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**“COMMUNICATIONS AND THE JUDICIARY IN ENGLAND AND WALES:
LORD KILMUIR TO LORD WOOLF AND BEYOND.”**

**Presentation by
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I am delighted to have this opportunity to talk to you on a topic which I'm sure is of great interest to judiciary throughout the Council of Europe. Public scrutiny of our various justice systems has increased over the past few decades and the number of column-inches in newspapers and magazines, and the amount of broadcast time devoted to them have grown accordingly.

It doesn't matter that the work of the judiciary in our separate jurisdictions is carried out in different ways, or indeed that our judges have different professional career paths. I'm also aware that one size doesn't fit all: what might work for the judiciary in England and Wales won't necessarily suit others. But some aspects might.

What is common to us all is that judges need communications channels - external, for example through the media or via websites, and also internal, to enable them to communicate amongst themselves on matters of common interest.

My talk is in three parts:

- 1st a look at the recent history of judicial communications in England and Wales;
- 2nd how our judges were provided with media relations support before 2005; and
- 3rd how judicial communications works today.

The Kilmuir Rule: 1955-1987

I said 'recent history'. I suppose defining 'recent' depends on how old you are. Bear with me as I take you back 53 years to the views of Lord Kilmuir as the Lord Chancellor of England and Wales in 1955.

The role of the Lord Chancellor was unique and dated back more than a thousand years. It was unique because the postholder was a Government Minister, Speaker of the House of Lords and, the bit we're interested in today, Head of the Judiciary.

In December 1955 Lord Kilmuir wrote to the Director General of the British Broadcasting Corporation (BBC): "as a general rule it is undesirable for members of the judiciary to broadcast on the wireless or to appear on television". Lord Kilmuir went on to make it clear that before engaging in public discussion, which would include dealings with the media, judges should obtain the consent of the Lord Chancellor. Having consulted the Lord Chief Justice, he was of the opinion that "the importance of keeping the judiciary insulated from the controversies of the day" meant that it was preferable that judges did not take part.

So, when approached by a reporter, no matter how interesting the subject or relevant to their work, judges simply answered that they were not permitted to contribute without the Lord Chancellor's consent. Journalists were well aware the consent was unlikely to be forthcoming in practice so this tended to be the end of the discussion.

This became known as the 'Kilmuir Rule'. It remained in place for 32 years, until in 1987 another Lord Chancellor, Lord MacKay of Clashfern, decided the concept had run its course.

The Lord Chancellor's Support: 1987-2005

During his first interview with the press Lord MacKay took a different view to his predecessor. He said that the rule laid down by Lord Kilmuir in 1955 was "difficult to reconcile with the independence of the judiciary".

Judges no longer needed his consent if they wished to take part in public discussion and he added: "I believe that those who have been given Her Majesty's commission for the discharge of judicial office should have the judgment to decide such matters for themselves."

To help judges decide whether or not to take part in such discussion he made his Lord Chancellor's Department's (LCD) fledgling press office available to them for advice. This rather *ad hoc* arrangement remained in place for the next eighteen years.

Over that period the LCD press office, staffed by a single professional communicator in 1987, expanded into a fully-fledged government communications office. By early 2005 it had 53 staff and a responsibility for managing not only media issues, but also for the provision of internal communications as well as a departmental website and an intranet.

During this period the advice and help the press office was able to provide to the judiciary became more focussed and useful to judges. In particular with regards to what are now regarded as 'high-profile' trials.

The first of these was the trial of Rosemary West in 1995. This case probably attracted as much media interest as did the trial of Marc Dutroux in Belgium in 2004 – or, dare I say, as much interest as I'm sure the impending trial in Austria of Josef Fritzl may attract.

West was tried and eventually convicted for the murder of 11 people, most of them at a now infamous address to people living in England, 25 Cromwell Street in Gloucester.

Media interest in the case was intense. It became quite evident in the run-up to the trial that new ways of handling the press were required to prevent it turning into a 'media circus', as the OJ Simpson murder trial had in Los Angeles. Predictions were that the West trial would follow suit.

The main thrust of the press office support was to ensure that the dignity of the court was maintained throughout. In other words it was important that the trial judge, Mr Justice Mantell, was provided with sound professional communications advice to make sure the focus of reporting stayed on the trial itself – not on the problems of reporters covering it. If a reporter believes his or her professional needs are being met, or at least listened to, he or she will be able to do a better job of reporting in an environment of minimal stress.

This was the first trial in the United Kingdom where reporters covering it were provided with a media annex adjacent to the trial courtroom.

Sound links from the trial courtroom at the Crown Court in Winchester were relayed into two nearby courtrooms fitted out with a large number of tables and chairs. These courtrooms, presided over by ushers, were regarded as part of the trial courtroom when the court was in session – no talking, eating or drinking was allowed.

It worked well. On an average day during the six-week trial about 60 reporters were present – 35 of them in the main courtroom and the others in the annex. When the court visited 25 Cromwell Street a small media pool was set up to accompany the jury and the judge and counsel through the house and its back garden. When it came to the summing up and sentencing at the end of the trial more than 150 reporters were accommodated.

A single press officer was responsible for planning the communications support to the trial, and also managed the media during the trial and the site visit to Cromwell Street – it happened to be me. It was good to see the months of planning had paid off. The feedback from the judge, counsel, court managers and the media was good. The process has since been refined a bit and CCTV links from the trial courtroom are now provided in to the media annex.

Media management for the West trial became the template for future high-profile trials. The concept has also been adapted for major public inquiries headed by a judge, such as Lord Hutton's Inquiry into the death of Dr David Kelly in 2004 which was related to the Government's use of intelligence prior to the Iraq War and was conducted in the Royal Courts of Justice in London.

And also for high-profile inquests, such as those into the death of Diana Princess of Wales and Dodi al Fayed, of which more later.

LCD Press Office support to the judiciary took a slightly surreal turn in 1999 when the jury hearing a World War 2 war crimes trial, *Regina -v- Anthony Sawoniuk*, was flown from a comfortable Old Bailey courtroom in London to a remote village in Belarus for a site visit in the depths of winter.

An LCD press officer – which once again happened to be me - was able to assist the trial judge, Mr Justice Potts, with media management.

Thirty-five reporters and cameramen flew from London, to be joined in Brest in Belarus, just over the border from Poland, by a further 50 media folk from Russia, Germany and the Ukraine. Many of the latter group did not speak English and interpreters had to be used.

The challenge in this case was to endeavour to get the media to comply with the wishes of the court – even though it was sitting outside the English & Welsh jurisdiction and thus the judge had no 'powers' to deal with breaches of contempt of court law by the media. Commonsense explanations of the reasons for the court's needs were the key. It was imperative individual jurors could not be identified by published media photographs taken whilst they trudged through the snow in -15°C. On the other hand it was essential for the reporters to be able to hear what the jury were being told by the judge, counsel and the interpreter for the witness, as he described where he had seen the tragic shooting of three Jews by the defendant in 1942. Juggling their needs and those of the trial judge was challenging.

Once again planning was the key, the aim being to maintain the dignity of the court even though it was 'in session' in the snowy, wintery streets and surrounds of a tiny Belarusian village hundreds of miles from the Old Bailey in London. Communication was essential in ensuring the trial judge's requirements were carefully and firmly explained to reporters and cameramen, and that their requirements were dealt with sensitively and

professionally wherever possible. After four hours it was over and all parties voiced their satisfaction in a plethora of languages.

These are examples of a couple of the highlights of the relationship between the LCD press office and the judiciary. More mundanely, most weeks a judge would contact the office to ask for advice about a speech bid, or a media interview bid or for an article on a topic in which a judge has a particular expertise, such as family law. The correction of media misreporting of judges' remarks was also high on the list.

LCD press office support to the judiciary increased markedly in 1992 when Lord Taylor of Gosforth, the newly-appointed Lord Chief Justice, broke with tradition and held a press conference for the legal correspondents. I doubt Lord Kilmuir would have been terribly pleased.

Lord Taylor's approach heralded a new approach by the senior judiciary in their relationship with the media which continues to this day. The LCD press office also had a hand in this new spirit of openness.

Senior judges were given television and radio interview training; television drama writers were shown through the parts of courts used by judges and rarely seen by the public; judges were happy to take part in their local court 'open days' and talk to their local reporters; judges took opportunities to visit their local schools and tell the children how the courts work.

Not surprisingly LCD press officers were first and foremost loyal to the Lord Chancellor of the day in his capacity as a Government Minister. And sometimes, if only rarely, the senior judiciary and the Government had differing views on points of public policy. It was becoming difficult, if not impossible, for an LCD press officer to wear two hats in situations like that.

In 2003 the then-Lord Chief Justice, Lord Woolf, said: "I am sure the judiciary must have a press Office of our own. Not, I emphasise, to spin, but to provide the media with the basic facts they need."

His remark had been prompted by the fact that in June 2003 the Government announced that the unique and historic role of the Lord Chancellor was to be abolished and the responsibilities of the post were to be radically realigned. The Lord Chancellor was to head up a successor department to the LCD, to be called the Department for Constitutional Affairs (DCA) – as such he was still responsible for representing the judges' interest in Government; the Speaker of the House of Lords became a post in its own right; and the Lord Chief Justice was to become Head of the Judiciary for England and Wales. Furthermore, the Lord Chancellor was no longer required to be a Peer sitting in the House of Lords: for the first time ever the post could be held by a Member of Parliament sitting in the House of Commons.

This was pretty seismic as far as the judges were concerned. As Head of the Judiciary the Lord Chief Justice was to become statutorily responsible for a large number of matters – some 400 in all ranging through judicial personnel matters, training, appointments and deployment.

The changes didn't happen straight away. In fact they didn't come about until nearly three years later in April 2006, when the Constitutional Reform Act 2005 came into force.

A Communications Office for the Judiciary: 2005 -

Due to the potential conflict of interest it was obvious to Lord Woolf that the support provided over the years by the Lord Chancellor's press office could not continue. So work was put in hand to create a judicial communications office. Note I said "communications office" and not just a "press office".

As Head of the Judiciary it was agreed that the Lord Chief Justice would need to be able to communicate with every judicial office-holder for whom he was to be responsible - in other words all the judges, magistrates and tribunals judiciary who total about 40,000. An internal communications capability was essential.

Unlike most other judicial communications offices its focus was to be solely on the judiciary. Her Majesty's Courts Service already had its own press office.

In April 2005 an embryonic Judicial Communications Office (JCO), comprised of me and a senior press officer, started work in the Royal Court of Justice in London. Civil servants we may be, but our loyalties were – and remain - firmly to the Lord Chief Justice and the judiciary of England and Wales, not to ministers and senior officials in the DCA - or the Ministry of Justice as it became in May 2007.

Our aim was to have a communications structure in place for the judiciary when the *Constitutional Reform Act 2005* came into effect. We succeeded and by 3 April 2006 had recruited a team of nine professional communicators from various government departments.

A 24/7 press office function had been in operation from the very start. To this had been added a judicial website (www.judiciary.gov.uk), a judicial intranet and, on 3 April, the first edition of a monthly e-magazine, *Benchmark* was published. A new logo had been designed for judicial stationery.

Over the past three-and-half years we have worked hard to gain the confidence of the judiciary for whom having their very own communications facility was a novelty.

This year we've set up a judges' media panel. The JCO has arranged for six judges to be given media training and they are being deployed to take part in interviews or media discussions so that a judicial viewpoint can be clearly stated. With regards crime, they do not comment on specific cases but can, for instance, explain how sentencing policy works in relation to a type of crime.

We also provide media training for senior judiciary, as required and, a new service - advice on how to deal with appearing before parliamentary select committees.

As in the days of the LCD press office something always seems to come along which is out of the ordinary. In our case it was the inquests into the deaths of Princess Diana and Dodi al Fayed.

In late 2006, Lady Elizabeth Butler-Sloss, a recently retired senior judge who had been appointed as the coroner for the inquests, asked that the JCO be allowed to provide her with communications support. This was agreed to by the Lord Chief Justice. Lady Butler-

Sloss stood down from the post in April 2007 to be succeeded by Lord Justice Scott Baker.

Everyone knew that the potential publicity for the inquests would be huge. However, I was confident my team would be able to handle the challenge – and they did. Admirably.

An inquests website [www.scottbaker-inquests.gov.uk - it is still viewable] was launched to carry press notices, background information on the inquests themselves and those involved in them. As the deaths had occurred in Paris, part of the information was also posted up in French. The JCO press office managed all media calls.

In June 2007, at the start of the inquest, the court moved *en masse* to Paris for two days to enable the jury to view the various places of interest relevant to the inquests. This was only the second visit by a jury outside the jurisdiction of England and Wales, the first being the visit to Belarus back in 1999. The JCO managed all the media arrangements and organised media pools to cover the visit in such a way as to minimise disruption to the court.

The Inquests were held in the Royal Courts of Justice and, as you can imagine, there was significant media interest: strangely the public was far less curious. More than 130 journalists from around the world were accredited to the inquests.

Once again a media annex was established. It contained 300 seats half of which were exclusive to the media, the remainder were allocated to members of the public, from which all proceedings in the court could be followed on banks of large television screens via a CCTV link and a link to the LiveNote transcription service.

Reporters appeared to like the greater informality the annex provided and, in particular, the ability it gave them to come and go as they pleased and to report immediately on any significant development which was more difficult to do from the courtroom itself. Good relations were maintained throughout, and bore fruit on things like the jury site visit to Paris where the media co-operated with the operational arrangements even though the court was out of jurisdiction.

Public and media interest was catered for by the website. It played an important role in building up public confidence in the inquests, given the very open way in which extensive material was posted in a timely manner. As the website was updated twice daily with the transcripts of the proceedings and evidence including photographs and CCTV footage, usually within an hour of the end of each hearing session, it was also of great benefit to the media.

An added bonus was that the JCO web team was also able to gauge international interest in the proceedings by monitoring web traffic usage. On three days it attracted more than 80,000 'hits'. The website was well received and became a good advertisement for the skills of the JCO web team.

Other things that worked well were directions from the Coroner to the media, communications support offered to the jury, in particular during their Paris visit and following their verdicts, and the media having a dedicated press team through whom they could contact the inquests' Secretariat.

What of the future? I am currently looking to add an Education Officer to my team which should enable us to tap into the consciousness one of the most important audiences we have – our students. Providing the right training materials to teachers and judges is the key to this I suspect. But that's another story: one that has yet to be written.