

I was flattered to be invited to give this keynote speech. I am not sure what "keynote" means, but as it is the only title for my contribution, I shall take it to mean what I want it to mean.

Some of you have heard me before. I enjoy - I really do enjoy - addressing the media, its editors and its journalists.

I sometimes think it gives me an opportunity to get my own back at you (!). Seriously, I enjoy the challenge of inviting you to look with me at one or two points of principle, and to think about them. That is the point of this keynote speech. You of course will do what you always seem to do with my keynote speeches, and ignore them.

I am not sufficiently naïve to expect immediate action. If at the end of this long day you remember one or two points, I should be very pleased.

Experience shows me, for example, that approximately one year ago I addressed a meeting of editors, wearing a proud banner on my sleeve. This is what I then said. "I believe in an independent press". That is fundamental and remains my starting and finishing point. I said then, and I repeat, "For me, the clarion call is the first sentence of the first copy of the North Briton, published in 1762, by John Wilkes:

"The liberty of the press is the birthright of a Briton."

I am indebted to Robert Hargreaves' superb history of free speech - The First Freedom - for informing me that the inscription on his tomb reads very simply:

"Near this place are interned the remains of John Wilkes, a friend for liberty."

In that address I wondered whether there was any memorial plaque to John Wilkes in say the Press Complaints Commission, or the huge buildings which house our national newspapers. I wondered whether there was any monument to him in St Brides. I said that I thought that there should be. The first publication of the North Briton was a historic moment. And such moments should be marked.

Did my speech do any good? Well, there is nothing yet up in St Brides, or the Press Complaints Commission. As far as I know, no newspaper has taken up my suggestion. So the answer to my question on this point is that my speech did no good at all.

Why not? Is it Igor Judge whose words are to be treated as the quixotic ramblings of a deranged idealist? Or was John Wilkes himself a deranged idealist of whom his successors now enjoying the privileges of independence are shy or ashamed?

My personal view is that moments like these should be celebrated. You are where you are now because of the man he was then. An independent press is a matter for pride. But the independence of a great institution has its source, its foundations, in the community, not in the institution itself. It is not "dust in the air suspended" - if it were, can we remember that that "marks the place where the story ended". After all, John Wilkes thought that the liberty of the press was the birthright of each citizen, not we must notice, the journalists or editors or owners of the press, nor those responsible for publication.

So what is the freedom of speech and comment which media people talk about, sometimes as though mere assertion amounts to proof, and constant repetition makes good. When you advocate, as you rightly do, the freedom of the press, the freedom of the media, do you envisage it as if it were identical to the freedom of each individual to express his own opinions. Is it indeed "identical"? Is it something more? Or something less? If it is not identical, does it merely reflect it, or simply repeat it? Is it absolute? Is the assumption, or the assertion, made any more or less accurate, simply because the freedom of the press represents a bulwark of freedom in our unwritten constitution, for each individual, at any rate, more accurately, one strand in that freedom of which an independent judiciary forms another, no less important strand.

As an individual I, like each of you in this room, can think what I like, and effectively express my opinion on any subject I wish. As a judge holding public office, I am prohibited from expressing my personal opinion at

all. In court I express my opinion about the law, and my conclusions about the case I am deciding. And even when the case is over and done with, I am still prohibited from commenting on it. The words in my judgment must provide the only explanation I can give. So my personal right to free speech is not absolute. When I am performing the office I hold, it is inhibited, and rightly so.

The media have a role to play in our constitution, just as judges have a constitutional role. As a judge mine is more obvious, but just because no-one spells it out, yours is no less real. Like me when sitting as a judge, your freedom when you are working as journalists is not identical to the right each of you enjoys as an individual, a common right shared by every citizen. In my view it goes further. Just as a judge is a public servant serving the community, so journalists and editors of newspapers and television programmes perform a public service. All their work has that additional dimension. I see no relevant distinction arising from the fact that whereas I am paid from public funds to exercise my constitutional responsibilities you are not, and that an independent press does not survive on good will alone. I know perfectly well that if your articles do not sell, you do not survive.

What I am driving at then is this. That although the principle of press freedom is founded in the right of each individual citizen to think and speak freely, the freedom of the media is one of the constitutional defences which enables individual citizens to speak and think as we will, and to warn us when those freedoms are being threatened, so that, acting as a community, we may choose freely to accept or reject restrictions on our liberties. It is, of course, my duty as a judge to enforce the law, and whatever my personal beliefs about the independence and freedom of the media, to apply the law laid down either by common law or by Parliament in statute. And here comes the critical question. In a democratic society, does the freedom of the press extend so far that if the community, through Parliament, concludes that the liberty of the media should be restricted in some way, that decision, properly reached by the institutions that we vest with power to run our community, may somehow be ignored? Of course not. We are all bound by the law. It would be no good then crying for the return of John Wilkes. As a judge, I would have to enforce that law. And as responsible members of the community, you would have to obey it. It is not enough merely to assert press freedom, even to assert it in the strongest possible language because someone has dared to question it.

The community, which owns the birthright to that liberty must understand that freedom of speech is more than just a happy triviality, having no practical consequence in their lives. They need reasons and arguments and education into the long-term consequences of restrictions on the press. They also need reasons and arguments and insight into the long-term consequences to them of a less-than-independent judiciary.

You must face up to this. If the public believes, or is persuaded to believe, or if by its own conduct, whether by malicious reporting, or reporting of a nature which the public believes to be over-intrusive, the media itself causes the public to believe that press freedom should be constrained in some way, public support for some greater control over the media may gather momentum. Saying that self-regulation works is an assertion, and it has to be shown that it does. And it is sometimes difficult for me, as a reader, to perceive why the media can sometimes be so hostile to self-regulation in any other profession, when it so strongly asserts it for itself.

So you have to make sure that the public understands that freedom of speech includes the freedom to publish rubbish, nonsense, and trivialities, and that freedom of speech carries with it the freedom to be irresponsible, and indeed to be wrong. That is the price to be paid by the public for the inestimable advantage offered to us by the principled journalist, and the editor, who hunt down and expose corruption in high places, and wrong-doing by those in authority, and then has the courage to point it out. Implicit in this is the recognition that you are important opinion-formers. You inform the public. And what you choose to inform the public about, then informs their opinions. No-one can tell you what to print, what angle to choose.

But, if I can return to a theme I have developed earlier, how are you doing on informing the public. Could you just take out a pencil and paper and answer me these questions?

1. For every 100 crimes recorded by the police, what number involve violence resulting in injury,

- however trivial, including sexual offences, robbery and so on?
2. Of every 100 men aged 21 or over, convicted of rape, how many were sent to prison?
 3. Of every 100 men aged 21 or over, convicted of robbery, how many were sent to prison?
 4. Of every 100 men aged 21 or over, convicted of house burglary, how many were sent to prison?
 5. What percentage of serious sexual offences against children occur in their own homes or in the home of an offender who is known to them?

Answers:

1. 16.8%.
2. Rape, which includes sexual intercourse which began with the woman's consent, but continued after she changes her mind, 97%, and I believe the remaining 3% were detained under Mental Health Act orders.
3. 93% of every 100 men over 21 sentenced for robbery received sentences of immediate imprisonment.
4. 72 out of every 100 men over 21 sentenced for house burglary were sent to immediate prison.
5. Approximately 80% of serious sexual offences against children occurred in their own homes or took place in the home of someone known to them.

How did you do? If you were right, within 5% on three of those 6 questions you have done outstandingly well. But even so, you have three answers wrong, and if you have 3 or more answers wrong, I ask you directly, where are you getting your information from? Who is responsible for information which leads you, intelligent men and women of the world, to be so wrong? And if you were wrong, is it any surprise that so many members of the public, 82%, believe that the sentences "handed down" by judges are lenient or much too lenient. But then, 82% of the population over-estimate, hugely over-estimate the amount of violent crime, and 82% believe that significant numbers of rapists and robbers are not sent to prison, and 70% believe that significant numbers of burglars are not sent to prison. So it is hardly surprising that 82% think that the courts are much too lenient. Who is informing them?

I repeat: no-one can tell you what to print, what angle to choose. But you do have a responsibility to your own pride and your own ethic, and, critically, to the preservation of your institutional independence. You do have a responsibility to provide accurate, truthful information to your readers and listeners. Surely we can agree about that.

So, looking at your own answers, how well are you doing? These things matter. They matter hugely. They matter not least because if the public is misinformed about the administration of criminal justice then that too undermines their belief in and the justification for an independent judiciary.

There was a direct personal attack on the Lord Chief Justice recently: more accurately, a number of direct personal attacks. The law says, by that I mean an Act of Parliament says, that there should be a reduced sentence for the defendant who pleads guilty. S 144 of the Criminal Justice Act 2003 says in terms - "Reduction in sentences for guilty pleas". Nothing in that Act of Parliament suggests that murder cases are different from any others. To the contrary, Schedule 21, which deals with mandatory life sentences for murder, says in express terms that nothing in that Schedule restricts the application of s 144. So what the Sentencing Guidelines Council - not the Lord Chief Justice himself, or personally, or on his own, was doing in proposals - notice proposals, not more; notice not any automatic discount of one third in murder cases - was applying the law. If they had proposed that there should be no reduction for a guilty plea in a murder case, they would have been criticised, and rightly so, for failing to follow the most recent statute produced on this issue by Parliament.

So, to end my theme: the independence of the judiciary and the independence of the media are both fundamental to the liberties which we still take for granted. But I do wonder whether the way in which the media sometimes comments on the administration of justice does not significantly damage the confidence of the public in the principle of judicial independence, and if does, whether simultaneously there may not also be an erosion in the public's confidence in the principle of an independent press.

Why an independent judiciary? I do not apologise for repeating myself.

“Although the principle of judicial independence benefits the judge sitting in judgment, who can do what he or she believes to be right, undistracted and uninhibited, the overwhelming beneficiary of the principle is the community. If the judge is subjected to any pressure, if he allows himself to be corrupted, his judgment is flawed and justice is tarnished. In the end, however, it is the community that must uphold the independence of the judges: in the ultimate analysis, we are serving our communities. When judges speak out as they do, in defence of this principle, they are not seeking to uphold some minor piece of flummery or privilege, which goes with their offices: they are speaking out in defence of the community’s entitlement to have its disputes, particularly those with the government of the day, and the institutions of the community, heard before a judge who is independent of them all. The principle must be defended, not for our own sakes as judges, but for the sake of any community which truly embraces the rule of law.”

These twin-independencies - independent of course, of each other - are fundamental to our community. They provide the over-arching context in which you will examine defamation, reporting restrictions, website liability, confidence and privacy claims, undercover reporting and freedom of information. Those are all significant issues, each worth a debate on its own. But as you discuss those individual topics, my objective is to provoke you to remember the broader picture, the fundamental questions, the over-arching principles.

And to wish you what I am sure will be a most interesting day.

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