

CONFIDENTIAL FILING.

Judges and the Media

LEGAL PROCEDURE.

February 1988

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
25-2-88							
8-3-88							
<p>PREM 19/2294</p>							



10 DOWNING STREET

LONDON SW1A 2AA

From the Press Secretary

8 March 1988

Dear Lord Chancellor

You asked me to let you have a note which might form the basis for briefing Judges on your attitude towards their giving interviews to press, radio and television or appearing on radio and television programmes. I am sorry for the delay, but I have been consulting colleagues because of our concern about the likely consequences for the judiciary of any significant move towards a more open approach to the media.

The issue needs to be handled very carefully indeed because there could scarcely be a worse time for adopting a more liberal approach. The media become more rather than less trivial, sensational, inaccurate and irresponsible.

Consequently, the attached note is austere. It is, as you will see, based on the belief that judges have much to lose from familiarity with the media.

I hope it is nonetheless useful in establishing a system which achieves a reasonable and practical balance of advantage and offers you reasonable protection. It is written in such a way that you might find it possible to circulate it to Judges.

Jim Samuel
Bernard Ingham

BERNARD INGHAM

The Right Honourable
The Lord Mackay of Clashfern

JUDGES AND THE MEDIA

Custom and practice have produced a climate in which practising judges have generally stood apart from the media and declined invitations to give interviews or to appear on radio or television programmes.

This enlightened self denial has overall stood the judiciary in good stead. It has been seen to stand above the battle and to practise an impressive degree of self discipline in an indisciplined environment. Whatever it may apparently have lost by turning the other cheek to media criticism, it has gained from its demonstration of professional self restraint and responsibility which has won wide respect.

Judges have much to lose from a more liberal approach to relations with the media.

Moreover, this is not a propitious time for experiment. We live in a period in which the media are not noted for their accuracy, fairness or responsibility. The media's interest in a judge is unlikely to be intended to be to his advantage.

Only in exceptional circumstances will the media approach a judge on issues divorced from either a current case or a topical issue - both of which carry serious risks for even those most experienced in handling the media.

Cases may, however, arise where the media, in a genuine spirit of inquiry, wish to explore matters affecting the legal system or may, for example, seek to prepare a series of programmes which promise to secure a wider public understanding of the working of the law.

There may be a case for judges to take part in such programmes, subject to careful professional control. I suggest that judges should consult my office for professional media advice about the desirability of appearing on any proposed programme.

In the meantime, the following elementary advice may be useful:

- a refusal to comment on any current case or topical issue is the only safe course; any comment is liable to be distorted or misinterpreted;
- never take approaches by the media at face value; any proposition needs to be examined carefully and all assertions - eg the interview has the support of X - should be checked with those concerned;

- in exploring a journalist's intentions the following questions should be asked:
 - What is the purpose of the interview? What kind of article or programme is intended? What event, if any, is the interview linked with?
 - Is the interview intended only for background and not to be attributed to the interviewee, or is it intended to quote the interviewee? [NB: There is no guarantee of anonymity in a journalist's promise not to attribute quotes to an interview.]
 - Is the interviewee the only person being approached or is he only one of a number whose views are being canvassed? If so, who are the others being approached?
 - If a radio or television interview is proposed, is it intended to broadcast it live or to record it? [NB: A live broadcast cannot be cut; a recorded interview can be edited.]
 - If a radio or television interview is to be recorded, will the interview be used in full or will it be edited? If it is to be edited, how will it be used - will it simply be cut or will extracts be "intercut" or threaded into the argument as it progresses?
 - If an interview can be edited in any way, what guarantee can the interviewee be given to ensure that the views he expresses are not distorted either by selection or juxtaposition?
 - Will the interviewer allow the interviewee to see the finished article or programme? If not, why not? [NB: It is usually a matter of journalistic honour not to show an interviewee the finished work.]

Satisfaction on these points is the minimum required before anyone should contemplate giving an interview.

file 104 ASF

MR. INGHAM

I discussed with Sir Derek Oulton on the telephone the Lord Chancellor's aspirations for judges to be more ready to give interviews or to appear on radio or television programmes.

My talk with Sir Derek led me to believe that he, too, has serious qualms about the judges talking more freely to the media. He pointed out that in fact the strict position is that the judges make up their own minds on this. Formally, the Lord Chancellor has no locus. But in practice most judges are likely to take a lead from him. The affair of Judge Pickles clearly rankles with the Department.

I put the standard arguments to Sir Derek:

- an unscrupulous media who would exploit critical comments by the judges;
- judges who would inevitably be taken for a ride (not because they were foolish men, but because their whole training and upbringing had not fitted them for the hurly burly of media relations);
- and probably in the fullness of time some antagonism, which the media would encourage, between the judges and the Government.

Sir Derek took all these points and undertook to pass on our qualms to the Lord Chancellor. He said that the Lord Chancellor was uncertain about how to proceed and genuinely was open to advice. I suggested that there would be a good case for his consulting the Prime Minister before coming to any final conclusion, though I hastened to add that I was not speaking with her authority in suggesting that.

I suggest that you should now send your paper to the Lord Chancellor, though I repeat my hope that you should not be involved in any way about giving advice to judges on which programmes they should appear in and which they should turn down. Could I suggest, too, that your paper might include a

DTS

further section on more practical aspects, with a view to demonstrating to the Lord Chancellor that this is an extremely complex area. Points which might be included in this section are:-

- should judges insist on appearing live?
- would they be able to ensure that their comments were not edited?
- how would they ensure that the balance of their comments was maintained?
- could they insist that their comments were not cut up so that they were interspersed between other items in a programme, etc., etc?

The more of these technical points which could be included as questions, the greater the chance of convincing the Lord Chancellor of the potential traps.

N.L.W.

N. L. WICKS

25 February 1988



10 DOWNING STREET

Nigel Weiss

With the compliments of

He discussed.

Bayman
2372

B. I.

I believe that the Lord
Chancellor's approval could, in
the course of time, have such momentous
+ deleterious consequences that he
would be well advised to have a
word with the P. N. before proceeding.

MR WICKS

This note, prepared at the Lord Chancellor's request, is sent to
you for comment.

It is, I think, at the reactionary limit of acceptability. It
nonetheless contains a clear message to judges: don't talk on
current cases or topics; and don't otherwise until you have
consulted the Lord Chancellor.

Second, I am reluctant to
see you involved in giving advice
on which programmes etc judges
should become involved in. If
you are involved, so is the
P. N. If they were to go down
this route, on the judicial
heads should rest the decision.
Third, an insignificant
drafty print.

BERNARD INGHAM
22 February 1988

Let us have a further word.
I am reminded to speak to Sir D. Oulter
about my first print. N.C.U. 22.2

JUDGES AND THE MEDIA

Custom and practice have produced a climate in which practising judges have generally stood apart from the media and declined invitations to give interviews or to appear on radio or television programmes.

This enlightened self denial has overall stood the ^{judiciary} profession in good stead. It has been seen to stand above the battle and to practise an impressive degree of self discipline in an indisciplined environment. Whatever it may apparently have lost by turning the other cheek to media criticism, it has gained from its demonstration of professional self restraint and responsibility which has won wide respect.

Judges have much to lose from a more liberal approach to relations with the media.

Moreover, this is not a propitious time for experiment. We live in a period in which the media are not noted for their accuracy, fairness or responsibility. The media's interest in a judge is unlikely to be intended to be to his advantage.

Only in exceptional circumstances will the media approach a judge on issues divorced from either a current case or a topical issue - both of which carry serious risks for even those most experienced in handling the media.

Cases may, however, arise where the media, in a genuine spirit of inquiry, wish to explore matters affecting the legal system or may, for example, seek to prepare a series of programmes which promise to secure a wider public understanding of the working of the law.

There may be a case for judges to take part in such programmes, subject to careful professional control. In these circumstances, I would hope judges would enable my office to form a view of the proposed programme and to offer advice.

BERNARD INGHAM
22 February 1988



IT8.7/2-1993

2009:02



IT-8 Target

Printed on Kodak Professional Paper

Charge: R090212