LORD CHIEF JUSTICE
OF ENGLAND AND WALES

LORD JUDGE

DIVERSITY CONFERENCE

10 UPPER BANK STREET, CANARY WHARF, LONDON E14 5JJ

WEDNESDAY 11TH MARCH 2009

Thank you, Michael - Chairman. Thank you and Clifford Chance for agreeing to host this conference.

You are all welcome, indeed hugely welcome to this conference. Many of you are lawyers by profession. Many of you are not. All of you are here by invitation. All of you are volunteers. All of you have taken time out of busy lives to participate in this conference and made a huge effort to be present. I should like to thank each of you personally, but that is unrealistic.

The coming into force of the Constitutional Reform Act made a considerable number of changes to the way in which the judicial system works. Among them the system of judicial appointment was altered, radically. The Judicial Appointments Commission, a statutory body for judicial appointments, was created. Its role is to select candidates for recommendation to the Lord Chancellor for judicial appointment. The old, much criticised, system has gone in its entirety. No tapping on the shoulder. Selection procedures are defined by the Act. The Commission like any other judge is bound by statute.

I was there when the Commission was created, and I have worked with the Commission ever since it was created. When it was set up, there was a serious underestimate of the resources needed to enable it to fulfil its statutory responsibilities. But, despite some significant disadvantages in relation to resources, and uncertainty about where, geographically, it would be based, the JAC has been fortunate not merely in the leadership offered by Baroness Parshar, but in the phenomenally high quality of each commissioner appointed to it. There are no trumpets sounding for the efforts made by the Commission and the commissioners and their contribution to a much more transparent and accountable system of appointments. There should be, and I shall sound one now. From time to time, I have observed carping criticisms. In my view they are unjustified. In a very short time indeed, the JAC's achievement overall has been remarkable.

But this seminar is not about either the old or the current system for appointments. Its purpose is self explanatory. The title describes it. We are considering the judiciary of the 21st century, a century which is not yet a decade old. My intention in this conference is that we should look forward not backward. We are where we are

now. That is the starting point. I should like to have some idea of where the road ahead should be built, and where it will take us.

I have on a different occasion commented on the need for us to be thinking now of the impact of modern technology on our criminal justice system. Modern, that is, today, but technology which will be so out of date in 10 or 20 years time, that they will laugh at us as we laugh at the quill pen. How will evidence be presented to juries in 2025? Will juries be content to sit in their jury boxes, listening to counsel? Will the oral tradition itself survive? And if so in what form? These are long term questions, not to be answered today.

But another facet of the longer term future is the judiciary that will be needed in the years ahead. I am not here inviting you to speculate about how the judges of the future will work side by side with the juries of the future nor do I think that there will be any major change in the personal qualities we expect of our judges. Wisdom, integrity, patience, independence of mind, knowledge of the law, a sense of practical realities, an understanding of people, fairness and balance, and a passionate desire that justice should be administered according to law and the ability to see that it is, the list of necessary qualities is a very long one. Judges at whatever level, and where ever they sit, need them, and the justice they administer is rightly depicted as blindfolded. Judgment is made without fear or favour affection or ill-will.

But may I note two particular features. The judge must have the ability to make a decision. Anyone can see that there are possible solutions and different ways to address a problem. The judge is faced with having to make the decision, and decisions can be profoundly unpleasant and have very serious consequences for others.

Judges must also have moral courage – it is a very important judicial attribute – to make decisions that will be unpopular whether with politicians or the media, or indeed the public, and perhaps most important of all, to defend the right to equality and fair treatment before the law of those who are unpopular at any given time, indeed particularly those who for any reason are unpopular.

Notice however that none of the qualities I have identified has anything whatever to do with gender, or colour, or creed or origins. And in my view, neither gender nor colour nor creed or origins has the slightest relevance to the identity of those most fitted to be judges or indeed to the judiciary as a whole. The selection processes too should be blindfold and deaf to any of these questions. And in my view they are. In the end your gender, the colour of your skin, your religious belief, or your social origins, are all utterly irrelevant. It is the individual who is the judge. It is the individual who carries the responsibilities and burdens.

The Judicial Appointments Commission is required to have regard to a single criteria – that the candidate is appointed on the basis of merit. I strongly support the merit test. The judiciary must be made up of individuals who are qualified for appointment, and of the highest calibre. Candidates must earn and deserve their places on the bench, whether sitting as magistrates, as part timers, or, if I may say so, as Law Lords. Those who come before the courts have the right to expect nothing less. Judges are men and women vested and trusted with considerable responsibilities. Depriving someone of his liberty is a vast power. Depriving a parent of his or her children is a vast power. Telling the government of the day that it is wrong in law is a vast power. It is a difficult enough responsibility for the best, and there is no room for those of lesser quality.

That is why these powers should be entrusted only to individuals of the highest possible quality.

What, however, troubles me – and, indeed, it troubles the present judiciary as a whole – can be simply explained. It is this. The pool of potential candidates for appointment to judicial office is not as large nor as wide as it could be, and as I would emphasise, it should be. Putting it bluntly, the larger the pool, the greater potential for better and better judges. When I was studying to become a barrister, the vast majority of those around me were white men. There were a very few, brave women, breaking into what was then an overwhelmingly male profession. There were tiny tiny numbers of candidates from ethnic minorities. Today the students at Bar school are equally divided between men and women and there are substantial numbers of men and women from ethnic minorities, all seeking in competition with one another to make their ways in the professions. The solicitors' profession now is much the same, just as the profile of those becoming solicitors at the time when I was starting at the Bar was very similar. I shall have more to say on the issue of solicitors.

In this new world, we have no difficulty in accepting that women and members of the ethnic minority communities are not as well represented on the judicial bench as a whole as they should. That must be addressed. I emphasise, as strongly as I can, that I am not seeking political correctness. My only concern is that appointment to the judiciary should be based on merit. And for that matter I reject any idea of quotas for appointment, for a number of reasons, but not least, because that would be unacceptably patronising. No judge should believe that his or her appointment has had something to do with his or her gender, or colour or creed, or origins, or that he or she was chosen to fill a gap in some quota scheme.

We have closely studied the review by Professor Dame Hazel Genn into the reasons why some senior practitioners do not seek appointment to the High Court. I am very grateful to Professor Genn for her work. One of the features which it demonstrates is the critical importance of perception. We have facts, and we have perception, and even if perception does not accurately reflect the actual facts, perception itself is a fact. When you are considering these matters, can you work on the basis that we must address perceptions as if they are facts, and where they are based on misconception, ensure that the misconceptions are corrected.

Can you also reflect on the nature of the judicial job and what it entails. There are judges at different levels doing different work on whom the demands are different. A High Court Judge has different responsibilities to those exercised by a Deputy District Judge or a judge of industrial tribunals. All are judges, but the demands made of them are different. Can you also bear in mind that we have to run, and I suppose I am personally responsible for seeing that we do run an efficient system. At this time of national financial crisis we cannot escape realities, and realities include the efficient conduct of business.

The kind of questions that we will be addressing and debating includes:
Why do eligible women and men and women from black and ethnic minorities not put themselves forward for appointment in the numbers which we might expect? Do we need to increase the support offered to them at the very earliest stages of their careers in the law, let alone as their careers develop? Who should be responsible for offering this support? Is this a matter for the professions? How is it that solicitors, who have been eligible for judicial appointment since 1990, come forward in what I must describe as a slow trickle of candidates? Is there something in the partnership arrangements or the fee earning issues? How can we encourage these people to give serious consideration to a possible judicial career? What part of the processes which

discourages them should be improved? And how? And when I ask and how?, I mean in the real world in which the judicial system is a candidate for public funds like any other national resource? I refer in particular to the solicitors' profession because it includes very many wise men and women of distinction experience and wisdom. Many of those in their 40s and 50s entered the profession at a time when a judicial career did not seem to be open to them at all. And I suspect that those brought up then are reluctant to allow their younger partners time off to gain judicial experience as part time judges, a necessary step before contemplating an application for full time appointment, not least because some of those who do sit part time come to realise that the judicial responsibility is not for them. Could we even persuade the major firms to allow some of their younger partners to seek part time appointment as part and parcel of their laudable pro bono activities?

I do not for one moment suggest that your debates should confine themselves to these questions, but I shall be very interested to know the answers.

We must do everything we can to achieve wider judicial diversity. We must make sure that the pool of eligible candidates for consideration for judicial appointment is as wide as it can possibly be, and that all eligible candidates at least consider whether to seek a judicial career. There are many who, for their own reasons, would not be interested in a judicial career. Not everyone enjoys or would enjoy the responsibilities. But some undoubtedly would and would discharge them with distinction. But how do we make sure that their decisions whether or not to seek a judicial career are founded on fact and reality rather than misconceptions? And how do we get rid of unnecessary barriers which hinder our objectives?

Some years ago now, when I was involved in the work of the JSB, the question arose about how judges should be alerted to potential problems faced by litigants or witnesses or defendants from the ethnic minorities. Largely, the judicial attitude then was that much of all this could be covered by ordinary decent courtesy, treating everyone in the same way. It was a reaction reflective of the times. Today we recognise that there is much more to it. The effect of discussing the issues has been much greater awareness and much more knowledge and better judging.

So, I can come to an end by reminding all of us of something that is obvious but is never said. That is, that we do not know what we do not know. And unless we try to inform ourselves, we will continue to be ignorant of what we do not know.

I am greatly looking forward to coming to the various different syndicates to listen to the debate, and then to be present for the reports back in the plenary sessions. I am absolutely certain that each one of us will learn something from what the others assembled today have to say.
