

WEDNESDAY 6 DECEMBER 2006

Present

Bledisloe, V
Goodlad, L
Holme of Cheltenham, L (Chairman)
Lyell of Markyate, L
Morris of Aberavon, L
Peston, L
Rowlands, L
Smith of Clifton, L
Windlesham, L
Woolf, L

Witnesses: **Ms Clare Dyer**, Legal Editor, *The Guardian*, **Ms Frances Gibb**, Legal Editor, *The Times*, and **Mr Joshua Rozenberg**, Legal Editor, *The Daily Telegraph*, examined.

Chairman: Good morning and welcome. Thank you very much for coming to share your insights with us; we are very grateful. As you know we are doing a short inquiry into the relationships between the judiciary and the executive in the new post-reform situation in which we now are and we are trying to see what role, if any, there is for Parliament in that as well. It is good to have the chance to talk to distinguished doyens of the legal journalism profession of the sort we have here. I should just say that this evidence session will be televised and also I have to ask my colleagues whether they have any declarations of interest to make before we start. I should declare that I am Chairman of the Hansard Society for Parliamentary Government. Are there any other declarations?

Lord Woolf: I declare an interest as a former Chief Justice who still sits as a judge.

Q85 Chairman: Thank you. I should also say that a transcript of the evidence will be available for you to look at afterwards. I do not know if any of you would like to make any

sort of opening observations; if not we will go straight into questions. If there is something that each or all of you would like to say, now is a good moment to do it.

Mr Rozenberg: I would just say that I did write something about this subject in response to some draft questions from your learned clerk which appeared in *The Telegraph* on 20 October. By all means, if that is of any use to you, please take that as my evidence. Apart from that I think all we wanted to say was that it is going to be rather difficult for us to report this session, so we are in a rather unusual position.

Q86 Chairman: To start the questioning, obviously our focal interest is the ways in which the news media portrays judges and, when there are these periodic spats between ministers and judges, the way they are reported. I wonder in your own careers - particularly that part of your careers as legal editors - how you perceive relationships having changed between the senior judiciary and the news media, given that you have had a very great change in the reality of what you are reporting in terms of the relationships. How do you perceive the changes in the way the news media report it? Perhaps I should say, do not feel obliged all of you to respond to every point, but if you have something that might help us we would be grateful.

Ms Dyer: Perhaps I could start off with the relationship between the news media and the judges. My career goes back to the early 1980s; the Kilmuir Rules go back to 1955 and the Lord Chancellor at the time, Lord Kilmuir, was asked by the BBC to allow judges to take part in a programme about famous judges of the past. He wrote a letter back saying that judges should not appear on the wireless or on television without the consent of the Lord Chancellor. It developed that judges did not speak to the media because of course they knew that if they asked the Lord Chancellor the Lord Chancellor would say no. Lord Hailsham continued that tradition and it was not until Lord Mackay became Lord Chancellor in 1987 that he, in his first interview, said that the Kilmuir Rules no longer apply and that judges were free to decide

themselves whether to speak to the media or not. Since then judges have participated a lot more in discussion in the media and have taken part in programmes. Lord Chief Justice, Lord Taylor, was on *Question Time* on television and of course Lord Woolf, when he became Lord Chief Justice, was very media friendly and gave regular briefings. To some extent it depends on the Lord Chief Justice of the time. I think Lord Phillips has not yet given a media briefing, he has just given one interview. However, the judges themselves have become much more forthcoming and are interviewed. I did a series of interviews last year with judges about a very political subject. Traditionally they have not spoken on politics, but in this case they spoke on conditions of anonymity and were very, very forthcoming indeed about how they felt the Government was trying to marginalise them with a series of acts which were reducing their discretion.

Q87 Chairman: That last point is exceptionally interesting. Are we going to move in the same direction as the parliamentary press gallery and lobby terms? Are we going to have judges giving deep background briefings but strictly non-attributable that you would then write stories about?

Ms Dyer: I have done that since then on another issue which now escapes me. I have spoken to a number of judges since then.

Mr Rozenberg: I wrote a story a week or two ago saying that senior judges were concerned about legislation which has been passed and which is due to come into effect. I did not name the judges but two judges had spoken to me spontaneously and independently expressing concern. I do not think it is going to be particularly widespread but one does see judges informally more and more and sometimes if there is something that they are concerned about they do in fact talk about it.

Ms Gibb: Can I go back to what Clare was saying at the beginning on the historical context? I think in 20 years, as Clare was saying, it is quite a change not just with the Lord Chancellors

and the Kilmuir Rules but actually a change in the attitude of the judiciary following Lord Lane's tenure. He very much took the view that judges should just say what they had to say in court and should have nothing to do with the press. In a sense that really brought the whole issue to a crisis because he was quite widely criticised - unfairly to some degree - but partly that emanated from the stance he took. Following that Lord Taylor took a distinct decision to open the whole thing up, to do the *Question Time* that Clare has mentioned and to do press conferences, interviews et cetera. It was a policy decision. Some feel that he actually went too far, that the *Question Time* performance was a mistake because there you had a senior judge talking about matters beyond the criminal justice or civil justice system and discussing policy matters. Following that I think there has been a bit of a rowing back as well and now we are at the position where I think judges are trying to find a middle way, not quite back to the *Question Time*, but how do they, in the new regime, have a relationship with the media?

Ms Dyer: I think that is true of the Lord Chief Justice but I do not think things have changed with the individual senior judges. I think they are as forthcoming as they were previously.

Mr Rozenberg: I think it is very significant that the present Lord Chief Justice has not had a single press conference in more than a year. Lord Woolf, when he was Lord Chief Justice, followed the practice of his immediate predecessors and did speak to the media. Lord Phillips has quite deliberately chosen not to, which is all the more significant given his increased responsibilities about which I know you want to talk.

Q88 Chairman: The logic of a greater separation of powers is that the judiciary, like other important bodies in our society, has in a sense to make a case for itself. It has to constantly be validating what it does, the value of what it does and how well it does it to various stakeholders, notably the British public. I wondered what you thought of the Judicial Communications Office which presumably, if there were a press conference or if there were a

press release, would be dealing with it. What more, if anything, should they be doing or are they doing?

Mr Rozenberg: What they could do is act as the public spokesman for the judges in a way that they currently do not do. Either the Lord Chief Justice or somebody deputising for him could and should speak out or, if he thinks that he wants to maintain a low profile for tactical reasons, the Judicial Communications Office could have a public spokesman who is trained, able and authorised to speak on the judges' behalf without having to refer everything that he or she might say to an individual judge. In the sense that Sir Bernard Ingham knew Lady Thatcher's mind, this spokesman would know what the judges were thinking without the need to check each individual comment that he or she might make. This would be a radical departure, but if the judges are going to follow the practice of the present Lord Chief Justice and not speak publicly when they are under attack, it might be a good idea to enlarge the role of the Judicial Communications Office beyond the routine of putting out press statements and organising press conferences.

Q89 Chairman: Something slightly more proactive and less reactive.

Ms Gibb: That obviously requires a big step, a leap of faith, because the person has to be entrusted to say what the judges would want to say. The only alternative to that is having half a dozen judges who are ready and able to do that press person role on television, radio and so on which they have not really developed.

Ms Dyer: They need somebody who is ready on the day to produce a correct version of what has happened. For example, in the case of Craig Sweeney there was a huge outcry sparked by ministers saying that this judge has got it wrong, he is too lenient, then about two days later something was released saying that it was completely in line with the existing guidelines and spelt it out chapter and verse how that was the only decision he could have reached. There ought to have been somebody in the Judicial Communications Office who could have found

out that information and put it out on the day and countered what ministers were saying or maybe even stopped them saying it. We would not then have this idea that there were these terribly lenient judges who were just doing it off the top of their heads. The public needs to know that they are acting on guidelines.

Mr Rozenberg: On the whole the Judicial Communications Office feels that it cannot speak for the judges, it cannot pre-empt the judges, without authority from a senior judge or the individual judge concerned. They will gladly put out the judge's sentencing remarks or any comments that the judge wants to be passed to the media but, as Clare says, they are not going to take a proactive role and explain something-quite unlike the press office of any department - the Department for Constitutional Affairs, for example - which would move quite rapidly to rebut something that ministers do not like.

Ms Dyer: They need to be following the media, hearing what is on the radio and immediately get in touch with the judge, work out what the actuality is and put that out immediately.

Q90 Lord Woolf: That should happen; it is obviously highly desirable. However, I would question the practicality of it happening as quickly as that, speaking with some experience. First of all the press office has to find out what the judge actually said in his sentencing remarks. Without that it is very difficult to form a judgment. Secondly, there has to be somebody who is sufficiently familiar in that particular area of the law and I am afraid our law has become so complicated that there are problems in being able to make a clear answer. For the judiciary to issue something which is not correct can make the position worse. Do you think there is force in what I have just suggested to you and really you are asking something which the judiciary would not be capable of doing? I should add, the judges who could give authority would have to be of seniority and they are probably sitting in court.

Ms Gibb: I think it can and should be done within a day. You can get out the sentencing remarks that very day if it is a high profile, controversial case. That part of it should be

possible. As for finding a judge who is available, that is where you need to build up a network of people who can and are able to issue a statement. It does not need to be long but it needs to be there. The Sweeney case was a perfect example of how damaging it can be to have that gap with nobody stepping in and in this case neither the Lord Chancellor nor the Lord Chief Justice actually said anything for two or three days by which time pages and pages of the story were running, particularly in the tabloid press.

Q91 Lord Morris of Aberavon: The case of Sweeney has been mentioned. There was a gap. The judgment was on a Monday; I was rung up on the evening of Monday and discovered what had happened in the course of Tuesday. I did ten television and radio interviews but there was a complete gap from the Lord Chancellor. If you recall I think he made a statement first to defend the Home Secretary. Only lately, after the intervention of a junior minister, did he speak up. The correction of fact is simple; that could have been done. What do you expect this information office to do other than that?

Ms Dyer: They do not need to have huge expertise in wide areas of the law. The main area of controversy is sentencing actually. Most controversial cases involve sentencing. You could have somebody who knew about sentencing who was there for that particular purpose. They have about three press officers I think so you could have one person there who knows about sentencing and who is in contact with the judges. Surely with technology the sentencing remarks could be put through the intranet. You can anticipate to some extent which cases are going to give rise to controversy.

Q92 Lord Lyell of Markyate: The Sweeney case almost tested the system to destruction for a few days. Whether or not the responsibility is on both sides, you pointed out what the Judicial Communications Office might in future do in circumstances like that, but was there not also a very immediate duty on the Lord Chancellor and on all ministers to abide by what

is now the law about not criticising judges and being extremely temperate in any comment one makes on a judicial decision?

Ms Gibb: That case was unusual in that judges were under fire both from ministers and from the media and I think that neither party acted swiftly enough. In that case the Lord Chancellor should have stepped in much more quickly to defend judges in the face of some of his colleagues' comments. Simultaneously the Lord Chief Justice could have given a short statement saying that the judge was acting within the law as set down by Parliament.

Mr Rozenberg: The context of that case was, as Lord Morris says, that the judgment was on a Monday but the previous day *The Sunday Times* had reported that more than 200 of Britain's top judges had given unduly lenient sentences to criminals guilty of serious crimes, according to a list released by the Attorney General. There was already an appetite by Monday for lenient sentences and soft judges. *The Sun* started naming and shaming these judges. I rang up the Department of Constitutional Affairs to see if the Lord Chancellor was going to be speaking and I was told by a relatively junior press officer that given the constitutional position having changed and the Lord Chief Justice now being head of the judiciary it was a matter for the Lord Chief Justice to speak out, although I was then told that the Lord Chancellor had agreed to do *Question Time* on the television late that Wednesday evening and I was given to understand he might say something, but of course it was going to be too late for Thursday's papers. The Lord Chief Justice was abroad in Poland, but even so more could have been done and it appeared to us that the Lord Chancellor was leaving the judges to swing in the wind, feeling that it was a matter for the Lord Chief Justice to respond-which he felt he did not want to do, certainly publicly.

Q93 Chairman: Just moving on a little bit, you clearly are very potentially influential in shaping perceptions, and I wonder the extent to which jointly and severally you see yourselves - as I am sure all journalists of integrity do - as merely reporting as accurately as

you can what is going on or whether you would concede that what you write and what is written in other sorts of newspapers how far that actually serves to shape the public's perception of the judiciary and therefore whether all journalists who report on this sort of issue have any special responsibility over and above the general integrity of a good journalist.

Mr Rozenberg: I think we do have that responsibility. There is a limit to what we can do on our own initiative, although I think we all tried to explain to as many people as wanted to listen the basis of the Craig Sweeney decision. It so happened that yesterday the same judge, the Recorder of Cardiff, Judge Griffith Williams QC, passed a sentence of two and a half years for involuntary manslaughter. It was recalled by the news agency that he was in the judge in the Sweeney case and there was the makings of a soft judge (in quotation marks) story. "Was he not the judge in the Sweeney case?" people said. "Yes", we responded to our news desks, but of course he was entirely vindicated in that case when the Attorney General decided not to refer the case to the Court of Appeal as unduly lenient because the Attorney General took the view that the sentence would not be increased by the Court of Appeal and indeed the sentence - or, to be more accurate, the tariff - was endorsed by the Lord Chancellor. I made it clear to my news desk that whether or not two and a half years was unduly lenient - and it struck me that it was not on the authorities in this sort of case - it certainly was not another example of a judge getting it wrong because the Recorder of Cardiff had got it right on the previous occasion. We do all the time talk to our news desks, and those involved, and explain how we see the stories as being different from the immediate reaction of those who have not been in this area of work for as long as we have.

Q94 Chairman: Do either of your colleagues have anything to add on that point?

Ms Dyer: I think that is right but I do think that the media do play a big role in how the public see judges, not only in this country but in other countries as well. I come from Canada and in Canada the supreme court has had a very bad reputation for a long time for being too

interventionist just as the judges here in some quarters are thought to be too human rights based, too ready to allow things on human rights law that the public disagree with. Even among quite sensible commentators in Canada there was a view which has apparently changed now because the court recognised this and tried to do something about it in their judgments. It is certainly not new. I remember back in the time of *Spycatcher* one of the tabloids ran a front page of the judges upside down, the ones who had ruled in favour of the Government and it said, “You fools” at the top of it. I think there is a lot of incorrect reporting about the judiciary which does play a big role in how the public see the judges.

Q95 Lord Goodlad: I would like to ask how the witnesses see the perceptions of the readers of your respective newspapers of the role of the judges and how, if at all, that has changed in recent years.

Ms Dyer: Judges were seen to be too right-wing in the time of John Griffith who wrote *The Politics of the Judiciary* back in the time of Thameside (Lord Woolf said that when he died “Thameside” was bound to be written on his heart). They were then seen to be too right-wing generally. Now they are seen to be too left-wing, too bleeding liberal, too wet.

Mr Rozenberg: Too pro-human rights and too soft. Too soft on sentencing is how they are perceived.

Ms Dyer: At one time they were seen to be terribly establishment minded and they would always rule on the side of the Government and to some extent that is true. Now they are seen to be much too liberal. The Government tries to get tough and do things to help the public and the judges sabotage it. That is the general view.

Q96 Lord Goodlad: Is this reflected in readers’ letters to you and your news editors?

Ms Gibb: Not to us.

Q97 Lord Goodlad: How do you reach that impression?

Mr Rozenberg: It is difficult but I think it is the public view that you get reflected from news desks. Just as there is a popular myth that judges in this country bang gavels, these myths are very hard to dispel. Stories fit into a particular template. The story of a soft judge letting somebody off too lightly fits into that template very well and therefore tends to get prominence in a newspaper because it is a story that a news desk can understand. If it is something particularly obscure, however interesting to the lawyers, but does not fit into a preconceived category like sentencing or like ministers being successfully judicially reviewed and being found to be acting unlawfully it is more difficult to get that sort of story into the paper.

Q98 Lord Rowlands: I wonder if I could broaden the discussion. Is this discussion we are having now reflecting the sea change taking place between us with the executive and the judiciary, between Parliament and the judiciary? I read with interest Vernon Bogdanor's lecture on "Parliament and the Judiciary: The Problem of Accountability". He says this: "that judges are increasingly making decisions, which used to be made by politicians, and which many will characterise as political. The decisions made by judges tend to limit the options available to government. It is very possible, therefore, that there will be greater conflict between the judiciary and Parliament". Has there been a change in the whole relationship beyond the issue of just the way it is being reported?

Ms Dyer: Yes. The law has changed and the judges are only interpreting the law.

Q99 Lord Rowlands: So you think human rights legislation has been the watershed in this?

Ms Dyer: Incorporating the European Convention of Human Rights into our law means that the judges have to go further than they previously might have gone in deciding something. It

gives them more discretion because they have to see whether something complies with article two, article three. It has brought discretion in judicial review.

Ms Gibb: That was the previous change, the growth of judicial review, which really brought the judges into the limelight and made them have to adjudicate on more politically sensitive decisions.

Mr Rozenberg: It is interesting to speculate on what would have happened if the Human Rights Act had not been enacted, whether judicial review would have grown anyway. I think that it might because if you look at the period up to the general election of 1997, you saw the then Labour Opposition very cautious about opposing what was going on for fear of not winning the 1997 election and you saw to some extent the judges under Lord Taylor stepping into the gap and acting as a sort of unofficial opposition I think. You have seen that subsequently under the present Government when again the Opposition has been reluctant to oppose too much and the judges to some extent see themselves as defenders of the public interest.

Ms Dyer: If a government has a big majority - as this one has, or certainly had - and tries to exceed their powers or push their powers as far as they can go, then the judges have to step in and it is not because the judges are suddenly exceeding themselves trying to oppose the Government necessarily, it is because the Government is pushing at the boundaries and that is what these judges I spoke to were complaining about. For instance, with the ouster clause that they were proposing when they were trying to fetter the courts' ability to do anything, to have any say about immigration and asylum decisions, to question the legality of these decisions, that was something that judges would have done something about if they had not stepped back and decided not to go ahead with it. In things like the control or detention without trial this Government has tended to push its powers further perhaps than some other governments, also with mandatory minimum sentences.

Q100 Lord Peston: The response of some of the media at least to sentencing and other things could fairly be regarded as feverish. Am I right that it is much more feverish than it used to be? It has grown remarkably. This also relates to Lord Lyell's question earlier about ministers, when I was young it would be inconceivable for a minister to start launching an attack - literally inconceivable - on a judge; it now happens. The world in that sense really has changed.

Ms Gibb: I think there are two things about that. People now obviously challenge any authority figures and it is not off limits to attack anyone in authority in the way it might have been 30 years ago. Secondly the sentencing framework that judges are currently working under requires them, as you know, to impose sentences. The discretion is fairly fettered and a lot of these sentencing controversies arise because judges have applied the law - as we said earlier on in the Sweeney case - but that is not necessarily explained fully; the press or the media do not necessarily explain it fully and the public do not understand or want to understand that someone is coming out half way through the sentence. It is the framework they are operating within and the lack of the explanation as to how they reach the decision because it is immensely complex.

Q101 Lord Peston: Should we assume on this Committee that we have lost respect for judges, it has gone forever?

Ms Gibb: I prefer to think about it as public confidence. Respect is a bit of an old fashioned word and I think people can still have confidence in, say, the medical profession - call it respect if you like - whilst they can still be open to scrutiny. We have had Harold Shipman and we have had other medical controversies which have not damaged the standing generally of the medical profession in the eyes of the public. I think you can have respect and/or public confidence while having greater public scrutiny and criticism.

Mr Rozenberg: I think the judges have to work for that. I do not think they can assume, as perhaps they used to, that it comes automatically with the role and with the knighthood. That is why public relations is so important and that is why perhaps it is in the judges' interests for them to be doing more in order to retain - and even regain - the public's confidence.

Chairman: Listening to Ms Gibb, it may be more appropriate to say that it is deference that has gone, but that does not mean it is not possible to have respect. It is notorious that all institutions now have a sort of deference deficit, including this august House.

Q102 Lord Peston: Could I just make sure I understand something that was said? You introduced this, Ms Dyer, when you were talking right at the beginning in response to somebody. Are you saying that Lord Phillips really ought to be taking a much stronger role in this? That seemed to be more or less what you were saying but you did not quite say it in those terms. Even if we cannot act as quickly as you said, as Lord Woolf has pointed out, someone ought to be speaking up much more now saying, "These people are doing a very difficult job in very difficult circumstances. They are trying very hard to play according to the rules one way or another and some of you ought to shut up" (that is perhaps a bit harsh).

Ms Dyer: Now that they have their own communications office with several press officers they should be doing this. It was done on a fire-fighting basis by the Lord Chancellor's Department previously, but they ought to be anticipating and they ought to have a system geared up to respond quickly to these emergencies.

Q103 Chairman: We are left with Lord Woolf's problem. I remember the evidence to us from Lord Chief Justice Phillips was that he sometimes found it difficult to speak for all judges at all times and he had an extremely senior and individualistic profession by definition. It would be difficult for a spokesman to speak up.

Ms Dyer: The spokesman would basically be giving information; he is not speaking for the judges as such. He is giving correct information to correct inaccuracies and it is not hard to anticipate the areas of controversy.

Ms Gibb: I think it should not all fall on the shoulders of the Lord Chief Justice. Half a dozen senior judges could be ready to be on *Newsnight* or whatever so that we always had the judicial view put in general terms even if they do not know the specific details of the case. There are always general points that can be made.

Mr Rozenberg: It is not that difficult. When these controversial decisions emerge I sometimes get calls from broadcasters asking if I will appear on a radio or television programme and the first question is, “Why has the judge done this?” It is not my job to speak for the judges but I can at least put some of the context before the public and if I can do it then a judge can do it a very great deal better even if he or she is not familiar with the precise details of that case at that time.

Q104 Lord Woolf: I am very interested to hear what you say, but could I first of all ask you if you think the establishment of the Judicial Communications Office has improved the position? It is clear from what you say that it is not satisfactory, but do you think there is an improvement?

Ms Gibb: I think it is an essential first step as a facilitator if nothing else to put out speeches, particularly now that the judges have their own empire.

Q105 Lord Woolf: The second thing that I think comes out of what you are saying is that that information office should know that sentencing is the hot topic and they should really go on a course or have somebody among them who knows something about the intricacies of sentencing so that they can give an authoritative explanation of what law requires.

Ms Gibb: Them and/or the judges themselves.

Q106 Lord Woolf: You would like to see a judge or judges being always available to make a clarifying statement. The last point is a question of whether it is feasible under the pressures which the judiciary face. If they are going to be good judges they must also sit as judges.

Mr Rozenberg: The compromise would be to have a lawyer available because the people in that office are press officers trained in journalism but they are not trained as lawyers.

Lord Woolf: That is a very clear message, if I may say so.

Q107 Lord Lyell of Markyate: Just glancing at the big picture and looking back over the last few years, we had Lord Irvine who stood up strongly for the judges, who was then dismissed and we had the Constitutional Reform Act 2005 and a re-drawing of the lines, but the Constitutional Reform Act quite clearly puts a duty upon the Lord Chancellor and ministers to uphold the independence of the judiciary. If that does not happen, is it not more effective if the Lord Chancellor steps in quickly rather than expecting the Judicial Communications Office or the Lord Chief Justice to step in? Should not each control their own?

Ms Gibb: Yes, I think they have distinct roles. I think that is absolutely right. The Lord Chancellor should be dealing with errant ministers but when judges are under fire or being misunderstood by the media or whatever the Lord Chief Justice should step in. They both have their roles to play.

Q108 Viscount Bledisloe: Just taking up what you said about there being a lawyer, it is going to need more than that, is it not? As I understand it at the moment you have press officers putting out statements and that sort of thing but who do not have the status to make pronouncements. You are really going to need at the head of this office somebody of the same status as the judge who can say, "I do not know the facts at the moment, I will come back to you", pick up the telephone, get the judge himself who did the thing saying, "I must

talk to you urgently”, get an answer and ring back. The press officers, I am sure, do not get to speak to the judge, they get to speak to the judge’s clerk.

Ms Dyer: They do speak to the judge.

Mr Rozenberg: Yes, they do speak to the judge but they are maybe less able to speak for the judge and understand what the judge is saying, and they are certainly not able to speak on behalf of the judge without having first spoken to the judge, whereas a lawyer would be able to understand the point rather more quickly and before speaking to the judge would be able to say something rather more authoritative than a press officer can who has to wait for a statement from the judge and is simply reduced to putting that statement out.

Q109 Viscount Bledisloe: He is not going to have to be a 25-year-old who was called two years ago; he is going to have to be somebody of considerable seniority who can punch his weight and get the judge to really talk to him.

Ms Gibb: Alternatively you could use recently retired circuit judges. I think the Judicial Communications Office has been considering this, a network of recently retired circuit judges who are good with the media.

Q110 Viscount Bledisloe: That is what I say, somebody with status.

Ms Gibb: Yes. There are one or two now who tend to be wheeled out.

Chairman: Perhaps we should stop there before we draw up a detailed job specification.

Q111 Lord Smith of Clifton: Given the broad bi-partisan nature of British politics in which there is not really much difference between one party and another, do you think there is a tendency on the part of editors, sub-editors and journalists to try to up the ante in this respect to try to put back a bit of the poetry and the contest into British politics which is lacking in the fields of economics and other things? In other words, do you think that the reporting of legal

matters and judicial decisions has been seen as a compensation for the rather boring nature of the rest of British politics?

Ms Dyer: Things tend to be seen as conflict, do they not? News desks love conflict and conflict between judges and the executive is seen as more interesting. A judge deciding such and such a thing which happens to be not quite the way the Government wanted it is played up as a snub for the home secretary. Mind you, ministers play into that nowadays in the way they react to court decisions against them.

Chairman: That is one of the aspects that may be worrying about the off-the-record briefing possibility that you started with because it makes a perfectly satisfactory headline, “Judges’ fury at minister’s statement”. What is that based on? It is based on an off-the-record conversation - which is perfectly legitimate - which a good journalist seeking to make a conflict story would feel entitled to go on. Off the record someone might say, “I’m hopping mad and all my colleagues are as well”, then you have a “Judges’ fury” headline, have you not? There are some difficulties about the informal thing for the judiciary, I would have thought.

Q112 Lord Windlesham: I would like to probe, if I may, the relationship between the views of individual journalists and what might be regarded as the general outlook and policy of the paper as a whole. It is a delicate matter here.

Mr Rozenberg: When I joined *The Daily Telegraph* from the BBC in the year 2000 I was not asked whether I shared the political outlook of the paper as it then was. I suspect that Charles Moore who offered me the job assumed that I did not share the political outlook of the paper as it then was and I have not been asked since. I do not think I do support everything that is in the leader columns of the paper and I am pleased to say that that is not a prerequisite and it does not seem to cause me any problems. I can say things on the weekly page that I write which express my view and they may well be different from the approach of the paper

particularly on, for example, human rights, and the paper seems to respect that which is exactly as it should be and very gratifying.

Q113 Lord Windlesham: All three of you are of course from what might be regarded as the more serious end of Fleet Street and therefore your own individual way of operation probably differs, nevertheless you are all in the same sort of business. Is this true of the mass circulation press, sensationalism being one obvious aspect of it?

Ms Gibb: I think it is. To answer the first question, I think Joshua is right; I do not think individual views come into it. I think we all have to work to a news desk agenda and above that in each paper there is the framework and the philosophy and the particular interests of that editor and above him the owner. That is quite removed, I have to say. We might all write the story in a similar way but the actual prominence it gets - this is the same with the tabloids - and the tone of it and the space and so on and whether it carries an editorial, that is what makes a difference. That is decided by the paper's own interest to a degree.

Ms Dyer: I am in the same position as Joshua; no-one has ever asked me about my politics or my views.

Q114 Lord Windlesham: I was not thinking entirely of that, but there is the style and the underlying quality of sensationalism which is a crucial part of the mass circulation. Reporting crime is sensational.

Ms Dyer: If you write for *The Daily Mail* if you write the same story as we are writing you will write it in a completely different way. You have to follow the paper's agenda I would say.

Mr Rozenberg: I think that is right. Other newspapers do have a view of the world and in their selection of the news that is reflected.

Ms Dyer: Not only in their selection of news but in the way they treat a news story.

Mr Rozenberg: I agree. It might be difficult to work on a paper that gave one a very strong direction as to the way in which that paper expected the story to be presented. I do not think any of us is in that unfortunate position but it would be very difficult were we told by a news editor, “This is how we see this story, make sure you fit that template”.

Ms Dyer: If you worked on *The Daily Mail* I do not think you would even have to be told that, you would know you should write the story.

Q115 Chairman: You have mentioned conflict but of course there is another respect in which the tone of a popular newspaper likes to personalise the news so instead of reading about Judge A you read about a 52 year old father of five, passionately interested in ballroom dancing as though that were in some way relevant to his judgment. That, of course, is part of the pop culture, to find personalities through which people can relate to public events. I do not know whether deference or respect are involved here, but it certainly makes it quite difficult for figures of authority when they are put in that intensely personalised frame.

Ms Dyer: Figures of authority, I do not think people think in that way now. People want to know. Papers are becoming popularised.

Ms Gibb: I think it is unavoidable.

Ms Dyer: There is human interest; people want to know more about the people they are reading about. They do not see them as remote sphinx type figures as the judge used to be thought of in the past.

Ms Gibb: I think Lord Falconer said recently that judges ought to be robust enough to be able to withstand that kind of comment.

Q116 Lord Morris of Aberavon: We would like to hear the advice you would give to the Government about handling human rights. The DCA reviewed the Implementation of the Human Rights Act in July and concluded that “negative and damaging myths prevail about

the Human Rights Act” and suggested that the media were responsible for this. Do you agree with this assessment? What advice would you give to the Government in tackling it in a practical way, tackling the myth that has apparently arisen?

Mr Rozenberg: I am not sure it is entirely our job to be advising the Government on this or even this Committee. To some extent the Government has its own advisers and they should be capable of telling it how it should fight its public relations campaign. The Government is perfectly entitled to complain if we perpetuate these myths, but I do not think it is for us - I speak personally on this - to help the Government out of a problem that it finds itself in.

Ms Dyer: And partly through its own creation because one or two home secretaries have themselves floated the idea of getting rid of the Human Rights Act or even coming out of the European Convention. The Lord Chancellor knows but did not say for a long time that it is impossible because part of belonging to the European Union is that we continue to comply with the European Convention on Human Rights and if we abolish the Act it would simply mean that people would just go to Strasbourg. The Lord Chancellor, in my view, has not been proactive enough and is only recently coming to the fore on this issue. He should in the past have stopped all this speculation. The Prime Minister himself speculated on it. They must know that it is an impossible thing to do, so why speculate on it as if it would be a good thing.

Mr Rozenberg: I am not sure the Prime Minister does know but he famously got it wrong.

Ms Gibb: The Joint Human Rights Committee recently in their report in November actually criticised the Prime Minister and ministers, as you know, for the way that the Act is being reported. It was not the media; they said it was ministers. I think that is what the Government should be doing, bringing ministers into line on it. They are peddling the wrong image of their own legislation basically.

Ms Dyer: The Lord Chancellor and the Attorney General have been making speeches saying that the Human Rights Act is a wonderful thing, et cetera, but it does not seem to have gone to the other departments.

Q117 Lord Morris of Aberavon: I take your point that your role is not to advise the Government. Can I put it another way? We are trying to write a report, what advice would you give us as to what to put in that report to correct the myths which apparently have grown?

Mr Rozenberg: The Government has published documents, reports and papers setting the record straight. The Government has passed advice to officials who may not have legal training not to exaggerate the significance of the Human Rights Act, which is perfectly sensible. The Lord Chancellor writes letters to the newspapers and appears on radio and television to correct myths. I think Frances is absolutely right, if the Prime Minister can say in print that the Human Rights Act allows primary legislation to be overturned by the courts as he did then it is not up to us to try to put it right. If he cannot get it right, it is not surprising that papers sometimes mis-report it.

Q118 Lord Lyell of Markyate: We have covered a certain amount of ground that I wanted to ask you about. I think we have agreed that both the Lord Chief Justice and the Lord Chancellor have important but distinct roles in the protection of the independence of the judiciary. If we look back about six months to 19 June this year the present Lord Chief Justice, Lord Phillips of Worth Matravers, wrote to circuit judges to express his “great sympathy for those judges who individually have been singled out for intemperate personal attack” in relation to sentencing. He went on to say that “personal and unmerited attacks on the characters of individual judges can only damage the public’s understanding of and confidence in the criminal justice system as a whole”. Do you agree that such reporting damages public confidence in criminal justice?

Mr Rozenberg: Yes, I think there is truth in that. This of course followed the Craig Sweeney episode that we have just been talking about and following his unwillingness to speak up publicly on behalf of those judges, although the letter was inevitably leaked as I expect he thought it would be. The point to emphasise is the word “reporting” in your question. There is a limit to what we as reporters can do on our own initiative. Yes, we can write columns; yes, we can do broadcasts, but our main job is to report what other people say and for that we rely on people in authority speaking up on their own behalf.

Q119 Lord Rowlands: In your answers to other questions we agreed that there was a changing role for the judiciary and the whole relationship between the executive and judiciary had changed with regards to legislation and trends. This raises the question that if judges are going to play this wider role, in what form should they be accountable? Again I refer to the Bogdanor lecture where he argued that it would be perfectly reasonable, for example, for select committees of Parliament to ask a judge about his judicial philosophy or general attitude to law and so forth. Indeed, judges do give lectures and do give their views. How accountable do you think in the new environment should judges be and what form should that accountability take?

Ms Dyer: The main thing about judges is that they have to be independent so in terms of their decisions they are not accountable. They are accountable to the head of the judiciary, the Lord Chief Justice, for their behaviour but in terms of their decisions they are independent and their decisions can be overturned on appeal if they are wrong. Ministers keep saying “these unaccountable, unelected” judges as if they should be accountable to somebody, but in fact they are there to uphold the rule of law.

Q120 Lord Rowlands: That would have been a standard reply in any age. Do you not think that the change in environment and the way in which the judiciary are playing their new role in human rights legislation and so forth does raise the issue of accountability?

Ms Dyer: I do not think it makes it any different. I suppose they could be asked questions but they would be bound to give you fairly anodyne answers because if they strayed into areas where they gave their opinions on issues then they would be in danger of being taken off cases because of apparent bias, as happened to Lord Steyn in the Belmarsh case because he had previously expressed a view on an issue in the case.

Ms Gibb: The only area I can see now where they are going to be increasingly accountable - I do not think it is incompatible with independence - is over the way they are appointed, because of the setting up of the new Judicial Appointments Commission which obviously requires annual reports to Parliament and so on, and the whole method is transparent and open to public scrutiny. The whole thrust towards a more diverse judiciary is another factor which should improve public confidence and respect, to come back to that earlier question. I think it is not incompatible with being independent; it reinforces it in some ways.

Mr Rozenberg: I can see dangers. Nobody wants to go down the road to the extent that you have a candidate for appointment as, perhaps, Lord Chief Justice being questioned by this Committee as to his views and his suitability for appointment as you would see in the United States. On the other hand, I do not think there is any harm in the public knowing a little bit more about the views of the Lord Chief Justice of the day once he or she has been appointed given that he has this important role as head of the judiciary, a role which we do not really understand. We have no idea how he is exercising that role. I know he has given evidence to this Committee but we do not know to what extent he is influenced by his officials, to what extent he works with his officials, how much of his time he spends on administration, what he sees his role as head of the judiciary as. I think these are questions that if he does not want to

answer from us, the press, he should certainly answer from a committee such as yours and we should know a little bit more about him personally if we think that his personal views and his philosophy on life are going to affect the way in which he carries out his public responsibilities.

Q121 Lord Rowlands: You actually said earlier on that you thought they were liberal judges or the judges were more left wing; you characterised it yourselves at the beginning. That is picked up because of individual decisions, but in that sense judges are entering the political arena in many respects. By even limiting options government has they do limit and they do therefore enter political debate through judgments, therefore is it not reasonable that they can be criticised? Or is not reasonable that we should make them more accountable?

Mr Rozenberg: They would say they are not acting politically and they would say they cannot answer back. It is not as clear cut as those answers would suggest because, in the broader sense, what they are doing has a political impact and to some extent they can answer back. However, they are right to say that they are not politicians and should not be treated as politicians. Whenever they come into conflict with politicians - as the late Lord Taylor did with Michael Howard when he was Home Secretary in the years up to 1997 - the judges inevitably come off second best because they do not have the political skills to engage with experienced politicians.

Chairman: I am afraid we are going to have to stop in a moment, but if there is anything that you have not said that you would like to say - anything burning but also brief - we would be extremely interested to hear it. You have covered a lot of ground; maybe we have covered everything. In that case, could I say on behalf of the Committee how grateful we are. It has been a very valuable session; thank you for being so candid and helpful.