



Exploring the Law

Newsworthy Lawyers

Opening sequence:

"The truth, the whole truth and nothing but...How does the defendant plead? Not guilty! So long as a judge keeps silent his reputation... It would be inappropriate for the judiciary to be associated with any... or anything that can be fairly interpreted as entertainment. Guilty!"

Gary Slapper:

Hello, I'm Gary Slapper, Professor of Law at the Open University. Lawyers and judges are an extremely important part of the legal system and in recent history they have moved from the shadows to the spotlight. The way that they work historically was rather mysterious and left outside of public scrutiny, and it was regarded as improper for judges and lawyers to be open in public debate or to engage in interviews. But this has changed quite dramatically and instrumental in that change was Frances Gibb, Legal Editor of The Times, under whose professional investigative journalism and analysis of the way that the legal system was working came this really important opening up of the legal machinery. How did the story begin Frances? What was it like at the time when your tenure as Legal Editor at The Times commenced?

Frances Gibb:

Well you're right Gary, things certainly were very, very different. I mean different for legal journalists who barely existed, and different for the legal profession itself. And I do remember when I began that there were no press officers for barristers or judges. There was almost no means of contacting a judge. Barristers the same. You couldn't find them, you didn't write about them. What started to happen around that time was that I and one or 2 others began writing about what the profession was actually doing as a profession. And I suppose it was partly stimulated by changes that came along in the 1980s under the then Lord Chancellor, Lord Mackay of Clashfern, who started to look at reforming the profession and their restrictive practices and monopolies. This caused the most unbelievable rumpus and furore and the rows that ensued between the 2 branches of the legal profession, the barristers and solicitors, really threw open into the public domain all the ways that they carried on. And exposed them to public debate and scrutiny and of course it was grist to a journalist's mill.

Gary Slapper:

Mmm, the Kilmuir Rules operated didn't they from 1955, these were the statements of the then Lord Chancellor, Lord Kilmuir, who said that it would be inappropriate for judges to entertain the public anywhere, to disclose information about their cases or their thoughts, because it would be an unnecessary exposure of what they were thinking to public criticism, which seems very odd to us now, yes.

Frances Gibb:

That's absolutely right. I mean judges just didn't and were not actually allowed to speak out in public, never mind give interviews to the media. And in fact again under Lord Mackay's regime, he lifted these rules, regarding them as an encroachment on judicial independence which they were. He said judges must be free to do what they want. I mean his hand was partly forced by a judge at that time called Judge Pickles, who kept defying the Kilmuir Rules and giving interviews right, left and centre, so I don't know whether it was pragmatism or point of principle. But anyway he did lift them. And gradually over time interviews began to happen with judges. I think probably one of the biggest changes came when at the end of the 80s the beginning of the 90s when Lord Taylor of Gosforth, Lord Chief Justice for about 3 or 4 years came in, and he actually made a profound change. He embraced dealings with the media, decided he would do interviews, gave a press conference which was absolutely unheard of, and shock, horror actually went on television and did Question Time.

Gary Slapper:

Yes, it seems a world away, and yet if you think from the point of view of people who are young or growing up in today's society, they would look at how important the legal system is in a democracy to having your disputes resolved in a civilised you know rational, non violent way, this is an immensely important part of the way that society works. And if you say to people then, children for example that you explain to them what lawyers are and how they operate it would be of course natural expectation that one would be entitled to know who the lawyers are, how they work, how their organisations work, you know how they plan things. And yet before you started this what became a professional project, a mission to expose and analyse and subject to scrutiny of the legal professions, you say so little didn't have press officers so they were able to operate in a secret way really.

Frances Gibb:

They were, and I think the other very big difference was that they didn't really ever really regard anything they did as against the public touchstone. So nothing was done for the public. It was done for themselves. And when I came along, I wasn't a lawyer and don't want to you know take any credit for this particularly. It was changing times. But it was unusual to have a legal correspondent who wasn't a lawyer at that time. But as I said to the editor of the day, I said, well I'm writing for the public and I have to explain it to the public. And I think that the lawyers hadn't really come across this before. They were used to just talking to each other. And they weren't used to having to explain anything. And the same with the judges and their judgements.

Gary Slapper:

Yes, many things like that I think have changed since. We would regard it now in a different area but as one which has been deeply affected by that, the change you're talking about, as being improper for a police force for example, accused of impropriety to investigate itself, because this would seem to be you know a wrong thing to do. And for police officers only to speak to other police officers about how policing was organised, or for universities only to speak to other people in universities and for there to be no public or employer or student engagement with how these work. So much has changed in the world since. And I think this is a pioneering area of change. It's being able to say to a body of expertise that the public have an expectation of knowing what is happening and have an opinion to give on this.

Frances Gibb:

Yes, I think one can't underestimate the changes that were started by Lord Mackay of Clashfern in the 1980s when he abolished the monopolies of the professions and what, you know barristers had a, had a control of all the rights of audience in the courts. That meant they had the right to take all the cases, and solicitors had controls over things like conveyancing and all this - these were really restrictive practices. But from that point on, these professions had to justify what they did and what they demanded to have and the rights they had, against the public interest. And I think they'd never had to do that before. But now they accept that everything they get and everything they ask for and every reform they push for or fight, has to be justified against that touchstone and you can't really put the genie back in the bottle.

Gary Slapper:

Yes, it's funny that, I mean legal aid really began in 1949, so you have a good 30 years of what - I mean today's language would really, really be council payers', taxpayer's money being invested en masse in a system which was not really in the beginning willing to expose itself to public scrutiny.

Frances Gibb:

It wasn't and it had a knock on effect. I mean the bar started by having an annual conference. It seemed such a little thing now. But, at that time it was revolutionary. They'd set up a press office, they set up a magazine, they would talk to journalists. And now we have judges who have their own press office. I mean 20 years ago that was unimaginable. Judges actually give interviews, they hold press conferences. Somewhat reluctantly it has to be said on some occasions. And they still get very anxious talking to journalists, they don't really want to give

interviews unless they absolutely have to. There's a bit of ambivalence there. But they accept that in the delivery of their judgements for example these have to be comprehensible. Not just to the lawyers and litigates in the case, but by ordinary members of the public and the press. So one great benefit is that we get summaries in important cases. And that is marvellous.

Gary Slapper:

Yes it's a hugely beneficial social impact. I mean in a way you know the law is everyone's law. The law isn't barrister's law or solicitor's law or judge's law. It's everyone's law and it's so natural, it should be seen as so natural. That what you've just described is something that would follow rationally from a law system but it didn't, interestingly until it was pressed for the public expectations changed because it was gradually being opened up to the inspection and analysis of the public through what you were writing.

Frances Gibb:

Exactly. They don't, they don't own the law, they don't own the justice system. I mean it wasn't just myself. Around about that time what also happened and this is, the combination of all these factors brought the change. You got a surge of legal journals. Magazines like The Lawyer, Legal Week, which didn't exist 20 years ago. Suddenly the whole of the profession found every bit of its dealings, every deal it did, every little bit of gossip, every little move being scrutinised and in the press. And I think now they have, they have accepted it, but I think it must have been a bit of a shock.

Gary Slapper:

Mmm, yes, and I think historically the connection with The Times though was an important one to note in the sense that it's been a journal which was once referred to a judge as being the journal which we always read but aren't allowed directly to cite. As, one judge put it. And I think that journalistic instrument broke the barrier in a way that other sources of social investigation would probably not have been able to have done, at that time. If it was going to be if that secrecy was going to be punctured and people were willing to begin to expose themselves, it would have been, as it was through The Times and so the gradual democratisation of law begins in this way.

Frances Gibb:

It does. I mean I hope to think we had some influence, but there, there were key people. Lord Alexander of Wheedon who was Chairman of the Bar in the mid 80s was, was very influential and, and you needed a few key people like that. I've mentioned Lord Taylor, because they were the ones who were prepared to do a deal with the media and didn't regard us all as reptiles.

Gary Slapper:

Mmm. Thank you so much Frances.

Closing Announcement:

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