

Order in the court

England's former **LORD CHIEF JUSTICE** talks to Brunswick's **CHARLIE POTTER** and **CAROLINE DANIEL** about justice in the age of digital communications

LORD JUDGE, THE FORMER HEAD OF THE judiciary in England and Wales, is a passionate student of history. An avid collector of medieval seals and documents, he recalls how he intended to study law at Cambridge University until his director of studies made him think again: "He told me, 'Read history,'" Lord Judge says. "It'll give you a hobby for life! It was among the most valuable pieces of advice ever given to me."

Historical perspective has proved invaluable to a man who would later become Lord Chief Justice, a post with roots dating back to the 13th century. Lord Judge served as Lord Chief Justice from 2008 to 2013. At his retirement ceremony, he was lauded for having led the judiciary "during a period of unprecedented difficulties and challenges."

During his tenure, Lord Judge administered a court system that was dramatically expanding as a global hub for litigation – by 2013, the UK market for international commercial dispute resolution had grown to £23 billion (\$36 billion), according to the *Financial Times*. Under rising pressure for greater transparency and public scrutiny of the legal process, the courts were also opening up to the use of social media and the introduction of video cameras. Lord Judge himself needed to become more accessible to the media as well as serve as an effective advocate for judicial independence to successive governments.

In a conversation recently over breakfast in his apartment, beneath an example of Queen Elizabeth I's Great Seal from the late 16th century, Lord Judge discussed the changes that the rise of technology has created for law and life in general.

In general, how do you rate the standard of media coverage of court proceedings?

The media doesn't attend court very often now. That's a serious problem that I think is a public disadvantage. It's a very good thing for the judicial system that the press keeps an eye on what judges are doing. In high-profile media cases, the place is packed for the morning. By lunchtime, the number of people has diminished significantly. By the



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second day, there's hardly anybody there. People go in to get the first story and that's what's printed. By the third day, there's no reporting of it. You might not even know the other side has actually got a point. The defendant may be triumphantly acquitted and his story is never told. But we really cannot have judges telling the press what they should report. How they set about their business is for them.

Is the increasing use of television cameras in court a positive development?

Judges very quickly get used to cameras and being recorded. But I am against them in criminal trials. Witnesses may play to the gallery and start to behave differently. And some who have very good evidence to give will be too frightened to give it. Civil cases, on the other hand, will rarely be filmed. I mean, who is really interested? It's crime people want to watch – for example, murder

and high-profile defendants. A civil case is a very slow-moving process. But to say people won't be interested isn't a good answer; the question is whether it can be filmed. I would not be too troubled about this, provided the judge has discretion to say, "I'm sorry, this part is sensitive."

What about social media in court?

I'm strongly in favor of technology in court, as long as it doesn't undermine the actual production of justice. Twitter has caused no problems at all, that I'm aware of. You have genuine court reporters doing no more than using Twitter as they once used their pens. To be able to report contemporaneously and immediately is an advantage.

There are limits of course. It would be very foolish for a judge to be on Facebook, for instance; I can see nothing to be gained by it. And in general, the way we as a society control things like Google or Facebook is open to very serious question. But that's a societal question for Parliament to decide.

Do judges receive media training? Should they?

I went off with a group one time – this is now 20 years ago – to be shown how to do television interviews. You know, "Don't sit forward too much. Don't sit backward. Never answer the question." What I now see on television is people who have been to the training, who are doing that.

The problem with television is how you look matters more than what you say. What we're anxious to get across is what we think, why we think it. But the conversation on the train next morning will be, "Did you see that judge? He looked a complete idiot." How you look on television is frighteningly important.

But I don't think many judges go on television. So that doesn't worry me.

Where do judges tend to get their news?

Do they use digital outlets as well as print?

It's a personal decision. I watch the television news every morning at 7, and I always did.

In the days before digital news, when I went to judicial training courses, I would see the newspapers outside the judges' bedrooms, and it was a very mixed bunch: *The Times*, *Daily Mail*, *The Guardian*, *The Independent*, *The Telegraph*.

Judges don't go hunting for news, I don't think, although obviously if you're a senior

administrative judge, you do worry about what on earth is coming up the next day, what asinine or allegedly asinine remark has been made by a member of the judiciary. Is there going to be a storm about it?

Has court advocacy changed at all over recent decades?

It's far less flowery. The best advocates explain in simple language, even to a very highly intellectual judge. Jurors don't like being spoken down to and that's how they regard pompous advocacy. But simpler is, in a way, harder.

When legal advocates publicly lobby on behalf of clients, does that have an effect on judges?

No, not in the slightest. Sometimes you get both sides commenting, neither entirely accurately. And sometimes you'll get both sides commenting accurately. But it makes no difference – at least in civil cases [where only a judge decides the case].

WHY THE WIG?



WIGS first appeared in British courtrooms in the 17th century. The reason? It was the fashion of the time, especially the upper echelons of society. When wigs went out of fashion, they endured in courtrooms because they conferred a sense of history, dignity and anonymity – hiding the color of the wearer's hair.

Countries founded on British common law, including Malaysia, Canada, Australia, Pakistan, India and New Zealand, adopted the wig-wearing practice.

Today, white horse-hair wigs remain a symbol of the courtroom, though in most countries outside of the UK, they are largely reserved for ceremonial occasions. Within the UK, wigs remain in use, but to varying degrees.

Not all have mourned the wig's departure. Some complained of their cost. The price tag for a shoulder-length judge's wig today is around £1,900 (\$2,500) while shorter wigs (pictured), typically worn by barristers (courtroom advocates), cost about £500 (\$650).

And there was no shortage of complaints that the wigs were uncomfortable. In 2006, lawyer John Baldwin argued for their removal: "Some people think it gives them more authority, but most of us just think they're itchy."

PHOTOGRAPH: BLOOMBERG, GETTY

I would have very strong objection to it in a criminal case because the jury must be left to make their judgment exclusively on the basis of the evidence they hear in court.

There's pressure on judges to be more directly accessible and accountable to the public through the media. How far should that go?

The judiciary has made itself more available, and that's simply recognizing that we live in a new world. We have to be in a position occasionally to explain what we do, how we reach our decisions and, in the case of the most senior judiciary, to be available for a press conference where we can be asked questions about what's going on.

But what judges shouldn't try to do is elaborate on or seek to further explain their judicial decisions outside the courtroom. I feel very strongly that you have to say what you think, and why you think it, in court, where the people who are actually involved in the case can hear and understand it. They may disagree, of course. The losing side tends to. But that's what you have to address.

The wider issue of how the public will take it is a separate question – you have to use language that enables the public to understand why you've decided what you have. It's no good when the newspaper or television attacks a judge, for the judge to say, "Ah, but what I meant here and here was this." If you haven't made it clear in your judgment, then you're stuck. You've done it. That's it. If every judge went on television every night to justify his or her decision, that would cause damage.

Generally speaking, do judges think they're fairly represented by the media?

If a judge becomes the story, then he or she is just as subject to being the story as any other individual. And I suspect many people who have become the story don't feel they've been treated fairly by the press. But a free press is absolutely crucial – one of the fundamental pillars, like an independent judiciary.

An independent press doesn't just exist in a vacuum. It exists in a society where it's allowed to exist because people buy it. Most judges value the independence of the press, and I can't think of any judge who doesn't value the right of freedom

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LORD JUDGE

Appointed in 2008, Igor Judge served as Lord Chief Justice of England and Wales until retiring in 2013. He studied history and law at Cambridge and was called to the Bar in 1963. In 1988, he was appointed a Justice of the High Court and awarded a knighthood. He remains a member of the House of Lords and sits on the Constitution Committee. A collection of his lectures, speeches and essays as Lord Chief Justice, *The Safest Shield*, is published by Hart Publishing.

of speech. The two aren't quite the same, but they're very closely linked.

Are judges effective advocates for their own interests?

Yes, within certain self-imposed but necessary limitations. Judges don't go off and do PR as such. They don't have spokespeople. There's a judicial communications office which does things like warn the Lord Chief Justice if a newspaper's got a very hostile article about a certain judge or inform the newspapers that there is going to be a judgment on a certain case they're very interested in. And all that works smoothly.

Do you welcome the UK's development as a hub for international commercial litigation?

Yes. A significant percentage of the UK's GDP is a result of London being a commercial center – for court and for arbitration, with all the knock-on effects.

It's a wonderful compliment to our system and not an accident that it's become a hub. It's because of the high quality of our judges, our process and our legal profession. If that quality declines, then there are plenty of other places that would like to take over the work, like Singapore and Hong Kong and a number of courts in the Middle East.

It's a very competitive market, and it will only continue to come to London while litigants from abroad believe that they'll get the best form of justice here. So it's very important that we maintain the standard, in particular of judicial appointments to our own commercial court.

In that regard, there is a potential problem of retired judges here going to work in a foreign court. If the commercial court here declines because of a better, homegrown quality of judiciary abroad, that's fine. The litigants choose. We can't compel them to stay here. But I'm not sure that I'd be quite so sanguine if that perception of a higher quality was based on the fact that the foreign jurisdiction simply used retired judges from here.

CHARLIE POTTER is a former lawyer and a Partner at Brunswick, specializing in litigation, crisis and regulatory disputes. **CAROLINE DANIEL**, a former *Financial Times* senior editor, is a Partner advising on media and technology. Both are in the firm's London office.