

# Judicial Independence, Judicial Accountability and the Media

- Note of Seminar at Queen Mary, University of London -  
- 21<sup>st</sup> September 2011 -

## 1. Introduction

This is a note of a seminar that took place at Queen Mary, University of London on the topic of 'Judicial Independence, Judicial Accountability and the Media'. The seminar was the second in a series of seminars being run under the auspices of an AHRC-funded project on 'The Politics of Judicial Independence in Britain's Changing Constitution' by the Constitution Unit at UCL, Queen Mary University of London and Birmingham University. Those participating in the seminar had a professional interest in the issue and there were contributions by a number of senior and former judges, politicians, civil servants and journalists. The event was run according to the Chatham House Rule and this short note reflects that. It is intended to give a general impression of some of the themes discussed.

## 2. Media Influence

Participants seemed generally to accept that judges are sensitive to public opinion in some forms, particularly in the context of sentencing. Some were keen to point out that this could be a positive thing and pointed to the success of media campaigns in influencing case law on issues such as 'battered women's syndrome' and in highlighting the flaws in expert evidence that had been used to convict Angela Cannings and Sally Clarke of killing their children. The same expert evidence had been used in the family courts for some time prior to these criminal cases but because of the operation of the *in camera* rule its flaws had never previously come to light.

Others were more critical of media influence on judges. Judges should be wary of taking account of the 'media's version of public opinion' and one participant described the media as 'on the whole emotional, irrational and obsessed with the short term.' The influence of the media could be negative, as in the case of changes to the law of damages reflecting media concern about a 'compensation culture'. Government research has shown that no such culture exists. The continuing public and media perception of judges as 'soft' was highlighted as the cause of a significant increase in the severity of sentences over the last 20 years. It was suggested that the courts needed to tread a difficult line by accommodating changing societal values but not being influenced by more temporary public opinion.

Short term and irrational behaviour is not unique to journalists, as some argued: politicians also behave in this way on occasion. An example was the phenomenon of legislation being passed purely for show, such as the Compensation Act 2006. Parliament also needs to grasp the nettle of difficult societal problems. For the system to work Parliament must deal with difficult social issues by legislating and not leave them to the courts to resolve *ad hoc*.

Participants accepted that the law of contempt was no longer appropriate in most cases of criticism of judges and the judiciary, but several expressed concern that the press was engaged in a 'race to the bottom' and that old deferences had disappeared as a result. One, however, expressed some surprise that judges had not developed a 'thicker skin', given that serious criticism of the judiciary – particularly from the tabloid press – was a long-standing feature of public discourse.

## 3. Media and Political Criticism and the Sub Judice Rule

Political criticism of judges is constitutionally improper in the British system (unlike, for example, the American system). Nonetheless such criticism does occur. Judges do not, however, refrain from criticising MPs either: they often do so in their public lectures. Politicians face difficulties outside of Parliament that judges do not. The pressures of the 24-hour media cycle create a demand for comment from them. Judges are, by contrast, in the relatively privileged position that they are not permitted to explain themselves or to respond directly to criticism.

One participant asked whether the *sub judice* rule was still of relevance. The feeling was that it remained extremely important. It was part of the deal represented by Article 9 of the Bill of Rights 1689: that Parliament and the courts would refrain from interfering with each other and if Parliament did not like what the courts did it would change the law. One speaker noted:

‘And that’s held amazingly well until without any reproof from the Speakers of the Houses two Parliamentarians, one in each House, decided to use parliamentary privilege to break a Court Order. And it’s a serious matter I think on which the judiciary would be entitled to take a tougher stance than they have done. They had no redress, no come back.’

Concern was expressed that there was now a trend of opinion in Parliament, or possibly a lack of knowledge, which was contributing to ambivalence about judicial independence. This might have something to do with the reduction in the number of members of Parliament with a legal background. When Parliament had a larger proportion of members with legal knowledge the rule of law may have been respected through informal processes that no longer operated.

#### **4. Judicial Engagement with the Media**

Some speakers emphasised the need for judges should be as pro-active as possible in engaging with the media. One noted that the judiciary are very conscious of the importance of ‘getting our blow in early’. The importance of the Judicial Communications Office in disseminating judgments as soon as they are delivered, and in using Twitter to highlight important forthcoming judgments, was emphasised. The Office is, however, quite properly not in the business of ‘spin’.

One participant queried why it was so difficult to get judges to speak to the media: current practice, he argued, appears to hint that only those judges who are approved for broadcasting are permitted to speak to the media. He suggested that it does not come across well if only one judge does all media interviews.