



IN THE HIGH COURT OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 6th July 2021

Before:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(Lord Burnett of Maldon)

THE MASTER OF THE ROLLS
(Sir Geoffrey Vos)

and

THE CHANCELLOR
(Sir Julian Flaux PC)

**SPEECHES OF WELCOME
TO MR. JUSTICE MELLOR
ON HIS ELEVATION TO THE HIGH COURT BENCH**

Present (in a socially distanced courtroom):
Members of Mr. Justice Mellor's family, the Patent and Chancery Bar,
Solicitors and Members of the Public

Digital transcription by Marten Walsh Cherer Ltd.
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP
Telephone No: 020 7067 2900.
DX 410 LDE info@martenwalshcherer.com

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES (Lord Burnett of Maldon):

Mr. Alexander.

Mr. Justice Mellor took up his appointment to the High Court Bench on 8th February this year. We have just formally received his oaths, nearly five months later. He and his family took part in a virtual swearing-in during February, with the promise of a full ceremony when circumstances allowed. Collectively, we were confident that, by July, physical restrictions dictated by the Covid emergency would be a thing of the past. How wrong we were!

We continue to struggle to organise these public ceremonies in the traditional way. Regrettably, the number of those who are able to attend -- counsel, friends and fellow judges -- remains constrained.

This morning I sit far removed and appropriately distanced from Sir Geoffrey Vos, the Master of the Rolls, at one end of the Bench, and Sir Julian Flaux, Chancellor of the High Court, at the other. For those in any doubt about what Mr. Justice Mellor has been up to in the last five months, the presence of the Chancellor confirms that he was assigned by me to the Chancery Division. Mr. Alexander, you and your colleagues might have been rather surprised if it were anywhere else.

It is a particular pleasure to welcome Mr. Justice Mellor's wife, Jennifer Lemkey, and their children Archie and Wilf, to share in this public marking of his promotion to the High Court Bench. It is a pity that Arthur, too, can't be with us.

Mr. Justice Mellor grew up in Sutton Coldfield and, after school, went to Cambridge University. There, he read not law but engineering. In that choice one finds the seeds of his later outstanding success as an intellectual property lawyer. He embarked on a career as an engineer, which took him to Germany and France, both agreeable billets, but also to Somalia, the Congo and Iraq, which were perhaps less so.

The call of the law, which was to some extent in the blood, deflected Mr. Justice Mellor from his career as an engineer. He returned to Cambridge to convert to law. He was then called to the Bar by the Middle Temple in 1986. He joined what is now 8 New Square when the head of chambers was Robin Jacob QC -- now, as he reminded me in an email only yesterday, the Rt Honourable Professor Sir Robin Jacob. He tells me that the decision of chambers whether to admit the new tenant took some little time, not because there was any doubt about whether he should be taken on but because there was much else to talk about at the same time. At all events, the uncomfortable candidate was left for an unconscionably long time sitting in the clerks' room awaiting the result. Perhaps out of some small sense of guilt, Sir Robin took the new tenant out for dinner and ended up playing snooker into the small hours with little sign of the skills displayed each year at the Crucible in Sheffield.

Mr. Justice Mellor distinguished himself instantly as an outstanding intellectual property lawyer. He developed an enormous practice and in due course took Silk in 2006. His first appointment of a judicial nature had nothing to do with the courts. In 2004, he became chairman of the Second Appeal Panel of the Veteran Car Club. That, apparently, went well, and so in 2015 he was appointed an Appointed Person for Trade Marks and Designs,

an inelegant description of an important judicial function. He became a Deputy High Court Judge in 2020 and moved swiftly to the High Court.

Mr. Alexander, I am confident that you will tell us much of Mr. Justice Mellor's distinction as a practitioner at the intellectual property Bar. It is sufficient for me to note that he was one of the most highly regarded practitioners, worthy of following in the footsteps of a series of internationally respected judges in the field of intellectual property who have done so much to cement this jurisdiction's reputation.

In addition to having one of the biggest and most demanding practices in his field at the Bar, Mr. Justice Mellor has found time to co-author Kerly's Law of Trade Marks and Trade Names. Whilst it is not a work, I have to confess, that I keep at my bedside, (*Laughter*) my enquiries over recent days have confirmed that it is an indispensable aid to anyone seeking credibly to practise in the field. There have been occasions when a quick internet search about a learned work written by a new colleague revealed that the book over which so much energy was expended is available on Amazon sometimes for a handful of pounds or less. Not so Kerly on Trade Marks. While it is possible to find out-of-date editions for relatively little, so far as I was able to discover, the 16th Edition with its supplement are available only at full price.

Not only might we hear from Mr. Alexander something of our new judge's distinction as an intellectual property practitioner, but, most unusually, were he indelicate enough to do so, he would be in a position to mark the judge's homework over the last five months. The fact that the contempt of murmuring judges has been abolished should not be taken as any sort of encouragement, but in any event there would be nothing adverse to say: on the contrary.

The legal endeavours of Mr. Justice Mellor have been such that many might think that there is little time left for anything else. Not so. He is extraordinarily energetic and indulges in sports which bring with them some risk -- cycling of an extreme nature, windsurfing and paddleboarding amongst them. Many have told me of his enthusiasm for cycling. Unlike most who cycle, he is not satisfied with one bicycle, or two bicycles -- or even, I am told, 10 bicycles. (*Laughter*) The purchase and collecting of bicycles has been described as something approaching an obsession. (*Laughter*) His chambers were used to him spending much of his time in cycling kit, but the Rolls Building, perhaps a little surprised when they first saw it, have, I am told, taken it in their stride. But I have learned a new acronym: MAMIL -- middle-aged men in lycra -- never, if I may say so, the best of looks. (*Laughter*)

It is with great pleasure that we welcome Mr. Justice Mellor formally to the High Court Bench. His family and his enthusiasm for outside interests will continue to protect him from becoming a slave to the law. We wish him well as he embarks on the next stage of his most distinguished career.

DANIEL ALEXANDER QC: My Lords and my Ladies, as your Lordships will appreciate, the Bar is always delighted to join you in welcoming those who have been elevated to the High Court Bench.

It is a privilege for me, on behalf of the Bar -- and may I also say solicitors, patent attorneys and trade mark attorneys with whom Mr. Justice Mellor has also worked so successfully

over many years -- to adopt what my Lord, the Lord Chief Justice, has said and to wish him well as he embarks on your new responsibilities.

I will touch on five reasons why Mr. Justice Mellor is particularly well suited to discharging these, but before turning to them may I begin with the words of a judge who not so long ago came to the end of his judicial career.

Lord Sumption, one of the leading exponents of the view that specialism in law and judging is overrated (a matter of potential relevance to the Patents Court) said this in a lecture partly about his finding family law hard to get to grips with:

“At the bar, I liked to trespass on other people’s cabbage patches. As a judge I do it most of the time.”

Some might interject to say, “Plus ça change”.

I pause to interject also that your Lordship has already been called upon to examine a range of cases, for you are not just an intellectual property judge but a judge of the Chancery Division generally. You have already trespassed delicately -- indeed, one might say, if one was still allowed to in this court, *nec vi, nec clam* but very much *cum precario* -- on areas including partnership accounting and charity election law. I am as unqualified to mark your homework in that field as you might say I am in any other, but as far as I can tell that has been done with distinction and we look forward to more of that.

Lord Sumption went on to say:

“...there have been two occasions in my professional life when I have been shaken in my view that it is all just law. One was my only foray, as Counsel, into patent litigation. I will not trouble you with this unhappy story. It persuaded me that chemical patents at least were a remote juridical island, best left to its savage inhabitants.” (Laughter)

That island -- indeed the archipelago of intellectual property -- may have been remote at one time, although always central to procedural developments in the law (from *Cyanamid* and *Anton Pillar* to *Norwich Pharmacal* and to *IPEC*). It has moved ever closer to centre-stage in the modern knowledge-based, technology-driven economy. One of your last cases at the Bar was about the use of trade marks on the internet, potentially important in international commerce.

No one would have imagined when your Lordship embarked on your legal career over 30 years ago that a speech by a United Kingdom Supreme Court judge to the Cour de Cassation in 2021 about being a Supreme Court judge in 2030 could focus on the lessons for the international legal order from a case about standards-essential patents in telecommunications. Yet, that was what Lord Sales took as his subject in April this year, commenting on *Unwired Planet v Huawei*. Your Lordship has already delivered a number of decisions, some of longer-term importance, as to how cases of that kind should be dealt with, and I would say, since I have appeared in some of them and would not mark the homework of those, that even on those very rare occasions, I should say, when I have wound up on the wrong side of those arguments, your Lordship’s manner is so pleasant,

engaged, courteous and respectful that, to adopt the words of another authority, Abba, “I feel like I win when I lose”. (*Laughter*)

Cases of this court are pored-over around the world. Following Brexit, the court may become more influential in certain respects, which brings me to the first reason why your Lordship is so well suited to this role. If the cleverest man in England did not find chemical patents appealing, he might have fled the island even more rapidly had he seen the inhabitants running towards him with offerings of standards-essential telecoms patents. But, for your Lordship, that kind of fare is a daily diet, as you have shown in your first patent case decided as a judge. For you, matters such as the “optimisation of radiolink control unacknowledged-mode protocol data unit headers” -- surely a subject that does lie by the bedsides of those in front of me -- are but a delightful amuse-bouche to a richer menu to come.

You were, as has been said, a first-class engineer at Cambridge, working in countries around the world before coming to the Bar. You have been involved in some of the most technically demanding cases in practice and you have demonstrated technical and scientific insight at the highest level. So, on the science, you have things covered.

Let me come to the second reason: your legal abilities. These are unquestionable. You studied law as well as engineering at Cambridge and have demonstrated scholarship in your editorship of *Kerly on Trade Marks*, a work which remains, as has been said, reassuringly expensive, an area one would think could be and should be summed up by asking the simple question: “Are the marks a little bit too close?” How wrong one would be! Were it so, the manuscripts for that work might have been delivered by your Lordship at a time more closely approximating their due date. A recent text on just one sub-topic of this area, the EU law of confusion, cited some 500 authorities, some I think by your Lordship in your capacity as an Appointed Person, a role you have also filled with distinction for some years. Here it is, of course, partly EU law that is responsible for the proliferation of authorities, and you have distinguished yourself in this area too, appearing in key cases, not just in trade marks but in copyright and database rights here and in the Court of Justice. One of these holds a clear lesson of your respect for the strictness of the law. Once, when we were against each other in the Court of Justice in a database rights case, you accused me of shameless jury advocacy -- to my great satisfaction, I must confess. (*Laughter*) We can take it from that, I think, that your Lordship will, as a judge, be stonily un-moved by the merits of a case.

May I come to the third reason for your Lordship’s suitability. Here the words of another great former judge come to mind: Sir Christopher Floyd, who recently retired from the Court of Appeal. Forgive me for paying a few moments’ tribute to him, his colleagues and former colleagues in the High Court and Court of Appeal, especially Lord Justice Arnold and Lord Justice Birss whose departure from the High Court have left the vacancies which your Lordship and Mr. Justice Meade have filled. Their extraordinary service -- and that of all of the many other judges who have had to consider IP issues -- is the main reason why this jurisdiction is second to none in the world. Your appointment does not just involve standing on the shoulders, but filling the shoes, of internationally known giants. Among IP judges fitting that description as *primus inter pares* we are all, I should say, delighted to see Lord Kitchen also fully back in harness now.

Sir Christopher described the judicial task in various nice ways in a valedictory email, but one of them was “bloody hard work”. I doubt this description would attract dissent -- although your Lordships may express the sentiment in other words since you may think there should be no swearing in a swearing-in. No one can read the substantial decisions, whether in heavy patent cases or in the many other fact and law rich disputes of the Business and Property Courts generally, without amazement at the diligence, attention to detail and sheer “stuck-inness” of the senior judiciary in this domain. People around the world -- including other judges, some with teams of clerks -- marvel at it. You are a man who works at pace and is renowned for your work ethic. The job cannot be done without a deep commitment, which you have, to keeping at the last, day in and day out. Your sleeves are permanently rolled up -- well, perhaps not just at the moment! In saluting you for joining an outstanding, hard-working team -- for you are joining a team -- I also pay tribute to the other newer members of this division, including those who have recently joined, who will somewhat lighten your load.

The fourth reason for your Lordship’s suitability is what might be described as your robust calm. You are often described as unflappable under fire. This may be connected with your taste for somewhat more extreme sports requiring balance. One of your former clerks has said that there was always anxiety on your scheduled dates for return from holiday as to whether you would arrive with all your limbs intact. There have been visual signs of that in court. Lockdown has provided an unexpected opportunity for the judiciary to display their hinterland. Instead of the Royal Crest in your Lordship’s case, behind your reassuring visage, we have sometimes seen a picture of a man on a wind-surfboard, who might be your Lordship and is at least as intimidating as any lion or unicorn.

Your Lordship, as has been said, is well known for sporting a good deal of sporting attire and some may have wondered whether, beneath that concealing robe, might lurk that well-known “MAMIL” even now. The vision of your Lordship on a bike in shorts is one thing, but a middle-aged judge in Lycra -- and since you have one of those standing desks, a middle-aged judge standing rather than sitting as a judge -- is an innovation too far, even for the Patents Court.

Let me turn from that appealing vision to the final reason why your Lordship is well suited: leadership. You have been one of the star leaders offering tremendous litigation direction and dedication from the front, a will to win, unfailing support and guidance to your juniors, as you did to your pupils. Your work over the full field of intellectual property from heavy telecoms patents to media and entertainment work is well known and you have been sought after for tough battles.

You have been an outstanding head of chambers at 8 New Square, quietly central to the success, both friendly and decisive, steering the ship on matters large and small. You are the ultimate steady hand on the tiller, on the sail, on board and now on the Bench.

You have, in short -- indeed, in shorts -- everything it takes for the job. You are needed at this important time for the courts of England and Wales. You are a just man, justly appointed.

You are already well-settled into the role. You are showing all the usual “poacher turned gamekeeper” signs. You are criticising counsel for things like aggressive cross-examination, which it is impossible to imagine your Lordship ever having engaged in

while at the Bar. *(Laughter)* You have yet to show signs of inability to follow simple instructions, which some may think is characteristic of the more rebellious end of the intellectual property judiciary. Your colleague, Mr. Justice Meade, is helping out a little there. At his swearing-in, he was given guidance about judgments by Sir Robin Jacob. I seem to remember Sir Robin saying, “Keep ’em short”. Those words of advice to him as published in the FSRs were immediately followed by a judgment of his running to, I think, 400 paragraphs. In his defence, and in the defence of others not known for brevity, to adapt the words of the world’s most famous former patent adjudicator¹: decisions should be made as short as possible ... but no shorter. We are confident that you will strike the appropriate balance.

It is conventional to say that you are supported in your role by your family. I say “support” with a little trepidation, because Jenny is so formidable a former lawyer (among many other things) and a person in her own right that to suggest that she is a support may attract adverse comment and criticism. *(Laughter)* Both I, and I dare say your Lordship, would suffer for that. So I will instead say that she is a wonderful partner and you have around you a tremendous team of children, Archie, Wilf and Arthur, two of whom are here today. Your family is a constant source of energy, engagement, strength and principle.

May I conclude, my Lord, by mentioning another former judge who will rank even higher in your Lordship’s esteem than the greats mentioned so far -- higher even, I dare say, than those on the Bench today, great though, I hasten to add, you all are! *(Laughter)* He is His Honour Judge Wilson-Mellor, your late father, who sat on the Midland and Oxford Circuit as a Deputy High Court Judge and as a specialist family judge. His Honour did not deal in affairs of state or the affairs of oligarchs. He did not visit remote juridical islands whether populated by patent lawyers or offshore funds, but I am told that he was very effective at getting to the truth. He was invited to join the High Court Bench but declined.

My Lord, you took on -- take on -- that mantle. Your Lordship is the right man in the right place to deliver justice of the highest quality at the highest level in the courts of England and Wales.

As to the right time, some may say that the only thing wrong is that your father is not here to see it. I venture to suggest, with respect to you and your family, that he would have been particularly pleased and proud to see your Lordship fulfil the promise you both shared.

You will be an outstanding judge and, on behalf of the professions, I wish you a long and happy career on the Bench.

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES: Thank you, Mr. Alexander.

At this point I would normally present letters patent to our new judge. Alas, one of the not-much reported impacts of Covid has been to cause a backlog in the production of letters patent and so they will have to follow. In their place I hope before you there is a warrant which confirms that you really are a High Court judge should anyone have any doubt. *(Laughter)* Thank you.

¹ “Everything should be as simple as it can be, but not simpler” attributed to A. Einstein, a former examiner at the Swiss intellectual property office.