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KATHRYN RYAN: Well, our year in review for 2012 continues and our next guest has presided over some of this year's highest profile legal cases, including Kim Dotcom's court appearances and the man who was charged with the murder of the Auckland teenager, Christie Marceau. Helen Winkelmann is the Chief High Court Judge. Cases that she and others have been involved in have been at times controversial and the proceedings very much under the media spotlight.

Her rulings in the Dotcom case, relating to the police raids on the alleged internet pirate - pirate's mansion in Coatesville in January, included ruling the search warrant for the raid unlawful, the search and seizure illegal. And in subsequent rulings that the FBI will have to prove at Dotcom's extradition hearing that it has evidence to back up its charges.

Just earlier this month also ruled that the Government spy agency, the GCSB, would have to confirm all entities to which it gave information sourced through the illegal interception of Dotcom's communications. An order which covers members of Echelon or Five Eyes and any US authority, thus drawing in New Zealand's international intelligence partners.

And in another high profile case in October the judge found the man accused of the murder of Christie Marceau, Akshay Anand Chand, not guilty due to insanity. These have been very high profile cases and there have been many others on which the decisions of judges in the various courts have attracted attention and often criticism of rulings and sentencings.

In a recent speech, Justice Winkelmann spoke of a volatile media environment and of the increasing calls for judges to justify their decisions. In the speech she warned that relentless criticism undermines public confidence in the judiciary. Justice Winkelmann was imported - appointed a High Court Judge eight years ago and became head of the bench in 2010. She qualified as a lawyer in the mid-eighties.

And she's here today to provide an insight into the complex world of a judge and the protocols that must be followed and why responding to public criticism is not part of the brief. This despite the great scrutiny being brought to bear now more than ever in the mainstream and in social media. Justice Helen Winkelmann is with me now. A very good morning.

HELEN WINKELMANN: Good morning.

KATHRYN RYAN: You have had a big year.

HELEN WINKELMANN: Yes.

KATHRYN RYAN: You've been involved with some very high profile cases of significant public interest and why can't I ask you questions about those cases and the decisions you've made and expect you to answer?

HELEN WINKELMANN: Well, the first reason is that I've already given all my reasons for those decisions in the judgments that I've written and those are publicly accessible on the internet, should anyone care to look. And if I were to start explaining them to you now, with words that sit outside that judgment, that might suggest that I had other reasons operating that would in itself be a ground of appeal in relation to those judgments. Yeah.

KATHRYN RYAN: In the Dotcom case...

HELEN WINKELMANN: Yes.

KATHRYN RYAN: ...you could say you faced a situation that might be unprecedented. Or you've had to deal with search rules that, it could be argued, have not kept up with modern realities. I can't ask you these sorts of things now and expect you to answer.

HELEN WINKELMANN: No, that's right. And the second reason, I suppose, is that anything I say might suggest that I'm not impartial and if I - if there are grounds to believe I'm not impartial, then I can't carry on sitting on that case.

KATHRYN RYAN: This particular case is a matter not only legal, but political, constitutional, diplomatic and commercial interest in several countries and there's someone making decisions about it, knows the most about it, can't speak about, can't question about it, for the benefit of informing the public. Is this convention still valid? You've just explained it to us again. Is it still valid?

HELEN WINKELMANN: Yes. Well, for the reasons I've given. If we start to debate our reasons for our actions in the public, we really undermine the entire way the judiciary has operated. I can't really advance further reasons than the reasons I've given as to why we don't do it.

KATHRYN RYAN: Is part of the pressure on you around this is that this is a time when world leaders are on Twitter and are interacting with the public that way? And everyone's views, as we've said, are now not just discussed around the water cooler at work or in the living room at home, but are online. Is this part of the environment in which judges are feeling a pressure against these longstanding conventions?

HELEN WINKELMANN: I think that's definitely the case. There is an expectation that there's going to be a conversation that carries on through the media and that a story will unfold. And the judges cannot participate in that unfolding story. But I think there are some things we can do to meet the challenges. I think we can communicate in our judgments better. I think that's very critical. And we can make sure our judgments are accessible. We've taken some steps toward that, but there are more steps we can take.

I think also something we can do as heads of bench is speak generally, such as I'm doing today, to explain some of the realities for judges. To explain something of the legal framework that we operate within, say, for sentencing or bail, which are two of the areas most controversial, I know, in the public mind, so that people get a better understanding of the context within which those decisions are made.

KATHRYN RYAN: One of them is simply the law itself.

HELEN WINKELMANN: Yes.

KATHRYN RYAN: And the constraints that it puts on what you can do.

HELEN WINKELMANN: Mm. That's right. Because we don't sentence on a whim. We have a very detailed legal framework that we work through, which is the Sentencing Act. Plus we have, you know, binding authority from Court of Appeal - from the Court of Appeal in some cases and we have some principles in the Sentencing Act we have to comply with. So actually we're going through a reasoned process. And I should say that's not divorced from common sense, because a lot of judging is common sense.

KATHRYN RYAN: That sentencing - those sentencing requirements and explanations are actually more stringent than they used to be before the law changed around that.

HELEN WINKELMANN: Yes, much more [laughs].

KATHRYN RYAN: You actually have to explain more.

HELEN WINKELMANN: Well, once upon a time, a judge would just sentence someone. They would say - I think in my speech I said, there's a famous quote. Joe Brown, you are a fool, but a dangerous one. Seven years. Take him down. But these days we have to give fully reasoned decisions, which are actually accessible. So in the High Court our sentencing decisions are accessible on the internet on Judicial Decisions Online.

Part of the difficulty we have is getting them typed up and get them - getting them up there quickly enough for the media to look at them. Because the media now - it's not a print run where they go the next day, it's immediately. There's a - I think it's a five-minute stand down time in court while we're sentencing, before the media can start tweeting from the court room.

So there's no stand down time. So we've got to do our best to communicate, not only in our judgments, but also in the courtroom, I suppose. And make the complex simple, so it can be understood.

KATHRYN RYAN: So part of what you have alluded to, I think, in this speech was the idea that there might be summaries done. Not only does the judge do the judgment, but the judge then does a summary that might be more easily able to be absorbed than reports.

HELEN WINKELMANN: Yes, I suggest to judges that it's at the end of the judgment, because that's where everyone always goes. They always go to the end of the judgment to see what the result is. And it's something I do myself and I find it a very useful discipline actually. So it's something I'm promoting with judges.

KATHRYN RYAN: This business of tweeting from court - we're going to talk about cameras in court, which are still, I think, almost unique to New Zealand. Can't be almost unique, can you? Unique to New Zealand - and how that may be working, or have worked, or certainly what difference it's made. But tweeting, you could always dip out if you're a journalist. You could always nip out of court and go and file. But do you have any comment on the impact that that's had on both the process and particularly the reporting of cases?

HELEN WINKELMANN: I don't know that tweeting in itself has had a lot of impact, but the speed at which media operates generally has had a lot of impact. As you say, they can just step outside. Judges have taken the view that it's best that they not be popping up and down from - the media are not popping up and down from the press bench to go and tweet things, because that will distract the jury, for instance, if it's a criminal trial. So we've thought we have to move with the times.

You say it's - oh, you're going to go on to cameras in court. I was just going to say about New - the way that New Zealand has opened up

courts to the media is probably at the forefront throughout the world of accessibility of the media to our court processes.

KATHRYN RYAN: Do you have a comment on what that impact's been? It's been around for some time now, the cameras in court. It began with very stringent regulations around it. I think it had to be a minimum of two minutes. It had to be evenly divided between prosecutorial and defence content. Is that still the case?

HELEN WINKELMANN: No. Over time that's really been let go. So the media, although they're given access to use the film for particular purposes, they tend to store the film in archives and they use it without the balance that had once been assumed would be in there. So you don't get two minutes of the prosecution, two minutes of defence. Moreover, sometimes you'll see one day's footage spliced against another day's. So judges are having to kind - having to monitor that sort of use of the film.

KATHRYN RYAN: Have the judges in fact been quite liberal about the way they've let that happen, or allowed that to happen?

HELEN WINKELMANN: I think the whole approach of the New Zealand judiciary has been liberal. When it was introduced in 1996, I think it was, the then Chief Justice said, this is going to happen, so let's embrace it and really effectively get out in front of the pack and shape it.

The experience has been, surprisingly, that the rest of the world hasn't followed us. It's not the case in Australia that they allow cameras into court. In the United Kingdom they're just starting to think about allowing cameras for sentencing. And, surprisingly, even in America there are only a few states that allow cameras in court.

So yeah, it's a pretty liberal approach. But the reason we did it was because we believed it was important that there be really - it was important for the principle of open justice to allow the public to see what goes on in the courts. And to increase - and that's to increase the understanding of what goes on in the courts.

KATHRYN RYAN: The role that the media play often and requesting things sometimes with recording, for example radio broadcasters like this recording, there can be quite stringent elements around that, in some cases even a judge wanting to know what is broadcast. Justifiable?

HELEN WINKELMANN: Well when judges do it, they do it carefully and deliberately. So I mean, I can't speak about any particular case, because I don't know what you're talking about, but generally speaking, judges do not place unnecessary limitations on the media. And the media are quick to point out if they have. We get a lot of adverse comment whenever an unjustifiable restriction is placed on the reporting.

KATHRYN RYAN: Is there to be some kind of review of how the cameras in court is working?

HELEN WINKELMANN: The Minister of Justice and the President of the Law Society called for that, and our media and court guidelines are subject to frequent review. So the Chief Justice and I have resolved this year to undertake a review of how it's operating at the moment.

One suggestion that's been made is rather than just allowing those members of the media who do want to turn up with their cameras to come into court, that we have real-time streaming of what's going on in our courts. That's probably a great idea, subject to the fact that it takes resources to set that up.

KATHRYN RYAN: Something similar was done for Parliament.

HELEN WINKELMANN: Hm, but of course we've got many, many courts, so.

KATHRYN RYAN: Ah, you are not averse to the idea that that may serve both concerns, the open justice but also full reportage?

HELEN WINKELMANN: I'm open to it as a possibility. I think we have to think through the implications because of course there are some things that you don't want filmed, and how would you manage it. For instance in cases of sexual offending, you don't want parts of the evidence filmed, and also sometimes you want to be able to pull things back that have gone out there and how do you do it once it's on the internet - you can't. That's the reality of the environment we're operating in.

KATHRYN RYAN: The challenges of the internet full-stop, part of perhaps the growing pressures in the mainstream media it is argued as that they are now competing not just with each other and the restrictions that they operate under, but with new media and with online.

HELEN WINKELMANN: Yes.

KATHRYN RYAN: We've seen examples of the breaches of suppression order for example, online, that the courts have responded to. What pressures is the internet itself and the new media bringing?

HELEN WINKELMANN: Well one pressure is a new part of the judge's job now is to deal with media applications. I mean it's a significant part of what we do, is to deal with applications for access to court files, repeated applications for access to film - it's adding further to the workload. It also means that we're constantly having to turn our minds to what should be suppressed and what shouldn't be suppressed.

Once upon a time, we wrote judgements and they went on the internet and they, you know, if it was an incredibly important judgement, it would appear in the New Zealand law reports, but otherwise it would just pass into a dusty pile of judgements that might exist in the judge's office but was otherwise not easily accessible. Nowadays everything is accessible, and it's permanently accessible.

KATHRYN RYAN: You've suggested more than once that the workload pressures, the resourcing. If you were talking about things like giving summaries of judgements that might be more immediately available, if you were talking about having to deal with the ongoing pressures of a variety of institutions wanting to come in and film or record, are you saying that actually the resources are being stretched to a fair degree in dealing with those demands?

HELEN WINKELMANN: I wouldn't say stretched. Judges having to work harder and harder, judges are hardworking people anyway, and we just accept it's part of the load. It's just a part of the feature of how complex a judge's working environment is now.

KATHRYN RYAN: The pressure on judges that we alluded to, also the new media part of that as well, because if they're human, they're going to notice some of the debate that rages about them in some cases. You spoke again of walking the hard road. What were you referring to with that?

HELEN WINKELMANN: Well, I was referring to the fact that judges can't seek popularity or public approval in their decision-making. Sometimes you have to make a decision that isn't popular, because it's the right decision, and that's the harder road I was referring to. I mean we swear an oath when we enter office, which has words that resonate with all judges to do right to all manner of person, persons after the laws and usages of New Zealand without fair or favour, affection or ill will, and that has very real meaning to judges.

So we don't think, how is this going to be received publicly, when we are reaching a decision. We reach the right decision.

KATHRYN RYAN: However, the public [inaudible 0:14:50.3] approval is perhaps more available to you than it used to be by means of new media and interactions?

HELEN WINKELMANN: Yes.

KATHRYN RYAN: And the differences with others - you can't step up and defend yourself against anything you feel aggrieved about. The business of accountability of judges has also been very topical. Calls for some kind of independent review panel of their performance. Some kind of performance management. How is their performance overseen?

HELEN WINKELMANN: Well, I probably should mention something called judicial independence here, because I think that's the necessary context for everything I'm going to say, which is that a very important constitutional principle is that our judiciary should be independent. And that means independent from outside influence, anyone trying to control how individual judges make their decisions, and also independent from other judges.

And the reason why that is important, it's not something that's of benefit of judges so that we can run amuck without any kind of control. It's important because it's the necessary precondition for a society that exists under the rule of law, and our society does exist under the rule of law. New Zealand is assessed as, in most international measures, as being far one of the least corrupt countries in the world, having the best rule of law score.

And the rule of law is - this is getting quite constitutional, I'm sorry - but the rule of law as a simple concept is that everyone is subject to the law and the law will be applied equally to them, and that includes the executive, the police, individuals, large corporates. To have the rule of law, you need a truly independent judiciary.

KATHRYN RYAN: This means things like, while you might be the chief judge of a court, of the high court in your case, you're not actually the CEO or the boss.

HELEN WINKELMANN: No, I'm not the boss of the other judges, no.

KATHRYN RYAN: So who deals with performance problems and how?

HELEN WINKELMANN: I mean, no one deals - we don't have performance indicators, because if you start creating a kind of a corporate culture in a judiciary, you may drive perverse and undesirable outcomes. So, for instance, if you tell people that they have - well, it would be hard to come up with the key performance indicators, but if you tell people that they have to put so many people in prison, well, then they're going to put so many people in prison, but it won't necessarily be a just result.

Who deals with accountability, well we're accountable because we do everything in public. Our courts are open, every decision we give, we have to give it in a fully reasoned way and it is open to public criticism and scrutiny. We're also accountable because if people are unhappy with our conduct as judges, then they can complain to the Judicial Conduct Commissioner.

And finally of course, we're accountable because if we get things wrong, people can appeal our decisions, and that includes bail decisions. If we make a flawed bail decision, then the police can appeal that bail decision to a higher court.

KATHRYN RYAN: So the court itself provides its own checks and balances. For someone though who was faltering in performance seriously, perhaps due to health or mental health or - is there a backup plan?

HELEN WINKELMANN: That's a head of bench responsibility and that's a pastoral-type issue.

KATHRYN RYAN: And there is a compulsory retirement age?

HELEN WINKELMANN: Yes, which is 70.

KATHRYN RYAN: Come back again to the question of mistakes, because you can see that judges make mistakes, and that in some cases those mistakes can have very serious consequences. I'm sure again we're coming back to bail and sentencing matters then. That is what keeps judges awake at night is your comment on that.

When they say things, when they make comments to which the public respond, and I can think of a couple - I think district court cases have been very high profile over that this year. And the public has responded to what they perceive is a comment that indicates either misjudgement or just misses the mark. Again, the comeback is, public reaction or indeed if it seemed to have affected the case, they can be appealed. One case I'm sure there was actually this year.

HELEN WINKELMANN: Yes, I mean the public reaction is a huge corrector. We don't judge in a way which is removed from the community. We have to be aware of what the community expects of us, but in a general way as opposed to the facts for a particular case. So public reaction is a huge corrector.

KATHRYN RYAN: There is an upside, one would have thought, to the public debates and interest that goes on, particularly around the New Zealand courts. I think you made the point also in the speech that court coverage gets very high profile in New Zealand because it's news. Sometimes there's not a hell of a lot else going on, is there. But is it healthy to have public interest and response and debate around, again a couple of verdicts I'll mention.

Say the Weatherston case and the public debate around the defence of provocation that that surrounded, or indeed another recent case where there was acquittal and there was a big debate around whether the jury is really the best way to be reaching the facts of a case, and achieving justice. Is that healthy, and are judges in some ways paying the price for the fact that there is a very interested public?

HELEN WINKELMANN: Yes, well, it's not - New Zealand's not a high news society, is it, so what goes on in our courts is some of the best news around, really. We - I suppose it's healthy to have debates about mass - general public interest. Sometimes we would wish that there was some other voice coming into the debate and to provide some context, especially when, you know, judges are being criticised and there is a lack of context in terms of the criticism that's being made.

For instance, sometimes a bail decision will be criticised but in fact bail was consented to, or there was a very strong presumption in favour of bail, so we would - I mean, what we would like to see is more balance in some of the public discussion.

KATHRYN RYAN: You've actually - I think that you suggested in the speech that those who might once have spoken up in that context and defended a judge are doing so less.

HELEN WINKELMANN: Yeah, that's right.

KATHRYN RYAN: Why?

HELEN WINKELMANN: Because it's such a difficult environment for people to speak up in support of those who exercise public power - public authority, I suppose. The attorney - the Solicitor General said to the Justice Electoral Committee a couple of weeks ago when he was asked why he didn't do much to explain the context in which judges operate to attempt to do the thing I'm talking about, which is giving a - give a bit more information for the public debate, he said he was reluctant to do so because it was like sticking your head up over the parapet. So some people are wary of entering into the media scrum, I suppose.

KATHRYN RYAN: When we look at some of those public debates and the law of provocation that came out of the Weatherston case was a very interesting one. Again, I'll speak specifically and I'm sure you'll speak generally. It's not just the judges, actually, it's the lawyers as well who attract that opprobrium. They are bringing a defence in line with the law as it stands at the time, whether the law is right, wrong or an S. Would you comment on whether some of the legal practitioners, and actually you do refer to them in your speech, are equally coming under very intense and perhaps new kinds of pressure?

HELEN WINKELMANN: Well it's quite a few years since I've been in the legal profession, but I believe they are coming under a lot of pressure. I mean, the media is a pressure. In some ways, though, that's been a constant for defence counsel because they are called upon to defend people charged with very serious crimes and there can often be a lot of public emotion generated about it.

They also are operating in a new kind of environment with the legal aid changes to funding in the criminal defence area, and they're having to come to terms with a different way of working. And so, too, is the crown prosecution, I might say.

KATHRYN RYAN: And again, this is also an environment where it's not just the old media but every person and...

HELEN WINKELMANN: Bloggers, yeah. Bloggers, yeah.

KATHRYN RYAN: Who have things to say about these matters.

HELEN WINKELMANN: Blogs are definitely a new development for everybody and that just - it just rolls on and on and on.

KATHRYN RYAN: Do you advise - or what was your word, provide pastoral care on - how to manage that?

HELEN WINKELMANN: Well when judges are newly appointed I do spend a bit of time with them talking to them about the fact that they are now public figures, and that it's just a matter of time until they're - they become involved in something which is publically controversial. And, you know, they're human beings. They have their families and their families are often proud of them, and it's important that that moment when they've just been appointed that they actually fully sense the weight of responsibility they're taking on.

It's quite an awesome responsibility to be a judge. And I suppose I burst their bubble a bit by telling them about the fact that in fact you're going to - it's going to get pretty real pretty soon, and to warn their families. Some of them have children at school and, you know, they need to know that their mum and dad are likely to be publically criticised. That's not to say, you know, that's not a woe is me story. It's just the world that we operate in and we have to accept it.

KATHRYN RYAN: For the matter again of public response, is public tolerance towards aspects of law that again, some may debate are out-dated, is that a

relevant and healthy means of influencing the law-makers, which is the parliament?

HELEN WINKELMANN: Yes, I think it is, yes, but I would like - I mean, we don't have much of a tradition of public debate of important principles. We tend to - and we don't have many people who participate in public debate, and if you read newspapers in England or even Australia you will see that there is much more of a long-running debate about important principles.

I would like to see more informed debate on some of the important principles that we haven't engaged with and there are some pretty important issues coming up for the - for the criminal justice sector I think and in order for there to be that, then we have to have people prepared to participate in debate.

So heads of bench I think have to become more involved, not in debating but in actually providing information about the important principles about how we sentence, et cetera.

KATHRYN RYAN: So when I'm talking about public debate I'm perhaps being a bit generous to some of what happens in response sometimes to - very passionately in response to some judgments and decisions.

HELEN WINKELMANN: Yes, I mean there are some - some voices get heard all the time and very loudly and that's - that's a feature of public life I think in New Zealand.

KATHRYN RYAN: Will you talk more about what you see as some of the looming challenges or changes that will be discussed in the coming months?

HELEN WINKELMANN: Yes, I think one issue that's bubbling away at the moment for the courts is the role of the jury in the new media age and that's something that courts throughout the common law world are grappling with, just how you - how you manage a jury in an age where they can go away and research what they like on the internet and post things on *Facebook* and in England jurors have been imprisoned for the kind of conduct that most people would think wasn't all that outrageous.

And I think there is a debate to be had about how the jury should evolve because a jury is not a static thing, it's a very important part of our criminal justice system but juries originally evolved as effectively they were witnesses in the case, they were brought in to judge a person who they knew.

So they knew all the person's reputation and - and they brought all their prejudices about the person into the jury room and that's where jurors come from but today the jury system requires that people bring no baggage into the jury room and that they proceed just on the facts that is produced into evidence and a lot of the tension in the public about the jury comes about because, you know, information will come out that the jury didn't know about.

There's admissibility of evidence issues around it and also of course there's the impact of the internet. So I think we're going to try and - we're going to, as a society, have to grapple with what this means for the jury and really - and perhaps re-imagine how the jury operates in our society.

KATHRYN RYAN: You can't live in denial of things that have changed, information that is now available online and carry on as if it's not happening?

HELEN WINKELMANN: No. Well, there are two ways to go. The first way is to try and discipline jurors and that's the approach that's been taken in England

and the other way to go is to re-think how the jury operates and that's not really a task for me but I think it's a task for our society.

KATHRYN RYAN: There are issues also with participation rates in juries. It's interesting you talk about how the juries are not supposed to bring their prejudices. Actually that's the whole point, isn't it? It's a combination of people with different prejudices, understandings of people, experiences of how humans must behave and you stick all that together and let them thrash out what they believe has gone on.

HELEN WINKELMANN: Well we tell them not to bring their prejudices.

KATHRYN RYAN: I mean, it is a kind of denial, isn't it, that we operate with? We ask them to manage their prejudices, don't we and deal with the facts in front of them?

HELEN WINKELMANN: Yes, we ask them to identify them and to put them to one side and it's really the discipline we ask of ourselves because in a jury trial they are the judges of fact, we're just - the judges just tell them what the law is and assist them with a decision pathway and the jurors then go off and decide the facts.

KATHRYN RYAN: What of the jury trial itself? Another very interesting case that you were involved with and which you received some criticism for one ruling, was the case of the Urewera raids and original their were eighteen and I think we got down to four in the end facing prosecution and at one stage of the process you ruled it should be judge only.

Is there a provision presently for judge only trials not because the defendant has elected or requested it but because for some reason it is deemed to be more appropriate than jury?

HELEN WINKELMANN: Yes, where it's particularly complex or long running. We ask an awful lot of jurors. We ask them to put aside their normal life and come and be locked up effectively. Not locked up but away from their every day life for a period of time and principles have developed that say that if it's going to be longer than twelve weeks that's possibly too much to ask of a jury, save exceptional circumstances and also some cases are so factually complex that to ask twelve people to work through them is regarded as being too onerous.

But, I have to say, we do ask a lot of the jurors and the threshold for that is not low by any means.

KATHRYN RYAN: Is there though really an alternative that satisfies what we were just talking about, that it is actually the combined experiences and wisdom and character judgments of individuals that can sometimes or certainly is seen as being the strength of a jury trial?

HELEN WINKELMANN: Well our society hasn't come up with one. I think the - I mean, I think the jury system can rightly be regarded as a successful system.

KATHRYN RYAN: The matter again of the judges and this argument that, you know, they're beyond reproach in some ways, they're untouchable. In your speech, you gave other reasons why you don't want to have a performance review system. And some of them touched on things like the security of tenure, the [inaudible 030:48] any kind of financial incentive to these systems. Would you elaborate on what the weaknesses would be of having an outside tribunal that said, you've made this many errors or whatever else and did performance review the judiciary?

HELEN WINKELMANN: Well the main - the reason why no system - no legal system with which we would compare ourselves has that system is because of the need to preserve judicial independence. So if you've got some

external body who is going to say, oh, don't like that decision, then it will inevitably start to influence how a judge decides cases. That's - it's the *Freakonomics* laws of perverse incentives. You don't want to incentivise judges to decide a case other than to incentivise them to decide a case in accordance with their oath, which is without fear or favour, affection or ill will.

KATHRYN RYAN: The other matters that you raised, the most serious situation is bail and sentencing. And did we conclude that the real issue there is that you are working within the provisions of the law and you are working within previous sentencing decisions and judgments? Is there any other way that that can be approached? Or is that in the hands of the parliament and to the instructions that they give to the courts?

HELEN WINKELMANN: We work within the Bail Act. And it has presumptions that operate in favour of bail in certain circumstances. That's the law we apply. I should say too that bail is inherently concerned with the risk analysis. And risk is all very - is easy to assess with the benefit of hindsight. But it's never so plain when you're sitting there in a courtroom.

And I'm a high court judge. So most of the bail decisions we're talking about would occur in the district court because that's the busy court. And to give you some sort of context to how busy the courts in New Zealand are, in 2008, there were eight six thousand bail decisions. So that's a lot of risk assessment going on.

KATHRYN RYAN: Aside from some of the discussions that might be had around the role of the jury, what else would you say will be something where there ought to be very healthy public debate in a full way, perhaps in the coming year or so?

HELEN WINKELMANN: Well affecting our courts, we're going to have some public debate about cameras in courts, because this review is going to be underway. And we've also got coming up next year the full introduction of the Criminal Procedure Act, which will see a different threshold apply for juries and it's going to cause the district court and high court to operate quite differently.

KATHRYN RYAN: Can you explain a little bit more about what that will mean in practice?

HELEN WINKELMANN: It will mean that there will be fewer jury trials. We don't quite know how many fewer jury trials there'll be. The Ministry of Justice has done some modelling. But we wait to see what it means.

KATHRYN RYAN: When you look at some of the decisions that have come out this year, including your own, as we see it, there's hardly anyone untouched by that, overseas governments and overseas spy agencies and everything else. And obviously we might say there has certainly been some lack of fear of favour in the decisions that you've made. And another court, another judge finding, a police operation throwing out a case because...

HELEN WINKELMANN: The same court, different judge.

KATHRYN RYAN: Yeah, yeah, yeah, beg your pardon. The police throwing - throwing out a police case because the operations involved were telling fibs frankly to the court and allegedly seeking or saying that they had sought permission for that. Can we say, looking at some of these groundbreaking cases this year, that that matter of separation of powers and that matter of the independence of judiciary has perhaps got some ticks beside it that people should take into account?

HELEN WINKELMANN: Those cases are an application of the principle rule of law I've talked about, which is the application of the law to everybody equally. So yes, I mean, that is an example, those are examples of that.

KATHRYN RYAN: Examples perhaps of the hard road, as you put it.

HELEN WINKELMANN: Mm. The high court, which is the court I'm in, does have this power, which is called judicial review. And that's why the high court is the constitutional court. We're the only court in the land that has an inherent jurisdiction so we can decide a case, even if we don't have a statute telling us that we have a power to do so. Every other court in the land only has a statutory - its power is confined by statute.

And when people think that the police have exceeded their authority or that a minister of the Crown has exceeded his or her authority, they can come to the court and say, this person has acted outside the law or they followed a poor process and they can ask for us to intervene. And that's why I'm quite passionate about the importance of the high court, because it is a court with true constitutional significance. And it's why I'm concerned to do what I can to maintain public confidence in it.

KATHRYN RYAN: Thank you for coming in and doing that today. Justice Helen Winkelmann. Certainly has had a big year 2012. It is eighteen minutes away from eleven and we welcome our book reviewer.

- ENDS -

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