Cambridge Law Journal, **66(2)**, July 2007, pp. 365–388
Printed in Great Britain

WHERE DO ENGLISH AND WELSH JUDGES COME FROM?

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> I liked the idea of wearing black, another romantic illusion. There were two things as a girl I wanted to do. One was a postmistress and the other was a nun. Nuns wore black clothes and the other filled in forms and I was a bit of a busy body so I have sort of combined the two by being a district judge.

I. INTRODUCTION

THIS article examines the backgrounds of a sample of 77 English and Welsh judges in an ambitious research project sponsored by the Nuffield Foundation, in which I work-shadowed and interviewed a core sample of 40 judges at every level of the court structure, in 2003–5, with the aim of finding out what modern judges do and what they are like. I interviewed a further 37.

I hoped to draw as broad a portrait as possible of the modern judiciary, so my sample covered judges from all six circuits in the family, civil and criminal courts, including those in specialist jurisdictions such as the Commercial Court and the Technology and Construction Court. Their courts ranged from the most prominent, such as the Old Bailey, the Royal Courts of Justice and the "flagship" county court, the Central London Civil Justice Centre, to tiny rural courts, where the visiting judge had to tannoy-in the cases in his list. This article does not draw on my observations of judges at work but on their responses to interview questions about their backgrounds, including their legal careers, and what motivated them to study law. The many quotations allow a group of judges to speak for themselves about their lives, in an unprecedented manner, in contrast with the many previous surveys of judges' backgrounds that are based on statistical analysis of information gleaned from *Who's Who*.

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https://doi.org/10.1017/S0008197307000578 Published online by Cambridge University Press

II. Demographic Information

A Age and Ethnicity

I selected a sample with a broad span of ages. The judges were born between 1936 and 1958 and thus aged 45–68 at the time of the research. All judges in the main sample were white, although one of the three pilot studies was conducted with a non-white judge with whom I had also sat on previous occasions up to seven years earlier.

B. Gender

14 of the 77 judges were women, as follows, including nine in the core sample:

		%	Wm as % of judges 2006	
District judges:	5 of 19	26.3	22.42	130 of 580
Circuit judges:	6 of 32	18.9	11.39	73 of 641
High Court judges:	3 of 16	18.9	10.29	11 of 107
C.A./H.L.	0 of 10	0	8.33	4 of 48

As can be seen from the table, this represents a greater proportion than in the total population of English and Welsh judges. Three of the 14 were married to judges, two of these outranking their husbands.

C. Schooling

The UK media frequently draw attention to the privileged educational background of judges, implying that this contributes to their being "out of touch" with those who appear before them and passing "soft" sentences.[1] Biographical surveys of the senior judiciary are easily done by journalists and pressure groups, using *Who's Who*.[2] This is misleading. For most people involved in a criminal case, as a witness or party, they will be dealt with in a magistrates' court. Around 95 per cent of all criminal cases are disposed of and sentenced by magistrates. Most of these 28,000 are lay people, meant to be representative of the population. Only 139 are professional district judges (magistrates' courts) (D.J.M.C.s). As for civil and family cases, most of these are decided by the 428 civil district judges in the county court. Information on these D.J.s does not appear in *Who's Who*, but

[1] I shall deal with this at greater length in a separate article, currently in preparation.

[2] For example, surveys are regularly published by Labour Research, www.lrd.org.uk, and in June 2005 the Sutton Trust published a survey of "top solicitors, barristers and judges", disclosing that 75 *per cent* of the senior judiciary attended fee-paying schools and 81 *per cent* attended Oxford or Cambridge (www.suttontrust.com). *The Economist* published a similar survey as long ago as 1956, cited in B. Abel-Smith and R. Stevens, *Lawyers and the Courts* (London 1967), p. 299. (It disclosed 76 *per cent* and 76 *per cent* respectively).

https://doi.org/10.1017/S0008197307000578 Published online by Cambridge University Press

most are solicitors and they come from much more diverse educational backgrounds than the senior judiciary, as can be seen below.

Of the 77 judges, 40 were privately educated, with the senior judiciary more likely to have attended independent school. A number won free or subsidised places as scholars, such as the only Eton-educated judge of the 77, a circuit judge. Of the six D.J.M.C.s, none was privately educated. Five attended state grammar schools and one an "awful" comprehensive. Of the 11 civil district judges, five were privately educated, one attended a state secondary modern and the remainder went to state grammar schools or direct grant schools as a result of passing the "11 plus" examination. Half of the 32 circuit judges (C.J.s) were privately educated. Two went to state secondary moderns and the remainder to state grammars or direct grant schools which took a mixture of state and paying pupils. Of the 16 High Court judges (H.C.s), 11 were privately educated, four went to state grammar schools and one to a direct grant school, as a state-funded pupil. Of the eight Court of Appeal judges and two law lords (C.A./H.L.), eight were privately educated.

D. University

The judges graduated between 1959 and 1979. The public image of the judiciary in England and Wales is of an Oxbridge-educated elite, who have remained in their ivory towers. Again, such surveys exclude district judges and usually exclude circuit judges. 35 of the 77 judges were Oxbridge educated and they were concentrated at the top of the judicial pyramid, as follows.

	Oxbridge	Old Uni	New Uni	Poly	No Degree	Total
D.J.M.C.s	1 (16.7%)	1	1	2	1	6
D.J.s	2 (15.4%)	4	1	3	3	13
C.J.s	11 (34.5%)	15	4	0	2	32
H.C.s	12 (75%)	4	0	0	0	16
C.A./H.L.	9 (90%)	1	0	0	0	10
Total	35 (45.5 %)	25	6	5	6	77

(Each of the six non-graduates had served five years as a solicitors' articled clerk).

I suggest that it should not be a surprise, or a subject of criticism, that judges in the highest courts are educated at elite universities. High Court judges spend much of their time in the Court of Appeal or handling extremely complex trials. The Court of Appeal has a very heavy workload, requiring minds that can process masses of highly complex data (facts, law or both) very swiftly. Most cases are not appealed beyond the Court of Appeal, so this is the crucial court for establishing precedents – developing the common law and interpreting

https://doi.org/10.1017/S0008197307000578 Published online by Cambridge University Press

statutes. The law lords confine themselves to deciding points of law of general public importance. It would surely be a matter of concern if senior judges were *not* highly educated and exceptionally intelligent. Indeed, an examination of senior judges elsewhere demonstrates that they too are part of an intellectual elite. In 2007, six of the nine US Supreme Court Justices are Harvard educated, two are Yale graduates and two also have Oxford degrees.[3] Canadian Supreme Court Justices are currently drawn from top Canadian universities, notably McGill and Toronto, and one was the first Canadian to be elected President of the Cambridge Union.[4] Bell, in his 2006 review of European judges[5] explains the following: members of the French *Conseil D'Etat* have social standing as a *grand corps*, drawn from the elite of the *Ecole Nationale de l'Administration*, a *grande école*; the German judicial culture has traditionally been of an intellectual elite;[6] Swedish judicial selection in meritocratic competition emphasises educational achievement (and law is taught at few Swedish universities). Similarly, Spanish judges are traditionally drawn from the elite of the legal profession.

The public criticism of judges' Oxbridge education and independent schooling needs further examination, however. Underlying it is the implicit accusation that *buying* a school education provided not only a superior schooling that could not be afforded by most of the population, but also enhanced the scholars' chances of entering Oxford and Cambridge. This is a fair criticism but it should be directed at the UK education process itself. The problem is this. Oxford and Cambridge are the UK's elite universities but they do not and did not have a monopoly of the highly intelligent, especially in the era when these judges were entering university, the 1960s and 1970s. In that period, an even higher proportion of Oxbridge undergraduates came from independent schools than they do now. In the 1960s, some Oxbridge colleges still had overt recruitment links with certain independent schools. Over-recruitment of Oxbridge graduates into the judiciary would, then, have resulted in the composition of the judiciary being skewed towards those with a privileged background and independent schooling and in turn, it excluded some highly intelligent lawyers who graduated from other universities. The problematic relationship between Oxbridge, independent schooling and social class results partly from the historic connection between them and partly from the UK's education system and cultural attitudes towards education, where many of the middle classes

[3] www.supremecourtus.gov.
[4] www.scc-csc.gc.ca.
[5] John Bell, *Judiciaries Within Europe – A Comparative Review* (Cambridge 2006).
[6] I would add that German lawyers in general are exceptionally highly educated.

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consider it acceptable that a better school education can be bought than that which is generally provided by the state. This produces a class divisive education system which is incomprehensible to some citizens of other European states such as Germany, where middle class energy is expended in improving the state education system, rather than in paying privately for an alternative.

My argument that the criticism should be directed at the education system rather than the judges is supported by the fact that the bias towards Oxbridge and independent school is found in other power elites in the United Kingdom, such as the civil service and private enterprise, as demonstrated by surveys regularly undertaken by the Sutton Trust, an educational charity promoting social mobility. For instance, a 2005 survey showed that a quarter of MPs were Oxbridge educated and that a large proportion of Cabinet ministers and the Shadow Cabinet were Oxbridge and independently educated. Oxbridge graduates are over-represented even among the most famous comedians.

I have explained this at length because English and Welsh judges are acutely aware of this repetitive criticism. In their interviews, some were apologetic about their privileged education and others defensive. For instance, one High Court judge wanted me to note that his single mother had worked "damned hard" and impoverished herself to pay for his independent schooling, for which he was profoundly grateful.

Another criticism is made of Oxbridge judges, however: that the old pre-2006 selection process[7] was dependent on the opinions of existing judges and was thus open to nepotism and favouritism, including a bias towards certain Oxbridge colleges. Indeed, the criticism was revived and directed specifically at the present Lord Chancellor, Lord Falconer in 2005, when the Commission for Judicial Appointments accused him of favouring Oxbridge graduates over objectively selected candidates who were better qualified.[8]

[7] Selection by the Lord Chancellor was replaced in 2006 with selection by a new Judicial Appointments Commission, as a result of the Constitutional Reform Act 2005. Henceforth, the general system will be that they, or a specially appointed panel, will select one candidate for each judicial vacancy and that name will be put forward to the Lord Chancellor for recommendation to the Queen. The Lord Chancellor now has a very restricted power to reject candidates they have put forward. The new system and criticisms of the old one are examined in some depth in P. Darbyshire, *Darbyshire on the English Legal System* (London 2005).

[8] In its 2004–5 Annual Report and in its review of the recorder competition (Midland Circuit), the Commission for Judicial Appointments criticised two instances where the Lord Chancellor's disagreement with officials about who should be appointed led to an increase in the proportion of Oxbridge judges appointed. The Lord Chancellor refuted the criticism. He overrode the choice of candidate as a specialist circuit judge in Cardiff: see UK news reports of 18 September 2005. The C.J.A's annual reports are on their website, www.cja.gov.uk. They were an independent watchdog over the judicial appointment system and have now been replaced with the Judicial Appointments Commission (www.judicialappointments.gov.uk) in 2006, following the Constitutional Reform Act 2005.

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The criticism of Oxbridge judges is often couched in misleading language that implies that *all* Oxbridge judges come from privileged backgrounds. This has not been the case since the mid twentieth century, when some of the most eminent Oxbridge judges came from humble backgrounds, such as Lord Denning M.R. (son of a draper) and Lord Chancellor Elwyn-Jones (son of a tin plate rollerman in a Welsh steelworks). Nor was it the case with all of my judges. For instance, one of the Oxford educated circuit judges, a Q.C., was born into a family living in a council flat. Another, also a Q.C., failed his "11 plus" exam, was sent to a secondary modern school and was moved to a state grammar school when he "showed promise". The same applies to those who attended older universities. For instance, with two district judges who were educated at Russell Group universities,[9] one was born into a council house family in "the Black Country" and another had an unemployed father and lived in the East End of London. The baby boomer generation[10] of judges benefited from having their university tuition fees and often their professional qualifications funded by their local authorities, as well as generous maintenance grants for those of low means. Many judges expressed their awareness that this permitted them a social mobility that they felt was denied to the current generation of aspiring students, such as this East Ender who attended London University:

> I think I was very lucky because during the early 1970's when I decided this was what I wanted to do and went to university it was a great time for education for the working classes because the barriers were being broken down. Whilst the posh barrister image was still there, it was starting to be broken.

Of the 71 graduates, 61 were law or law joint honours graduates, ten having postgraduate degrees, including three with doctorates. None of the D.J.s or D.J.M.C.s had postgraduate qualifications. For four of the law graduates, this was their second undergraduate degree.

There was a significant difference in terms of achievements in education between the 26 senior judges and the 13 district judges. This district judge came from a legal family but was not academic:

> My A levels were appalling. I got two Ds and an E. I retook one A level and ended up with a lower grade... and went to... Polytechnic... I did a straight three year law degree and spent a lot of time staring out of the window. I realised I was never going to be an academic and scraped through with a basic 2:2.

[9] The UK's 19 top research universities: www.russellgroup.ac.uk.

[10] There are 7.6 million baby boomers in Britain, according to Government statistics. They are normally defined as being born between 1945 and 1957, with "shadow boomers" born between 1958 and 1963: A Grice, "Labour and Tories target the 'baby boomers'" *The Independent*, 20 October 2006, p.29.

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By way of contrast, the senior judges included a number of academic high flyers, at least 11 of the 26 having obtained double firsts at Oxbridge and/or scholarships from Oxbridge or the Bar (usually in multiples) and/or a Ph.D. I say "at least" because some of them were too modest to list all their achievements. As for the circuit judges, it was often said to me by judges at all levels that circuit judges were "a mixture" in terms of ability and the 32 in this sample were no exception, six of them listing outstanding academic achievements similar to those of the senior judiciary. Five of the circuit judges had won competitive scholarships at their university or Inn of Court.

E. Professional Qualifications

18 of the 77 judges were solicitors and the remainder barristers. As with the national pattern, solicitors were predominant among civil district judges. 12 of the 13 civil D.J.s were solicitors, as were two of the six D.J.M.C.s and five of the 16 circuit judges. One of these had qualified as a barrister and then requalified as a solicitor. None of the 26 senior judges was a solicitor. 19 of the barrister judges and one solicitor had taken a correspondence or part-time course to qualify professionally, or were entirely self-taught. Most of these 20 had supported themselves by working as schoolteachers or law lecturers. The others had taken the traditional route to professional examinations, via a full-time course. For some of the older judges, qualifying as a barrister in the 1960s was very straightforward:

> I didn't attend any course because in those days you didn't have to, unbelievably. I just read a few books at home and then came and squeaked through the exams here in London. (C.A./H.L.)
>
> In those days... it was all terribly simple. You went to Gibson and Weldon in Chancery Lane. I came down from Oxford in June. I took Part One crime in September and the Bar Finals in December, all in the same year, and that was that. My professional education consisted in those days of rather parrot like learning. (C.A./H.L.)

A number of judges remarked on how the professional exams of their day had required mechanical learning. This is a very common attitude among lawyers qualifying prior to 1979. At that date, both the Bar and Law Society's professional courses were radically redesigned and have since been progressively reformed:

> I hated the exam process. They were *animal* examinations in those days. You just had to remember lots and lots of stuff and regurgitate it. (Solicitor)

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A number of the barrister judges had opted for the Bar exams rather than qualifying as a solicitor because it was a swifter and easier option,[11] of which they spoke in disparaging terms:

> I then did College of Law. It was a farce really... .. I didn't know anything about the law at all... It was extremely undemanding and that is one of the reasons I did it to be honest. I was called to the Bar in 1963. (H.C.)
>
> I went straight to the Council of Legal Education and did the course there, which was very different to the university course that I had done. The standard, I thought, was somewhere between moderate and appalling. I think things have changed. I was called to the Bar in 1971. (C.J.)

This civil district judge was typical of those solicitors who had not studied for a degree but, instead, had served for five years as an articled clerk:

> Well, I went straight from school to an office and did five years articles. I started off making tea and counting stamps. I did a part-time law course while I was doing my articles. It was at the College of Law.

III. Why Study Law?

When these judges completed their schooling, barrister families, judicial dynasties and solicitors' practices handed down within a family were not uncommon, so I expected a substantial number of the judges to have been influenced by relatives in the law and was surprised to find that this was not the case. Only two of the 77 had fathers who were judges. Another's father was a barrister and five (four of them solicitors) had solicitor fathers. Three more had relatives in the law. The remaining 66 had no relatives in the law when they made their career choices. Like many others, they were the first lawyers in their family, in an era of expanding legal education.[12] They had a variety of reasons for choosing a legal career. For some, it seemed like a glamorous choice:

> I decided very early on I wanted to be a barrister. In fact I decided at the age of seven. I saw a programme on TV called Boyd Q.C. with Michael Denison. He played a very posh barrister and being a very poor Jewish boy from the East End of London I thought to myself I would love to be Anglo-Saxon and posh. I asked my

[11] And cheaper: Abel-Smith and Stevens, *Lawyers and the Courts*, p. 358.

[12] Abel-Smith and Stevens, *Lawyers and the Courts*, ch. 13. This contrasts very strongly with modern French judges. Bell, *Judiciaries Within Europe*, cites a 1993 survey which showed that one in 10 French judges was from a family of judges, one in five from a family of lawyers and 43.6 per cent were married to judges.

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> father who was a cab driver at the time, "What do barristers do?" and he said, "They get paid for arguing"; and I spent most of my life arguing with everybody. (D.J.)
>
> When I was eleven I watched a Bogart movie and decided I was going to be a barrister and it became a fixation. I don't have any family in the law. They are all engineers, farmers or miners so it was just the movie. (C.J.)
>
> I was about fifteen or sixteen. I saw it on the telly and I just liked the romance of being an advocate. Pure vanity. (C.J.)
>
> Having watched television programmes such as Perry Mason at school, I always enjoyed debates in class and that sort of thing and it also seemed to me to be terribly exciting. (C.J.)
>
> Perry Mason on telly (C.J.)
>
> Glamorous. Plus you earned a lot of money. (D.J.)
>
> Being paid to argue. (C.J.)
>
> Gift of the gab. (C.J.)
>
> Opinionated. Liked the sound of my own voice. (C.J.)

Three were inspired by judicial biographies and three, such as this High Court judge, had met real judges:

> There was a lecture at my school by [someone] who had just become a High Court judge. He was very charismatic and exciting, I thought. He became Lord Scarman. He was then one of the youngest High Court judges ever.

Three had been to watch a court, including this one, who had a salutary experience:

> I went to the magistrates' court ... and sitting there in the public gallery, trying to mind my own business, was identified by a witness as being the young thug who had attacked him in the street. That took me by surprise and it led me to think that identification evidence wasn't always the most convincing. (C.J.)

Several insisted on law in the face of parental opposition but others were given a talking to by parents:

> I didn't decide. My Mum did, in the sixth form. (High Court judge now tipped to be a future Lord Chief Justice)
>
> My Dad kept pointing out I had no prospective means of support. (H.C.)

For some, the choice seemed to be an accident.

> I tore the margin off the [university] application form. It didn't seem to me, because of that, I was going to get in so I filled in whatever came to the top of my head and it was law. (C.J.)
>
> I filled in the first set of UCC.A. [university application] forms to do economics but changed my mind and decide to go and do a degree in law. (C.J.)

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For some judges, they had studied law "as something to fall back on", then became enamoured with legal practice. This one wanted to be a theatre director but on his first day as a pupil barrister:

> Within an hour or two I was already hooked. It is a fascinating job. It is such a testing, complicated game of heavy chess. (C.J.)

And this one started off indifferently.

> I honestly can't say that I went with a burning sense of vocation. I honestly didn't. It was just that I really couldn't think of anything else that seemed to fit…. Once I got to the Bar, after a year or two I certainly became completely addicted to it. (H.C.)

For a number of judges, they were influenced by friends at school or at university, where they made a change of course:

> Sixth form. All my friends were doing law. (D.J.)
>
> I had dropped out of the first term of an economics degree. I knew one or two people who had gone to study law and I spoke to them and they encouraged me so I decided to follow them. No family background in the law. (D.J.)

For six judges, including three bored scientists and a police officer, law was a career change. Other people's grass seemed greener, to this banker and taxi driver:

> I was walking home rather discontent one evening and met a friend who ... had just started his own practice... and he described what life was like at the Bar and it was rather like St. Paul on the road to Damascus. I just thought this is really what I want to do. (C.A./H.L.)
>
> [I decided] after having picked up some law students, as a taxi driver... aged 20. I ... heard what they were doing; how they went off to London; how in the Inns of Court everyone got drunk and had a very good time. (C.J.)

Poignantly, seven of the 77 judges seemed to be fulfilling a close relative's lost career or ambition. The first of these explained why she and her siblings had become lawyers:

> My Dad came here at the end of the war and worked in the coal mines, completely wasting any education that he had... It was a difficult time. He came over here with the intention of earning some money and then going back to study at university in Austria. He had a place but he never went back and spent the rest of his life in a factory, so it is a bit of a mixed background… Even though I know he had a lot of intellectual abilities…. (he spoke a number of languages), he really didn't do anything with his life, which is why I guess we did. (D.J.)
>
> When I was about fourteen, I was interested in a career in the law. It was prompted by discussions with my father, who was a

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> teacher of modern languages. He had started after the war doing an external law degree. When I was born he gave it up and he probably mentioned that to me and it started my interest in the law. I didn't have any relatives in the law. (H.C.)
>
> My father had wanted to go to the Bar in the 1930's but for financial reasons hadn't been able to, so became an economist. He encouraged me to look at the Bar from early on, and certainly from the age of eleven or twelve he started steering me in that direction. I started reading books about the lives of lawyers and became quite interested. (C.J.)

Two of this group had fathers in the law who had died when they were young:

> My father was a solicitor. He died when I was thirteen and I either decided shortly before he died or shortly after he died that I wanted to be a solicitor. I never thought of any other career from then on. No one else in the family was involved in the law. (C.J.)

IV. Social Mobility

None of the judges came from an aristocratic background but seven of the 77 had fathers listed in *Who's Who* or *Who Was Who* for their outstanding achievements in industry, academia, the Church, medicine or the law. Three had brothers listed in *Who's Who* for their achievements in law or medicine.[13] For 21, entering the middle classes as a lawyer (let alone becoming a judge) represented significant upward mobility. These of course included the taxi driver, the taxi-driver's son, the coal miner's daughter, and the four children brought up on council estates.

For some judges, the route to success had been a rocky road:

> My father was a solicitor's managing clerk. I had failed my 11 plus and my father would not agree to my remaining in education past school leaving age. The compromise was to do a secretarial course and then work in his office. Before this happened he was killed in front of me. I had no money and no job. The very far sighted Head Teacher at the local grammar school employed me as a junior secretary and allowed me to sit in on the 6th form classes. It was not an ideal situation to be in so at 18 I went to North America taking my secretarial skills over there. (C.J. and Q.C.)
>
> My father was unemployed when I started at the Bar. He had been ill and packed in work. I managed to get a couple of crisis loans, one from the Senate and one from the university. They lent

[13] Reminiscent of Lord Denning M.R., the most famous Master of the Rolls in recent history, whose brothers, he often proudly related, were an admiral and a general: Lt-Gen. Sir Reginald Denning, KCVO, KBE, 1894–1990 and Vice-Admiral Sir Norman Denning KBE, 1904–1979. They all attended Andover Grammar School but only the judge was educated beyond school: *Who's Who 2006 and Who Was Who 1897–2005* (London 2006), accessed via www.xreferplus.com.

https://doi.org/10.1017/S0008197307000578 Published online by Cambridge University Press

> me some money and a couple of scholarships and I also did some teaching in the evening. I failed my A levels first time round so I had the advantage of going out to work in a betting shop and I spent two years working as a betting shop manager so I was able to put more money aside. By the time I went to university at 21, but for the supplements I don't think I could have done it, because we had literally no money coming into the house apart from what I earned so I was really fortunate. (D.J.)
>
> I left school at the age of sixteen... I had always wanted to go to the Bar but my parents couldn't have sent me to university for the five years it took so I went off to become an attorney first, then doing the university course at night. I did the BA lectures from five to ten o'clock every night... But for the LL.B. [I studied] 7:30 to 8:15 a.m. and then 5 to 7:30 p.m. so I ended up with a B.A. LL.B from the University of Pretoria... Then on a weekend cricket tour we had a very entertaining weekend in Transvaal. Three of my team were arrested. We got them released then under martial law. They were arrested outside the gates of Pretoria jail and given 90 days detention. I thought I was likely to be next so I resurrected an ambition. By then at the age of 23, I had given up the choice to go to Cambridge, but they were foolish enough to accept my letter to say "Please can I come?" (C.A./H.L.)

Incidentally, as can be seen from this story, this judge had turned his back on South Africa in the 1960s, as had a number of his compatriots now working at all levels of the judiciary in England and Wales. At the time of the research, 2003–5, three of the 12 Lords of Appeal in Ordinary (the core 12 law lords) were South African: Lords Steyn, Scott and Hoffman.

V. Careers as Lawyers

59 of the 77 judges were barristers, all but three having been in private practice. It has often been observed that during the 1960s and 70s, when most of the judges were called to the Bar, obtaining a pupillage or a tenancy in chambers depended on who you knew. Having the right connections eased the way into a worthy "set" of chambers, with a sound reputation, which was briefed by solicitors in important and lucrative cases. Many judges admitted that they were "lucky" in this respect. Predictably, parentage helped this judge's son:

> I went straight into my father's old chambers, which nowadays people would be horrified by. Life was made, certainly for my generation, a Hell of a lot easier than it is for them now. (H.C., called to the Bar in 1963)

As we have seen, however, only two were the children of judges and one had a barrister father so most of the other 56 had to find their own connections. Some were eased from their humble origins into the Bar by a supporter who had spotted a bright law student, like these four,

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who modestly described themselves as "lucky" but who indeed did very well at university or in the Bar exams, such as the taxi driver's son:

> Then, luckily, my pupil master, who had taught me at university got me into... Chambers. They were a big left wing chambers doing just defence work, who did work all over the country. (D.J.M.C., called in 1976)

And the printer's brilliant child:

> I was very lucky to get a pupillage with [by 2007, one of the most eminent C.A. judges]. Life is all about being in the right place at the right time and it so happened that one of the lecturers at [London University] knew I was interested and knew [him]. In those days, it was before any sort of fair selection system or on-line applications for pupillage so you just tended to make your own arrangements. I rang him up ... and he just said "Come along and have a chat with me and I'll see what we can do". There wasn't any sort of structured interview at all. It was just an informal chat... He said he would offer me a pupillage and I started pupillage in January of 1976. (H.C.)

And in 1971, one council-flat child graduated from Oxford and joined a chambers

> ... which was probably the principal criminal law set, servicing London and East Anglia. The head of those chambers... was [V] who went on to become Attorney General and Lord Chancellor. (C.J. and Q.C.)

This East End grammar-school boy had done well in his Bar exams, in 1972:

> I took a bit of time to get pupillage, about six months or so. I had no connections with the Bar, no school connections... In my local pub... there was this old curmudgeon who happened to be a barrister. He said "Come along and see me."... .The head of chambers was [W, who later became Chancellor of the Exchequer] and he said "I will have you as a pupil. There is a chap along the corridor who hasn't got a pupil" ... That was very lucky ... I then had to hang around a little bit to see if they wanted to take me on as a tenant ... Those were the days where ... there were about 150 applicants for decent chambers and about sixty got in ... so I was lucky again. I was the first person from state education who was taken on in the days where everyone was Harrow or Eton and Oxbridge. How on earth I got in I don't really know and there were no women at that stage. They came later. (C.J.)
>
> I couldn't get one anywhere. I wandered round the Temple not knowing anybody and I ended up in the last building bar one ... I said to the clerk "I am at my wits' end. What do I do?" and he said "We don't take pupils here, although we have taken on a chap who has just got a double first at Oxford and he was a

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> Minister's son" so it didn't look very promising but he said "Try Mr ... He hasn't had a pupil for years and years and years"... He turned up late from court and was told there was this wretched individual waiting to see him and I went into see him and he was an absolutely charming man and he said "You can start on Monday". (C.J.)

Some middle class youngsters were doubtless helped by their parents' connections, like one doctor's son who "had an introduction through a solicitor who my parents knew", but another public school boy (now C.A./H.L.) whose father's *Who's Who* entry was breathtaking for his achievements in medicine, struggled to find a tenancy, despite all his promising connections:

> I only knew one senior person at the Bar and he was the father of a friend. ... In those days pupillages were done partly on the old boy network so he placed me as a pupil … [but] it was clear somebody else was going to be taken on… So I met... a husband of a friend of my wife's, who said come to his chambers... There were four pupils... One of the others got taken on... I then met another chap who I was at school with... .I did [another] three months... and again I wasn't taken on. So I was getting virtually to the end of my tether and I had virtually run out of money I had saved... and the head of chambers had been talking to... another set of chambers... They... were looking to recruit so I went there... My chancery pupil master... begged me not to go there. He said it was inferior, county court, rubbishy work... but in the end I decided that beggars couldn't be choosers and this time the outcome was a happy one. If it hadn't been a happy one I think I would have left the Bar.

Entering the Bar as a tenant was only the first career step, however, because all private-practice barristers are self-employed and most drop out within the first ten years, having failed to obtain sufficient work to support themselves. Many described a "hand to mouth" existence. This senior judge's child, married to another barrister, did not seek parental support:

> The pair of us were as poor as church mice. Whoever got paid that week bought the food shopping... I remember my first case. The book cost me more than my brief fee so I was down at the end of the day. (D.J.)

For those in a weak set of chambers, the first few years at the Bar were a struggle, such as this grammar school child:

> I started my pupillage in [X] so I could live at home as I didn't have an income. I stayed... for a year after I had finished my pupillage. I then decided to move back to [Y]. I obtained a place in chambers there. I did some teaching at [the local university and polytechnic]. I wasn't quite sure I was going to end up at the Bar.

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> I think I found the first few years extremely difficult because the chambers I joined was a bit of a disaster. (C.J.)

Dependent on building up their career by getting lucrative or prominent cases, many judges described a "lucky" break at this stage.

> I had a few lucky breaks, including, for instance, a brief in a rape trial at the end of my second sixth month pupillage, in front of Mr. Justice Melford Stephenson, who I managed to persuade to give me a suspended sentence if I twisted my client's arm to plead guilty. He described it as the most anaemic rape, as he gave my client a suspended sentence. (C.J.)
>
> I knew nobody. I was a complete stranger but an [Oxbridge] chum of mine had a contact... and they offered me a pupillage... I was not posh enough to stay there because I was a crude South African boy so I was chucked off into the second or even third division where I was a common law hack. Gradually, because there was a degree of divorce work in the long vacation when I was working and my head of chambers was away, I had to cover for him and picked up a brief in a huge Greek shipping divorce and began to do more and more of it so ended up in silk [as a Queen's Counsel] as a sort of family specialist. (C.A./H.L.)
>
> I got well in with [the] Local Authority because I was quite good with old ladies that tripped so they would give me rating cases to do, so it was quite off the wall. Because of working for them I was involved in the [major disaster] Inquiry. (C.J.)
>
> I was very lucky. First of all the work suited me and secondly, it involved landlord and tenant work which sounds deeply boring and at the Bar was fairly sneered at because everybody thought they could do landlord and tenant, as it involved traipsing around country courts but it was the most terrific training. It was lots of little cases, badly prepared, with judges who were not always the best judges so it really taught you how to think on your feet, how to be a good advocate, how to cross-examine the experts without any prior warning and that sort of thing. (C.A./H.L.)

The judges acknowledged that they had benefited from being at the Bar during a time of expanding demand for legal services. Several told a story of entering small chambers that grew or went from being general to specialist:

> I joined what was a general common law chambers but within a few years they became a very specialised set of chambers, specialising in construction law because one of the senior members of chambers had written a book on the subject and it was at the time when that area of law exploded. So within no time at all I found myself doing this kind of work, although I never would have intended to do it and I wasn't actually hugely interested in technical things and never had been much good at them. Life takes strange turns and twists. (C.A./H.L.)

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He did not mention that, despite his professed disinterest, the "turns and twists" took him to become head of the Technology and Construction Court.

> I joined a very small provincial chambers that are now the biggest set of chambers in [the region]. There were only eight of us when I joined and we didn't know it at the time but [three] became superstars... From a really small chambers we produced three of the great advocates of their generations and of course this is a big advantage for those who are associated with them. (D.J.M.C.)
>
> Just when I took silk in 1986, building society law changed radically with a new Act of Parliament being passed, the first for twenty four years, and that meant there was sudden expansion for the need for advice and sometimes representations on behalf of building societies and that influenced my career considerably as a young Q.C.. (H.C.)
>
> The emphasis of chambers was changed considerably from the time I first joined chambers. Historically, chambers had a pretty mixed practice but we moved towards commercial work under the leadership of [Y] and from the time I took silk I was practising largely in international banking law. (H.C.)

Most judges had, however, orchestrated their careers into more lucrative work. Only eight of the 59 barrister judges specialised from the time they were called to the Bar, in commercial law, patents, competition law, chancery (three), family and admiralty. The general pattern was to start in a general practice and eventually specialise:

> Everyone did everything to start with. So I traipsed round magistrates' courts, courts of sessions and so on. But the expectation was that people would eventually have a civil practice based on defendants' insurance company work. They were a very good set at the time. We had produced no fewer than five High Court judges from a set of chambers that had only thirteen when I joined them. (C.J.)
>
> Early days were a lot of magistrates' court work and a lot of matrimonial, little stuff in the Crown Court... It was a set of chambers where the senior people were all mainly doing personal injury civil work, a lot of industrial accidents. I got into that with masses of Dunlop cases, working for mainly the insurers. Gradually the sort of general practice that I started with dropped [crime work], as the clerk of the chambers was devoted to looking after the interests of the solicitors who did the big insurance company work. (H.C.)
>
> I started in common law chambers doing a variety of work. In my first seven or eight years I did quite a lot of crime. I then decided to go into civil work because I was advised that I had a much better chance of getting silk if I did that. I moved into civil work and rapidly developed a planning practice and within a few years I had specialised in planning, parliamentary work and some judicial work. I then moved into specialist planning chambers. I

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> moved twice. In due course I took silk and I did seven or eight years as a planning silk before coming to the bench. (C.J.)
>
> I had a very busy common law practice... I loved advocacy, adored addressing a jury... could persuade the hind legs off a donkey and did that for a very long time. Then everybody said "You really must stop doing that. You really must do something specialised to make a decent living". Crime wasn't paying; family ceased to pay. So I ended up doing an enormous amount of building work and commercial work and earned quite a lot. I didn't particularly enjoy doing that. (C.J.)

Six of the 77 judges had had full-time academic careers for a number of years, three reaching the status of professor. For those who combined academia with practice at the Bar, the latter proved more lucrative:

> I was lecturing at that time at [X] Polytechnic. I stayed there for quite a long time, combining that with working at the Bar... After a short time I realised that I could make more money in a week than I could make in three months. Although I'd been warned at university if you didn't have connections you would never succeed at the Bar, in fact I found I was able to succeed and make quite a lot of money doing it and I quite enjoyed the work. (C.J.)

Two of these judges sandwiched periods of academia with practice at the Bar, until they grew "fed up" with academia. Two judges, one a barrister and one a solicitor, had served as legal advisers to non-governmental organisations and the others were private practice solicitors.

Generally, the private-practice solicitors described their careers in very straightforward terms, such as this one with a typical career profile: "Articled clerk; assistant solicitor; partner; managing partner last three years." None had tales to tell of a struggle or a lucky break such those of the barristers discussed above. Three entered their family firms but one was asked to leave by his father's partners when they realised he was gay. One broke up with his business partner who was irritated by his taking time out of the practice to sit as a part-time judge.

VI. Career Profiles

A. District Judges

The thirteen district judges had had fairly unremarkable careers in private practice as solicitors for 17–25 years, save to say that the one barrister was the first woman in her chambers, in 1977, and another woman D.J. had been prominent in her local Law Society and in the Law Society nationally.

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B. District Judges (Magistrates' Courts)

Four of the six D.J.M.C.s had been in private practice, two as barristers and two as solicitors, with 19–25 years post-qualification experience. Magistrates' courts deal with a significant amount of family work and minor civil work but the bulk of their work is criminal, and two of the six D.J.M.C.s described how they had developed their legal practices so that they could concentrate on the criminal work they liked.

> I went into private practice. I discovered I really hated it. I hated doing civil work. It wasn't me. I was a fish out of water. I hated the clients coming in every two minutes or phoning up….so one day I decided I just want to do crime so I thought "Right I am going to work from home". I had built up enough connections in the area to enable me to do that and I set up at home on my own. I did CPS prosecuting work and I had lots of defence work too. (Solicitor)
>
> My practice at the Bar was quite mixed. I was quite idle so I let the civil paperwork rest on my table for weeks on end and my room mate, who is now a circuit judge... would look at my paperwork and said "You ought to do it" and eventually he would take it and do it for me and I would get paid for it. I started to feel a bit guilty so I said "You sort this and start to get paid for it yourself" so I palmed that off onto him because I was only ever interested in doing crime.

Two D.J.M.C.s had been justices' clerks prior to appointment. Justices' clerks are the chief legal advisers to magistrates, usually responsible for magistrates' clerks at a group of courts. Most magistrates are lay justices so they are wholly dependent on advice on the law and their sentencing powers. There were over 400 justices' clerks in the 1970s but because their jobs have been amalgamated, there are now only 70. Those made redundant often went into private practice or the Crown Prosecution Service, or they became stipendiary magistrates, now renamed D.J.M.C.s, after having served as a deputy D.J.M.C. part-time, while fully employed as a clerk. It has become a fairly common career progression pattern. Indeed, one of these two D.J.M.C.s had been a subject of mine in previous research. He had been a 29 year old deputy justices' clerk, when I work-shadowed and interviewed him in 1977 in very similar research, on the work of magistrates' clerks. He is quoted anonymously in my 1984 book *The Magistrates' Clerk*. I spent four days with him as a judge in 2004.

C. Circuit Judges

The 32 circuit judges were a mixture, in terms of achievements. Some had career profiles similar to the High Court judges and one of these became a High Court judge during the time of the research.

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Of the 27 barrister circuit judges, 10 had achieved the status of Q.C.. Typical of these was the planning specialist, quoted above. He had written two practitioner textbooks and, before specialising in planning, had become standing counsel to the DTI in criminal cases. One Q.C. had been a professor. Three of the Queen's Counsel and one non-Q.C. had been counsel to or appeared before major public inquiries that were so well publicised in the media that they are still frequently mentioned, decades later. Another seven non-Q.C.s had something in their career that enhanced their profile. For instance, two had been standing counsel to the Inland Revenue, one had been on the Professional Conduct Committee of the Bar Council, one had been appointed to the Senate of the Inns of Court at a young age, one had been head of advocacy training and an active organiser in his circuit Bar, one had been sheriff and then deputy lieutenant of his county and another had been a young head of her chambers. One, with a very heavy family practice, had not aspired to become a Q.C., being content to earn a lot of money doing "very heavy" family cases.

Of the five solicitor circuit judges, one had become a partner in a firm of city solicitors at the age of 33. Building up an international practice, she wrote articles in refereed and trade journals and gave lectures to promote her firm's business, explaining "My brain grew." Another was, by 25, head of litigation in a provincial firm which represented a group of affected parties in a major disaster inquiry. He became head of his regional Law Society and a member of the Lord Chancellor's Advisory Committee on Legal Aid. Two judges had been solicitor advocates and one had been a county court registrar before being promoted to the circuit bench.

D. The Senior Judiciary

Unsurprisingly, all 26 were high achievers as barristers. If some of the circuit judges had glittering careers, then 11 of the senior judges were dazzling. With four, we might expect most lawyers of their generation to recognise their faces from having seen them in the newspapers and legal press, when they practised at the Bar. All 26 were Queen's Counsel, who were eminent in their specialist fields, except the three who served as First Junior Treasury Counsel (*i.e.* the first in a list of private-practice barristers who represent the Government in major litigation, often appearing on behalf of the Attorney-General) immediately prior to appointment. Those selected for such briefs expect to be made High Court judges. Three others had been on the list of Treasury Counsel, two had been Attorney-General for the Duchy of Lancaster, one had chaired a major inquiry and one had been counsel to such an inquiry. Four had been members of royal

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commissions, government advisory committees or court rule committees. Three had been academics, with a string of publications. Another five had written or contributed to major practitioner texts in their fields and a ninth had written widely. Five had chaired or founded a specialist Bar Association and/or were very active in the Bar Council. Each had 20–34 years post-qualification experience before being appointed to the High Court bench.

VII. Experiences of Minorities in the Legal Profession

A. Being a Woman

It would be dangerous to make any generalisations from such a tiny sample of women judges (14). In any event, race and gender discrimination in the legal profession since the 1960s has been examined in great depth,[14] but I quote some of the women judges here, in order to give them a "voice" on the subject. I did not ask any judge whether they had been the victim of any sexist attitudes or gender discrimination as lawyers but those quoted below volunteered this information in their interviews. I then telephoned some of the others to ask if they felt they had suffered any discrimination. They confirmed that they had not, some adding that they felt that they had benefited from being a woman, that this had enhanced their career progress as lawyers. These two felt that their gender had delayed progress at the start of their careers:

> I got pupillage after a struggle. It took me nearly a year to get it because women found it quite difficult to get in then. I got a pupillage starting in 1967, when I was called. (D.J.M.C.)

This circuit judge explained that she had done pupillage in London in the days of "real sex discrimination":

> I was never going to be taken on in the chambers I was in... They did take on a girl and my pupil master was livid. They had interviews and they didn't say anything to him, so they arranged for me to have an interview with the head of chambers. He just explained to me that places had been taken and I would be happy to know that I had much nicer legs than the woman they had taken on... What I wanted to do was crime. Girls shouldn't really do crime at all because they can't possibly cross-examine police officers! ... Every time a boy pupil came into chambers and was taken on as a tenant my practice would be given to him by the clerks and I always used to have to fight to get it back but I

[14] P. Thomas, *Discriminating Lawyers* (London 2000); C. McGlynn, *The Woman Lawyer – Making the Difference* (London 1998), and material cited therein; P. Darbyshire, "Discrimination in the Legal Profession" (1999: article on www.sweetandmaxwell.co.uk/academic/updates/darbyshire) and material cited therein.

https://doi.org/10.1017/S0008197307000578 Published online by Cambridge University Press

> always did get it back. It was appalling in those days. There were numerous rows with the clerks about my practice but I always won in the end and ended up with a serious criminal practice as a junior. I applied for silk four or five times. My peers thought that I should have silk but I came from nowhere... They'd see a guy as a potential silk and they groomed him for it. (Called to the Bar 1975)

This circuit judge did not complain of any handicap to her career but she found sexist attitudes at the Bar caused her to leave and requalify as a solicitor.

> There had been other irritants about it. I found it old fashioned in other ways. I found that in those days there were a very small number of women at the Bar and when one would go into a county court and a middle aged male would come up to you and if you were really unlucky he would put his arm round you but in any event he would say "How are we today? I don't think I should have much difficulty today and women, women, women …" with his public school voice and that used to bring out the fighter in me and I thought "I am going to wipe the floor with you today". I quite enjoyed the traditions, the dining in halls... but the manifestation of male public school I didn't enjoy. (Called 1977)

These experiences should be placed in the astonishing context that race and gender discrimination were not outlawed at the Bar of England and Wales until the enactment of the Courts and Legal Services Act 1990. The judge quoted below was prompted into her application to become a Q.C. because of her concern over the low status of women lawyers but was pleasantly surprised. Her attitude typifies a problem that has long been identified, not only in the structure of the legal profession but in other occupations: women's habit of devaluing themselves:

> I was so horrified at the shortage and lack of status of women that it just didn't seem right and that is what got me into silk. I would never in a million years have thought about applying for silk. I wouldn't have been good enough, but another female silk... said ... there are so few women that if you don't push it and don't show you are willing there are going to continue being so few women... I got very wrong footed because I got appointed first time and that was a horrendous shock. It is like actually having the baby without the nine months pregnancy.

B Being a Gay Male

One judge in the sample was overtly gay and had written about his experiences as a gay judge, which is why I selected him. In his interview, he spoke at length about his experiences, both as a gay

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solicitor and a gay judge. He found his sexuality affected his career path, forcing him to leave his father's firm:

> I had to find out exactly what the position was because I was gay and my father knew I was but my employers here didn't necessarily know. I specifically spoke to the partner I was working with and the answer came back that it wasn't a problem... Initially that wasn't a problem. It became a problem when [the others] found out... and they didn't react well. It was difficult because one of them was my godfather. I knew all of them since I was a child and I was pretty much angry with the way they dealt with things. I ended up with respect for one of them and that was about all. He was very straightforward about the reasons that he wasn't sure that it was good to have me working there with the same name as the firm etc. The net result was that I hadn't got a future there. They were never going to offer me partnership and therefore I would move.

C. Being a Solicitor

The arrogance of some barristers and the fact that Bar etiquette and practice rules are hierarchical and mark solicitors out as inferior are well known irritants to solicitors. For instance, barristers traditionally referred to fellow barristers in court as "my learned friend" but to solicitors as "my friend";[15] solicitor advocates are not permitted to wear wigs in court despite repeated applications to Lord Chancellors; the Law Society recently opposed the retention of the rank of Queen's Counsel, a position historically not open to them. One solicitor judge in the interview sample had practised as a solicitor advocate. He told me that after a long High Court case in the 1990s, a Q.C. invited the judge out to dinner, in accordance with tradition. He did not receive an invitation, however, and one Q.C. declined her invitation out of disgust at this.

VIII. Conclusion

This article has examined the backgrounds of a sample of 77 English and Welsh judges, representing a very broad spectrum, in terms of age, length of service, jurisdiction and court location. Unlike the many previous statistical surveys of judges' backgrounds, this work uses extracts from lengthy interviews to allow judges to speak for themselves, explaining what motivated them to study law and how their careers progressed.

[15] For examples, see J. Boyle, "When Solicitors Take the Role of Barristers" *The Times*, 12 December 1989; J. Gordon, "A Solicitor Born to Suffer" (1995) 145 N.L.J. 1345; R. Hazell (ed.), *The Bar on Trial* (London 1979).

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In line with their public image, a large number of judges were independently schooled and attended Oxford or Cambridge but the occurrence of these characteristics increased towards the top of the judicial hierarchy. Frequent statistical surveys are misleading, because they usually focus on the senior judiciary, yet most people involved in a civil, criminal or family case will appear before a bench of lay magistrates or a district or circuit judge.

The image of judges as Oxbridge-educated fuels the criticism of them as out of touch with the public at large. This is misconceived since senior judges in other jurisdictions are, unsurprisingly, graduates of elite universities. Further, it is unfair to attack judges on the basis that many of them are independently schooled. Other power elites in UK politics, the civil service and private enterprise also contain high proportions of Oxbridge graduates and the independently schooled so the criticism ought to be directed at the UK education system, cultural attitudes towards education and the Oxbridge recruitment system. Oxbridge judges do not all come from privileged backgrounds, nor do those from Russell Group universities, as this sample and their stories show.

The senior judges were all academic high fliers, as were some of the circuit judges. Most judges were law or law joint honours graduates. As with the general population of judges, most district judges were solicitors and most circuit and senior judges were barristers. They were often critical of their professional courses and the Bar course pre-1979 was seen as a cheap and easy option.

Surprisingly few of the judges came from a judicial or legal background. They chose to become lawyers for a variety of reasons: the glamorous image; earning capacity, parental choice, copying peers or fulfilling a relative's unfulfilled ambitions. None of the judges came from an aristocratic background but seven had fathers who were high achievers and three had high-achieving brothers. For 21, entering the middle classes as a lawyer, let alone a judge, represented significant upward social mobility and some of the judges recognised that their generation had been assisted by state funded higher education.

56 of the judges had been in private practice as barristers before appointment. Many of them described their "luck" in entering a suitable set of chambers but this description was misleading in a number of instances, since they won the support of acquaintances or strangers because of their apparent talent. Again, many described a "lucky break" in acquiring challenging or lucrative cases. They benefited from entering the Bar at a time of significant expansion, several describing the growth of their chambers or its increasing specialisation. Only eight barristers had started in specialist chambers,

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with many moving to specialist chambers. Six had been fulltime academics at some point, three having risen to the status of professor.

Most of the district judges had fairly unremarkable careers as solicitors. Two had been justices' clerks. 10 of the 32 circuit judges had been Q.C.s and a further 12 had some unusual or outstanding achievement on their CVs. All 26 High Court judges had had outstanding careers at the Bar and four of them would have been renowned to lawyers of their generation.

Although I did not ask minority judges whether they had suffered any discrimination in practice and my sample was too small to make any generalisations from their experiences, some women, one gay man and one solicitor advocate volunteered information which I include here for the sake of completeness.

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