Picture Manchester in the early to mid 1980s. Wardship was fashionable. The assize hall was still busy with the footfall of silks settling civil cases. I was lucky – a youngster caught on the roller coaster learning curve that was the High Court list with greats such as Dame Margaret Booth and Sir Anthony Ewbank dispensing justice with humanity and with an eye to public policy and changing the mindsets of those who came before them.

There was nothing formulaic, superficial or preconceived about the decisions that were made at that time. They were reasoned and sometimes swift. Practitioners and judges alike knew their best practice materials and research. Some of you will remember the published imprints on the success of placements by type and by age, gender and even the social background and heritage of the child together with the earlier versions of the section 7 guidance on inter agency working and comprehensive assessment methods. Those were also days when a bundle was just that in the singular. There was a confidence that enabled analysis and précis, collation and recording. It was all part of the professional skill and expertise of lawyer and social worker professionals alike.

Don't get me wrong, there were plenty of stentorian judgments on errors of perception, principle and practice from ritual abuse through to anatomically correct dolls. There was unacceptable delay and a different culture of court control, but it was a vital environment. The lack of a coherent process over the children jurisdictions of family justice had by then led to calls to systemise and describe principles and their application in a new act. The Children Act 1989 was the result. Arguably one of the most successful endeavours of our professional lives.

Into that environment walked a statuesque, striking and self assured advocate – Joanna Hall. She exhibited intellectual ability with an independent spirit that was both refreshing and necessary as the counterbalance to the paternalistic culture of welfare decision making outside the High Court. She helped change the language and attitudes of many of us. The masculinity of paternalistic post-colonial decision making was transformed into gender free objective problem solving that was subtly though not too overtly influenced by the femininity of critical theory. Not that she would have put it like that, at least to her professional colleagues.

She was interested, indeed driven, by a desire to see justice done. The facts of a case, the real options open to the court and what the law must mean if interpreted fairly for all – without fear or favour – that was what

she was about. You could only achieve that by knowing your subject inside out. She was a genuinely fearless advocate and consummate professional.

I knew that I had finally obtained a measure of her respect when, with a touch of humour, I got my first brief for Women's Aid, who had broadened their base into the North West from London and there was Joanna swapping places with me and acting unusually for a local authority.

What would she have made of the family justice system we have re-fashioned over the last three years and in particular, what would she have thought about the placement of children, including and especially, for adoption since the landmark decision of the Supreme Court in *Re B* [2013] UKSC…..

The stereotypical criticism of robust case management and timetabled decision making is that it attempts to create out of justice a commodity that behaves like a product on a production line reducing the judge and each participant to no more than a semi-skilled operative dealing with standard situations in a predictable way. In the sense that achieving earlier resolution of children's cases demands a much more engaged judiciary who identify issues, evidence and options at the earliest stage, then I concede there is in the new Practice Directions and Rules an element of the design of an optimum process. That process is also a court controlled inquisition albeit a collaborative inquisition between the judge and other professionals and the parties themselves. It is a new style of delivery of justice that demands more specialist judges who know their caseload, know what is out of the ordinary, can predict, react and pro-actively direct a case so as to try and achieve the best quality outcome in each case.

That is not a production line approach. That is a flexible, skilled, value added individual approach. There will of court be tensions between two elements of process, individual and collective proportionality on the facts of any case and that is what I will return to in a moment.

In *Re P-M (A Child)* [2013] EWHC 1838 (Fam) Joanna Hall appeared before me for the last time. It was an adoption application by a long term carer of a child. The child, like all children, desperately needed permanence; that in itself did not indicate any preferential option. On the facts of the case the young boy who had lived with his carer for some time (she having received him from a previous failed family placement)

needed permanent care by this carer. Everyone acknowledged that but this young boy had a powerful and meaningful relationship with his grandmother who had taken on the care of his siblings. She could not realistically do any more. She acknowledged that.

The question was how to reconcile the conflicting options and provide not just a least worst solution but hopefully the right solution for this young boy. Ultimately and not before I had agonised long and hard over Joanna's brave, powerful and intellectually acute submissions, I decided to allow adoption but only with a generous contact order to grandmother, even though the adopter did not really want that to happen.

For my part, I would like to think more judges could act upon the evidence and their own judgments to help guarantee sibling contact and/or a birth family contact on an adoption. In more cases than is presently the norm contact proposals need to be carried through to an order.

Joanna would have approved albeit that she would have described the end product more intellectually and less pragmatically than have I. She died shortly after that case. If one could dedicate a case to an advocate I would do so.

The real question in the paradigm case of permanent placement is not the collateral question of maintaining relationships, important though they may be, but with whom the child is permanently placed: adoption, long term foster care, family and/or friends or re-habilitation. Those options should of course be explored from the outset in every case.

There is another lecture on another occasion about how that must be done and the steps that are necessary to define what is a reasonably available and/or realistic option for the child, how that is to be determined in practice and whether within the inquisitorial decision making process of case management, one can reason a decision to exclude an unreasonable, unavailable or unrealistic option without falling into the trap of linear decision making. For the purposes of today I shall take it as read that all options should be explored at the outset and all reasonably available options should be assessed, welfare analysed and evaluated by comparison with each other so as to determine which option is in the best interests of the child and whether that is a proportionate interference in the Art 8 ECHR rights that are engaged.

That so far only describes the process that gets us to the decision, not the decision itself. Before moving to the meat in the sandwich and considering the import of the Supreme Court in *Re B*, I need to just answer criticism of the process itself. In an article in January 2013 in Family Law, the family reforms that the judiciary recommended were equated with a pro-adoption enthusiasm which was presumably at the behest of Government. Speaking entirely for myself, I do not wish to support or oppose any fashion, whether at the behest of Government, the tabloids or anyone else, that is not supported by empirically sound research and good practice. I am unmoved by Secretaries of State and pressure groups alike if they do not condescend to the evidence and that includes rigorously scrutinised research material. The judiciary did not act at the direction of Government.

It would perhaps surprise a number of commentators that I, like many other judges, have read, digested and accept the body of research material that points to the success of permanence options other than stranger adoptions without contact. I need cite only Professor June Thorburn's powerful critique from 2011. One cannot have spent a lifetime in child protection cases without understanding the value of long term foster care and special guardianship to identify but two of the options.

Perhaps more damming of the new family justice system is the critique of modernisation and proportionality as a euphemism for state controlled managerialism or more accurately neo-managerialism to which I have already referred. What the elegant critique ignores is that the concept of proportionality has legislative effect. Individual proportionality is the equality of arms on the facts of the individual case and collective proportionality is effective access to justice for all i.e. a fair share of available resources for litigants. They are the underlying concepts of the overriding objectives in the Rules. A judicial report writer can no more ignore that legislation than can a judge. The concept is neither opaque nor vague or unfair. How it is to be applied may need better exposition and understanding but the concepts are well known to both common law and civil codified jurisdictions and have under-pinned the development of procedural justice in this jurisdiction since at least the Woolf reforms. The concepts prevent Executive interference by price rationing; the very spectre that it is suggested we will unwittingly permit. Not on my watch.

So, returning to the substantive questions, how do I characterise the issues for the future? In three ways which were admirably described by the President sitting in the County Court – but no less important for that – on 16 April 2014 in the case of *Re S*. There are likely to be three non-

exclusive situations that will be relatively commonplace before the Family Court. One involves a litigation failure by a breach of good practice that requires remedy by the court so as to resolve the proceedings justly. The other two involve placement options:

a) FDAC
   International jurisdictional enquiries
   Complex medical cases which will take more than 26 weeks to complete and
b) Change of circumstance cases where a previously unknown option must be investigated to resolve the proceedings justly.

Of their very nature the latter category involves no fault and new circumstances. In reality it is the former category that are of greatest interest. The President's judgment warrants careful reading. You will see that it is not limited to FDAC but extends to other empirically evaluated good practice processes which by way of an example include the Liverpool drink and drugs project which along with neglect cases are described in a research based memorandum that local authorities and professional agencies have agreed and, where they exist, domestic abuse survivors projects which provide the specialist support necessary for victims to disengage from perpetrators and return to successful care of their children. Examples also include mental health support projects.

None of these options presents an open ended assessment opportunity. Of necessity they are constrained by their methodology i.e. the project has to be supported by research accepted by a reasonable body of professionals that is sufficiently well funded and organised to be available and within which the parent qualifies to be considered. The placement options have to be reasonable/realistic options within a timetable which is appropriate for the particular child.

Government and now Parliament has decided that absent specific justification the timetable in care cases must be 26 weeks unless judicially extended. It is of note that FDAC offers the opportunity to make decisions in principle about the appropriateness of a placement with a parent within 26 weeks. The continued success of court based implementation of a decision in principle justifies continued involvement of the court in contrast to local authority control under a care order with a plan for the placement of the child at home, although that remains a serious option in some cases. Published research now supports the FDAC hypothesis and to the extent that research supports any other project, I

will need no persuasion. This is a valuable, indeed an essential tool in the court's armoury.

Let me then turn to adoption itself. I do not understand the UK Supreme Court to be saying that all was well in the first instance court's interpretation of Parliament's intentions in respect of adoption law, let alone the proper application of proportionality having regard to the interference with the Art 8 rights that is involved in that process. Let me re-iterate what the President said in *Re B-S* at [22]. The language used is striking. The message is clear. Adoption and for that matter placement orders, care orders and removal decisions are a last resort when nothing else will do. Where does that language come from: have a look at the White Papers and commentaries surrounding the 2002 Act.

A care order with a placement at home or with relatives or friends is clearly a very different level of interference than with stranger adoption without contact. So too is Special Guardianship or long term foster care with contact. I cannot accept that the language used by the Supreme Court is meant to denote anything other than a reminder that our adoption practices, no matter how successful successive Governments and agencies may think they are, have to be justified and scrutinised to an enhanced degree on the facts of each case. The mantra that this child needs permanence tells us nothing. All children need permanence. The question is why does this child need the permanence of adoption.

To this extent the practices of local authorities and others may have to change. There is a crying need for more feasible permanence options: more realistic family support, not unrealistic second or third chances that ruin children's lives, but genuine support for otherwise capable care givers. We should make greater constructive use of Special Guardianship and long term foster care to protect relationships, while protecting children and providing stability and the permanence of care that each child needs. Yes, in some cases, maybe even the same proportion of cases, adoption will be the answer, but even here sibling contact should be afforded greater respect than it presently has.

In our quest to improve outcomes for children let us at least return to the rigour of Dame Margaret Booth, Sir Anthony Ewbank and others of our memory and use best practice, validated research and specialist knowledge to inform what we do.

Joanna would have approved of that. So do I.