MASTER OF THE ROLLS

THE RT. HON. THE LORD DYSON, MASTER OF THE ROLLS

ADVANCES IN OPEN JUSTICE IN ENGLAND AND WALES

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Introduction[1]

1. Good morning. It is a real pleasure for me to be back in Hong Kong after an interval of more than 20 years and to have been asked to address such a distinguished audience today. When I was a barrister, I came here several times to do construction cases. That was in the pre-1997 era. I always enjoyed my visits. This is such an exciting place. I imagine that most of the buildings that I saw have been replaced as being out of date. Nothing stands still here. There is no clinging to the past; no nostalgia for days gone by. Change is the name of the game, whether it is physical change to the environment or economic or constitutional change. But even in the UK, that most traditional of countries, changes have been taking place. Some of them have been forced on us by the economic crisis that has afflicted the world in recent years. Others have occurred as a response to the remarkable technological developments of our time. As I shall explain, these developments are relevant to the subject of this address.

[1] I wish to thank John Sorabji for all his help in preparing this lecture.

2. My subject today is open justice and recent developments that have been introduced and are being considered in England and Wales to enhance it.

3. Open justice is a principle that has long been a central feature of our justice system. When civil trials were conducted before a jury drawn from the local community, justice was done under the eyes of ordinary citizens. They performed a central role in the process. Ordinary citizens also had free access to the courts if they wished to see what was going on inside them.

4. As a general rule, the days of the civil jury trial are now long gone. When the Defamation Act 2013 comes into force, the presumption will be that civil jury trials will be confined to proceedings for civil fraud, malicious prosecution and false imprisonment.[2]

5. The days when the general public would attend civil trials in large numbers are long gone. Television may secure high ratings for legal and courtroom dramas, but an interest in compelling fiction does not translate into increased attendance to witness real proceedings. This may have something to do with a general impatience and unwillingness these days to sit through long and often rather dull hearings with no guarantee of excitement. The falling attendances at county cricket matches in England and Wales may be another example of this.

6. The decline in public attendance at court, as well as the decline in media reporting of civil proceedings in general, poses a problem. This is a problem identified by the great 19th Century philosopher and advocate of law reform, Jeremy Bentham. Professor Andrews, of Cambridge University, succinctly described the problem nearly twenty years ago. He put it this way:

[2] See Senior Courts Act, s69 and Defamation Act 2013, s11

'*Justice administered behind closed doors will soon reek to high heaven. This is the procedure of a despotic legal system, not an open and liberal one. Bentham supplied the theory. He insisted that justice should take place publicly in order that the judges be kept up to scratch: [He said this]*

"Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial."[3]

Professor Andrew's solution to the problem was to suggest that '*The principle of publicity [ought to] be emblazoned on a banner and displayed aloft the Royal Courts of Justice.*'[4].

7. Such a banner would have the virtue of making it plain to everyone passing by the courts that they know the courts are there and that they are open to the public. That was twenty years ago. It was a suggestion from an era when the Internet was in its infancy; mobile phones were a long way from being smart; and social media platforms like Twitter were unknown.

8. Today I want to discuss the steps we have taken and are considering taking, in the light of twenty years of advances in communication technology, to raise a metaphorical banner over our courts; a banner which will give practical reality in the 21st Century to what Lord Brown recently described as that highest of constitutional principles: open justice.[5] I shall focus on the following specific issues: televising courts; the use of social media; and the Judicial Communications Office and the Judicial Media Panel.

(2) Televising Courts

9. It is nearly one hundred years now since photography in courts was banned by section 41 of the Criminal Justice Act 1925. The first UK television broadcast was not made until 1929.

[3] N. Andrews, *Principles of Civil Procedure*, (1st edition, 1994) (Sweet & Maxwell) at 23 – 24.
[4] Ibid.
[5] *Al-Rawi v Security Services* [2012] 1 AC 531 at

With the advent of national television, the ban was extended to cover filming as well as photography. The reason why photography was banned was that there was a growing concern that newspaper coverage of trials, specifically criminal trials, was becoming increasingly sensationalist. The issue had first come to a head in 1912 following the murder trial of Frederick Seddon. After he had been convicted, photographs were taken of him in court whilst he was being sentenced to death. The question arose whether the photographs were taken with permission of the relevant authorities. It seemed that no permission had been sought or granted. Questions were then raised in Parliament and the Prime Minister was asked to consider whether legislation should be brought in to render the publication of such photographs unlawful.[6] The issue was, we would say now, kicked into the long grass until 1925.

10. The rationale behind the ban was to stop sensationalism in reporting. Photographs of defendants being sentenced to death did little to inform the public of what occurred in the court that could not be communicated fairly and accurately in writing. They did however, excite a degree of prurience, perhaps resembling a little that exhibited by those who in earlier times used to go to Tyburn to witness hangings. At all events, the ban stood in England and Wales from 1925 until the creation of the UK Supreme Court. The ban did not apply to that court, since it is not by definition a court of England and Wales.

11. The Supreme Court was, therefore, able to come to an arrangement with Sky Television to provide live coverage on its News Channel of appeal hearings and the delivery of judgments.[7] It is now possible for the public and aspiring barristers to watch some of the best advocates in the country argue before its highest court from the comfort of their homes, their smart

[6] HC Deb 21 March 1912 vol 35 c2067 <http://hansard.millbanksystems.com/commons/1912/mar/21/photographs-criminal-courts#S5CV0035P0_19120321_HOC_216>

[7] http://news.sky.com/info/supreme-court

phones or their laptops. Apparently approximately 22,000 people do so each month.[8] As someone who sat in that court for more than two years, I can honestly say that I did not find the TV cameras (which were very unobtrusive) at all disconcerting. In fact, I rarely even thought about their presence. And my indifference to them was not always brought about because I was dazzled by the brilliance of the legal argument that I was hearing. Nor did I ever have any sense that the behaviour of any of my colleagues or the advocates was in any way influenced by an awareness that they were being televised. I believe that the President of the Supreme Court, Lord Neuberger, commented that he had been told off by his wife and daughter for slouching on camera and having an evidently smug smile.[9] I cannot of course comment on that other than to say that, if he was guilty as charged, it is good proof the presence of the camera is not causing any change in behaviour on the part of the judges.

12. Following the introduction of live televised broadcasts of proceedings in the Supreme Court, it was understandable that the question would be asked: why limit them to the Supreme Court? The ensuing discussions led to a government consultation paper in May 2012, which proposed introducing filming of both civil and criminal appeals in the Court of Appeal, and at some future date sentencing remarks in the Crown Court. Filming would not extend to the High Court. The government said that it was '*aware of concerns that televising our courts may open the judicial process to sensationalism and trivialise serious processes to a level of media entertainment.*'[10] Those concerns were, of course, as applicable to the Crown Court as the High Court, and the consultation paper noted the danger of criminal trials becoming show trials if they were

[8] Ministry of Justice, *Proposals to allow the broadcasting, filming, and recording of selected court proceedings*, (May 2012) at 10 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217307/broadcasting-filming-recording-courts.pdf>.
[9] As reported by Joshua Rozenberg at: http://www.theguardian.com/law/2013/feb/13/judicial-review-judges-supreme-court
[10] Ministry of Justice, *Proposals to allow the broadcasting, filming, and recording of selected court proceedings*, (May 2012) at 8.

to be televised.[11] Subsequent to the consultation, televising the courts was made lawful by section 32 of the Crime and Courts Act 2013. This provision gives the Lord Chancellor the power, with the concurrence of the Lord Chief Justice, to make an order disapplying section 41 of the 1925 Act.

13. We are proceeding cautiously. Plans are well under way to introduce a pilot scheme in the Court of Appeal later this month. The consequences of this reform are therefore yet to be seen. The government, in its consultation, took the view that opening up the courts to television cameras, so that the public can understand how courts work, and how in particular the sentencing process works, was '*critical to confidence in the system and to its effectiveness in ensuring that justice was done.*'[12] Greater accessibility should help to blow away the mystery that surrounds the process. Public ignorance as to what goes on in courts is not surprising in view of the fact that so few individuals have the time or inclination to visit a court during the working day. The reform will certainly help to promote open justice.

14. There are those who fear that televising court proceedings will undermine the due administration of justice and that it will encourage the very kind of prurience that saw Parliament ban photography almost a century ago. In these days when anyone can see almost anything on the website, it seems to me that it is absurd to worry about prurience. But we do need to make sure that televising court proceedings does not harm justice itself.

15. I can see no objection to filming appeals at any level of our system. Why limit television to appeals to the Supreme Court? The experience of that court has shown that the televising of appeals has been an unqualified success. Different considerations arise in those few appeals in the lower courts where evidence is given during the course of the appeal. The general

[11] Ibid at 21.
[12] Ibid at 23.

consensus in England and Wales, so far as one can tell, is that the camera should be excluded from trials at which witnesses give evidence and from all jury trials. Some may say that this is rather pusillanimous. My personal view is that, as a general rule, we should not exclude the camera even from witness trials, but that the judge should have the power to direct that certain cases are not televised if he considers this to be necessary in the interests of justice. For example, it is difficult to conceive circumstances in which it would be in the interests of justice to televise proceedings involving children. But having expressed my personal view, I think it is wise that we are proceeding on a step by step basis and that each step of the way is the subject of a pilot study. There are many who do not share that view. There is also a range of practices in different countries. We need to examine their experiences.

16. The reforms provide an important means of bringing court proceedings to a far wider public audience than in the past. It is true that reforms often carry certain risks and we should be cautious in how we proceed. But legal proceedings have evolved over time in response to changes in society and they will undoubtedly continue to do so. We live in an age of television and technology. Opening up courts to the cameras is a necessary reform of this age. It is one that we must make work in the public interest. Television has been with us for a long time. I need to turn to some of the other technological changes which are relevant to my theme. With that in mind I propose to consider the changes that social media has brought about.

(3) Social Media

17. Not so long ago, if court reporters wanted to report what was going on in particular proceedings, or to report the outcome of a trial or a judgment, they had to wait in court and then, when they had the information they needed, they would make a dash for the public phones within the court building. With the advent of the mobile phone there was no need to

dash; the reporter could just walk out of the courtroom and make a call to the news desk. The dash to the public phone now seems to be a rather quaint piece of history; and even the use of the mobile is receding into the past. This is because of the arrival of smart phones and social media. As most of us know, it is now possible to report in 140 characters or less and to give a running commentary of whatever you want in real time through Twitter. Equally it is possible through the use of mobile email to file a report with the news desk from within the courtroom itself or to put a report onto a live blog.

18. But the opportunity for court reporting by means of the Internet and the use of smart phones was frustrated by the prohibition on the use of mobile phones within the court. The ban was explained in the Lord Chief Justice's 2011 Consultation on the use of mobile technology in courts, because of the potential they have

> '. . . *to interfere with the proceedings, and the fact they may be used with ease to make illegal sound or video recordings, or to take photographs. [In addition the] blanket prohibition against the use of mobile telephones in court is also easier for court staff and security officers to enforce than if there were some permitted uses and some prohibited uses.*'[13]

The blanket ban meant that whatever benefits might arise through via smart phones and the Internet could not be realised.

19. In December 2010 the Lord Chief Justice issued Interim Guidance to the courts that provided an initial framework for the use by the media of mobile phones in court, so that live text-based reporting could be carried out in court.[14] This was followed by a formal

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[13] Judicial Communications Office, *A Consultation on the Use of Live, Text-Based Forms of Communications from Court for the Purposes of Fair and Accurate Reporting* at 9 <http://www.judiciary.gov.uk/Resources/JCO/Documents/Consultations/cp-live-text-based-forms-of-comms.pdf>.

[14] http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/lcj-guidance-live-text-based-communications-20122010.pdf

consultation on whether and if so how such reporting should be permitted.[15] In December 2011 formal Practice Guidance was issued.[16] It covered the use of mobile email, social media and internet-enabled laptops in and from courts in England and Wales to provide live-text based communications. It emphasised that the court has the overriding responsibility to ensure that proceedings are conducted consistently with the proper administration of justice, and that open justice is a fundamental aspect of that. It noted however that there are exceptions to open justice; that photography from court and making sound recordings of proceedings was prohibited.

20. It went on to say:

> '*8) The normal, indeed almost invariable, rule has been that mobile phones must be turned off in court. There is however no statutory prohibition on the use of live text-based communications in open court.*
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> *9) Where a member of the public, who is in court, wishes to use live text-based communications during court proceedings an application for permission to activate and use, in silent mode, a mobile phone, small laptop or similar piece of equipment, solely in order to make live, text-based communications of the proceedings will need to be made. The application may be made formally or informally (for instance by communicating a request to the judge through court staff).*
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> *10) It is presumed that a representative of the media or a legal commentator using live, text-based communications from court does not pose a danger of interference with the proper administration of justice in the individual case. This is because the most obvious purpose of permitting the use of live, text-based communications would be to enable the media to produce fair and accurate reports of the proceedings. As such, a representative of the media or a legal commentator who wishes to use live, text-based communications from court may do so without making an application to the court.*
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> *11) When considering, either generally on its own motion, or following a formal application or informal request by a member of the public, whether to permit live, text-based communications, and if so by whom, the paramount question for the judge will be whether the application may interfere with the proper administration of justice.*'

21. The Guidance noted that the issue of improper interference with the administration of justice was likely to be most acute in relation to criminal proceedings. Witnesses outside

[15] http://www.judiciary.gov.uk/Resources/JCO/Documents/Consultations/cp-live-text-based-forms-of-comms.pdf
[16] http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/lcj-guidance-live-text-based-communications-20122010.pdf

court would be able to read evidence given in court via Twitter or live blogs. Inadmissible evidence posted on Twitter might influence the jury. Live reporting in any proceedings might serve to create pressure on witnesses or litigants more generally, distracting them or worrying them so as weaken the quality of their evidence.

22. It is perhaps not surprising that, following the publication of the Guidance, there were some teething problems. For example, shortly after it came into force, the criminal trial for tax evasion of Harry Redknapp, a famous football manager, was interrupted because a journalist had tweeted the name of a juror and some of the evidence given by a witness in the absence of the jury. A fresh jury had to be sworn in, the matter was referred to the Attorney-General and tweeting was barred for the rest of the proceedings.[17] But since then, as far as I am aware, court-based tweeting and blogging has taken place without any significant hitches. The recent High Court action concerning David Miranda, the partner of the US journalist Glenn Greenwald, was for instance live tweeted by The Guardian newspaper with no apparent difficulty.[18]

23. It is difficult for the judiciary to know to what extent live tweeting and blogging from court is finding an audience. No doubt the means exist to discover how many people follow such tweets and blogs, but I am not aware of any research yet which has collated such data as exists. It would, I think, be useful if someone were to undertake the research. In the absence of such evidence, and on the assumption that there is an audience for such court reporting whether through journalistic tweets tied to a newspaper or TV channel or by members of the public or legal bloggers, I think it can be said that the use of technology is enabling important advances to be made in opening up the courts to the public. As long as

[17] See, for instance, http://www.legalweek.com/legal-week/news/2141015/judge-bans-court-tweeting-redknapp-tax-trial-reporting-breach
[18] See, for instance, http://www.theguardian.com/world/2013/aug/22/david-miranda-high-court-tweets

technology can continue to be used in a way that does not impede the proper administration of justice, its use should continue to be permitted.

(4) The Judicial Communication Office and Media Panel

24. I now want to say a few a words about the Judicial Communication Office, the JCO, and the Judicial Media Panel. The traditional attitude of the judiciary to the media was one of deep suspicion. Generally speaking, reporters were not to be trusted. The judges behaved like Trappist monks. They spoke only through their judgments and, occasionally, through lectures. The media knew that this was the convention. Therefore, if they wanted a judicial view on an issue, they tended to seek out retired judges. There were one or two of these, usually people who had had fairly undistinguished judicial careers. They enjoyed the publicity which they had not previously enjoyed. The silence of the serving judges was imposed on them by the Kilmuir Rules.[19] So from 1955, when they were framed, until 1987 when Lord Mackay set them aside, they effectively barred public comment by members of the judiciary.[20] In this there was no conflict with the principle of open justice. The intention behind the prohibition was to help secure public confidence in the judiciary by preventing them from being drawn into political and other controversies.

25. The relaxation of the Kilmuir Rules in 1987 did not lead to a rush of judges jostling to give interviews with the press nor did it lead to pressure from the media for comment from the judiciary. Where such comment was called for in respect of the judiciary or judicial decisions, the Lord Chancellor would make it under his historic duty to defend the independence of the judiciary. Occasionally, the Lord Chief Justice would speak. But his public utterances were comparatively rare and not always an unqualified success. Lord Taylor's one and only

[19] Letter from Lord Kilmuir LC (12 December 1955), in Barnett, *Judges and the media – the Kilmuir Rules,* (1986) Public Law 383, 384 – 385.
[20] See Lord Mackay LC, *The Administration of Justice,* (Stevens & Co) (1993) at 25 – 26

appearance on the TV show "Question Time" alongside politicians was generally regarded as unsuccessful.

26. In 2005 however our constitutional arrangements were changed by the Constitutional Reform Act. The effect of this legislation was that the Lord Chancellor lost his tripartite role of being a member of the executive and legislative branches of our constitution as well as Head of the Judiciary; and the Lord Chief Justice become the head of the judiciary of England and Wales instead.

27. The 2005 Act imposed a duty on the Lord Chancellor to uphold the independence of the judiciary, thereby maintaining his historic duty to defend the judiciary from adverse public or media comment of the kind that is likely to reduce public confidence in the judicial system. But the wider role of representing the judiciary to the media and the public passed to the Lord Chief Justice and with it, as the House of Lords' Constitution Committee noted the duty to '*increase public understanding of the judges and the justice system, . . . [as well as to] help the judiciary to place constructive pressure on the executive over areas where there is disagreement or unease*'.[21] Informing and educating both the public and the executive about what goes on in the courts is clearly an important aspect of open justice administered in an open society. Increasing an understanding of what is done and, most importantly, why it is done is an essential element of securing public confidence in an independent judiciary and thereby the rule of law.

28. To help the Lord Chief Justice to carry out this duty effectively the JCO and the Judicial Media Panel were created. The JCO is the judiciary's press office and carries out the role that the Lord Chancellor's press office used to play prior to the 2005 reforms. It was created with the explicit aim of increasing '*the public's confidence in judges … as part of an overall requirement*

[21] See House of Lords' Select Committee on the Constitution, 6th Report at [156] (http://www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/15106.htm)

to enhance public confidence in the justice system.'[22] It operates in a number of ways. It maintains the judicial website, which contains a wealth of information about the judiciary, its role and function, about judicial independence and accountability. It published important judgments as well as summaries of judgments which outline the key factual and legal issues and the reasons for the decision (something the JCO shares with the UK Supreme Court, which routinely publishes such summaries at the same time as it hands down judgments[23]). It also published judicial lectures and speeches, judicial responses to government consultation papers, as well as reports and Practice Directions and Guidance.[24]

29. The JCO does not simply ensure that the judiciary has a web presence, as important as that might be today. It also ensures that, wherever possible, a member of its press team is available to talk to the press on issues of interest that arise, in particular contentious issues that arise from judgments. The Office cannot explain or interpret judgments or a judge's sentencing remarks. What the judge says in his or her judgment or sentencing remarks must speak for itself. But the Office can help to place the judgment or sentencing remarks in their proper context by, for instance, ensuring that the press is aware of the full picture. If an enquiry relates to the length of a sentence handed down for a certain criminal offence, it can for instance ensure that the enquirer is aware of the relevant sentencing guidelines. What might at first blush have appeared to be a very lenient sentence can then be seen in its proper context. The aim of the Office is to ensure that the sentence, or judgment, is reported fairly and accurately. In this way, if the sentence or judgment still appears to be unsatisfactory once the context has been fully explained and understood, the issue may be seen as one for political debate concerning whether the law itself should be changed rather than an occasion for criticising the judge.

[22] Lord Woolf LCJ cited ibid.
[23] http://www.supremecourt.gov.uk/news/latest-judgments.html
[24] http://www.judiciary.gov.uk

30. One interesting issue that was raised by the respected legal journalist Joshua Rozenberg shortly after the JCO was created was whether it should '*act as the public spokesman for the judges*'.[25] By this he meant: should it employ a trained lawyer, or perhaps as others suggested a panel of senior or retired judges, who could comment on judgments so as to '*correct inaccuracies, highlight significant sections in judgments or sentencing remarks, and possibly even explain complex points of law to facilitate more informed media coverage*.?'[26] It seems to me that the idea that a senior judge could play such a role is a non-starter. First, the judge would not be able to sit on an appeal from such a decision. But more importantly, it would risk undermining judicial comity and judicial independence. It is one thing for a judge's decision to be overturned on appeal. The risk of that happening is an incident of judicial life which every judge accepts. But I would regard as unacceptable the risk of being exposed to adverse criticism by another judge without the benefit of adversarial argument.

31. There is perhaps something to be said for a legally trained spokesman or a retired judge explaining complex points of law or the background to sentencing remarks so as to facilitate accurate reporting. This is an idea that we might perhaps consider in the future, although given the existence of the judge's media panel it is perhaps an unnecessary development or one that carries with it too great a danger of the spokesman drifting into the realm of defending judgments or explaining that when the judge said X he or she really meant to say Y.

32. Let me turn then to the media panel. It too was created following the 2005 reforms. It is the responsibility of the Judges' Council's communications sub-committee. I can best describe its role by setting out how my predecessor as Master of the Rolls, Lord Clarke, explained its role

[25] Ibid at [166].
[26] Ibid.

to Parliament in 2009. In evidence to the Culture, Media and Sport Select Committee he said this,

> '*The media panel was set up as a means by which the judiciary could clear up media confusion which can simply and easily be rectified and thereby improve public understanding and confidence in the justice system. It does not exist to enter into a debate with the media or to respond to adverse comment by the media . . .*
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> *The panel is selective in respect of the interviews it gives. Panel judges are not available 'on tap' on any and every topic. There are occasions when we feel that an objective opinion voiced by a judge will be helpful e.g., where confusion has arisen about bail decisions, sentencing and housing repossession processes. There are also matters on which panel judges cannot comment. They never comment, for example, on individual judgments, sentencing or other judicial decisions. Equally, there are areas on which panel judges decline and will continue to decline giving interviews i.e., on matters that are overtly political, raise social policy issues or concern party political argument. Media attention on bail is a good example of where an issue developed and become too political for it to be appropriate for judges to give interviews about it. Once it became political and an announcement was made to review the law on bail it was decided that any interview would draw the judge into a conversation about what changes should be made.*'[27]

33. How does the panel work? A small group of judges of wide experience is given media training. If the media seek judicial comment on a particular subject, they can approach the JCO. It checks with the LCJ and the relevant Head of Division, say the President of the Queen's Bench Division, whether comment would be appropriate. If it would be appropriate, the JCO arranges for a panel judge with relevant experience to speak to the media. Panel judges do not comment on individual cases. They deal with issues that are raised by cases, but only in a generalised way.

34. At the time when this evidence to the Select Committee was given, the media panel was '*still in its infancy*'.[28] Few requests for interview had been granted. In fact, only twelve interviews had been given. Since then, the panel has not been called upon to speak as often as might have been expected. This may reflect the care that has been taken to ensure that the members of the panel are not available to comment on issues which are perceived to be too controversial. But the creation of the JCO and the Panel shows that since 2005 there has

[27] Lord Clarke, Written Submission to the House of Commons' Select Committee on Culture, Media and Sport, in 2nd Report of 2009 – 2010 Session on Press Standards, Privacy and Libel at Ev201 – 202 <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcumeds/362/362ii.pdf>

[28] Ibid.

been an acceptance that the voice of the judiciary should not only be heard through their judgments. Like Parliament and the Executive, the judicial arm of the state needs to engage with the public and to explain its role. Engagement – a form of openness – as a means of furthering public legal education is essential if public confidence is to be maintained in the justice system. We are feeling our way and proceeding with care. I think this is the right thing to do. A careful balance has to be struck. On the one hand, people think that the majesty of the law should be preserved. One aspect of this is that judges should keep their distance. If judges become too familiar, there is a danger that respect for the law will be undermined. On the other hand, what judges do is of enormous importance to the maintenance of the stability and well-being of our society. Judges should act in the public interest. Ultimately, they are public servants. That is why the public has a right to understand what they are doing. I can well imagine that what has been done since the 2005 Act came into force to inform the public about the work of the judiciary is only a start and that both the JCO and the media panel will develop their respective roles further in the years to come.

(5) Conclusion

35. But to return to my main theme, it is perhaps fitting that I should conclude my presentation today by noting something that was said by another of my predecessors as Master of the Rolls: Lord Donaldson. He famously noted that,

> '*The judges administer justice in the Queen's name on behalf of the whole community. No one is more entitled than a member of the general public to see for himself that justice is done.*'[29]

[29] *R v Chief Registrar of Friendly Societies, ex parte New Cross Building Society* [1984] Q.B. 227 at 235.

It is true, as he went on to acknowledge in another case, that there are circumstances which justify limits being placed on public access to the courts[30] – where, for instance, such limits are strictly necessary to ensure that justice is done. But apart from these situations, all steps should be taken to secure public scrutiny of the courts. This is essential to maintain public confidence in the justice system, and by that means the rule of law itself.

36. In the past, the public could exercise their right to see justice done by going to court. They could also read press reports. But necessarily these could only be read hours, if not days, after the event; and a journalist's summary of court proceedings is highly selective and hardly a satisfactory substitute for witnessing the real thing. Anyway, the days when a journalist sat in court all day have gone. In the 19th Century we reformed our courts and their procedures to make them fit for an industrial age. A system that had evolved to serve the needs of an agrarian society was no longer regarded as sufficient to deliver justice. We now live in a technological age. We have the means to enhance public access to the courts. If we want justice to be truly public, for the courts to be properly open, we will have to continue to build upon recent advances and utilise that technological as far as we can, as far as is consistent with our commitment to making sure that justice is done.

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[30] *A-G v Leveller Magazine Ltd* [1979] A.C. 440 at 450; and see *Scott v Scott* [1913] A.C. 417 at 437.