Lord Sumption for transcript-1

[00:00:00] **Sally:** [00:01:00] Hello and welcome to the Talking Law Podcast. I'm absolutely thrilled to be interviewing, um, Lord Assumption, KC Lord Jonathan. Assumption Casey, not Casey. Hello, not kc. Um, what should I get you to introduce yourself? Who are you?

[00:01:44] **Lord Sumption:** Jonathan Su. I retired from the Supreme Court with the United Kingdom, uh, at the end of 20.

[00:01:51] I think that's the only useful piece of information.

[00:01:53] **Sally:** Pardon me? Well, I, I, I disagree and I have a lot of questions to ask you on that. Thank you very much. [00:02:00] Um, can we start from the beginning? You, um, were a barrister of the bar and then of course you were appointed, um, to the Supreme Court, um, when you are what would be a law Lord.

[00:02:11] Um, they changed that title of course. Um, subsequently you became Law Justices and so on. I select the title law Lord. But can we start from the beginning of your career? Uh, you went to Oxford, uh, and um, you had quite an interesting career before you came to the bar by understanding why did you decide to choose law or the

[00:02:37] practice?

[00:02:45] **Lord Sumption:** Started, uh,

[00:02:51] uh, an academic story. I was a fellow of Morland College Oxford. [00:03:00] Uh, I was primarily a research fellow, but I did also teach undergraduates. Um, and having done that, there were two reasons really. Uh, one was that I, yes, uh, I didn't want an enormous amount money. I didn't have some good holidays, and that's not a great admission, which it wasn't one that I thought I was going to achieve or Don's salary.

[00:03:20] Yes. The other reason was that, uh, at the age of in my mid twenties, you inevitably look ahead, uh, at people who have done the same thing and are in, uh, mid forties. Yes. And you say, do I really want to be like that? Are they happy? And sometimes the answer to both questions is no. That was one. That's the other

[00:03:42] **Sally:** reason.

[00:03:42] Yes. Now you corrected me when I said not Casey. Mm-hmm.

[00:03:47] **Lord Sumption:** Um, and that's cause uh, QCs and Caseys surrender their patents of appointment as, as queens council on appointment to the high court or, or above. [00:04:00] I see. So that when you, uh, I mean when you become a circuit judge, you keep your, uh, your, your silk. But when you become a high court judge or above, you don't.

[00:04:11] Right. So you cease to be. Kings Council or Kings

[00:04:15] **Sally:** Council. So fascinating because of course you also, um, received an honor, uh, an obe. Um, but that's, that was time years earlier. Yes. And it was nothing to do with law. Yes. Well, I'm coming to that. Um, I've written several books, nothing of the volume and the share breadth as you have, you know, your four volume, the Walls, books.

[00:04:36] Um, and then of course you've written much, um, more recent books, uh, a as well. So you, you've done a lot with, um, uh, with, with your career. Um, how have you managed to have a successful legal career? I won't have to go through all your cases, cuz we'll be here. Please don't All, all day long. And people who listen to this podcast know there's a bio that is attached to it, so you can [00:05:00] see all the cases listed there, including the Hatton inquiry.

[00:05:03] There's a very famous case, a Bromage case. Mm-hmm. There's so many cases that you've been involved in. Do you have a favorite or a meaningful case?

[00:05:12] **Lord Sumption:** No, not really. Uh, I enjoyed, uh, the Aprimo and Barovsky case. It was the last case that I did at the bar. Yes, it was a case with involving no law at all. It was a swearing match between two people about what happened at a series of meetings when no witnesses were present and there were no, no documentation.

[00:05:31] So that's,

[00:05:32] **Sally:** that's a challenge. Yes. Quite, quite. Now, um, I asked you about the books now, I'll come back to the Abramovich case a a bit later. Um, but I asked about your books. How did that come about?

[00:05:44] **Lord Sumption:** Because it was a continuation of my work as a Don. Yes. Um, I taught, uh, undergraduates the history of the Middle Ages in both and continental Europe.

[00:05:58] Um, it was a subject [00:06:00] that I hugely enjoyed and I wanted to retain something of that when I went to the bar. So after having around with a number of other projects, which came to nothing, I started writing about a hundred years war at the end of the 1970s. I was doing that for 43 years until I finished last year.

[00:06:20] **Sally:** Wow. And I think the fifth, is it the fifth book

[00:06:23] **Lord Sumption:** in that series? The fifth and final volume is due to be published in the summer of 2023. So in a few months.

[00:06:30] **Sally:** Oh well, will there be a book launch and you'll have to try and muscle in our way

[00:06:34] **Lord Sumption:** in? That really depends on my publishers.

[00:06:38] **Sally:** There might be. Yes. Well, we have a book club.

[00:06:40] You see women of the law. So, um, we, we read books and we invite the authors to, uh, come and, uh, be grilled, so to speak. There's an audience and they ask questions. So even the secret barrister, it's not very intimidating. It's not, it's, it's largely a varied group who say, uh, who will probably say, I loved book [00:07:00] one, not sure about book three.

[00:07:01] Well, why did you do this? Or why did you do that? So it's actually quite fun. Not do that. That you must come, you must come on. But, but the question of thought, you came to law to, to, to earn a living. My Arab branch of the law was criminal law, public law, um, and, uh, and Plum Law. How did you decide which areas to, um, specialize

[00:07:22] **Lord Sumption:** in?

[00:07:22] Well, I didn't really decide, uh, essentially you have to find a chambers and you can't be too choosy. At least you couldn't be too choosy. Mm-hmm. In the 1970s when I was applying to chambers for a, a place. Yes. Uh, so you took what, whatever you could get. I had done pupillages in commercial chambers. Yeah.

[00:07:41] Um, and um, so that was a, it was, commercial chambers were the obvious sort of chambers for me to apply to, but actually it took me two years after the end of my pupillage to find a place to practice. So I was pretty desperate and I wasn't going to turn down anything that was of half [00:08:00] respectable. Yes. As it was.

[00:08:01] I got something that was very respectable. A tendency at brick quarter.

[00:08:06] **Sally:** Yes. Where you

[00:08:07] **Lord Sumption:** remained Where I remained, yes. I mean, of course in the seventies and early eighties, people did not change chambers for their entire career. Yes. Now it's perfectly routine. It's a big change that's come to the bar.

[00:08:19] Mm-hmm. Uh, but I never had any inclination to, uh, change chambers. Brooke Court was a wonderful place to practice with a very varied diet of

[00:08:28] **Sally:** work. Yes, yes. Um, so interesting. So now, To deal with the cases point. Do you have a favorite case of that you've done

[00:08:37] **Lord Sumption:** or No, not really. Um, I, um, I have a few cases that I wish I'd never done.

[00:08:45] Um, the rest of them are roughly equal in, in, in my book. Uh, I did enjoy, um, uh, Beski and Davidovich, although it's a never a case that's going to go down in the law books cause it had no [00:09:00] loin at at all. Really.

[00:09:01] **Sally:** Mm-hmm. Now we have some quite young or younger listeners, uh, from all sorts of backgrounds and in fact all across the world, this podcast is very popular in the Caribbean, for example.

[00:09:13] Um, and so I wonder if you can just talk to us, I mean you mentioned that case very briefly, but, um, how was the advocacy in that case different to perhaps, um, other types of

[00:09:25] **Lord Sumption:** advocacy? Well, it was a case that termed entirely on cross-examination. Yes. I cross-examined Barovsky for nine days. Wow. And uh, and there were lots of other witnesses, but they were much shorter.

[00:09:39] None of them was really more than half a day. Yeah. Some of the, the burden of that was, um, was, uh, taken by my wonderful junior Helen Davies. Um, so it was, it was an entirely fact-based case, which turned on cross-examination. There are lots of different types of advocacy. There's the [00:10:00] appellate advocacy or advocacy on pure questions of law.

[00:10:03] Yes. There's cross-examination and there's just the business of making submissions, analyzing facts in the most persua way that you can manage. Um, when I came to the bar, I had no idea whether I would be any good as an advocate. I had a vague idea that maybe it was better to just have an advisory practice cause that might leave me more time to pursue other interests.

[00:10:28] Yes. But I quickly discovered that. Advocacy is act actually where the magic is. Yes. Um, and, um, you know, I, I, I went on from that, really. Mm-hmm. Um, it's, nobody starts out at the bar by being a good cross examiner. Um, it's something that you just have to grow into with a lot of practice. So the ideal is to have the kind of practice, which, when you are a bit green and [00:11:00] starting out at your cross-examining on sort of trivial motor cases.

[00:11:06] Yes. Um, where, um, it's not a tremendous disaster if you don't do it very well. And sooner or later you graduate some cases where it really matters a great

[00:11:19] **Sally:** deal. Wow. Well, I, I teach advocacy and I think you have to be approved now. Mm-hmm. Um, you know, for my circuit and indeed for, um, uh, the Inn and some of that is international.

[00:11:31] Yes. Uh, and I always say preparation. Preparation, preparation. Yes. That's my three top tapes.

[00:11:37] **Lord Sumption:** And the basic group is you have got to know the material better than the witness. You've got to know it so completely that you are never going to be put off by a witness's answer. Some people prepare meticulously and map out every single question in writing.

[00:11:55] Yes. But you quickly learn that you can never stick to that plan. Yeah. You basically have to [00:12:00] be adaptable according to the answers that you get. Yes. And that means that you've got to have in your head, uh, all the material available and know how to find it quickly. Um, in a criminal case, uh, unless it's fraud mm-hmm.

[00:12:14] Uh, that they tend to be relatively light on documents. So burgs don't need a document. Nearly the document fail, but in civil cases, the volume of documentation is bit bigger and bigger every year. Yeah. The, uh, the fax machine, um, uh, the uh, uh, and computerization generally has multiplied the weight of documentation probably in every class of case, but, In commercial cases.

[00:12:40] Yeah. When you think that in Abramo Beski there was something like 60 files documents, although not a single one of the relevant meetings was actually documented. Um, uh, you can see what the problem is, but you've really got to know what's in all of those

[00:12:57] **Sally:** documents. Yes. Um, [00:13:00] especially if you've got a stickler of a judge asking you.

[00:13:02] **Lord Sumption:** Yes. Um, but it's the stickler of the witness. That's the real problem. Yes. Um, and it of course it helps to have a good junior with a capacious memory who can remember things that you have forgotten and put them on front

[00:13:13] **Sally:** of you. Yes. But only when you are a kc you know, I'm a senior junior, if you like.

[00:13:19] You're not blessed with a duty you've got to do with all yourself. Well, that's true. Yes.

[00:13:24] **Lord Sumption:** Um, and people take so younger in the commercial field Yes they do. They do younger, younger specialized fields generally. Yes. Um, it's simply cause there is less leading work at the criminal bar. Especially now with the, um, the CPS and the legal aid authorities being particularly stingy

[00:13:43] **Sally:** Yes.

[00:13:44] About representation. Yes, yes, absolutely. Absolutely. Uh, Laura ab I wanted to ask you about your judicial career. Mm-hmm. Uh, because it's said that you are the only judge, uh, probably because of your big brain, who was appoint state [00:14:00] straight from never being a full-time judge, the Supreme Court. Um, is that right?

[00:14:07] **Lord Sumption:** Not quite, and I, well, first of all, there have been, I think, five other people promoted directly from the bar, uh, since the, um, judicature acts of the 1870s. I think that the last one before. Was in

[00:14:24] **Sally:** 1948. Oh, right. That's why no one remembers.

[00:14:27] **Lord Sumption:** Right? Well, I remembered I wasn't, I was born in 1948, so it's not a question I'm remembering.

[00:14:32] Yes. But, but, uh, that's, that's the, uh, that's the history. Yeah. And the other thing is, uh, although I'd never heard a judicial, a full-time judicial full-time appointment before, uh, I had a portfolio of part-time appointments. I sat as an a p judge in the Channel Islands for a couple of weeks a year. And I sat as a deputy high court judge, uh, and as a recorder.

[00:14:54] Recorder

[00:14:55] **Sally:** court. Yes. Yes. Um, uh, so, so why didn't you [00:15:00] take the, the appointment all apply

[00:15:02] **Lord Sumption:** sooner? Well, I was offered appointment to the bench in the days when it was done by a tap on the shoulder. Yes. Um, more than once. Um, and I decided to refuse basically because, uh, I felt that, When, when you are at the top of your game as a barrister.

[00:15:27] Yeah, of course. It's a slightly dismayed prospect becoming a full-time first instance judge. Suddenly you move from having the pick of the cases, uh, to having, uh, the draws as a junior judge. You take what you are given by the listing office and some of it will be interesting, some of it not. So interesting.

[00:15:47] Yes. And I just felt that it would be a much less interesting job than the one I already had. Um, I mean, I was tempted because I think there are important considerations of public obligation. It's not just [00:16:00] all about me. Yes. Um, uh, and so I was, I was strongly tempted that on balance, I decided not to do it.

[00:16:07] I never expected the opportunity to arise to go straight to the Supreme Court. That is one of the most interesting jobs in the common law world. Absolutely. And I can't imagine. That anyone would turn it down. Yes. I mean, but I'm not suggesting that it was offered to me on a plate, uh, but it, it became, uh, clear that I might

[00:16:28] **Sally:** get.

[00:16:29] Yes. Well, let, let's just talk about that for a moment. When you were, uh, sitting at the Supreme Court, of course. Mm-hmm. Um, the makeup of the court was quite interesting because at one point before you retired, you had three women. Mm-hmm. Um, uh, and of course

[00:16:44] **Lord Sumption:** when you, I think it was two in effect, because I think Mary Arden No, Mary Arden joined the court before I left.

[00:16:49] That's quite

[00:16:49] **Sally:** right. Yes, yes. So just, just Yes. Yes. And, um, uh, bar Hale was still president. Yes. Um, then, so, so that of course, now there [00:17:00] was Jill Black. Yes. There was Jill Black. She's retired. Mm-hmm. Um, there's only Dame Vivian, um, rose. Yes. So there's only one woman now. Yes. Um, left. Um, and so I am, I am as a woman concerned about representation in the highest court in Nave court.

[00:17:19] And you have said in the past that it will take 50 years, um, to gain

[00:17:24] **Lord Sumption:** some sort of equivalence. Well, that, that, that's a different issue. Not go to that. Yeah. But. I think that there are important issues, which will no doubt get on to discussing about representation of women and ethnic minorities in particular.

[00:17:40] Yes. Uh, in the judiciary at large, but the position of the top court is actually rather special. Yeah. Because the qualities required are exceptional. Um, and there are very, you, you are not spoiled for choice when you're looking for candidates for that job. Not perhaps spoiled for [00:18:00] choice is and idu patronizing expression, you're probably not spoiled for choice at any time.

[00:18:05] **Sally:** Well, you might.

[00:18:06] **Lord Sumption:** Well, but you know, the, the sort of people that you want in the, in the top appellate court have to have, um, a certain qualities that are not very common. One of which, for example, is that in a, at a time when specialization is increasingly the theme Yes. Um, at the bar and. Among sisters, um, the, um, uh, you, you need people who have the ability to look over the fence into the garden next door.

[00:18:37] Yeah. Um, people who are rigidly focused as a very high proportion of barristers are on their own specialty, are much less likely to be able to look at the way that the law develops as a whole. Yeah. Something which requires you not necessarily to be a master of every legal subject, but to have a reasonable acquaintance with, with the principles underlying every [00:19:00] area of law.

[00:19:01] And, uh, that together with the, uh, intellectual requirements. Yes. Um, uh, these are not, these people are not actually that easy to find. Um, now obviously you need, in order to maximize your chance of finding them, you need the broadest possible range from which to choose. Yes. Including, uh, uh, women ethnic minorities, and indeed.

[00:19:26] Members of the bar. Yeah. Um, and but it's still not an easy job. No. So I think one should very careful about taking 12 people, quite a small number. Mm-hmm. And counting the number of women or members of ethnic minorities in that 12, and treating that as an indication of the, um, success or failure of, of, uh, diversity.

[00:19:53] Uh, in judicial selections. Uh, you can carry that exercise out meaningfully. [00:20:00] Mm-hmm. Uh, when you look at the judiciary as a whole, cause after all the high court and the court of appeal combined, we're looking at a between hundred and 200 people. Yes. And when you look quite in circuit judges, ones looking at more than a thousand.

[00:20:13] Um, I think Yes. Yes.

[00:20:16] **Sally:** That's the other part. Yeah.

[00:20:17] **Lord Sumption:** So, um, you know, I. Looking at the proportion that this category bears to the whole is a rather more meaningful exercise when you've got a group of that size than it is when you are just looking at 12 members of the Supreme

[00:20:31] **Sally:** Court. Yes. And it, it is and it's an important point you make.

[00:20:34] But ju just to follow through though, Lord Reed, the current president of course, gave a speech where he was saying he would like to see some, I suppose, ethnic diversity in the Supreme Court before his retirement. Um, do you think it will, because in the court for appeal, there is still no full-time centrally black sitting, full-time, uh,

[00:20:56] **Lord Sumption:** judges distinguishing black judges and, [00:21:00] uh, other colored

[00:21:01] **Sally:** judges.

[00:21:02] Yeah, well, yeah. Other minorities of all there are, yes. Um,

[00:21:06] **Lord Sumption:** but I think one should be careful not to, uh, not to subdivide the field, uh, too, um, in, in, in, in too much detail. Yeah. Because essentially, What we are looking for is some signs that the judicial appointment process works well. Mm-hmm. And it seems to me that's, uh, at least partly a matter of attitude as well as availability of talent.

[00:21:31] Yes. Um, and I think that you can gauge the attitude of the pointers from their willingness to appoint people from, um, non-mainstream sources, uh, whether they are of Caribbean or of African, or of Indian or Pakistani or Sikh origin. Yes. Um, I mean, I, the, the position at the moment is, um, not good [00:22:00] at, at, at court of, well, it's not good at the high court level.

[00:22:02] Generally Yes. And not even less good, uh, at Court of Appeal and Supreme Court. But you know that that will change. Mm-hmm. Um, I think you have to bear in mind that the period of time, which most people spend before taking up a full-time appointment, um, is um, between 25 and 30 years. Yes. And so that is the, the, the time gap between a major change to the, to the entry into the profession.

[00:22:36] Yes. Uh, and a, a significant change to entry into the judiciary. Yeah. I mean that's, that's not the whole explanation of the problem. It's only part of it, but it's, it is part of it,

[00:22:47] **Sally:** yes. Now, can I ask you about Prorogation? Mm-hmm. Uh, the Prorogation case, um, uh, you know, Mrs. Miller and I mean that, and I've interviewed two people, well, three actually from that [00:23:00] case.

[00:23:00] You know, it, it was quite an interesting case. Yes. Is one of the few times that even in the robing room, everybody was crowded around, uh, Mac laptops watching on so many different levels in terms of the advocacy, the law and, and so on. So I've interviewed Mrs. Miller, uh, David, um, panic and, um, LA Lady Hail.

[00:23:21] Uh, now I'm interviewing you and I just wondered I to sit

[00:23:23] **Lord Sumption:** on the Corrugation case. No, I sat on the first one I'd returned before the pre Purgation

[00:23:28] **Sally:** case. Yes. So what, what, what I wanted to ask you, um, actually having not sat on it. Mm-hmm. Um, have you got any views about it? Well,

[00:23:37] **Lord Sumption:** yes, and I've, I've expressed them publicly.

[00:23:40] I mean, initially, uh, I thought that, um, that the attempt to challenge the prorogation, uh, was likely to fail. Um, I mean, I thought that the, uh, prorogation was an appalling decision on the part of the Prime Minister, um, and a gross breach [00:24:00] of, um, constitutional convention. Yes. But the thing about constitutional conventions is that most of them are not, uh, ju uh, judicially enforceable.

[00:24:09] Yeah. Political conventions. The price you pay for ignoring them, uh, is a loss of political support, uh, rather than having your decision quashed by the courts, um, I, I changed my mind about that. Uh, in the course of the case, yes. Not in the course of the argument, but rather before that, because it, it seems to me that, um, The problem about the Prorogation was that it converted a public par into something more like a private privilege of the Prime Minister.

[00:24:45] Yes. Because if the Prime Minister had won that case, um, he would've been responsible to absolutely nobody, not to the Queen. Because the convention is that min, the queen's powers are exercised by ministers. [00:25:00] By, by himself, yes. Not to parliament. Cause it would've been paroled not to the electorate at large because between elections, the electorate has absolutely no way of bringing pressure to bear.

[00:25:11] Yes. Uh, on the Prime Minister. So he would've been responsible to nobody. And it seems to me to be that one important principle of public law is that you cannot simply have a voidable authority in which somebody has a public power for his exercise. They are not responsible to anybody at all. Not even to the courts.

[00:25:30] Yes. Uh, if he'd succeeded in his submission that this was non-dual. So I changed my view. Now, that's not precisely the ground that the court gave when, but the reason, uh, for that is that the government conducted the, um, the uh, um, of the case with the utmost incompetence possible. Mm-hmm. Now, that was not the fault of their representatives in court.

[00:25:57] Uh, I mean, I believe it's right. [00:26:00] Uh, that they were given the right advice as to what they should do. Yes. And ignored it. Yes. What they should have done was they should have, they should have said, uh, look, there's no doubt that, uh, we, the government have the constitutional function of negotiating, conducting foreign policy and negotiating with the European Union.

[00:26:21] In our judgment, it is completely impossible to do that in the national interest if we've got all this noise in the background coming from the House of Commons. Yes. Uh, we have therefore got to have a period of radio silence. Well, we sought this and then the parliament can come back and pass judgment on what we've done.

[00:26:40] Now that might or might not have been right? As, as it would've been a purely political question, I think it would've been extremely difficult. And if they'd said that for the courts to second guess them? Yes, because, um, they mean what they actually decided was that you couldn't perro without [00:27:00] reasonable cause.

[00:27:01] But what is a reasonable cause and who is to the judge of what causes are reasonable when the judgment that is being made is a hundred percent political. Your judgment of the negotiating situation with the EU and of the political position department. Yes. I can't see how the Supreme Court could possibly have resolved that, but the government didn't take that line.

[00:27:23] They didn't take that line because, um, orris Johnson had. Sent out, uh, a circular letter to all mps explaining the prorogation, saying this has got absolutely nothing to do with negotiations with the eu. It's all a pattern of practical time ment. Now that was complete s Yes. Uh, and but having said that, he didn't want then to say, well, actually that was a load of baloney.

[00:27:47] The true reason was that we basically thought we couldn't negotiate a reasonable deal. Deal, yeah. With parliament. Yes. Uh, jumping up and down in the background. Now, uh, the result was they gave put in no evidence at [00:28:00] all. They didn't even have the traditional civil servants affidavits from witness statements saying this.

[00:28:05] These are the reasons. Um, so that. In a sense it was very much easier to wrong foot them. Yeah. Uh, the Supreme Court simply said, you need reasonable grounds. We don't have to decide what reasonable grounds are because they haven't put on forward any at all. Now, that was a really serious tactical mistake.

[00:28:24] Mm-hmm. Um, I suspect they would still have lost, but I think they would've lost for the reason I thought that they should lose and not for the one they gave.

[00:28:35] **Sally:** I really rather like, I really rather like that. Uh, just before we move on, I wanted to ask you about the, the gender issue, which we were, we were going to come back to.

[00:28:46] Yes. Um, and this idea about achieving gender equality. Mm-hmm. Taking 50 years. Um, why do you pick it up 50 years? Well, I'm just picturing I think it was a headline in [00:29:00] the Times. Yes, sir. When you said it. Give us a context and

[00:29:03] **Lord Sumption:** why you Well, you've got to remember, I mean, first of all, This came from a lecture that I gave, uh, shortly after my appointment.

[00:29:11] Yes. And it reflected the experience that I had had, uh, sitting as a judicial appointment commissioner Yes. For the first six years of the commission's existence. Mm-hmm. Now, uh, that may or may not still be the case today, but it reflected very much the difficulty that we had had, uh, in devising policies that were likely to lead to a bigger representation, particularly by women and by ethnic minorities.

[00:29:38] Yes. Um, without, uh, departing from our statutory rebate agreement. Yeah. Which was to make appointments exclusively exclusively on on merit. Yes. And the problem about merit is there's an argument that merit, uh, that appointment of minorities is, is an appointment on merit. Cause the judiciary needs a more balanced, uh, [00:30:00] representation of different centers of the population, but it's pretty clear.

[00:30:04] Uh, that the way that the act is framed is treating merit as the quality of individuals rather than the quality of the judiciary as a whole. Yes. So we basically had to square that particular circle. Mm-hmm. And it proved very difficult to do. Now. Um, diversity in judicial appointments is a very difficult subject.

[00:30:25] **Sally:** Yes. It's one

[00:30:26] **Lord Sumption:** of my questions. And, um, the basic problem is different depending on which sector you're looking at. In the case of women, it's, uh, certainly was the case. And I should make it clear, I haven't actually looked at the data for the last three years. This is a moving situation. Yes, it is. But, um, uh, in the case of women, uh, I, I always felt that the biggest problem was the very high dropout rate.

[00:30:54] Women have been slightly more than half the recruitment to solicitors since the early [00:31:00] 1980s. Yes. And about half. For a slightly less long period, but for considerable number of years at the bar. Yes. Um, there is a very high dropout rate reflected in the fact that the proportion of juniors who are women Yeah.

[00:31:16] Is much greater than the proportion of silks who are women. Yes. Um, and the, um, intensity of, of work, uh, uh, the difficulty of combining work at that level of intensity with just about anything else is clearly part of this. Yes. This is actually a very profound societal change and we are in the middle of it.

[00:31:40] Um, I think one of the biggest factors, militating in favor of change is likely to be the, um, uh, uh, the sharing of household work and childcare between husband and wife. My, yes. Uh, now that's happening, you know, my children's. Uh, [00:32:00] way of looking at this is completely different from my own and even more different from my parents and grandparents.

[00:32:06] **Sally:** Are you going to be at the school run? Have you

[00:32:09] **Lord Sumption:** been? Not because I didn't, but my children do. Yes. Yes. With with their children. Mm-hmm. And you know, this, this is a very fundamental change in our social habits and a lot of the problems that we have about diversity, not just in the judiciary, but elsewhere Yes.

[00:32:25] Are actually down to very profound societal habits and ways of thinking and in part to the educational system. Um, now, um, in the long run, I absolutely no doubt that this will change. Yeah. But it's extremely difficult to grappl. With a problem like that when most of the variables are not within the control of the selecting authorities.

[00:32:52] Yeah. It's too late for them to do anything about the educational system. Yeah. It's too late with, it's never going to be possible for them to do much to change [00:33:00] the habits, uh, of the society around them. But they will change spontaneously in any event. And, you know, things are undoubtedly a lot better now.

[00:33:09] Uh, yes. 14 year, 12 years after I left the judicial appointments commission. Yeah. When they were then. Yes. Um, now, uh, the, the problem about women is I think closer to being resolved than the problem about, um, the ethnic minorities as well. Yes, it is because, uh, the dropout rate, there is a dropout rate, um, but it's not due to the same factors and it's not so, it's not such a big factor.

[00:33:37] Dropout rate is smaller in the case of ethnic minorities. Than it is in the case of women. Yes, it is. Or at least that was the position when I last looked at the figures. Um, and, um, I don't know what the reason for that is. I heard a variety of explanations, none of which strike me as wholly convincing.

[00:33:56] And it was, um, a problem that [00:34:00] we discussed endlessly on the JAC when I was a member. Yes. Um, uh, and, um, my instinct is, uh, that the problem is basically, uh, one of educational disadvantage for some ethnic minorities atten rate, which starts at a fairly early stage and has a knock on effect on people at a significant stage of their career when they're contemplating into university and so on.

[00:34:29] Uh, so, um, you know, I don't pretend to have the answer, but I do recognize that there's a problem. Yes. As to the 50 years. And obviously that wasn't intended as a precise estimate, but I hope not. But you have to, um, remember first of all that any change that begins at the bottom mm-hmm. And changes in the patterns of, of household chores and childcare sharing and so on, do start at the, at the lower of the age spectrum.

[00:34:58] Yes. Any change of that [00:35:00] sort is going to take at least 20 years to feed through to judicial appointments because that's the period of time between entering the profession and being considered for judicial appointments at least 20 years, usually 30. Yes. So, right. You've got half your 50 years there. The rest is, it depends on how fast you think that these very fundamental changes in education or patterns and in societal change and in the way that families organized themselves are going to take.

[00:35:32] I don't think you can be precise, and I wasn't intending to be precise in saying 50 years, but I could see it taking a long time. Yeah. I did enter one caveat, which I, which was that I thought, uh, that, uh, one thing that would accelerate the change was a positive discrimination, but positive discrimination was and remains unlawful.

[00:35:53] Yes. It wasn't permitted by the statute up from which the JAC derived its PAs. [00:36:00] It would probably have been, have happened if the Lord Chancellor had retained his, um, PAs of appointments because Yes. Uh, he would've been able to do many things, which you didn't need to explain in too much detail. Mm-hmm. Um, it's a, it's quite a delicate issue.

[00:36:18] Yes. Um, and, and our hands at the JAC were tied. Um,

[00:36:27] **Sally:** Well, what about, what do you think about this then? Because the, the JAC appointment system has got to be better, certainly for my generation than the previous appointment of, you know, the, the perception of disappointing your friends. Mm-hmm.

[00:36:41] **Lord Sumption:** Uh, well I don't think that was actually ever

[00:36:44] **Sally:** really No, but I, that's the perception that Yes.

[00:36:47] It,

[00:36:48] **Lord Sumption:** when, where we, but I mean, there's no doubt in mind, um, that success in Johnson Yeah. To produce, uh, more [00:37:00] striking diversity figures. Mm-hmm. Um, we were constrained by the terms of our appointments and the statute. Yes. Uh, the Lord Chancellor would not have been so constrained and, um, of course, so I, I've absolutely no doubt that things that, that diversity would have.

[00:37:20] Um, it improved faster. Mm-hmm. If the Lord Chancellor had retained his powers of appointment, there would've been lots of other objections to that. Um, such as the ones that you've mentioned. Yes. The perception of cronyism, though, I believe that, that that was never the reality. No, I, I agree with you that it was the perception.

[00:37:38] Yeah. Um, and the sheer opacity of the system, uh, would have invited all kinds of criticisms, some of which would no doubt have been unjustified, but who would ne ever know? It was such a, a, an opaque, uh, and complicated system. Yes, yes. Um, so, you know, I think that there [00:38:00] were advantages certainly as regards diversity in the old.

[00:38:04] But it was absolutely right to change that. Yes, it was for all the reasons that I think everybody's now agreed on. Yes.

[00:38:11] **Sally:** Quite Now, um, I I want to ask you about, um, uh, people who know you, who are not in law. You know, people are not at the bar, like, yeah. Because you've got a bit of a, a fan base or fan following and it recognizable from Radio four to news night, um, during the awful Covid 19 pandemic.

[00:38:35] Um, because you opposed the lockdown, uh, rules and you spoke about it publicly. I don't think you were afraid. And this, the first question was about, um, Juan's retired. Did you feel a sense of freedom to speak about what you like, um, which you of course wouldn't have had before as a full-time, uh, salary judge?

[00:38:54] And secondly, What, what do you think about the [00:39:00] lockdown rules? Really? Because the fallout and the consequences of all of that is still going on, in my view. Yes. Um,

[00:39:08] **Lord Sumption:** well, to take your first question first, yes. Um, a retired judge is obviously freer to speak his mind than a serving one, but he's not totally free because there is a, a convention, maybe putting it too strongly, but there is an understanding, which I think is wise.

[00:39:26] Yeah. That judges should not even in retirement, uh, become too controversial on politically electric issues. Um, and that was a principle which I comprehensively broke during the lockdown. Why, why did you break? And I, you know, it was a, it was a principle which I recognized as being important and which I would normally have adhered to.

[00:39:50] There are some issues, which seems to me are so fun. Fundamental that you have to stand up and be counting. [00:40:00] Yes. I thought that this was fundamental because it was an exercise of authoritarian government, uh, which, uh, it seemed to me was likely, uh, to influence the ways the governments behaved on a variety of other issues once they got away with it once.

[00:40:18] And it seemed to me that the implications for the future of government in this country were potentially extremely serious. Now, obviously that tied into my particular views upon the lockdown. Generally. I got into this, uh, in a sense accidentally, the world at one asked me to comment on the first lockdown very shortly after it had been ordered.

[00:40:41] Yes. And I said that I recognize, uh, that the, um, that covid was a serious matter. Mm-hmm. I certainly wasn't belittling it at all. No. But I thought that there had been no thought given. To the collateral consequences, uh, as the pandemic un unfolded. I had two [00:41:00] broad objections to it. One was that it seemed to me that with a pa, a pathogen that, um, caused serious illness, it could strike anyone, but it actually caused serious illness or death.

[00:41:12] Yes. Only in identifiable categories of people, essentially

[00:41:22] people of whatever age who suffered from one of bad issues. Issues. Yes. Um, and it seemed to me extraordinary that the government did not use this fat, uh, as part of its policy. Um, there was absolutely no reason why people in categories that had limited or no vulnerability to covid, uh, shouldn't have been allowed to get on with.

[00:41:47] Lives in the ordinary way. Yes. Um, they would have acquired a substantial level of immunity. We wouldn't have come anywhere close to third immunity. We would've acquired, acquired some immunity. We wouldn't have suffered [00:42:00] the catastrophic collateral consequences that we did. Um, and we could have protected the old and the vulnerable in other ways, uh, by encouraging them, uh, to take sensible precautions, the kind of precautions that were imposed on everybody, whether they needed them or not.

[00:42:18] Yes. That was one reason. And the other was the sheer scale of the collateral consequences. It became very quickly, completely clear from talking to ministers and to other people involved in the decision. Yeah. As I regularly did. Yes. That and as, and as is now known, that the government never carried out a serious cost-benefit analysis.

[00:42:41] They never carried out. The kind of analyses of the collateral consequences that would follow for health, mental health. Yeah. Uh, ischemic heart disease, cancer diagnosis, and so on. Yes. They certainly never consider a sheer scale, uh, of the economic and [00:43:00] educational implications of this. Yes. Which it's becoming increasingly clear since the pandemic have been catastrophic.

[00:43:07] Absolutely. And will continue to be really profoundly damaging. Um, and I thought that this was a gross failure of government and it sprang largely from their desire to shield themselves from criticism by hiding behind the scientists. Yeah. Although the decision was never a scientific decision alone, it was a political decision, which depended on weighing up a lot of economic, social educat.

[00:43:33] Uh, clinical and other factors, and arriving at a decision which produced the least bad result, going, bearing in mind there was never a perfect result. Never a who? Good one. Yes. So it, it seemed to me a combination of a highly authoritarian style of government, uh, largely sustained by sowing an unnecessary degree of fear and panic in the public.

[00:43:59] Uh, [00:44:00] the collateral consequences and the, uh, uselessness from a health point of view of much that was done, yeah. Was a pretty comprehensive indictment of government. So, faced with the choice of saying that, uh, or, uh, keeping my mouth shut as an ex judged, uh, I decided that I would, it would be a better service to the public to say the kind of things that were manifesting true.

[00:44:23] Yes. Uh, but which nobody else would prepare to put their heads above the parrot and say, one advantage of being. Okay. Uh, that a retired judge is that the judiciary has a high degree of respect in this country. Yes. And, uh, you can say things that if said by others, would lead to a avol load or an abuse.

[00:44:48] Actually, I never got that. The height I was, I was receiving, you know, a hundred odd letters a week. Yes. Uh, and that's not a particularly scientific guide cuz [00:45:00] obviously people who think that you are, uh, a twrp who are completely wrong, are much less likely to write a letter to say so. And those who, uh, who admire what you are doing.

[00:45:10] Even so, uh, you know, you, there was, you would expect more abuse than I actually got. Yes. I got a fair number of letters, which said, I don't agree with you. Uh, for the following reasons. A reasoned, sensible Yes. Letters written by people who had thought their position out. And I always answered those. Did you?

[00:45:32] Yes, of course. Why? I mean, they, if, if they'd been, you know, several dozen a week, I probably wouldn't have been able to. Yeah. But you know, I got three or four letters like that a week. Wow. And I would write and answer them. Um, and, you know, people made serious points and sometimes you said, I disagree for this reason.

[00:45:48] And sometimes they said, well, I think you've got a perfectly good point there. But I think it's outweighed by other factors. Yeah. Um, public policy is never clear cut. Yes. It's always a [00:46:00] question of pluses and minuses. Yes. And you can believe in both.

[00:46:03] **Sally:** Do you think there's been any learnings though from looking at the regulations?

[00:46:06] Because a lot of my time in lockdown was spent, um, advising people who may been affected or not employers and so on, and look in the actual regulations. And I, I had quite a long conversation with Adam Wagner, who was written a book about the Yes. I've written Yes. So, and I had a con same conversation with him that.

[00:46:26] You know, have there actually been learning, shouldn't there be sort of draft or watered down drafts of kind of public health regulations in case, because you know, I've taken note of that, uh, um, influenza is on the increase in turkeys just before Christmas. It was a whole load

[00:46:42] **Lord Sumption:** of stuff going on. It hasn't been on the increase here that's not getting done

[00:46:45] **Sally:** exactly.

[00:46:46] But I I just wonder if, you know, if climate change and whatever else, and there's various factors are going on, means that there's more likely to be other viruses of this nature. Shouldn't there be, [00:47:00] um, a working group, perhaps there is, um, of, of how to deal with it? Um, well

[00:47:06] **Lord Sumption:** there are a number of issues there.

[00:47:08] One of them has caused the drafting of the regulations, which was very unsatisfactory. Yeah. And they were extremely complicating. They were rather. And, and, um, and

[00:47:19] **Sally:** they had been amended every time I, they were

[00:47:21] **Lord Sumption:** amended very les. So it was extremely difficult to keep up with it. Yes. And you know, the sort of amendment that says, you know, in the, uh, in the fifth subsection of section 142, delete the word.

[00:47:33] And, uh, so you have to, it takes ages to work out what, what the current law is. Yes. That's extremely unsatisfactory. It was made worse by the government's habits of giving so-called guidance. Yeah. Which always went a long way beyond the regulations themselves. Yes. So that's one lesson. Uh, I don't know whether that was been learned.

[00:47:52] I mean, people have been complaining about the draft involved legislative instruments for donkeys ears, and they didn't seem to have got there. If, [00:48:00] if anything, That drafting standards of legislation are getting

[00:48:05] **Sally:** worse probably cuz it's you and not you and I drafting them. Well, that's always a temptation to say that.

[00:48:10] I know. I can only say that to you. But

[00:48:14] **Lord Sumption:** I mean, the, uh, the other question, the route, I think the big question is, are we likely to have another lockdown? I mean, I think you're right to say that, uh, at an age of increasing movement of both goods and people and animals, yes. We must expect pathogens to spread around the world much quicker.

[00:48:38] Mm-hmm. Uh, and zoo amorphic, um, uh, illnesses, I spread from animals to people. Yeah.

[00:48:47] **Sally:** Uh, are like swine flu, you know, that's, well they're a growing

[00:48:50] **Lord Sumption:** risk not only in China. Yes. Um, so we must expect more of this. Uh, I think two things. First of all, I think that. We, [00:49:00] uh, I'm not sure about a working group, but clearly we need people to draw contingency plans.

[00:49:05] Now, that did actually happen after SARS one, beginning of the current century, uh, all of Europe, including the uk in fact, the UK was in the Vanguard, started developing contingency plans to deal with this kind of problem. It was number one, the, the risk on the national risk register from the moment it was published in 2008.

[00:49:29] There were working groups, preparing plans. Uh, the plans were up.

[00:49:45] Uh, the problem was that when the pandemic broke out Yes. These plans were all binned, lockdowns indeed. In the UK and indeed in Germany and other countries too. Yes. Uh, they were based on two basic propositions. One was that it was [00:50:00] wrong to have one size fits all measures. Uh, you should, you should concentrate measures on vulnerable categories at the moment that you've been able to identify them.

[00:50:09] Wasn't very difficult in the case of Covid. Yeah. Um, and the other was you should avoid coercion and treat the public like grownups. Yes. Now, both of those principles, which I think were basically sound mm-hmm. Had been the result of considerable thought over a number of more than 15 years. Wow. Uh, and I think they were entitled to a great deal more respect than they received at the hands of government in the blind panic that occurred in March, 2020.

[00:50:38] Yes. Um, uh, in fact, our. Pandemic plans, which were more detailed than most countries were, um, uh, very similar to those of other countries. In February, 2020, the European Center for Disease Control, which was the EU institution set up after SARS one. Yes. [00:51:00] Um, uh, published the pandemic plans of all 28 participating countries.

[00:51:06] None of them, none of them I've been through, uh, suggested a lockdown, uh, and some of them firmly rejected a lockdown. Wow. Um, and, you know, this was a, a, an international mood of panic and copying my neighbor. Yeah. Um, which got out of control. Mm-hmm. It's terribly difficult for people who have taken measures that have completely mucked.

[00:51:35] An entire economy and large millions of people's lives to say, oops, awfully sorry, we've made a mistake. Yes. Um, so it's not, although that would be refreshingly honest and in one or two countries has happened, uh, I think that it is unrealistic to expect human beings to behave like that. Yeah. But we are much more conscious now that human beings are complex organisms.

[00:51:58] Human society has a [00:52:00] complex organism. You can't muck around with some of the central features of human behavior. Like, like being behaving as a social animal without inviting, uh, uh, unexpected, uh, consequences. Women as expected ones. Yeah. I think the scale of the economic and social damage done will actually deter them from doing it again, except possibly under the case of a really catastrophic pathogen.

[00:52:28] Something that generated 50% case mortality or something like that. My God. Yes. So I doubt whether it'll happen. Mm-hmm. Um, but I could be wrong about that. Remember? I didn't think it would happen first time round. No, I was wrong.

[00:52:40] **Sally:** That, well, I know that Covid inquiry is going on, uh, and so, um, led by, um, have a Yes.

[00:52:48] Um, and so I, I, I'm very interested to see where that will lead if it ever, if, if that

[00:52:54] **Lord Sumption:** finishes. I am very skeptical at that. I mean, uh, in terms of the reference [00:53:00] are very wide, but there's a very strong temptation to fudge things. Mm-hmm. And to say, and to avoid criticizing people, I think they should be criticized, not to be wrong, but for making insufficient efforts to be.

[00:53:16] **Sally:** Yes, that's interest. That's very interesting actually. Oh, well, we'll have to re revisit it. Um, can I ask you something about, um, your interests and wellbeing? Mm-hmm. We're sitting in a wonderful, um, library or office with more books than in my parents' library on leading my own house. And you are obviously very well, well read and have a large brain.

[00:53:38] Um, I, I also noticed, uh, yeah. Well, um, I noticed when you said earlier about your portfolio career that um, you have some other outside interests. Outside of the bar. Mm-hmm. Um, including being the director of E n O, the English National Opera, and the trustee of the Royal Academy Academy of Music. Yes. Um, uh, so as well as writing, as [00:54:00] well as the reflects.

[00:54:01] And I, so I wanted to ask you this question about wellbeing, and we have to be truthful. The life of the bar, it is tough and we often burn out. Um, it's half term next week, I'm going away with my children and my husband, but actually I know there's gonna be a few days that I'll have to work and we won't be able to finish, um, the 2000 puzzles.

[00:54:22] Um, so how have you managed your wellbeing in your career? The bar and then also on the bench, and have those outside interests, you know, like me, with an interest in theater, have, have they kept you balanced? Uh, and

[00:54:37] **Lord Sumption:** to some extent I'm sure they have. Um, I, I think that, um, having, uh, two consuming interests, one of them a professional on the other private, yeah.

[00:54:46] Yes. Um, is. You are likely to be better at both of them, uh, than you would if you did one of them alone. Yes. Um, how does one do it? Well, the answer is, uh, you know, some people, [00:55:00] um, uh, who repair old cars, some people engage in Morris dancing or bell ringing. This is my equivalent. Yes. Uh, I write history books.

[00:55:10] Yeah. But it's a leftover from an earlier career. I enjoy doing it. Um, and I think that it's mentally refreshing not to be completely intellectually dependent on your job for stimulation. And the pro, the threat of burnout is much more serious. If you are a monomaniac and you are only. About your professional activities.

[00:55:35] I

[00:55:35] **Sally:** totally agree with you. Uh, as somebody who also has interests, like, like, like yours. Um, and what about the reflectors? How did they come about? I really enjoyed, they're quite a while, 2019, I think. Mm-hmm. Um, you gave them on BBC Radio four, and they recorded Driven audience. I think my interest is probably bias because it, uh, yours was delivered by somebody who knew [00:56:00] about law and, and history, um, than some of the others, I suppose.

[00:56:04] But how did that come about? And did you enjoy them because that led to the, your book Politics and Decline? Or had you written that book first?

[00:56:12] **Lord Sumption:** No, no, no. That was, that was the lectures. Ah, uh, unadulterated. Except in some, uh, I, uh, I incorporated in the, in the published version points that had arisen from the question and answer sessions that followed every lecture.

[00:56:28] Yes. Uh, some of which raised interesting points that I either hadn't been able to, uh, include for, because the 20 minute, 20 minute, 28 minute lecture Yes. Uh, or else, uh, haven't occurred to me. So, you know, further reflection almost makes these things a little longer. Yes. Yes. How did it come about? Well, um, Gwyneth Williams at the time was the controller of Radio four, and the appointment of the re lectures [00:57:00] is very much in her gift.

[00:57:02] They are probably the most prestigious public lectures Absolutely given in the uk. Yes. Uh, I had had these thoughts buzzing around my head for a number of years, and I wanted an occasion, uh, for expressing them. And the re lectures was obviously the ideal, uh, opportunity. So basically I wrote to up to Gwyneth, who I didn't know.

[00:57:26] Mm. Um, And made the suggestion and she expressed enough interest to make it worth preparing that kind of summary prospectus. Yes. Which I sent her. We had a long conversation and that was it. Mm-hmm.

[00:57:44] **Sally:** Well they were very good and, and very, very interesting. Now, do you, this is again, should be a very difficult question for you cuz I think there's about 2000 books in, I mean No, but, um, uh, if you, well two questions really if you like, but [00:58:00] if you, do you have a favorite book?

[00:58:02] Not one of your own? Um, uh, you know, wouldn't be one of my own anyways. Well, no, I didn't think. But often when I speak in schools, in primary schools, they say, cause there's usually a banner with some of my books on there, about 16 books. And they say, which is your favorite book? And some of my books are children's books, right.

[00:58:21] And so I, I might pick one of those just in and read a bit or something, but of my own. Um, do you have a book need and be related to law that's been quite a powerful insp influence in your life? Or has it inspired you in some way?

[00:58:35] **Lord Sumption:** Well, um, actually I think if I were to name a single book, it would be a book with which I.

[00:58:43] Disagree at the most fundamental level. I'll tell you why it's nevertheless a favorite book. Yes. I mean, I read so many books in my lifetime that are quite in

[00:58:51] **Sally:** a single favorite. I know. Well, okay. I'll let you have three.

[00:58:54] **Lord Sumption:** No, I'm not gonna, that makes things three times more. I know. But I would choose [00:59:00] Hobbs.

[00:59:00] The Han Hobbs, Thomas Hobbs was the 17th century political theorist who was an apologist for authoritarian indeed absolute government. Um, I disagree as to completely as it's possible to disagree with his political ideas. But the great thing about Hobbs is that he was one of the greatest masters of the English language ever wrote a book whose object was to persuade.

[00:59:31] And Leviathan is a book which patiently builds up his case in small steps. And each step. It seems totally convincing, and you eventually arrive at the conclusion and you say, well, blame me. However did I get here? This isn't where I want to be at all. And it's actually quite difficult to work out where you think he went wrong.

[00:59:53] Now, of course, one possibility is that I'm just being naive and he didn't go wrong. Uh, it's, that's not a [01:00:00] possibility that, that I accept. Um, I think his diagnosis of human nature was too pessimistic. But basically, Hobbs is an object lesson in how to write persuasive and memorable English for anybody who is in thinking of being an advocate.

[01:00:19] Yes, I can't imagine a, a better, uh, intellectual training than to read a book like that. And in a sense, the facts that I disagreed with it and that I think most people reading it today will also disagree with this. Um, uh, actually is good. It means that you have, uh, it's as a piece of minds training, working out why it is that you disagree with something as persuasive as Hobbes is, uh, a really outstanding challenge.

[01:00:53] Everybody should try it,

[01:00:55] **Sally:** right? I'd need to, I'll remember that. Um, so, oh, that's your favorite [01:01:00] book. Now, if, um, you had to choose a legal character, um, a favorite legal character, it may be a fiction, fiction. Fiction, uh, who, who can I choose A factual one? Well, yes. Wow. Uh, and then I have a, a question about your life.

[01:01:18] I

[01:01:18] **Lord Sumption:** catch contemporary one year contemporaries at the bar who I enormously admired and who were formidable characters. They weren't just skillful operators. Yes, though they were that too. Uh, but they were very remarkable people. Um, So, you know, if I'm required to choose a fictional one, well that's easy, but the result is not going to correspond to anything you're ever going to meet in

[01:01:45] **Sally:** practice.

[01:01:46] No, but you should. Well, why don't you name both of them. Okay. Well

[01:01:50] **Lord Sumption:** one is Sydney KenRidge. Yes. Who was the most me ever against him [01:02:00] beating me? Uh, or in the latter part of my career, appearing before me as a judge. Mm-hmm. He appeared before me. Did he? As a judge on his 90th birthday? Yes. I've

[01:02:09] **Sally:** heard. I think panic may have mentioned him too.

[01:02:11] Well,

[01:02:12] **Lord Sumption:** he was there. He was on the other side. Yes. And very unusually, completely appropriately, he opened the proceedings by congratulating Sydney on, uh, on being still in the full force of his powers at the age of Magic, which he was really, um, so, you know, he was a very remarkable figure, not just because he continued for so long.

[01:02:34] Mm. But because he had this astonishing voice, remarkable intellect, an extraordinary memory, and was a very entertaining speaker. Yes. Uh, you know, humor, uh, has got its place in good advocacy. Absolutely. He was a master of that. Yes. But the other one, uh, and I don't know that Sydney, uh, [01:03:00] would be particularly pleased to have me mention him in the same breath cuz they represented polls apart.

[01:03:08] Who was Gordon Pollock? Who is now dead? Ah, Gordon Pollock, um, dominated for many years the field of commercial law. Uh, he was completely unconventional advocate. He was unbelievably fluent. Uh, And he was famously rude to everybody, including judges, that he was appearing before. Oh, he got away with it because he was witty and because he was extremely clever and because people knew that Yeah.

[01:03:42] They made alliances of, uh, the fact that he was witty and they, uh, realized that they needed to listen quite carefully to him because he was clever. But he was a tremendous character. Every convention that applies to the way that you need to behave in [01:04:00] court was systematically broken by him almost every day, uh, of his life.

[01:04:05] Uh, now you can't help admiring that kind of choice path. No. I also liked him very much personally. Not everybody did. Cause he, he could, he took no prisoners. Yeah. Uh, he's dead now, but he was possibly the most remarkable legal character that I encountered in 35 years as a practicing barrister. Wow.

[01:04:26] **Sally:** Wow.

[01:04:27] And if there was a story being told about your career, um, both prior to the bar mm-hmm. Um, let's not forget, and then at the bar and then on the bench, and then you know, your other work outside it. Um, because really this story, this podcast is about telling the stories about the leaders and the interesting characters in law.

[01:04:50] You know, I had another podcast was all about law, but it is not this one. But who would you like to play? And of course they don't have to look like [01:05:00] you as a, as a colleague pointed out to me the very thought

[01:05:02] **Lord Sumption:** of anybody playing.

[01:05:06] **Sally:** Well, should I make some suggestions? Well, you're welcome to make some suggestions

[01:05:13] **Lord Sumption:** whether I agree with them or not. Let's see.

[01:05:16] **Sally:** Uh, well, uh, I was going to say Colin first, uh, when people ask me this question, I say it has to be somebody English. Cause I'm English. Um, but of course, you know, there aren't that many good en you know, black English actors.

[01:05:28] Mm-hmm. Um, so there has to be American one. So I was thinking for you, maybe Colin Firth or if it was an American, some be like,

[01:05:35] **Lord Sumption:** be the kind of, of of solemnity. Yes. Which is how I picture.[01:06:00] [01:07:00]

[01:07:04] **Sally:** Well, um, we're coming to the end really of our time together slowly, but one of the things I wanted to ask you was about young people entering the profession, the bar, whether it's at our end as barristers or solicitors, I suppose. But, um, have you got any. You've given a lot already, but tips and guidance, maybe three top tips about how to cope in the profession.

[01:07:30] When I was recording this in the lockdown period, the advice often that I gave or suggested in response to my interviewing guests was, was different. It was often about resilience and not giving up, you know, that type of thing. But I wonder, you know, there are less peoples on offer now where now in an economic downturn, um, you know, this podcast doesn't age.

[01:07:51] That's what my producer keeps saying, you know, it's sort of ageless. But if someone was coming to become a barrister now in whatever jurisdictions, [01:08:00] let's focus on England. What kind of top tip advice would you give them about, you know, staying in the profession and trying, progressing?

[01:08:09] **Lord Sumption:** The real problem is getting your foot on the ladder.

[01:08:12] Yes. Uh, and the big, um, bottlenecks are pupillages and tendencies. Yes. Um, I, I think you need to go to, obviously to the best chambers you can. Even if you think that they're unlikely to, they're less likely to be able to offer you a tendency because the best chambers are, uh, they're, uh, pupils are likely to be more attractive catch for other chambers if you don't get into your first chambers.

[01:08:42] Yeah. Um, you know, if you, if you've been trained with I pupillages at a top set of chambers, even if you haven't got in, that's a big advantage when looking for somewhere else. But there's a huge element of luck in this and it's terribly difficult [01:09:00] to give people tips about how to maximize their luck. Um, and when I, uh, have had enormous amount of luck in the professional, things could quite easily have worked out in a way which would've led to totally different results.

[01:09:17] I found myself in a. A wonderful set of chambers. Yeah, I, I discovered in entirely by the accident that there were things like cross-examination, which I turned out to be quite good at. Um, you know, but you know, there's, and also just being in the right place when cases came along, I mean, for, for some years in the 1980s, I was regarded as the go-to person of, uh, contested takeover bits.

[01:09:44] **Sally:** Yes, I saw that. My research, why was that

[01:09:47] **Lord Sumption:** captain? Completely by accent. I was sitting in chambers trying to complete an opinion about something completely different. Uh, uh, when, when all of these takeover cases arising in an immense haage that should no [01:10:00] notice, uh, when, uh, a solicitor rang up and wanted to speak to somebody reasonably senior, like that stage, I was such a junior.

[01:10:08] So, and, um, he was put through to me and so. I was involved in first, um, big piece of litigation about takeover bits, which was a case called Data Film. Now that was pure luck that night. It wouldn't have happened.

[01:10:29] **Sally:** Yes. Yeah. Or not be in Chambers. Um, which is a Yeah, of course. Yeah.

[01:10:32] **Lord Sumption:** So, you know, there's a lot of things like that and, you know, you, you get returns from other people who turn out to be unable to do something or you, um, you, you do a case, which when you took it over seemed to be of no importance, but then turns out to be,

[01:10:52] uh, the leading case on an aspect of the law that you never realized was even relevant to, [01:11:00] its of the chances of professional life. The bar is full of really talented people who hadn't got anywhere. Cause they didn't have the strokes of luck that other people had. I mean, it's all pretty difficult to give people tips about that sort of thing.

[01:11:16] Yes. The only tips that I would give, which is a pretty happy one, is take your holidays at unusual times. Being around in all, it's a great way to get the kind of work that would normally go to people who are much more senior.

[01:11:36] **Sally:** Yes. Um, well, it's funny you should say that. Uh, Charles Barton, who used to be head of my chambers in Bristol, used to say that very same thing.

[01:11:45] He's passed away now, but, uh, yeah. But falls now with having families, you can't always, um, um,

[01:11:51] **Lord Sumption:** well that's of course a particular problem. Yes. In current social world. Yes.

[01:11:55] **Sally:** For women. Yes. Um, yeah, absolutely. Now, you know, the, so the, the [01:12:00] advice and tips you gave about yourself really was that you had enormous amount of luck, but these sort of clever gurus and coaches would say that luck was preparation meeting opportunity.

[01:12:10] Do you, do you kind of sign up to that?

[01:12:12] **Lord Sumption:** Well, I mean, only partly obviously you need to do that, but you can do it and get nowhere and the difference is

[01:12:19] **Sally:** luck. Yeah. We are, um, yeah, ab absolutely. Um, interesting. Fascinating. So, um, Lord Santon, what's next?

[01:12:30] **Lord Sumption:** Well, I just finished after 43 years of writing about the hundred years.

[01:12:35] Yes. I've just finished doing that.

[01:12:38] **Sally:** Uh, well just give us a quick, cause I've read the book, I don't want to ruin it, but can you give us a quick praise of what those books are about?

[01:12:44] **Lord Sumption:** Well, they're about, uh, a classic series of wars in Western Europe in the 14th and 15th centuries, which is a fascinating period.

[01:12:54] Partly because it is artistically a very beautiful period. Mm-hmm. Partly because so [01:13:00] much of the physical, uh, environment, which it created castles, walls, cities, et cetera, actually still survives. Mm-hmm. Partly because it is, uh, a period in which there's first really personal sources, memoirs, private letters, and so on.

[01:13:15] Yes. Begin to survive. But it was a, a series of wars mainly between England and France, but the hood of western Europe was involved. It's built out into Scotland, then an independent country, uh, into what we now call Belgium or Holland into Italy, into Spain and Portugal. And it's Germany and Switzer, Switzerland.

[01:13:35] It, it involved the whole, uh, of Western Europe. Uh, and that is, you know, it gives you a range of, of, of, of facts, which are fascinating. It involves formidable linguistic challenges, which, you know, I like languages. Yes.

[01:13:54] **Sally:** Well, you speak three, don't

[01:13:56] **Lord Sumption:** you? Uh, I speak, um, more [01:14:00] than three. If you allow me to include Yeah, please.

[01:14:02] Because I speak badly. Yes, please. But I can make myself understood, uh, in most Western European languages. Wow. And I speak French fluently.

[01:14:13] **Sally:** Wow. And did you, so I read in my research that you didn't learn that conventionally you have a dictionary and you learn by listening to the Yes. To, to the people speaking.

[01:14:24] We were just plow through

[01:14:25] **Lord Sumption:** a book. Yeah. Yeah. I mean, you know, languages have a lot of structural similarities. Uh, once you've grasped the basic and grammatical, um, structure of a language, the rest of it's vocabulary. Yes. And that just, Means you need a, a reasonable memory and a dictionary. Yeah. Wonderful.

[01:14:44] **Sally:** Wonderful. So four. So after four, three years, the fifth book is coming out

[01:14:49] **Lord Sumption:** and I now contemplate a vast void in my life. I wish that I knew the answer to your question. What's next? I've got a number of possible projects and I'm doing [01:15:00] a lot of reading. Yes. In order to refine them and decide which of them I want to do.

[01:15:05] But clearly, you know, I'm 74, so I'm not going to embark on another five

[01:15:10] **Sally:** volume. Well, no, no. And I suppose I should ask you about politics. Um, and did you ever contemplate a career in politics? I

[01:15:21] **Lord Sumption:** did, uh, not for very long. Um, and the reason that. Abandoned the thought pretty early. Uh, was that I, I got married very young, um, and I was 21.

[01:15:39] Yes. And, uh, wow, that is young. I wanted to stay married. Uh, and I, I didn't think that a political career was the best way of ensuring that.

[01:15:52] Did you think the other thing about politics is, um, you know, some professions, the bar, for example? Yes. If you, [01:16:00] uh, if you get halfway up the greasy poem, it's half as interesting as being at the top. Yeah. Politics is desperately boring except at the top it's got a very narrow apex. And so, you know, um, there are some people of supreme self-confidence, maybe the last Prime Minister, but, uh, yes.

[01:16:18] But one is an example, uh, who don't worry about this. They're quite sure they'll get to the top, uh, but most people can't be. And really to flog through the back benches and junior ministries, um, in the hope of getting somewhere more interesting as a so destroying business. My father, uh, wanted to desperately to be a politician.

[01:16:41] Did he? Uh, and it ruined his life. Oh. And he never got into the House of Commons. He tried many times unsuccessfully. Um, and, you know, he felt this made him a complete failure, actually was rather good at quite a lot of other things. Mm-hmm. But not none of that country for him. [01:17:00] Yes. I mean, I didn't want to end up like that.

[01:17:01] **Sally:** No. Well, I What? Well what about the House of Lords?

[01:17:06] **Lord Sumption:** Well, I didn't sit in the House of

[01:17:07] **Sally:** Lords. Why did, I didn't think so. But did you have any desire or interest or anything like that?

[01:17:12] **Lord Sumption:** Um, well, um, I had mixed feelings about it. Uh, law lords have not been members of the House of Lords since 2009, unless they already were before, right?

[01:17:21] Yes. Um, uh, the House of Lords is now. A, a very demanding, um, thing. Don't, you can't just wander in a natch. You have to do it seriously, or not at all. They're right. Um, and um, you know, there was, at one stage there was an understanding that Supreme Court judges would have periods upon their retirement. Yes.

[01:17:47] That was my understanding. And Mrs. May decided to reneg on that. Okay. Um, she didn't like lawyers particularly, and didn't relish the prospect of seeing more of them in the House of Lords. Yes. [01:18:00] Um, so, um, I, um, I would've had to apply and my feeling was that, you know, if if I had, if I was a, a peer, I would want to be to do it properly.

[01:18:17] Yes. That would've involved surrendering a lot of other interests, which I've got musical, historical, and so on. And I had mixed feelings about that. So, um, I did actually, I was encouraged to apply once and I did, but it didn't get anywhere. Cause there's only I would've applied under the Crossbench system.

[01:18:38] Yes, yes. And, um, uh, they only have, you know, one or two vacancies a year, if that. Mm-hmm. Um, so I wasn't at all surprised that other people were chosen, but I was in a way relieved cause gave me a chance to get on with things that are, [01:19:00] um, genuinely enjoyable. Absolutely. Absolutely. Legislation, some enjoyable, some of it isn't.

[01:19:08] It's a much more mixed bag than the letter I've got.

[01:19:11] **Sally:** Yes. Quite. And, um, Lord uh, one of my guests on here, um, was, uh, Leslie Thomas, professor Leslie Thomas, uh mm-hmm. Now KC Ward qc. And he has, uh, he's black and he has long dreadlock. You may know him. Mm-hmm. And, um, and I asked him, is that a deliberate look?

[01:19:33] You know, you could just have short hair or shave your hair like, you know, my, my own brother has

[01:19:39] since

[01:19:39] **Lord Sumption:** I look any different from the way you

[01:19:40] **Sally:** otherwise work. Yeah. So I just wonder your hair's quite long and uh, you know, has that always been a deliberate look

[01:19:46] **Lord Sumption:** or No, it's the fact that, uh, my hair is cut by my wife and always has.

[01:19:53] That's good choice. Um, and, you know, I don't feel able to ask her to take time off to do my hair more than [01:20:00] once or twice a year. So that inevitably, you know, one was coming up for another one, the hair gets quite

[01:20:06] **Sally:** long. I love that. And then, uh, uh, the, um, Broich case. Um, there were rumors about the pay that you would pay for it.

[01:20:19] I'm not

[01:20:19] **Lord Sumption:** asking, they don't need to be rumors because the facts are published. The, the, the taxation process meant that it was all over the

[01:20:25] **Sally:** papers. Oh, right. Okay. Um, and so I, I, I saw that. So we started this interview with me asking you why you chose the law, stop being, uh, the honor, and of course you're still a fellow.

[01:20:36] Mm-hmm. Um, at Morley. Yeah. I must still a fellow

[01:20:40] **Lord Sumption:** member of the Senior Commonwealth. Oh, I

[01:20:41] **Sally:** see, I see. But that's different. So I was just saying on reflection, do you think you fulfill that, you know, earn a good living, have some outside interests? Yes. And had a, had a happy life?

[01:20:51] **Lord Sumption:** Well, I certainly had a happy life earn.

[01:20:54] As to whether I've fulfilled my idea of having more money or obviously yes I [01:21:00] have. Uh, but you know, in a way, um, the bar is in a bit like a one arm bandit machine. Yeah. Uh, you, you pull a lever and nothing comes out and then quite suddenly the hole of the floor is covered in silver. Uh, and you don't actually have much control over which it

[01:21:15] **Sally:** is.

[01:21:16] No, no. Um, well as I said to David panic, you're very modestly dressed and a nice jumper. I don't see any girl medallions going on. No. So, I dunno where they suppose if millions have gone. But it's been very nice to, um, meet you properly and, um, talk law with you about your career, uh, at the bar and um, and beyond.

[01:21:40] Thank you so much.

[01:21:41] **Lord Sumption:** Nice.