Brittany Higgins sexual assault trial. The jury was still deliberating. Lehrmann’s lawyers acted without the public fanfare that has surrounded lawyers in the Higgins camp. Lehrmann’s lawyers also acted pro bono.

Last Thursday, when discharging the jury after directing a mistrial, Chief Justice Lucy McCallum said this of criminal defence lawyers: “I want to say it to you all personally, to the counsel in the trial, to thank you for the manner in which you have conducted this trial. You have all behaved in an exemplary way in accordance with the finest traditions of the Bar. As I said, the role particularly of defence counsel is sometimes poorly understood and can visit great hardship on counsel who are doing no more than upholding the finest traditions of the Bar in appearing for persons accused of serious offences and ensuring that they are well represented and receive a fair trial. Also to the prosecutors, whose behaviour has been extremely fair.”

The WLA offers its members clay sculpting and wine classes, yoga lessons and diversity surveys. A reminder about the cab-rank rule, let alone other critical principles that make up our criminal justice system, wouldn't go astray.

The cab-rank rule is one of the Bar's most noble legal traditions. It means a barrister is honour-bound to accept a brief from a defendant if they are available and skilled in the area. It means all defendants, no matter the crime of which they are accused, are entitled to, and can in reality, obtain defence counsel. Lawyers at the gala dinner should have found Milligan's attacks on criminal lawyers repulsive, not a reason for applause.

Heidi Yates was also at the dinner. She is the ACT Victims of Crime Commissioner who, every day that Higgins gave evidence in court, appeared right next to Higgins, in full view of the throng of cameras and other media. Yates won an award that night from her peers for lawyer of the year. She heads an independent statutory body charged with advocating for the interests of victims of crime.

Section 6 of the act establishing her statutory position defines victim as "a person who suffers harm because of an offence". Offence is described as "an offence against a law in force in the ACT".

Higgins is a complainant. No offence has been proven.

After McCallum called for "respite (for Higgins and Lehrmann) from the intense glare of the media that has been pervasive throughout this trial", Yates stood next to Higgins, once again in full glare of the cameras. Yates nodded as Higgins, still a complainant, not a victim, railed against the legal system that scrutinised her allegations.

Lawyers have contacted The Australian concerned that Yates's presence could be seen as an inappropriate endorsement of the truth of Higgins's allegations. They don't recall her attending court in a similar fashion for other, less high-profile, complainants.

If one needed more evidence of the hollowing out of the legal profession, there it is. We are witnessing the worst kind of revolutionaries, those who have nothing to replace a system they are intent on tearing down.

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