

PRESS CONFERENCE

held by

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES

(Lord Thomas)

on

Wednesday, 12 November 2014

at

THE ROYAL COURTS OF JUSTICE, THE STRAND, LONDON, WC2A 2LL

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THE LORD CHIEF JUSTICE: Good morning. Can I just say...? Sorry, you were going to say something, Stephen. I am sorry.

STEPHEN WARD (HEAD OF NEWS, JUDICIAL OFFICE): Well, I was going to just explain the ground rules. The Lord Chief Justice is going to talk about - ask any questions, any subject - but he will not be able to talk about individual cases. As you know, judges cannot. There will be a transcript later, so hopefully early afternoon at the latest, so you will be able to [inaudible] and put it on our website. Everything said is obviously on the record today. After each question, if you could indicate if you have a question to ask and I will ask the next person speaking if you could identify yourself, just so the Lord Chief Justice, if it is someone he does not already know, has not seen before. It is over to the Lord Chief Justice just for him to say a few words, I think, and then I will take the first question.

THE LORD CHIEF JUSTICE: I just wanted to say one thing. About ten days ago, the Friday of the week before last, I gave a judgment in the Whole Life case. The facts of the case were particularly gruesome and horrible and the parents had been very distressed, of both children in the trial, and I asked you, when handing down the judgment, which contained all the detail, if you would be kind enough not to report too much and do it with discretion and I merely wanted to say thank you. All your reporting was excellent and I am sure has been very much appreciated by the families concerned. I am afraid one has to set it out in detail because when approving or upholding a sentence of the severest kind, it is necessary to go into that sort of detail. But I just wanted to say that sometimes you are accused of not being responsible. You were all entirely responsible on that occasion and thank you very much. Much obliged. That is all I wanted to say.

MARTIN BENTHAM (EVENING STANDARD): Last year you said that you were going to, in the fairly near future, or hoped to, issue guidelines on wearing the veil in courts which is a very important issue and so on and that has not happened. Can you tell us where you are at with that? Is it proving difficult?

THE LORD CHIEF JUSTICE: No. We found in the course of the year that the Strasbourg court was going to give a judgment in relation to the position in France, and their attitude to France, and the judgment came out in July. I regret to say that we have had a number of matters to deal with, really, since this term started and we have not got back to taking it into account, but I would hope to be able to do so as soon as is reasonably practicable. The one thing that has happened is that there have not been any problems. There have been what one might say some other problems but not that one. But that is the reason and we have not done anything but we will do as soon as we can.

FRANCES GIBB (THE TIMES): We have had a number of disclosures recently about surveillance, security services, of lawyers' conversations and by police of journalist sources and I wondered if this was a matter of concern to you, if you thought we needed greater controls.

THE LORD CHIEF JUSTICE: I think that an inquiry, as I read what is reported either by you or your colleagues, this whole area has been looked at. Obviously the way in which the surveillance services can monitor anything is strictly controlled in this country. We have, if I may say so, one of probably the best systems in the world. If it has not been working properly, I am sure it will come to light either through one of the various security commissioners or through a complaint to the Investigatory Powers Tribunal. We have got pretty good systems here for preventing matters of that kind.

CLIVE COLEMAN (BBC): Can I ask you about the secret alternative of trials? There has been a trial recently in the Old Bailey. The Court of Appeal has said that a trial is totally secret, if you like, that the defendant is anonymised for the trial, that he is not known, but that combination is almost unthinkable. But arguably it is quite a low bar for partially secret trials where the prosecution said that they might not proceed. We have had the first one. Are you concerned that that might be the first in a line and that might affect public confidence?

THE LORD CHIEF JUSTICE: I obviously cannot talk about that trial for two reasons and the principal one is that the jury has been discharged and there is going to be a retrial, but I do think that this is an area we need to revisit. You may appreciate I have given about three or four major judgments in cases relating to putting into the public domain what happens. I think the first was “Binyam Mohamed” and then recently in relation to “Marine A”. I think that we ought to have much clearer rules as to what this has done, meaning much clearer guidance. I think that this is something that should be looked at and looked at properly. My own experience of the intelligence service is actually that when you have made a full exploration of what are the principles of open justice, they actually believe in it – I am not going to say as much, but they do believe in it – but we need to get the ground rules straight. We cannot have something like this, in my view, happen again. I am sorry. I cannot go further in relation to this particular case.

OWEN BOWCOTT (THE GUARDIAN): The Labour Party have recently commissioned a report saying that there should be quotas to improve the diversity of judges in recruitment and gender representation so that the judiciary reflects society more. How do you respond to that?

THE LORD CHIEF JUSTICE: Well, it is a report to the Labour Party by two people commissioned. I think, first of all, I would say we are actually doing a great deal at the moment. First, I take the view, unlike some, that actually some positive action is required and we have made progress, as I think the report and everyone else acknowledges. For example, we are targeting the right people and if I could just take a couple of illustrations. I think you must know, as you sit in court and the Government is involved in a lot of litigation these days, how you find in the Government Legal Service a very significant proportion at higher levels of women and a reasonable proportion of BAME. I think the figures are, according to Jonathan Jones’s blog, but we knew this earlier, that they have about 50 percent women of the senior civil service level and about 10 percent BAME. We took the view much earlier that actually this was a group we ought to target and we are because there is no reason why Government lawyers cannot come and do a very good job in the judiciary and I think I should say this, that Government lawyers actually are a very, very important line of ensuring that the Executive complies with the law. The contrast is with law firms where between 18 and 20 percent are women and so one is looking – I take that example – at a much better pool. But we are doing something about that as well. We are going to target those by looking at a more sensible way of recruiting partners on their retirement because they retire at an age we basically recruit – there are so many retiring in their early 50s or so – and we want to look at that and we are going to run, early in the New Year, a competition for people who are not recorders who can then become deputy high court judges – the recent legislation permits us to do this – and we hope that will then recruit people to where the real problem is, which is the much more senior levels.

In addition to that, we had a very good session for academics in the Spring Court earlier in the year and we have been doing a substantial amount of outreach. We have got, I think, about a hundred judges to sign up to be role models. We are putting our mentoring on a much more structured basis. I think one of the issues that people have, having recently been through a competition, I know what it is like to fill in the form and what you have said and so I do think that quite often people need help there. And, last of all, there is another group of Government lawyers who do a lot of work – for example, the magistrates’ courts help us here in the Court of Appeal – who I think, again, there is a much higher proportion of women than at BAME and we are trying to look at putting those in as the very much longer-term solution. So there is a lot of activity.

Now I will answer “Do I believe in quotas?” I believe as long as one has taken positive action and one appreciates that results will come and they are coming, I believe quotas are not necessary and I think there are huge disadvantages in them and other proposals that, in a sense, upset what is probably regarded as the finest judiciary in the world and so I think that as long as we are doing something that achieve results and doing something we certainly are.

CLIVE COLEMAN (BBC): Can I ask you about cameras in courts? In the Court of Appeal things seem to have gone pretty well. This cannot go any further. It cannot go into the Crown Court or for judges’ sentencing remarks without your consent. Are you able to tell us this morning that you are happy where things are going?

THE LORD CHIEF JUSTICE: What we are doing at the moment is, I think – if I may say so – the thing has gone well. There have been two glitches. One, which was an appeal in which I was involved and I think it was just a genuine human error and steps have been put in place to stop that happening again, and there was a recent glitch in a case here and I think, again, it was human error. You are bound to get this and we just have to make the systems failsafe and what we are doing it at the moment is the MOJ is evaluating it. They are conducting an evaluation. We are evaluating it ourselves and we are looking at systems throughout the world and we are looking at Scotland because, as you know, Scotland is also looking at this problem and where we go and what we intend to do, now that we are at the first anniversary, is to look at experience around the world, look at our own experience and actually see – I think I said to the Constitution Committee, “I want to know where we are going,” and when we know where we are going, I will be happy to go somewhere.

JOHN HYDE (LAW SOCIETY GAZETTE): I just wanted to ask you, you know, the judgment from Sir James Munby on the adoption case and he is fairly critical of the situation in relation to the one the parents were in. I just wondered how relations are between the Government and the judiciary in the light of cuts and certain judgments that have been made since that seem to criticise?

THE LORD CHIEF JUSTICE: Well, you mentioned there was one case about adoption. I think what Sir James said in that, I listened to what Sir Martin Narey said, I think, on the “Today” programme yesterday about it and he was of the view that there was nothing Sir James had said in relation to that other than what was required. As to the position between the judiciary and legal aid, we have set out extensively our views before decisions were taken by Parliament. In the lecture I gave to Justice earlier this year I said that actually if both political parties, the political consensus is that the overall level of expenditure has to be reduced, we have actually to acknowledge that fact and work out how we actually deliver justice and I think now I was very encouraged by what was announced by the Government with very small sums, I will add immediately, to bodies such as the PSU and LawWorks and I think we need to look probably pretty radically at the way – if both political parties are saying, “This is the legal aid budget,” we have to deliver justice probably in a slightly different way. My end view is that I know Justice themselves – the committee under Sir Stanley Burnton – has been looking at the position for civil claims. I think we are going to have to do the same with family and come to a view on how, if Parliament decides not to provide money, and ultimately it must be for the elected representatives to decide how much money they are going to provide, we can do justice properly within those constraints.

JAMIE GRIERSON (THE PRESS ASSOCIATION): Harry Roberts, the serial killer, police killer, was released from prison last night. Obviously it provoked a lot of outrage when it was announced he would be released. One of the concerns has been the decision undermines the judge’s ruling at the time, albeit 38 years ago. I just wondered what your view was on it.

THE LORD CHIEF JUSTICE: The way in which the life system now works, I think, is pretty clear. The judge makes the decision and if the judge makes a whole life order or minimum term, then it is for the Parole Board to assess risk. There is to that one gloss which is that the Secretary of State of Justice has power to release people on grounds as set out in the enactment. Once the judge has expressed his view as to the amount of time required to serve in prison to deal with the elements of punishment and retribution and deterrence, then the judiciary have no role other than its judiciary superior role by judicial review over the Parole Board. It is for the Parole Board and that is the structure Parliament has set out and we respect it entirely and it would be inappropriate for me to express a view on their decision.

BILL GARDNER (DAILY TELEGRAPH): Earlier this year, Lord Neuberger has suggested that judges in this country have sometimes been too ready to follow decisions by judges in Strasbourg. I think his point was that some of these decisions are made by staffers, they can be sometimes inconsistent and that sometimes judges in this country have been too willing to follow them as if they are lawyers determined by them. Do you ever have those thoughts?

THE LORD CHIEF JUSTICE: Yes. That is what Parliament directed us to do and I completely agree with Lord Neuberger and I think one is seeing in opinions delivered both in the High Court of Appeal and in the Supreme Court a view that we take account of the decisions but we do not necessarily follow them.

FRANCES GIBB (THE TIMES): Just really coming back on the way you answered about secret trials, when you said you cannot have something like this happening again, what did you mean by that?

THE LORD CHIEF JUSTICE: I think what we do not want, in my view, is a situation where you have anonymous defendants, that the matter has to come to the Court of Appeal to resolve it. I think there ought to be very much clearer guidelines and rules so that the prospect of an anonymous defendant is one that I hope we will never, ever see again in our courts and I think we need to bottom out what is the best way of dealing with this and what is the best way, I would very much clearly add, is the position I took in the “Binyam Mohamed” case, how we ensure that at the earliest possible stage, the Press is entitled to make representations and see such material as can be shown to them so they know what the argument is about. I hope I do not need to repeat this but I really passionately believe in open justice and justice that is not open is not good justice. There may be wholly exceptional reasons why you can't say very much more than what someone is charged with but I think anonymity and the nature of the charge, it is difficult, as the Court of Appeal said, to conceive of circumstances in which that could ever arise, and I would like to try and identify if that ever happens again, a proper way of dealing with it.

JOHN HYDE (LAW SOCIETY GAZETTE): I just wanted to pursue the point that you made when you were speaking of a different type of justice. Is that removing lawyers from the process and to some extent I just wanted to find out your opinions on the increase in litigants in person and professional McKenzie friends as well.

THE LORD CHIEF JUSTICE: What we have to work out, if Parliament decides, and it ultimately is a decision for those who control the expenditure, what they are prepared to provide and what it is that needs to be done in a case. For example, I suggested in the lecture I gave, do we need to look in certain areas at a more inquisitorial procedure? That is one solution. Do we need to use much more online dispute resolution for small claims? We now have for the first time in probably a hundred years the opportunity for significant investment in the IT and court estate and I think that we need to look at how do we best design it. I think lawyers play an indispensable role in the administration of justice and we just have to work out, within monies Parliament is prepared to pay and with due regard to the rights of people to justice, we have a system that works. I do not

want to express what it should be because I have invited people to think and for me to express a view without actually listening to people, I think is not conducive to good reform.

MARTIN BENTHAM (EVENING STANDARD): Could I just return to the question of open justice? You also implied that the intelligence services should be, or could be, more forthcoming, would be more forthcoming. Were you talking about just explaining in pre-trial hearings what the reasons were for secrecy, you were presumably talking about presenting more material actually in the court—

THE LORD CHIEF JUSTICE: I think I would prefer not to go any further than I have done. I think one needs to look at this. My experience of the “Binyam Mohamed” case was that a lot of the stuff can be done in open, it may be necessary for the judge to be shown things and, in a case where it cannot be done in open, that has to be done, but I do think we need to be very clear as to if something is secret, why is it? What is the rationale for withholding things? I think one has to do that openly and, in times, one might say to you, “Well, you cannot report that now”, for good reason but we really need to explain a secret process.

CLIVE COLEMAN (BBC): I would like to ask you about the European Arrest Warrant, and the Home Secretary has made it clear that she considers it a vital part of our criminal justice arrangements and that without it we could become a haven for foreign criminals. It has made the whole extradition system more efficient. It is regarded as very important. Do you regard it as very important in its current form? Should we keep it or not?

THE LORD CHIEF JUSTICE: There are two things I want to say. First of all, a judicial review has been launched of the process which will occur between now and 1st December and therefore the matter, to an extent, falls within the matter of which Stephen spoke at the beginning, namely that there is active litigation. Secondly we have to have an efficient extradition system otherwise this country becomes a haven for criminals. People’s views as to what an efficient extradition system is, I think – and I have said so – that if you weigh the whole of the evidence and the improvements that have been made, it is ultimately a matter for parliament, but I think on balance what we have at the moment, with all the protections built in, is probably, the evidence is reasonably good, that it is a system that works. What the alternatives are would have to be investigated but I have made my position very clear. Parliament will make its decision. If it had decided or will in the future decide it was not to go on with it, whatever the new arrangements may be, we will do our best to make them work. We have had to make extradition arrangements work with a huge number of other countries but I am very reluctant to go beyond that because of the pending litigation.

OWEN BOWCOTT (THE GUARDIAN): Just to go back to legal aid cuts, there is talk about a new round of economising in the next Parliament, over a billion pounds, do you think there is a danger of, first, if any more money is taken out of the justice system, it will be difficult to administrate and are there already problems in some courts? In Hull, I think, the judge was concerned about the possibility of an unrepresented defendant.

THE LORD CHIEF JUSTICE: There is no doubt in my mind that we are reaching a situation where if we do not invest, if, for example, as you know, we have secured a very substantial investment, if that is not to go ahead for any reason at all, then in my view the justice system would face a severe crisis. We have not been able to use modern technology, for example, just for carrying out those, in doing a judgment. I am doing it on Word 2003 with the XP operating system which Microsoft is supporting by special arrangement. We do not have a proper system for people to do claims online. I mean it is wholly antiquated. Now, I believe if one can make an investment that we can do a lot more online. An awful lot of processes you can do, but without that you cannot do anything. Take filing – I don’t know – you probably do not do any anymore but you have nice electronic filing systems but I found that when I used to do filing as a young

person, and still do it, because one still has to keep a lot of one's own records in paper because we do not have a proper electronic filing system, that if you have misfiled something, you lose it; you never find it again. This is something that, if you do not go to a modern electronic system, you have to have the staff we have, you cannot reduce the staff anymore, otherwise the system will fall over. So I am very concerned that if, for some reason, and I cannot conceive there is any reason, the investment was not to go through, then there would be a problem. If the investment goes through and, as I was saying earlier, we look at different ways of doing and delivering justice, we can deliver it at a cost that is less than now. How much less and what the cuts should be, I think at the moment it would be too difficult for me to speculate by going beyond that.

JOHN HYDE (LAW SOCIETY GAZETTE): Do you have any concerns over the proposed reforms for judicial review?

THE LORD CHIEF JUSTICE: We always put in responses and we publish them. We put in views which were quite strongly expressed. I take the view at the moment that as the matter is now a matter of political debate in Parliament, it would be wrong for me to add to what we have already said and we have to allow Parliament to decide what it will do.

FRANCES GIBB (THE TIMES): Would you be happy let a serving judge to be appointed to head the child abuse inquiry and have you actually agreed that should happen?

THE LORD CHIEF JUSTICE: Let me explain to you. It may take a moment or two. When the whole question arose early in the summer, my office was consulted and we obviously expressed certain views but I cannot go into what would be confidential communications. But then, assuming everything was reasonably quiet, I gave a lecture at Bangor University for the legal publication, "Public Law", in which I tried to deal, not with the context of this inquiry at all in mind, with the report of the Constitution Committee on the Inquiries Act 2005 and on the government's response to it and I think I made there three points. One, I regard it as an important part of a judge's duty to conduct public inquiries and I would always do my utmost to make a judge available. Secondly, I took up and greeted with enormous enthusiasm a suggestion made by the Constitution Committee that we ought to have an inquiries unit and the Constitution Committee said it should be established in HMCTS. I completely agree with that and there are two reasons for that: one, we have a huge amount of accumulated experience here of conducting inquiries, so many of my colleagues have done them; and, secondly, we have quite a lot of experience of picking the right person for the right job, and I have said all this in this lecture. So I think that would be a very good idea. Thirdly, I do think one needs to think very clearly about how you set terms of reference and how you deal with the day-to-day conduct of an inquiry. All my views are set out there, entirely without reference to this case, about which I cannot go further than I have already done. You are happy to read those views, Frances.

CLIVE COLEMAN (BBC): Can I just ask you a follow up from that? Is it not sometimes frustrating – I mean perhaps two years ago if one had anticipated the demand that there would be for senior judges to hear public inquiries and, of course, if you take a very senior judge out of the Court of Appeal, Sir Brian Leveson has to be taken out for what – two years? Does it not just become rather difficult for you to run arrangements here?

THE LORD CHIEF JUSTICE: We have done two enquiries. There was Sir Brian's inquiry. We took a view, which I have expressed on the basis of that and another point I am coming to in a moment that actually one needs to focus on a problem. Should you actually consider time-limiting inquiries? Sir Brian gave himself a limit of just over a year from the time he started his evidence, and he delivered within a year – well, maybe a week or two afterwards – and it depends on the view you take of the functions a judge can perform. If there are really serious issues which a judge is best suited to perform, then I think it is my duty to make available a judge. Secondly, I do think we need to look at timing. For example, earlier this year, Lady Justice Hallett

did the “on the runs” inquiry. She did it in four months. The terms of reference were set so it could be done and the understanding was she would do as much as she could in four months. We have managed and I think that the report she produced actually answered a difficult political question and reassured people. This inquiry, I absolutely accept, is of a very different order but going into discussion about a particular inquiry, I really cannot do.

JOHN HYDE (LAW SOCIETY GAZETTE): Should the Lord Chancellor be a lawyer?

THE LORD CHIEF JUSTICE: Parliament has decided he need not be and, if Parliament has decided that, then it seems to me that we must respect the decision of Parliament. But our constitution does work and needs to work so that if someone may not have a particular expertise or experience, the constitution adjusts to take that into account. One of the things I want to speak about at a lecture I am giving at the IFG, Institute for Governments, in early December is actually the way in which the three branches of government have to work together and we do try and make certain, maintaining absolutely one’s complete independence, that we try and get what you technically need to run a system right and, where problems arise, we are fearless in saying, if they have broken the law or not followed the proper procedure, so be it, but there is also a function that judges have enjoyed way back into the 19th century, of giving technical advice and I think that is the kind of thing that I think both Parliament and the Executive need and must not forget they need, but I will explain it in a bit more detail on 1st December. I think it is the 1st – do not hold me to the date.

OWEN BOWCOTT (THE GUARDIAN): As there are obviously proposals before Parliament to reform judicial review, which will restrict it, make more difficult, as it were. Can you express any... how do you feel about that?

THE LORD CHIEF JUSTICE: It is to my mind absolutely central that the government conducts the business of the state according to the law. It is also central, and I think this is where the problem has arisen, that people should not be able to use judicial review to delay matters. We did have a very serious problem in the Administrative Court in that it was inundated with asylum and immigration work. Parliament has fortunately transferred the vast bulk of that to the tribunal. Since that has happened, we have established a planning court where we are now making decisions on planning issues where often the issue is the legality of what the government has done or a statutory appeal much more quickly, and I think when our system worked that people could think, “Let us start a judicial review; that will stop the government doing what it wants”, that was wrong, but if the government was doing something that was not lawful then the government was wrong and the key to this in my view is making certain the system actually does what it is intended to do, which is to review judicially the decision made and give a decision quickly. One must not allow litigation to be used simply for the purpose of delay, and I hope we are in the position now to deal with that problem and, if we can, I would hope that judicial review would then be seen, as it should be seen, as an integral part of our constitution.

STEPHEN WARD: We have got time for one more, I think.

MARTIN BENTHAM (EVENING STANDARD): If we did not have a Human Rights Act, are you confident that the common law and any other existing domestic law, should be sufficient to protect the rights of citizens from oppressive state conduct?

THE LORD CHIEF JUSTICE: I do not think anyone has suggested we should not now have a charter or rights, if I can use that neutral term. If we had not got one, would the common law have actually moved to create similar rights? I think there is a possibility that might have happened but it was not necessary and at the moment I do not think anyone is suggesting we should not have one and I think that if one looks about the achievement of the past half century of judicial review and then rights enacted in a fundamental charter or fundamental bill, I think almost

everyone has benefited from that, and I would even include the press in that, if I may. Article 10 has actually been used quite successfully. It is difficult to answer your question because it is hypothetical. The common law is wonderful but it cannot always achieve everything.

MARTIN BENTHAM (EVENING STANDARD): What would you like to see?

THE LORD CHIEF JUSTICE: I think that if you are developing, and I am not going to go... we need a charter of rights, I think. What we have got in the Human Rights Act or in the European Convention is fine and we need its development cautiously, gradually, in the way common law judges have always done so, taking steps at a time and leaving plenty of time for consideration as to how the law is moving forward and, on the whole, I think it has moved forward pretty well.

STEPHEN WARD: Thank you, everybody.

THE LORD CHIEF JUSTICE: Thank you.

[Ends]