

THE EXCORIATION OF LORD HARLEY...

The 'Harry Potter' case ... Or much ado about nothing?



This a true record of post sentencing proceedings at a Crown Court in Cardiff, Wales, a place perhaps better known among South Africans for its Princes, rugby and singing rather than its jurisprudence. The transcription, dated 28 August last year, has gone viral on websites, such as www.wordwave.co.uk, facsimile machines and mobile devices throughout the common law world, including South Africa, to whose bifurcated legal profession the judge makes a passing reference. In the UK and USA it is often referred to as the 'Harry Potter' case.

The Law Society of England and Wales' Gazette, takes up the tale nearly a year after the event: 'A judge who reprimanded a solicitor-advocate for "dressing like something out of "Harry Potter" has been cleared by investigators,' it reported. The Judicial Conduct Investigations Office had in early July dismissed complaints against Judge David Wynne Morgan.

The circuit judge was sitting at Cardiff Crown Court last August when he told Alan Blacker after a trial that the solicitor-advocate was dressed 'like something out of Harry Potter'. He scolded Blacker, who wore a medal and badges sown onto his gown, in front of the jury and press and added that "If you ever appear before this court again dressed as you are I shall exercise my right to decline to hear you".

Blacker, also known as Lord Harley and who was based at Joint Armed Forces Legal Services complained of 'judicial bias'. The investigators said that complaints against Judge Morgan's conduct should be dismissed entirely.

The Lord Chancellor and the President of the Queen's Bench Division ultimately found that the judge was entitled to challenge Blacker's appearance and status as a legal representative and this did not amount to misconduct.

— Philip van der Merwe, Editor

JUDGE MORGAN: ... I am sure there has been something on the jury's mind, and it has been on my mind, and I would be very grateful if, now that the matter has concluded, we can discover: What are these ribbons on your gown, please?

LORD HARLEY: I am sorry, your Honour?

JUDGE MORGAN: What are the ribbons?

LORD HARLEY: They are service medals, sir, for voluntary medical service.

JUDGE MORGAN: I am so sorry?

LORD HARLEY: They are service medal ribbons, your Honour, for voluntary medical service.

JUDGE MORGAN: Voluntary?

LORD HARLEY: Medical service. I have been an officer in both the St John's Ambulance Brigade and in the Emergency Response Service.

JUDGE MORGAN: And you wear them on your gown as a matter of course, do you?

LORD HARLEY: I was asked about them at a number of ceremonies where I have attended to assist and I was recommended that it ... or I was told it would be appropriate for me to do so, your Honour.

JUDGE MORGAN: By whom?

LORD HARLEY: (inaudible)

JUDGE MORGAN: Who was it who told you that it was appropriate to wear these things in here?

LORD HARLEY: Well, I was speaking with Lord Thompson, your Honour.

JUDGE MORGAN: Who?

LORD HARLEY: Lord Thompson.

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JUDGE MORGAN: And who is he, please?

LORD HARLEY: The Lord Chief Justice, your Honour.

JUDGE MORGAN: Lord who?

LORD HARLEY: Thompson.

JUDGE MORGAN: The Lord Chief Justice of?

LORD HARLEY: I am sorry, your Honour. The Lord Chief ...
I have no further information other than he was the Lord
Chief Justice.

JUDGE MORGAN: Of ...

LORD HARLEY: I was attending a (inaudible) conference.

JUDGE MORGAN: Of where? Lord Chief Justice of where?

LORD HARLEY: Of the United Kingdom, your Honour.

JUDGE MORGAN: Lord Thompson?

LORD HARLEY: Yes, your Honour. I do not believe he is still
the Lord Chief Justice. I believe he has now retired.

JUDGE MORGAN: Well, to my certain knowledge, since I
started practise in 1978, there has been no Lord Chief Justice
in England, Wales or Northern Ireland called Thompson.

LORD HARLEY: Well, I cannot ...

JUDGE MORGAN: You sent, the other day, an email to the
court. I just want to check the details if I may. This email is
headed 'From the Chambers of the Right Honourable
Lord Harley of Counsel'.

LORD HARLEY: Yes, your Honour.

JUDGE MORGAN: And who is that?

LORD HARLEY: That is myself, your Honour. May I assist the
court in saying that my bona fides are well known to my
regulator and have been verified by both of my primary
regulators.

JUDGE MORGAN: What chambers are these, please?

LORD HARLEY: They are my chambers. They are located
within a law firm which is regulated by the SRA, which is
known to the court ...

JUDGE MORGAN: Yes.

LORD HARLEY: ... and has been for at least seven years.

JUDGE MORGAN: So you are The Right Honourable, The
Lord Harley, yes?

LORD HARLEY: I am, your Honour.

JUDGE MORGAN: Are you a member of the Privy Council?

LORD HARLEY: I am not, your Honour.

JUDGE MORGAN: Upon what basis do you describe your-
self as 'The Right Honourable', please?

LORD HARLEY: It is a recognised hereditary peerage, your
Honour, and, therefore, I am entitled to the term 'The
Right Honourable' as a prefix to my title.

JUDGE MORGAN: Forgive me if I am ...

LORD HARLEY: Not at all, your Honour.

JUDGE MORGAN: ... being impertinent but may I enquire
from whom you inherited this peerage?

LORD HARLEY: Yes, my father, your Honour.

JUDGE MORGAN: I see.

LORD HARLEY: Vivian (?) Harley Clough Blacker.

JUDGE MORGAN: And this peerage, it is an hereditary peer-
age?

LORD HARLEY: It is, your Honour.

JUDGE MORGAN: In England and Wales or in Northern
Ireland?

LORD HARLEY: In Ireland, your Honour. It is an Irish Earl-
dom, your Honour.

JUDGE MORGAN: You also describe yourself as 'Lord Harley
of Counsel'.

LORD HARLEY: Yes, your Honour.

JUDGE MORGAN: My understanding is that you are an
admitted solicitor.

LORD HARLEY: I am a solicitor advocate, your Honour ...

JUDGE MORGAN: Yes.

LORD HARLEY: ... and subsequent to the order that allowed
solicitor advocates, in I believe 1990, to practise with higher
rights of audience, the regulator that has represented my
branch of the profession has obtained for us the existing
rights that we practise today, including the use of the word
of 'counsel'. And that is ...

JUDGE MORGAN: Well, I repeat what I have just said. I may be wrong but ever since 1978, someone describing himself of 'counsel' is somebody who is a barrister, not a solicitor. So why do you describe yourself as 'counsel' if, in fact, you are a solicitor? And before you answer, I stress I am not suggesting that a barrister is better than a solicitor; I simply want to know what you mean by describing yourself as 'counsel'.

LORD HARLEY: You will understand that the solicitor advocate branch are solicitors who have obtained the same rights of audience as my learned friend, and your Honour has constantly referred to me as 'learned friend', as distinguished from solicitors who are referred to as 'friends' of the court. Our regulator, the solicitor advocate representative body, of higher courts advocates, has campaigned tirelessly for recognition for solicitor advocates in such as the court order for dress, number 4, which entitles me to dress in the attire that I appear before this court. The type of counsel ...

JUDGE MORGAN: What is this regulator that permits you to do this?

LORD HARLEY: I am sorry, your Honour?

JUDGE MORGAN: What is the name of the regulator that permits you ...?

LORD HARLEY: SAHCA your Honour.

JUDGE MORGAN: Sorry?

LORD HARLEY: SAHCA. It is the Solicitor Advocate Association of Higher Court Advocates.

JUDGE MORGAN: Solicitor Advocates what, sorry?

LORD HARLEY: Association of Higher Court Advocates. And its chairman is a Deputy District Judge.

JUDGE MORGAN: My understanding is that solicitor advocates are regulated by The Law Society.

LORD HARLEY: That is not correct, your Honour.

JUDGE MORGAN: I am sorry.

LORD HARLEY: That is not correct.

JUDGE MORGAN: I want this clear. You are asserting that solicitor advocates are not regulated by The Law Society?

LORD HARLEY: That is quite correct, sir. Solicitors have not been regulated by The Law Society for the last twelve years. They have, instead, been represented and regulated by the Solicitor Regulation Authority.

JUDGE MORGAN: And you say that that authority permits you to dress in the way that you appear before this court?

LORD HARLEY: Indeed, your Honour.

JUDGE MORGAN: Thank you. I have got your letterhead ...

LORD HARLEY: I can assist the court further ...

JUDGE MORGAN: Just a minute, please, I am asking you some question.

LORD HARLEY: Yes, your Honour.

JUDGE MORGAN: I have your letter heading here. It is ...

LORD HARLEY: I am sorry?

JUDGE MORGAN: I have your letter heading here.

LORD HARLEY: Yes, your Honour.

JUDGE MORGAN: It says that you are Dr Alan Blacker & Co?

LORD HARLEY: Yes, your Honour. That is the firm (sic) by which my firm practises as a firm of solicitors.

JUDGE MORGAN: It says 'In-house lawyers, The Joint Armed Forces Legal Advocacy Service', which is a charity, as I understand it.

LORD HARLEY: It is a registered charity regulated both by the SRA and the Charity Commission.

JUDGE MORGAN: Underneath that, it says 'Chambers of The Right Honourable The Lord Harley, Senior Counsel'.

LORD HARLEY: Yes, your Honour.

JUDGE MORGAN: What does that mean?

LORD HARLEY: That means that I have recognised more than 15 years qualifying experience before or post admission as a solicitor advocate.

JUDGE MORGAN: And that entitles you to style yourself 'senior counsel'?

LORD HARLEY: Yes, your Honour.

JUDGE MORGAN: Well, again, in my experience, the only area where I have ever heard anybody described as ‘senior counsel’ is the rank of leading counsel in South Africa. But you are telling me that notwithstanding that I have never heard of any of this since 1978, you are entitled to style yourself ‘senior counsel’?

LORD HARLEY: I believe so. I have verified it before I used it. My letterhead has been presented before – by voluntary submission, I hasten to add – on at least two occasions as my qualifications have enlarged, for verification.

JUDGE MORGAN: Submitted to whom?

LORD HARLEY: To my regulator, the SRA.

JUDGE MORGAN: Has it been seen by The Law Society?

LORD HARLEY: The Law Society, your Honour, is a trade union; it is no longer a regulator. It has not been a regulator for 12 years. The Solicitor Regulation Authority is the body that regulates solicitors and entitles them to practise under the Courts and Legal Services Act.

JUDGE MORGAN: I have not been able to see them but I also understand that you have some badges attached to your gown, is that right?

LORD HARLEY: I have the badge of my regimental association, your Honour, who paid for a substantial part of my education in the law and as an advocate ...

JUDGE MORGAN: All credit to them, I am sure.

LORD HARLEY: Thank you, your Honour. Can I assist the court in any other way?

JUDGE MORGAN: Yes. You can give me this undertaking. As I say, I have been practising in these courts since 1978, I am not going to embarrass him but your opponent has been here even longer than I, have you not? (pause) Mr Nicholas Gareth Jones, have you ever seen a barrister or a solicitor appear before these courts wearing medal ribbons?

MR JONES: No.

JUDGE MORGAN: Have you ever seen a barrister or a solicitor appearing before these courts with badges sewn onto his gown?

MR JONES: No.

JUDGE MORGAN: Do you recall, as I certainly do, that here in South Wales we had a barrister who later became a distinguished judge who had won, during the Battle of Normandy, the highest honour for gallantry, the Victoria Cross?

MR JONES: Yes.

JUDGE MORGAN: Did you ever see that particular individual coming into court wearing a medal ribbon?


MR JONES: No.

JUDGE MORGAN: Would you not agree with me that that particular individual would have regarded it as the height of vulgarity for such a thing to be done? (pause) If you ever appear before this court again dressed as you are at the moment, I shall exercise my right to decline to hear you. I did not raise any of these matters before this case started, although I wanted to, because I am mindful of the fact that a young man has died and I did not want to interfere with the dignity of the proceedings, but if you want to come into court looking like something out of Harry Potter, you can forget coming into this court ever again. Do I make myself clear?

LORD HARLEY: Your Honour ...

JUDGE MORGAN: I am going to rise.

CLERK to the COURT: Court rise.

(2.44pm) 

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