



Constitution Committee

Corrected oral evidence: The rule of law

Wednesday 21 May 2025

10.25 am

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Members present: Lord Strathclyde (The Chair); Lord Anderson of Ipswich; Baroness Andrews; Lord Beith; Lord Bellamy; Lord Burnett of Maldon; Lord Foulkes of Cumnock; Lord Griffiths of Burry Port; Baroness Hamwee; Baroness Laing of Elderslie; Lord Murphy of Torfaen; Lord Waldegrave of North Hill.

Evidence Session No. 6

Heard in Public

Questions 79 - 100

Witnesses

I: Joshua Rozenberg KC (hon), Legal Commentator; Frances Gibb, Journalist and former Legal Editor at the *Times*.

Examination of witnesses

Joshua Rozenberg and Frances Gibb.

Q79 The Chair: Welcome all of you to this meeting of the House of Lords Constitution Committee. Today, we hear from Joshua Rozenberg, a legal affairs commentator and journalist, and Frances Gibb, a journalist and former legal editor at the *Times*. Thank you for coming along. Your reputations, of course, come before you. You have commentated on these affairs for a long time, which very much suits our committee and our inquiry into the rule of law. I gather from the team here that you gave evidence to this committee many years ago, which just goes to show how long you have been doing this. Your knowledge and experience are invaluable.

The first question is: how important is the free press to the rule of law? We have taken lots of evidence from tremendous legal personalities and we are very much looking at a view not just from the media but how it affects people on the ground. How do normal people react to legal questions, to the law, where the media has such an important interaction, and, therefore, how important is a free press to the rule of law? I do not mind who goes first or second. Do not feel you have to comment.

Frances Gibb: Thank you, Chair, and thank you again for the invitation to speak to everybody here. The role of a free press is absolutely crucial to the rule of law. When I say free press, I mean also freedom of speech. As the rule of law is essential to a functioning democracy, so too the free press is particularly important in exposing abuses of power or noting when there is erosion of the rule of law. Basically, without a free press, you have no watchdog on abuse of power. Judges seem to agree, in the sense that one or two of them have said as much, linking the importance of a free press to the independence of the judiciary. I am thinking of the late Lord Judge, who was a member of this committee. He was very keen on a free press, saying that it was not just a constitutional necessity but a constitutional principle. More recently, the Lady Chief Justice, Lady Carr, said that independence of the judiciary and of the press were essential features of a healthy democracy. She said we are the eyes and ears of the public.

Specifically on your question about the public view of the press and the rule of law, we will probably go into it in more detail, but one thing your committee has talked a lot about is the definition of the rule of law. I do not think that that is in the public eye at all. When people think about the rule of law, they think about how the laws and justice system affect them in their everyday, working lives. They look to the press to report on that and explain to them what is happening. Hence the headline on the front page of the *Daily Mail* today that Britain is becoming a "police state" under Labour. That is the sort of thing they think about when they think about the rule of law.

Joshua Rozenberg: I agree entirely with what Frances said. A free press and the rule of law are each a marker or indicator of the other. In other

words, if you have a free press you are likely to subscribe to the rule of law and if you subscribe to the rule of law you are likely to have a free press.

To broaden the discussion ahead of any specific questions you may ask, I suppose that the mainstream media is less influential in some ways than it was. If we talk about the “free press”, we are talking about broadcasting, although that is fragmented; social media, which is of great importance; blogging, which is something I do; and the media more generally. The days when people got their opinions from leaders in the *Times* or any other paper have gone, but I think the way in which things are reported is extremely important. Frances gave an excellent example from today which we might talk about later. It is perfectly possible for people, to the extent that they understand the concept of the rule of law, to lose faith in the rule of law if they read things in the newspapers that seem to undermine confidence in it, as perhaps they have recently.

The Chair: We had evidence some months ago that the rule of law predates democracy itself and even possibly the invention of the free press, although there was always reporting and a press in whatever form before. Would you agree that we have not needed democracy for the rule of law but that democracy buttresses the rule of law in the same way as the free press?

Joshua Rozenberg: Yes, I think that is right. It is what I was thinking of when I said that one goes with the other. I wonder if you really could imagine the rule of law without a free press these days. It would be very difficult to imagine the rule of law working properly without the ability for us all to say what we wish.

Lord Foulkes of Cumnock: To pick up what Frances Gibb said when she held up the *Daily Mail* with its rather strange headline today, do we really have a free press when papers like the *Daily Mail* are owned by oligarchs living abroad?

Frances Gibb: Well, we have a free press in the sense that newspapers are able to publish what they want, within the laws of the land on privacy, libel and so on. It is free for anybody to own a newspaper in this country.

Lord Foulkes of Cumnock: Would you say it is free when so many of the newspapers are owned by right-wing people?

Frances Gibb: There is nothing to stop a left-wing baron buying and operating a newspaper, is there?

The Chair: We would not have a free press if the *Daily Mail* was not allowed to say what it said.

Lord Foulkes of Cumnock: I am not saying that. If we mean by “free” that anyone can publish anything, but the only people able to do so are those with huge amounts of money and who support a particular political point of view, is that really free?

Frances Gibb: The important point is what Joshua said about the influence of “mainstream” or what are now called “legacy media” papers. How much influence do they actually have? We have citizen journalists. Social media has been a real game-changer. Influence, if you like, is coming more and more from that area, rather than traditional newspapers.

Lord Foulkes of Cumnock: Even the BBC seems to put on people with a right-wing perspective more frequently.

The Chair: I wish.

Lord Foulkes of Cumnock: Well, they do.

Frances Gibb: I will let Joshua answer that.

Joshua Rozenberg: I cannot speak for the BBC. There is a lot one could say about it. I cannot confirm or deny your suppositions.

The Chair: You may want to come back to this, George, but I think we pretty much got the answer for the moment.

Q80 **Lord Anderson of Ipswich:** Perhaps I could take the opposite tack from Lord Foulkes, to try you out. Do you think there is an argument that too much free speech can itself be a threat to the rule of law? We had some written evidence from Lord Reed, President of the Supreme Court, which I thoroughly recommend. One thing he said is that if individuals cease to believe that their society is effectively regulated by law, the rule of law is liable to break down. One thinks of the extraordinarily widespread conspiracy theories to be found on QAnon and other online platforms to the effect that we are run by a paedophile gang or that Hillary Clinton was doing unmentionable things from a pizza parlour in Washington DC. One wonders whether that sort of exercise of free speech is positively corrosive of the rule of law. Of course, when we talk about the rule of law, we are talking about not just what courts do but what powerful people do generally. If the message gets about that powerful people are acting in an arbitrary and unaccountable way, that itself corrodes the rule of law. Do you think that, vital though free speech is, the excessive use of it might itself corrode the rule of law?

Joshua Rozenberg: It has to be balanced. Take the *Daily Mail* story today that Frances referred to. The headline is, “Boris: Starmer’s Britain is turning into police state”. It begins, “Britain is becoming a police state under Labour, Boris Johnson warned last night ... former Prime Minister Mr Johnson warned that the country is ‘losing its reputation for free speech’ as a growing number of online rants draw the attention of police”. He is talking about the case of Lucy Connolly, which I think is a very good example that we might come to later.

There is certainly a danger if the public get the wrong impression. I was on GB News last night, which is why I happened to be watching it when it talked about two-tier justice and these allegations, which, again, are a matter of concern and believed by some people but denied by others. The

answer to the free press saying things you do not like is to have more free press saying things you like. A multiplicity of journalistic outlets should lead the intelligent reader or viewer to get a balanced picture. Just as there are right-wing papers whose job it is, as they see it, to oppose the present Government, so there are the *Guardian* and other left-wing journals that broadly support the Government.

Frances Gibb: *The Daily Mirror*.

Joshua Rozenberg: Exactly.

Lord Waldegrave of North Hill: BBC Radio 4 this morning had a retired judge explaining the Lucy Connolly case beautifully clearly, which I should have thought settled the matter for anyone who listened.

Frances Gibb: I completely agree with Joshua on that. People now have the means to express their views much more widely because of the internet and social media. You cannot put the genie back in the bottle. What people say will not be confined to a village pub as it was a century ago; it will be out there worldwide. The answer is not to clamp down on it but, as Joshua rightly said, to allow it as much as possible and put out explanations—as you just said. Have judges and other commentators speak out to explain things if there is misunderstanding—that is the answer to correcting false impressions.

Lord Anderson of Ipswich: If I may say so, you make a compelling argument for the advantages of counter-speech and a free market in ideas, in which one hopes that the good ideas prevail. I wonder if that is entirely realistic. If it were, why would we need, for example, Ofcom codes for broadcast media? Why did the major social media platforms, certainly until recently, have their own codes, monitoring, takedown procedures and so on? If we could just trust to the good guys to counter-speak and bring everyone to their senses, we would not really need those things.

Frances Gibb: Readers can judge and make a decision. People know that a mainstream, traditional newspaper goes through multiple hoops and has in-house lawyers and its own internal codes, but that stuff on, for example, X, TikTok or whatever it may be, is pretty well unregulated. People make those judgments. They have to decide on the quality of the material that they read and of the information that they get.

Lord Anderson of Ipswich: Do you think the fact-checking business should grow and perhaps will grow in future years, so that people know the sources in which they can place their trust?

Frances Gibb: Fact checking is interesting. There is a point about the BBC with its verified facts. In one way that is interesting, even compelling, but it raises the question of whether we are saying that things not subject to being verified facts by the BBC are not to be trusted. That is rather strange. I do not know what Joshua thinks about that.

Joshua Rozenberg: I agree with that entirely. All the facts reported by the BBC should be verified to the ability of the broadcaster and the journalists concerned. I am not saying that BBC Verify is a gimmick; it is probably well intentioned, but, as Frances said, everything should be verified before it is published. At least, readers and viewers should be told that it is what we know to the best of our ability. Corrections should be prominently published rather than hidden away on the internet. The widest range of views on matters of contention should be published so that people can make up their own mind.

Lord Anderson of Ipswich: Is it reasonable for a democracy such as ours to require, for example, online platforms to practise content moderation, or is that too great an infringement on the freedom of speech of those who might wish to post on those platforms?

Joshua Rozenberg: It is difficult. If we allow individuals to publish on social media as we do, who is to be responsible for correcting it? Obviously, other people can respond on social media. Is the publisher X to be expected to check every allegation in every tweet and every post that is published? That is unreasonable. There are attempts to fact check and to add things saying, "This is contentious", or to give people ticks of approval at various times. You are right: it is an imperfect system, but I do not think that detracts from the principle that the more there is in the public domain, the more likely it is that the intelligent member of society has a good idea of what is really going on.

Frances Gibb: It is worth remembering—you will know much more about this, Joshua—that a lot of the stuff out there on social media possibly comes from foreign agents. It is not even from a person you could locate or find. It is all false stuff. What do you do about that? It is very difficult.

Q81 **Baroness Andrews:** Parking the social media stuff, I have a rather different question about your influence as serious journalists and papers. Is it a counsel of perfection, for example, to think that we might ever return to the sort of parliamentary reporting which would have been explicit in articulating the rule of law in public discourse? Do most papers have a legal reporting facility?

Joshua Rozenberg: No.

Baroness Andrews: That is clearly answered. What is the future of your particular influence? Is the pond you swim in getting more and more congested?

Frances Gibb: I think it is. As I said, the arrival of social media is a game-changer. Our newspapers are all declining. Local newspapers are declining. Court reporting, for example, has gone right down. The PA service in the Royal Courts of Justice is now about four people, if that. Two decades ago, it was more like 25 people. You will know, because it has been debated here, that the PA's parliamentary service has been cut by a third. We do not give prominence to parliamentary debates in the paper. We do not cover things because we do not have the staff or the

money. Newspapers do not have the funding to report cases in court throughout the country, up and down the land, as they used to do. Yes, it is completely changing.

Joshua Rozenberg: I agree with that. I have a picture at home of Frances and me with Lord Mackay of Clashfern in 1997, when he retired as Lord Chancellor after 10 years. We, the legal journalists, gave a dinner for him after co-operating with him during that time. Frances and I are there, as is the chap from the *Telegraph*, and Marcel Berlins, who has since died. The *Guardian's* Clare Dyer was there and the *Independent* had a legal correspondent, too. There were several of us, all working full time—in my case for the BBC, which had two other legal correspondents. Others were from newspapers. That has all gone. Among newspapers, the *Times* certainly has a legal editor but other newspapers do not have full-time correspondents covering law; neither does the BBC. That is just a sad fact of life. It is deteriorating, and those days are not coming back. There is an answer to that: public bodies, Parliament and the courts could communicate directly with the public, but maybe we will come on to that later.

Q82 **Lord Beith:** Before we leave this point, there is some court reporting. Immigration tribunals and employment tribunals are regularly reported, without any reference to the fact that they are not courts of record or setting precedents. They are somehow picked up by the system. Given the well-known absence of journalists from the courts, how can it be that there is regular reporting of what the newspaper proprietors find attractive, namely to demonstrate that the right to a family life has been too influential in a case, or something like that?

Joshua Rozenberg: That was the point I was getting to when I paused. To some extent, this makes up for what has gone wrong: the great change is that judgments are available online. That includes First-tier Tribunals, immigration cases, and everyone up to the Supreme Court, with more and more judgments from the High Court, the Court of Appeal, the Scottish courts, the Northern Ireland courts, and so on. The information is online. Lord Beith is referring to the fact that one newspaper in particular, followed by one or two others, trawled through the published judgments in immigration cases looking for stories, and wrote them up in the way they thought appropriate. These reports are not new. They are written at the journalist's desk from the full judgment which is available online. You just look through them for one that you want to write about.

Q83 **Lord Griffiths of Burry Port:** In an earlier life, about five years ago, I had some responsibility on the Front Bench for taking through the Data Protection Bill, as it then was. There were several mini debates at the heart of that rather vast piece of legislation and one was about the freedom of the press. Without in any way wanting to challenge the right to have a free press, what came out badly from that exchange, from families whose children had committed suicide, was the capacity of the press for self-regulation. It was often held up as an ideal, but the practice was thought, quite widely, to be deficient. Is it reasonable to suggest that

self-regulation is an achievable ideal among those who exercise these freedoms?

I know that you will swallow that up in a second, so as a little supplementary I want to question the confidence you express in people making up their own minds. When you repeated that little formula a moment ago, you added another word: your confidence in “intelligent” people to make up their own minds. I think we are in a bit of a morass there, about which I would like a very separate session. I meet people in their ordinary lives who are very capable of being led by the nose.

Joshua Rozenberg: Self-regulation can be seen as the mark of a free press. If the press is regulated by government, arguably it is not free. On the ability of ordinary people to make up their minds, that is a matter of judgment. Maybe I aspire to a position that I would like. Maybe you as parliamentarians meet more ordinary people than we do speaking to lawyers all day long. I think there are plenty of people who, if they are given information, can reach a decision, but it is perfectly true that people are likely to be influenced by what they see, hear and read.

Frances Gibb: I completely agree about self-regulation of the press. In a sense, that subject has been done to death. We had Sir Brian Leveson’s inquiry into the press and ethics; recommendations came out of that and the system we have now, actually, I think works pretty well. It has checked certain aspects of press behaviour; you may not agree, but I think it has. Maybe people would want a more paternalistic society where we decide what they could or could not read, or were able to read or make decisions on.

I do not know if this is related, but on the public not understanding or getting the wrong end of the stick, I did a series of interviews with judges for the University of Law in recent months. Judges said that politicians had a very poor understanding of the justice system, the constitutional principles underlying it, and the relations between the Executive and the judiciary. It is not that the press is to blame, necessarily or at all, for such misunderstandings. Everybody has a misunderstanding about the law, in some respects.

Q84 **Baroness Hamwee:** Lord Reed also said that misinformation on social media should be countered, given its potential to inflame, but that task is beyond the capacity of the courts. You covered this to an extent, but is there anything you would like to say about the capacity of the courts? We have to take evidence and there is a limit on what we can impose on the committee out of our own heads, which is very frustrating, thinking of the limitations of defamation in this sphere. It may be that you feel you have said everything that needs to be said.

Frances Gibb: I do not know whether we will talk further about what can be done to improve public understanding. On your point, the courts already do more and more. I do not know, Chair, if you want to talk about this now. Courts give summaries of their judgments. Broadcasting

is a key factor. We might come to that. Yes, courts need to do more to counter misunderstandings, and are doing that.

Q85 Lord Murphy of Torfaen: You touched a little on whether politicians have a good understanding of the law and legal system, as well as whether the general public do. Is there a case for the media, in all their forms, to be able to shape that understanding?

Joshua Rozenberg: It would be very good if they could. To be fair, the news media are not in the business of public education, in the sense that it is not their job to provide lessons in constitutional law. Their job is to report news. Now, the more news they report, and the more accurate it is, the better idea people have about the constitution and the legal system. There are ways in which people can learn about the law. It is a matter for schools and education. There are charities such as the Citizenship Foundation¹, and there are projects in schools, such as mock trials. Quite a lot can be done for people who want to learn about the law. I think that all one can expect of the news media is that they do not get it wrong. I do not suppose that it is fair to expect them to give lessons in the law as footnotes.

Lord Murphy of Torfaen: I suppose that in reporting they could make complex issues simpler for people to understand, which would be your role.

Joshua Rozenberg: That is what I have always tried to do. The reason why my Substack blog, which is my main journalistic outlet, is called "A Lawyer Writes" is that, years ago, after the end of a news story, often in the *Times*, reporting what happened in court, the phrase would appear, "A lawyer writes", and there would be a paragraph or two, generally written by Professor Michael Zander, but anonymously, explaining the point of law at issue in the case. That is a very good thing to do.

Frances Gibb: On people's understanding, or lack of it, most people do not come into contact with the law in their lives. They do not go to court, so why would they understand it? They perhaps get some degree of knowledge from newspapers, but it is limited. As Joshua said, we try to simplify and boil things down, but surveys show that most readers of traditional newspapers do not get beyond the first three or four paragraphs. You cannot be certain that everyone will read to the end of a thousand-word article, much as you might want them to. Also, people are very shaped in their views by television, films and other things. Yes, we try to simplify, but I agree entirely with Joshua that the media do not have a responsibility to promote understanding of the rule of law. They have a responsibility to try to be accurate and fair.

Lord Beith: When it comes to public understanding of the rule of law, the media sometimes contribute in ways that you might not approve of or think appropriate. Let me give you an example from the Covid period. When the parties in Downing Street attracted press attention, some

¹ The Citizenship Foundation is now known by the name 'Young Citizens'.

people said that it was disproportionate compared to other things that happened during that period. But the effect was that people started saying, "There's one law for them and one law for us". What is that but an appreciation of the rule of law and that the law should apply equally? When the media expose hypocrisy or double standards, they may contribute an understanding of the rule of law.

Joshua Rozenberg: Yes.

Frances Gibb: Yes, I could not agree more. That is the role of the media in exposing breaches of the law and abuses of power.

Joshua Rozenberg: The public may not think of it in terms of the rule of law, but they think of it as unfairness. The phrase "two-tier justice" is used in Parliament rather a lot these days. You are right that the media expose abuses, even if they do not label them abuses of the rule of law.

Lord Beith: Of course, the general effect may be to undermine confidence in politics, politicians and all of that. Alongside that, you have to set the consideration that it gets the public understanding that there are mechanisms, including the reporting itself and cases being taken up by the police, that enforce the rule of law.

Joshua Rozenberg: Yes.

Frances Gibb: Showing that the law is working like that is important. That is the job of the press, in a way.

Q86 **Baroness Laing of Elderslie:** Flipping back to Lord Anderson's questions about corrosion of the rule of law, you mentioned headline-grabbing sensationalism in journalism. Has the culture of negative discourse around the judiciary possibly got worse? Does criticism in the media of judges and their judgments threaten judicial independence and therefore harm the working of the rule of law. Has it gone that far?

Frances Gibb: The negative discourse around judges may have slightly worsened, although not significantly. I think it has gone hand in hand with the rise in populism, where people see the judiciary as an arm of the state, detached from their own views. Social media has fuelled that, to some extent. You will have seen that Lord Hermer, in his recent speech on the rule of law, talked about the rise in perceptions of a conspiracy of elites, including judges, who all come from the same stock and have the same kinds of views, which populist followers perceive as detached from their own views. Immigration is a good case in point. The answer there is yes.

As for whether attacks on judges and judgments are damaging, no, I do not think that they are. I distinguish attacks on judges from attacks on rulings. Rulings are fair game and people are entitled to comment on them, as with anything else. Personal attacks on the judiciary are quite rare. "enemies of the people", which we still talk about, was years ago. I do not think it had a lasting damaging effect, or was damaging even then. It was uncomfortable for the judiciary, but I feel they are strong

enough to withstand personal attacks of that nature, even though they might be quite undesirable.

Baroness Laing of Elderslie: That is a helpful observation and shows why it is valuable to us to hear from you as journalists. We have been told by several others that that was a terrible event, and it is referred to over and over again as damaging. I hope that you are right that it was not as damaging as it might have appeared.

Joshua Rozenberg: I think you are referring to particular criticism of particular judges. Your committee asked the Lady Chief Justice in February about her criticism of the Prime Minister earlier that month. That related to his comments on a story in the *Telegraph* on 12 February about a family from Gaza who were allowed to settle in the UK under Article 8 of the human rights convention. The leader of the Opposition said the family had applied under a scheme for Ukrainian families and, instead of correcting her, the Prime Minister said he did not agree with the tribunal decision. The point that the Lady Chief Justice tried to make, perhaps not entirely successfully, was that this was a challenge to a decision of the Home Secretary, and that if a member of the Government did not agree with what the courts said about a decision made by a member of the Government, then it was up to that member of the Government—in this case the Home Secretary—to appeal against the decision. As far as I know, the Home Secretary chose not to do that.

The Lady Chief Justice did not intend to say that you should never criticise a decision of the courts; she intended to say that where the Government are a party, they should use the judicial system rather than the parliamentary system to respond. Of course, there was concern about the fact that that particular judgment was misreported, and there is concern about the fact that the Prime Minister did not seem to be properly briefed on that judgment, even though it had been reported in the *Telegraph* that morning. He was unable to explain that it was not a question of a family from Gaza being granted permission to enter the United Kingdom as if they had been Ukrainians. Of course, the tribunal knew they were not. Apparently, they filled in a form headed “Ukraine”, and that was the advice they were given.

It is damaging to the judiciary to some extent if people misunderstand what they have ruled, said and done. The criticism of the Lucy Connolly case does not seem to take account of the fact that there are sentencing guidelines—another controversial subject which Ministers have spoken about—and therefore that judges are constrained to pass sentences within particular parameters. The guidelines are statutory in the sense that they are backed up by law. There is a danger of uncorrected criticism of the judiciary. On the other hand, we are all entitled to say that we did not agree with a judgment.

Baroness Laing of Elderslie: Gathering together several of your answers and what you just said, is there a dumbing down in reporting of important decisions? Could that adversely affect the rule of law?

Joshua Rozenberg: I remember from my time in newspapers that there can be an attempt to put news and court reports into a particular framework, to fit them on particular tramlines, to meet an agenda that the newspaper thinks its readers will want to read. Obviously, that isn't a criticism of those journalists. All journalism is about selection of facts. The impression you give is created by the facts you choose to report, the order you choose to report them in and the language you use, particularly how many adjectives you use in certain circumstances. There is obvious concern that the media can report things in a particular way, have a particular agenda and be damaging.

Q87 **Lord Burnett of Maldon:** I agree entirely with both of you observing that it is appropriate for people to criticise the judgments of judges. I said so fairly frequently when I was in office as Chief Justice. It would be nice if that criticism could be based on what was actually said in a judgment, rather than what may have been gleaned from a headline.

Coming back to the attacks on the judiciary, obviously at the moment there is public concern reflected both in the newspapers and by politicians about some immigration decisions. We see exactly what Joshua identified: various journalists trawling through First-tier Tribunal judgments and trying to make stories out of them. Some of them, as you have commented in the past, get those stories completely wrong, in ways that one finds surprising from a responsible journalist. That is a different issue.

As for attacks on the judiciary, I want to follow up on two points that have been made and that Lady Laing picked up on. Most judges have relatively broad shoulders and recognise that, if we give judgments in areas of public interest, there may be pushback from various quarters on the result. That is not comfortable, but it happens. However, although the "enemies of the people" episode was seen, first, as an attack on the independence of judges because it was attributing to them personal rather than judicial decision-making, the issue that was really to the fore at the time was the failure of the Lord Chancellor of the day to intervene and discharge her statutory function. Are you able to comment on that?

On currency and prevalence, we are conscious of that at the moment, particularly in the immigration field. I remember very well, during the Labour Government of 1997, long before I was a judge, that one of their Home Secretaries got really angry with some judges' decisions in the same field—immigration. Indeed, he personally criticised a High Court judge in a way that was not appropriate, and the Lord Chancellor of the day intervened. As is well known, the Home Secretary telephoned the judge to apologise. If one looks back to the 19th century, there were some absolutely vituperative articles in the broadsheet newspapers about judges when the view was that they were doing a bad job. So, is what goes on today exceptional or not?

Lord Waldegrave of North Hill: There was also Bernard Levin on Lord Goddard.

Lord Burnett of Maldon: Of course, yes.

Frances Gibb: I agree with that entirely. Every so often, you get an eruption—often in the tabloid press—against judges. That can be for soft sentences, and you have galleries of judges taken to task for that or whatever it might be. I remember Lord Woolf being labelled “the burglar’s friend” and whole galleries of rogue judges who were out of step, as the newspaper perceived it at the time. It is nothing new and it does not happen that regularly.

On the point about “enemies of the people”, you are absolutely right: the reason why that got such traction, in a way, was the lack of action by the Lord Chancellor. Had she, at the time, spoken out more quickly to defend the judiciary and point out that they were basically just doing their job, and that personal, ad hominem attacks of that sort were unacceptable, it might have faded away more quickly. That was the problem there. When any of these attacks happens, it is difficult for judges themselves to speak out. They could have a rapid rebuttal unit, as civil servants do for their Ministers. They could put out press releases and statements immediately, correcting things. A number of things could be done. I agree with you that it is not a totally exceptional occurrence.

Joshua Rozenberg: The present Lord Chancellor is to receive a report tomorrow from David Gauke, which will recommend, effectively, shorter sentences.

Lord Burnett of Maldon: I am on the panel that produced that report, just so you are aware.

Joshua Rozenberg: Well, you know more about it than I do—

Lord Burnett of Maldon: I hope so.

Joshua Rozenberg: —although there has been quite a lot in the newspapers about it. I suggest that it will lead to more criticism of judges when they faithfully follow the law as laid down by the legislation that the Lord Chancellor is expected to introduce in response to Mr Gauke’s recommendations. I think the Lord Chancellor should defend the judges on that.

Going back to “enemies of the people”, the view of the then Lord Chancellor was that defending the judges was the responsibility of the head of the judiciary. Unfortunately, the head of the judiciary was one of the judges criticised by the *Daily Mail*, which made it rather difficult for him to speak in his own defence.

There is a certain amount that judges can do. Equally, it is understandable that people in your position, Lord Burnett, when you were Lord Chief Justice, think that the best thing is to not go public and get dragged into a public row, but to speak to people quietly behind the scenes. It is difficult. The more that Ministers can stand in for judges in circumstances where judges feel they cannot respond without the risk of making things worse, the better idea one will have of the truth. When

opposition politicians deliberately criticise judges for political motives, that is their privilege, but I think it is damaging to the judiciary.

Q88 Lord Bellamy: Briefly coming back to the comment Frances made a moment ago about judges being seen as an arm of the state, I think you meant as distinct from being a referee between the citizen and the state—as judges would see themselves. How do we promote the idea that the judge is actually there to see fair play between the citizen and the state, rather than being on the side of the establishment and state power?

Frances Gibb: I meant that they are seen wrongly as an arm of the state. Obviously, people do not always understand about the separation of powers. Baroness Hale made the point that they think that pressure can be put on courts to come to a decision, or that the Director of Public Prosecutions might be able to ring up and make sure that something comes out a certain way.

To answer your question, it again comes down to promoting constitutional understanding. I do not think that is a role particularly for the press, necessarily; it needs education in schools or through judiciary talks. Lord Reed promulgated a little video which he sent to all new MPs, explaining those simple, basic points so that everybody coming into Parliament understood the separation of powers and the role of the courts—which is your point.

Lord Bellamy: Technology may now be approaching the position where we could, at reasonable cost, more or less live-stream every court proceeding in the land all the time.

Frances Gibb: That is another thing. I think it has made a huge difference. Lord Sumption made the point that when the controversial “enemies of the people” case actually came before the Supreme Court, there was no longer any fuss about it. The whole thing died down. He puts that down to the fact that proceedings were televised and everybody could watch the whole thing. They decided it was not a political ruling but a rather boring, tedious ruling with judges getting lost in the weeds of the law. Conspiracy theories vanished away. People being able to see what goes on in the court makes a huge difference.

Joshua Rozenberg: That is absolutely right. The problem with the Miller I, “enemies of the people”, case is that the hearing before the High Court, sitting as a Divisional Court of more than one judge, was not televised, yet the judges there looked and seemed to be exactly the same as those in the Court of Appeal. They were senior judges who sit in the Court of Appeal and if they had been sitting as the Court of Appeal it could have been televised. We still do not have televising of judicial review cases in the Divisional Court, as far as I know. It is something the Lady Chief Justice is in favour of, as am I. It would help to educate the public about what goes on and I do not know why it has taken so long to implement.

Q89 The Chair: In your opinion, is the judiciary itself doing enough to rebut

some of the examples that you gave about potential rebuttal? Could the judiciary do more for itself?

Frances Gibb: There is always more that can be done, especially at local level, but it comes down to resources. The Lady Chief Justice, as Joshua said, is very on top of it. She has set up a transparency unit that is partly aimed at working out ways for people to understand what has happened and understand the meaning of rulings and so on. Locally around the country, that is difficult. You cannot have press officers in every court in the country unless you are prepared to pay for it.

Joshua Rozenberg: That is right. Years ago—Lord Burnett knows more about this than I do—there was an attempt to appoint media judges who would pop up and explain the decisions of other judges. It never really caught on because it is quite difficult for a judge to speak for another judge. The nearest we get are press summaries of judgments, always in the Supreme Court, sometimes in the Court of Appeal and occasionally in the High Court. That is a very good start, and it helps journalists who are unfamiliar with them. Ultimately, most journalists rely on PA Media, the news agency, but, as Frances said, like all journalistic enterprises, it is facing cuts.

Q90 **Lord Burnett of Maldon:** We have covered the regrettable state of affairs that newspapers no longer report from their local courts. It used to be the case that every magistrates' court was reported and every poor drink-driver was in the local press. The local papers do not have legal correspondents, and, as I think you have both already indicated, neither now do almost all the national papers. The BBC does not have a legal correspondent any more, but of course the regular news media, as I still like to think of them rather than the legacy news media, are only a small part of where people get their information.

The issue that arises as a result is whether those who report legal issues and legal cases, who are almost always double-hatting—they are usually home affairs correspondents or political correspondents—really have the legal understanding to be able to do it properly. I think I am right in saying that when journalists are trained, they are trained in the law as it affects journalism, which is obviously important. Do you think there is a problem with non-legal journalists or those with only a passing understanding being expected to do what, if I may say so, you two have been doing so well throughout most of my professional time, which is to explain in simple terms what can be quite complex issues?

Joshua Rozenberg: Yes, certainly. You hinted at that. Dominic Casciani at the BBC covers home and legal affairs. Your point that somebody who has been covering a brief for a period of time becomes experienced in it and understands it better is a good point. I remember when I was at the BBC that before it had a legal correspondent it took the view that, if a journalist could go to a story completely fresh in the morning and by the evening report it, it was a sign that the journalist was speaking in language that the public could understand, because if the journalist could grasp it the journalist could explain it in simple terms. That is totally

wrong. You need to understand the story thoroughly yourself before you can explain it in simple terms, as you have made clear, Lord Burnett.

So I think there are major problems in that area. Yes, journalists will rely on other journalists and the PA, who at least have shorthand, can write things down and, on the whole, have a grasp of the rules. You are right to say that journalists trained in the traditional way, on journalist training courses, will study law. There is a well-worn book called *Essential Law for Journalists* that is republished in new editions regularly and given to people.

The question is whether journalists are trained at all. There was, years ago, a principle that you started on local journalism having done a journalism course, and then you graduated to national journalism, but nowadays people do not necessarily go through that process. It is certainly not required, and it should not be required, but it means that people who write for magazines and blogs and online may not be trained at all in the law and may not understand the law at all. Even some academics who write in weekly magazines or blogs have a particular perspective that they wish to put across, and find ways of choosing the facts to fit the conclusion that they want to reach.

Frances Gibb: I would distinguish between columnists and magazine writers or feature writers and news reporters, who report on things every day, be it in Parliament, in the courts, on disasters that may happen or in inquiries. In my experience, people who are general reporters—certainly in the so-called quality press and, in fact, across the board, from all the papers—are of a very high standard. I know that is not necessarily the public perception. I have never, ever stopped being impressed with the quality of the people I worked with over nearly 40 years on the *Times* and the people on other papers whom I encountered. The specialist law reporters for the PA in the courts have fantastic skills. They are really good and they understand the system completely. People such as chief reporters who come in to do a big story in the courts do it pretty well. They have some training in the law to cover courts. There is a backstop, if needs be, with the lawyers at the newspaper. I am not sure I entirely agree with Joshua on this one.

Q91 **Lord Burnett of Maldon:** This may be a question that some of my former colleagues may not like the answer to, but we will see. I have long worried that judgments have become longer and longer, by and large, and more complex. Do you agree with my perception, given that you have both been reporting on difficult cases for many years, and do you think that that may itself, in the absence of the summaries that you have referred to, lead to difficulties in understanding the kernel of a decision?

Joshua Rozenberg: I remember long judgments in the past. I suppose they have become longer, but it is not something that has particularly struck me. The answer, though, if you have to have a long judgment, is to explain it clearly, to have an introduction that summarises the issues in the broadest possible terms, and have a concluding paragraph, or

concluding set of paragraphs, that sums up what the court has decided. We might start with the opening paragraph, but many of us will turn to the end to see who has won. It is important for the judge in writing the judgment to make it accessible on several levels: an introduction that anybody should be able to understand and might even encourage people to read on; a conclusion that sums up the outcome in the most basic way; and, if it is necessary, descending into the detail during the course of the judgment, as it may well be if you expect your judgment to be appealed and therefore subjected to close analysis, or if you are the appeal court that is subjecting somebody else's judgment to close analysis. You are writing a judgment. You are writing the law. You have to use the words that are available. It is significant, is it not, that some judges are able to summarise things very well and others do not work at summarising it but just go on and on?

Q92 **Lord Foulkes of Cumnock:** I am a bit worried that you rely so much on the PA. I do not know if you know that the Press Association is cutting back on the number of reporters in Parliament?

Frances Gibb: Yes, I said it earlier.

Lord Foulkes of Cumnock: Up till now we have had dedicated reporters in the House of Lords. That is going to go. The cutbacks that are taking place are really frightening.

Joshua Rozenberg: It is, particularly because we all rely on them. I say "we"; I am talking more about the general press. I try to look at original judgments and *Hansard*. I try to look at primary sources.

Lord Foulkes of Cumnock: I am really concerned—and I am glad you mentioned this, Frances—not about the reporters but the columnists and the sketch writers. They are the ones who cause great harm to this whole concept. I was just writing some down: there is Sarah Vine in the *Mail*; there is Allison Pearson, who is all over the place. I think she lives in Dubai now.

Joshua Rozenberg: Is it not Essex?

Lord Foulkes of Cumnock: I do not know. Is it?

Lord Anderson of Ipswich: It is Isabel Oakeshott, is it not?

Baroness Laing of Elderslie: Yes, it is Isabel Oakeshott, but your point is right.

Lord Foulkes of Cumnock: I do not remember all their names. Then there is Quentin Letts, a mischievous fellow. Do you remember he called Michael Martin, who was a decent guy—I knew him very well—"Gorbals Mick"? Michael Martin did not come from the Gorbals; he came from a relatively posh part of Glasgow. These kinds of people create tremendous problems not just for politicians but in terms of understanding the legal system, the way the constitution works and so on.

Frances Gibb: I do not know if I entirely agree. You are mentioning some very good columnists. Life would be very dull without people like that writing. Nobody would buy newspapers at all. You have to have comment. That is the price of a free press: people can say these things.

May I add one thing to what Lord Burnett said about the long judgments? They are very long. Summaries are absolutely critical. I can remember, because I am old enough, the days when I would come down here to pick up sheaves of judgments from the House of Lords. You picked up a bundle and you had to start working your way laboriously through all the dissents and so on to find out what the decision was. It was almost impossible. Another pressure that has changed everything and makes it even more difficult is the demands of 24-hour news. You get a judgment at 10 o'clock and you have to turn it round within half an hour for the online edition of the paper.

Lord Foulkes of Cumnock: I am still concerned that you keep on about the free press. Joshua, you had a row with the *Telegraph*.

Joshua Rozenberg: Yes.

Lord Foulkes of Cumnock: It tried to get you to write something that you did not want to.

Joshua Rozenberg: That is right.

Lord Foulkes of Cumnock: The people on the *Telegraph* did not like what you were writing. Surely, it is not a free press when journalists are not allowed to write the truth because their owner does not like it.

Joshua Rozenberg: I was free to resign, which is what I did.

Lord Foulkes of Cumnock: Yes, honourably.

Joshua Rozenberg: The news desk had its view of what the story should be. It was a report of the Law Lords. One of the judges said to me afterwards that my analysis on the inside page was fine but the news story, which had my byline and the byline of another journalist, was not true, and that is because the news desk had written it up to make it into a better story. I did indeed, as I say, feel I could not carry on writing news stories for them, but I carried on writing a column for them for another year. It depends on what you mean by "free press". They will say they were free to report the stories in the way they thought appropriate.

Coming back to your point, Lord Foulkes, about the columnists and the sketch writers, as Frances said, they are the people who people read and who readers are interested in reading. It is perfectly possible in a sketch to capture something in an amusing and entertaining way that can be the truth and the most perceptive way of looking at a particular debate.

Lord Foulkes of Cumnock: Yes, some of them do that.

Q93 **Baroness Andrews:** Can I pursue this a little and the slight

disagreement that you have had over what constitutes fair play? I am going to quote you back at yourself, Joshua, from your blog. There were two headlines that related to immigration cases. You said, "A quick glance at the published rulings made it clear that the outcomes were rather different from the impressions given". One was in the *Independent*: "Criminal's deportation case halted over son's dislike for chicken nuggets". A second was in the *Times*: "Illegal immigrant claims husband would find Caribbean too hot", a deportation challenge. You criticised the headlines and said: "There is no justification for giving the impression that experienced tribunal judges are taken in by patently spurious arguments", which is a very legitimate comment.

Given that this watchdog, as Frances described it, can be a bit mangy at times in different ways, is there any recourse in the profession itself to a collective discipline that says, "Come on, chaps, let's get it straight sometimes and let's have a bit more self-regulation that gives a fairer account of how judgments were arrived at and on what basis the decisions were taken", or are you simply left with your blog to correct or try to correct? Is that the only weapon you have? Does the press standards council have any locus in this discourse at all?

Joshua Rozenberg: I write very little for the mainstream press these days because they do not ask me to write very much for them, which is fine as far as I am concerned. I cannot really speak for them. The problem with these headlines, and indeed some of the stories that followed them, is the desperate attempt of the newspaper industry to survive in a very difficult market. In the industry, they are under a lot of pressure. They have a lot of competition. They are losing readers. They are losing advertisers. They are desperate to keep their readers and their market. I feel very sorry for them. That is why they are sacking journalists and that is why the PA is having to sack the reporters here in the House of Lords and at the Law Courts. The money that went into traditional journalism from advertisers and from readers is no longer there. That is unfortunate. I do not think there is very much that one can do about it in terms of the newspapers. As I say, there is a lot that public bodies can do by communicating directly with the public, and they choose to do so. It is a problem. I do not think that tougher regulation and people saying, "Well, that headline was wrong", and so on, or even findings from the body that the press happens to be part of, will make a huge amount of difference when they face those commercial pressures.

Frances Gibb: People complain about headlines, and their complaints are upheld. Newspapers sometimes publish corrections if they are seriously inaccurate. What you are talking about is sometimes picking up one aspect of a ruling. It is not actually wrong; it is just not the whole picture. In a headline, obviously, by definition, you have to encapsulate one bit of it that will attract the reader's attention, and that is not going to go away, particularly with X and people putting up one line. That is all headlines, is it not? They are not called tweets or postings on X. They are headlines in themselves, and it is not going to change.

Baroness Andrews: No, I accept that. It is realistic. In the general

debate we are having on how we can reinforce the rule of law and make it more resilient and more salient to people, we are dealing with layers of misinformation at this level that are extremely difficult to break through, because, as you said, that is how people come across the law and perceive it. If they think, in fact, that you cannot be deported because the Caribbean is too hot, it becomes an issue for people.

Q94 **Baroness Hamwee:** Our discussion has mostly been about litigation. As it happens, we are a group of primary sources, to use your term, Joshua, sitting in the room where the Law Lords sat. Is there anything that you would like to say, focusing more on legislation, the rule of law and the reporting and public understanding of that, so that we have a more complete understanding of what you think about it?

Joshua Rozenberg: If we are talking about the technicalities of legislation, it is rather irritating that Governments of all political parties trail legislation before it is published. Traditionally, the Bill is published in the afternoon and the Minister has spoken about it, possibly in a statement the previous day in Parliament, possibly in broadcast media, possibly in advance. My primary source is the Bill itself, which I do not get to see until later in the day. That means I cannot judge how selective the Minister has been in trailing the Bill. What I can be confident of is that there will be something in the Bill, perhaps hidden away at the end, that is newsworthy and that the Minister has chosen not to mention.

The same applies in a very obscure way to litigation. The courts in Northern Ireland have a strange habit of publishing a summary a day in advance of the judgment, so you have to rely on the summary of the judgment, and you do not get the judgment itself to check it until the following day. They say, "Well, it takes us time to get the judgment out", and I say, "Well, publish the summary the following day or the same day as the judgment". It is an odd thing that happens in Northern Ireland. I do not think it happens anywhere else. Certainly, we as journalists benefit from embargoed judgments that we get, in most cases, in the Supreme Court. We benefit from embargoed reports of committees such as yours that we can read in advance and write up for publication on the morning they are officially published. The more information we get as journalists, the better we are able to do our job.

Frances Gibb: That is absolutely right. In court, there were some judges who used to be particularly good when I was doing this on a regular basis and would say to the press, "Have you got everything you need? Have you got that piece of evidence or submission or whatever it is?", and they would make sure you had it. Not all of them do that. It is cost again. Counsel had to provide all those copies.

Joshua Rozenberg: There is one aspect that I would like to stress, and that is sentencing remarks, which are important. There was a controversial sentencing in Northern Ireland yesterday. I was speaking to Radio Ulster this morning and I got the impression that it did not have the full sentencing remarks issued by the judge, whereas here, in

England and Wales, in a controversial case you would normally have the full text of what the judge reads out.

Baroness Hamwee: There is controversy about payment for that, which is a pressure.

Joshua Rozenberg: I am not talking about the transcript.

Baroness Hamwee: No, even about sentencing remarks.

Joshua Rozenberg: A judge giving a sentence in a high-profile case has usually written it out in advance and maybe thought about the sentence in advance, but certainly written out the facts, the arguments and the reasoning in advance, even if that follows very shortly on oral submissions. As a matter of policy, those sentencing remarks should be distributed immediately both to the reporters in court and, more importantly, online to those who are not in court and did not hear them. It is often done in high-profile cases. It should be done in all important cases.

Baroness Hamwee: I was referring to payment. I suppose what you have said about going to the Bill applies also to White Papers.

Joshua Rozenberg: Yes.

Q95 **Lord Griffiths of Burry Port:** First, I want to thank you for explaining how to write a judgment. I happen to have an undergraduate working with me in my office, and it is exactly the same advice I give to him about his essays, so thank you very much indeed. Yesterday, some of us had a would-be judge in the dock as we interviewed three would-be judges to go to Strasbourg to fill the vacant position there. It was with varying degrees of success that we probed behind the prepared statement with its comprehensible opening and its understandable conclusion to find something about the person themselves. Judges are quite mysterious people. We wanted a little bit of something else, knowing that we could not probe in an inappropriate way.

I am a great believer in using entertainment—this is going somewhere, by the way—based on legal work to help people understand the law. I was a great fan of *Judge Deed*, for example, played by someone who is a great friend of mine. The book that has led me mostly deeply into it all is *East West Street* by Philippe Sands, which is truly magnificent. He manages to hold the attention of someone like me because of the penetration of a personal story with the search for two identifiable crimes that emerged from the Nuremberg trials. This was in play yesterday, in that, without discrimination, you are talking about either crimes against humanity or genocide in a way that does not help anybody make the distinction between them, as if they are equals, at a time when it is so critical that we understand the difference. I wonder how the legal profession—Philippe Sands did it for me—can find ways of communicating that bring these things out of the shadows and help the public to understand what is at stake, because what is at stake is a terrible thing that is happening in the Middle East at the moment.

Joshua Rozenberg: If you look at the acknowledgements in Philippe Sands's books, particularly *East West Street*, you will see that he thanks a series of editors, assistants, agents and so on. When Frances and I write, we might possibly have sub-editors, but we do not have experienced editors to knock our copy into shape, as the expression is. His book is structured in a particular way. The subsequent, most recent, book on Pinochet is structured in a similar way. It requires an editor to look at the material and to present it in a way that makes it accessible and attractive. I did not know that your committee interviewed candidates for the European Court of Human Rights.

Lord Griffiths of Burry Port: It was those of us who were on the delegation.

Joshua Rozenberg: I see—at the Parliamentary Assembly of the Council of Europe. That is very interesting, because they of course are among the few judges who have to stand for election. The Ministry of Justice said that one of them would get it, perhaps ignoring the fact that the parliamentary assembly turned down all three candidates from one country, France, some time ago. I am sure that it will elect one of those from the United Kingdom.

Lord Griffiths of Burry Port: The Ministry of Justice says that it has total confidence in all three of them.

Joshua Rozenberg: Of course. That is very interesting. Of course, there are other judges who have to stand. Dapo Akande is standing for election to the International Court of Justice as the UK candidate. It is quite difficult for them. It was very difficult for people aspiring to the rank of Queen's Counsel, as it then was, to have to set out their achievements. It is also difficult—although I suppose people have become used to it—for people who used to be appointed as High Court judges by a tap on the shoulder but now have to explain why they qualify for the job.

Lord Griffiths of Burry Port: And explaining what the European Court of Justice does to a British electorate filled with ideas that are far from the truth. I am looking, really, for a voice from within the legal profession recognising the need to help the public to understand what can be nuanced positions or sometimes radically different positions. Is it a foreign court or not? It is in normal parlance. It would help if from within the legal profession, as well as from journalism and the press, or perhaps together, there could be an effort to make better mileage with some of these tricky questions.

The Chair: We will move on with Lord Anderson.

Q96 **Lord Anderson of Ipswich:** Before I move on, if I may venture an answer to Lord Griffiths, I refer him to the work of the Secret Barrister. Even more than that, I refer him to an extraordinary book called *Enemies of the People? How Judges Shape Society*. It is one that I always recommend to students not only of law but of anything else. Its author is Joshua Rozenberg.

I want to talk about challenges that expert journalists like yourselves, as well as less experienced journalists and bloggers, face when you are talking about legal affairs. We have talked about the challenges on the journalistic side of the fence: the opinionated proprietors and the terrible lack of funding. We have also talked quite a lot about accessibility. We have talked about live streaming, judgment summaries and making judgments readable and so on. By all means, add anything else under those headings that you can think of. I am wondering whether there are obstacles in our law that make your job more difficult than it should be.

We were told in evidence by the Legal Services Board that what it calls unethical legal practice such as strategic lawsuits against public participation—so-called SLAPPs—hinder the ability of the media to play an active role in maintaining the rule of law. It would be interesting to know what you think about that. More broadly, you might have reflections on the law of defamation. Do you think that is in more or less the right place, or do you think it restricts you from saying things that you ought to be able to say?

Frances Gibb: I would have mentioned SLAPPs. They are the next big thing. Newspaper lawyers mention them all the time. There has been some legislation, but it has not gone very far. It is confined to economic crime. Newspapers generally would like a broader bit of legislation to protect them against deep-pocketed plaintiffs bringing actions to quash an investigation or quash any kind of article just because they have the money to do so, and to protect newspapers against costs in such actions. Yes, that is a big thing.

Joshua might be better able to answer about privacy law. It has shifted. Since the Leveson report, there has been a big change in what newspapers can report. The public might think that is right. Newspapers are more careful about what they mention or whom they name. They have to have a public interest reason for mentioning something like a personal aspect of someone's lives.

Joshua Rozenberg: It took many years for the media to grasp the developing law of privacy, which is why the BBC got caught with Cliff Richard, and that was years after the development of the law of privacy. I know a bit about that because I wrote a book about that as well. Your general point about SLAPPs is important.

Perhaps I can just raise a point that is very difficult for newspapers to raise, for reasons that will become obvious. Newspapers often publish apologies to people whom they admit having defamed. They make statements in open court. They make payments of substantial damages. They apologise. You know, Lord Anderson, and I think everybody around this table knows, but perhaps the general public do not know, that those are often tactical withdrawals. They are issued because the newspaper cannot afford the risk of fighting the cases in court. The journalists concerned—fortunately I have not been in this position but I know people who have—are furious that something that they not only believe to be true but that they believe they can prove to be true will not be proved to

be true because the newspaper cannot afford the risk of losing and having to pay the other side's costs. They are not defamed but they are certainly damaged in their reputation by their work being described by their newspaper as false. One can say this in general terms without referring to any specific case. It is worth defending the newspapers by saying that litigation, and the costs and the risks, mean that that is a problem. I do not really see an answer to that except public education and the public understanding that, when a newspaper apologises and withdraws, it may well have been true.

Q97 Lord Bellamy: Picking up on your words there that a newspaper cannot afford it, is not the underlying problem with SLAPPs and a lot of our legal system in general that it is very expensive, and is not a major Achilles heel in our defence of the rule of law in this country that it is extremely expensive to exercise your rights?

Joshua Rozenberg: That is right. Legal aid has never been available in defamation cases, which would in theory be the answer to it. It is a problem. We have defamation law and the newly developed law of privacy. As Frances says, that is well regarded by some people, however much they like reading about people's private lives or misbehaviour. It is a problem for newspapers, but I do not see an answer. I do not see a way of reducing the cost of litigation in defamation cases. I certainly do not see a prospect of public funding for those cases.

Lord Bellamy: To put for a moment the other side of the SLAPPs argument, is it not the beginning of a slippery slope to try to regulate the circumstances in which someone can approach the court? What exactly is the difference between a robust approach by a well-resourced litigant and an abusive use of the legal system? Are we not introducing a real uncertainty in your right to go to court?

Frances Gibb: That exists already, does it not? Courts throw out what they regard as baseless claims and vexatious claims. All manner of cases do not get off the ground. I do not think it is a new principle.

Lord Bellamy: Why is that not sufficient? Why do we need to go further than that?

Frances Gibb: Clearly, we do. I do not know. I have not been on the receiving end, thank goodness, of one of these cases. Clearly, there was a need for legislation, or it would not have been legislated on.

Lord Beith: That does not follow.

Q98 Lord Waldegrave of North Hill: Without in any way diminishing the importance of SLAPPs and the defamation cases, I am interested in the rule of law and the perception of the rule of law. Obedience by the ordinary citizen to the law without force is essential to the system. We voluntarily accept, broadly, the fairness of the system. Whenever the ordinary citizen—if there is such a person, which as a former MP I rather doubt—comes across what appears to be unfairness inherent in the system, that vital allegiance takes a bit of a knock.

Anybody who has been an employer of a big company or a small company, or a big charity or a little charity, will know that there is another kind of abuse out there. A very grand judge who was a colleague was astonished by it all and thought it was very wrong, but could not think of anything to do about it. If you have a dispute with a big company, you apply for a subject access request. That will probably cost the company £100,000, so you settle for £20,000. My grand lawyer friend says, "What are you doing? That's just complete nonsense. We should fight it". You cannot. You do not because it is just wasting shareholders' money. There are lots of employment cases where there are no costs. I know very vexatious ones will be thrown out by the tribunal, but there are plenty—I could give you some hair-raising ones, but I will not because they would be easily traceable—where people regularly bring cases for a living, and they get paid off £10,000 here, £15,000 there, £20,000 there. That all corrodes the base of people's acceptance that the law is fair for everybody. Is there anything to be done about it? I am not asking you as journalists but as people with immense experience of the law.

Frances Gibb: This is not quite the same point, but another thing that is corrosive of people's trust in the courts system as well as cost is delay, the twin bugbear. It comes back to criminal cases in particular and the delays; having to wait for two or three years for serious cases such as rapes and murders to be heard is really undermining public confidence in the system.

Joshua Rozenberg: The answer to Lord Waldegrave's question is the same answer as I gave to Lord Anderson, which is education. Your committee can publish an observation that if an employment case is settled it does not mean that the employer admits that the employer discriminated against the employee; and there was the other example that you give. I am not saying that that is going to make a huge impact, important though your report will be, but the general elucidation of these issues, and a general improvement of public knowledge about how the system works and that it may be and often is cheaper to settle, is something that I hope will enable people to look at things more critically in future.

Lord Waldegrave of North Hill: We fear what happens on the other side of the Atlantic. Putting aside the issues at the moment, we watch that low-level warfare become a tax on employers, effectively, if you are an American company. People put up with it, but it must be bad for acceptance that the rule of law is a serious and fair thing.

Joshua Rozenberg: The law is not perfect.

Q99 **Baroness Laing of Elderslie:** On that very point, we have talked a lot in recent weeks about access to justice. I am sure you recall that not long ago, solicitors were not allowed to advertise, and they were not allowed to take cases on a no-win, no-fee basis. One side of the balance is that those two rules having been changed has possibly facilitated better access to justice, but has it also meant, as Lord Waldegrave has just

described, that cases that perhaps should not be brought are being brought? Is that part of the problem of overloading in the courts?

Joshua Rozenberg: A solicitor will not take a case on a conditional fee unless the solicitor thinks a case is going to be successful. What you get are campaign groups bringing judicial review claims because they support the principle behind those claims and oppose what the decision-maker is doing; and those can be funded by supporters. They can be funded by crowdfunding these days, which is very successful. There are all sorts of ways in which cases can be brought that clog up the courts, and it is up to the courts to have their filters, as you do with judicial review, and not to waste time with hopeless cases. You are right; solicitors advertise and the rules change. I reported this morning on a class action that settled for £200 million and is meant to mean that millions of people in this country will get a relatively small payout from Mastercard, which agreed to settle the case for much less than was originally claimed. That depended on advertising. It depended on advertising for people to benefit because they had to put in the claims against the fund that was awarded by agreement.

Lord Foulkes of Cumnock: To follow up the SLAPPs issue, it is a concern for the Council of Europe as well and other countries. What is clear is that you need to be rich to take that kind of action. I can understand people wanting to protect their privacy, but that applies to poor people as well, does it not? How extensive are SLAPPs in the United Kingdom? What about injunctions and super-injunctions, or interdicts in Scotland? How do they overlap? How do they relate to each other? How extensive are they?

Joshua Rozenberg: I do not think we know because many of them are settled. There was great concern about so-called super-injunctions a few years ago. You hear much less about them now. You do not hear so much about SLAPPs in the courts now, so I do not know how much of a problem they really are. That is probably because in-house lawyers working for newspapers find some way of settling before they ever come to court.

Lord Foulkes of Cumnock: How can we find out about them? Frances, you used a very interesting phrase, "a conspiracy of elites", which I rather liked. It does seem to be happening.

Frances Gibb: I am a bit out of my depth on SLAPPs because I do not report daily now. I think it is no more than maybe 20 or so a year in the UK. That is all I can say on that. I know that newspapers are worried about it and sufficiently worried to be pressing for the legislation to be amended and widened in scope. The super-injunctions are interesting. Lord Neuberger did a report into them. They seem to have completely vanished. It may be partly because they could be defied by people in Parliament breaking them under parliamentary privilege, as happened.

Lord Foulkes of Cumnock: Yes, it did.

Frances Gibb: I wonder if that was what really punctured them.

Lord Foulkes of Cumnock: It was in relation to Alex Salmond.

Frances Gibb: That was one of them. There was a footballer one as well.

Lord Foulkes of Cumnock: Yes.

Q100 **The Chair:** The Attorney-General has said that “the rule of law will be the lodestar for this Government.” How has the Government’s performance held up against this promise so far? Just a quick answer, please.

Frances Gibb: It is too soon to judge this Government. I would say one thing, though. I know that we have touched on this, and Joshua has touched on it. The public perception about whether the Government are upholding the rule of law is as important as the reality. There is this business that is emerging of a two-tier system of justice—two-tier Keir. These sound like slogans, but people really are worried that that is in existence with the Connolly case that Joshua mentioned, where the woman was jailed for a tweet and that kind of thing. There was the way that the rioters were dealt with very swiftly on the one hand, and other disparities and apparent disparities. People need these things explained.

Lord Foulkes of Cumnock: Why is the Prime Minister to blame? There were people—

Frances Gibb: The Prime Minister is not to blame. I am just saying that he is labelled “two-tier Keir”, is he not, in some quarters of the press?

Lord Foulkes of Cumnock: Climate protesters were arrested, but when the farmers blocked Whitehall they got away with it.

Frances Gibb: Yes.

Lord Foulkes of Cumnock: That is nothing to do with the Prime Minister.

Frances Gibb: I am just telling you how it is reported. He is called “two-tier Keir” because there is a perception. There was a lot of misinformation floating around after the Southport riots, with people not knowing who had been arrested for the killings of the girls and that sort of thing.

Joshua Rozenberg: Can I give a direct answer to Lord Strathclyde’s question? It is to be found in paragraph 38 of the Attorney-General’s written evidence to this committee: “To protect and promote the rule of law, the Law Officers are prioritising work to strengthen cultural acceptance of the rule of law as a fundamental democratic value, rebuilding public trust in the institutions which uphold the rule of law in our democracy in our increasingly politically polarised times. This will focus on communicating the importance of the rule of law more effectively to people who do not usually hear it, promoting it in terms that make sense to different groups, particularly young people”. He implies that more needs to be done. If more needs to be done, it follows

that the public do not already have a good understanding of the rule of law.

The Chair: That is very helpful. In fact, it is a good place to stop. We have covered a lot more than just the simplicity, if I can use that word, of the rule of law. It has been so interesting listening to the questions and the exchanges that the committee has had with both of you. I express on behalf of us all our deep appreciation for your coming along and taking the time and trouble to speak in the way you have.