



JUDICIARY OF
ENGLAND AND WALES

MR JUSTICE FULFORD
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About the only thing I ever learnt at dance classes at school back in the 1960s is that weird little refrain, given to us by a Hungarian dance instructor - “*slow, slow, quick, quick, slow*”. I have forgotten the steps, but those words have echoed round my brain maddeningly ever since. So it was with the quick step; so it has been with the advancement of minority rights within the legal profession. Long periods of seeming inactivity and lack of progress, suddenly punctuated by a real step forward, or perhaps two, or three *Slow, slow, quick, quick*, and then these days, perhaps not so *slow*.

For me, the personal battle, as part of a broader involvement with the whole issue of discrimination, has concerned the particular fate of lesbians and gay men. Could you have a decent career in law whilst being honest and, like a new, more humble kind of debutant, by “coming out” in the robing rooms of England and Wales? I was born into an era when such an admission spelt professional doom, social ostracism by many and very possibly blackmail. For those of you who have not seen it, Basil Dearden’s spectacular 1961 film “Victim” starring Dirk Bogard and Sylvia Syms captures the ghastliness of those days with stunning authenticity. Indeed, it was the first film in Britain to use the dreaded word “homosexuality”.

But I had the good fortune of coming to the bar a few years after the Stonewall Riots in America and the emergence of a somewhat rowdy gay liberation movement in this country, which I happily joined. Very unevenly, attitudes suddenly started to change, and I soon discovered that with a little courage on our part and a modicum of good will from others, seismic change is possible. There were many cold shoulders (there are still a few), but equally a significant body of colleagues “in the law” have demonstrated a true generosity of spirit. It is right to say that the new Lord Chief has been unfailingly supportive in relation to this issue for decades.

Some attempts at courage were, I have to confess, a little misplaced; I think that back in 1981 the small gold earring at Inner London Crown Court before His Honour Judge the Lord Dunboyne was a definite “no-no”, but you live and learn. And worse than that, I am almost too embarrassed to say that I have a memory, from the first day of my pupillage, of sitting in

counsel's row next to my pupil master in Old Street Magistrates' Court before a Stipendiary Magistrate who was puce in the face because I was wearing a pair of dungarees. I was not sitting there for long.

Countless hundreds, thousands of well-qualified men and women for reasons of gender, race, colour, sexuality, disability and class (and no doubt others) have since time immemorial missed the opportunity to become judges for the worst possible reasons. The fact that events like tonight's are occurring show the real need for further steps to be taken and it is a warning against complacency. However, rather than succumbing to gloom and negativity, it is worth remembering just how far we have travelled, in many important ways.

I am now a judge, not at one but at two courts. I come, not from Oxford or Cambridge, but from Southampton University where I read, not law, but history, and not very well. I did not do pupillage in one of the well-heeled sets, but instead at 35 Wellington Street in Covent Garden, an overtly socialist set of Chambers set up by Tony Gifford which was given pariah status by many of our more elegant pinstriped brethren at the bar (and they were mostly men in those days). My attempts to become an assistant recorder in the early 1990s were farcical. In 1994, the Lord Chancellor approved my application for silk, but it was a very different matter when I shortly thereafter applied to sit. This caused real consternation, not least because I think it was the first time the Lord Chancellor's Department had had to deal with someone who was applying for a judicial position as an openly gay man or a lesbian, someone who had made no secret of the fact.

The normal interviewing process was completely set aside, and a special tribunal of men in grey suits whose names I think I never knew was convened. What followed was bizarre and depressing. The underlying theme was that I should simply withdraw my application; this was presented by questions to the effect of: "we have just given you silk; surely that is enough?" "Do you really have to pursue this?" When I indicated that I wouldn't be putting myself through this rather difficult process unless I really wanted to be a judge, they then directed their focus, in a somewhat dramatic way, on what may or may not happen behind my own closed bedroom door. In essence, I was asked whether my role as junior to Ann Mallalieu in **R V Brown** and others (the House of Lords case on the extent to which a person can consent to injury) meant that I was a sado-masochist or had some kind of unspeakable sexual interest. I protested that the briefs barristers accept have nothing to do with who they are (think of all those murder trials) and that in any event I was conventional to the point of innocence under the duvet, but it seemed extraordinary that such a question could be put without any possible foundation. So odd having complete strangers believe they could ask me things about my private life, for no reason at all, which I have never discussed even with my own family. The men in grey suits looked distinctly and unsmilingly unimpressed, and so we parted. It is, I believe, to the credit of the then Lord Chancellor, Lord Mackay, that my application was ultimately successful.

That was only 15 years ago, but we have come a very long way since then. Lord Irvin rapidly ensured that what I experienced became a thing of the past, and courtesy of Lord Falconer we now have a youthful procedure in the capable hands of Baroness Prashar which, although it perhaps has certain cumbersome aspects and some complain there are pitfalls, is in most respects incalculably better than the old system, which, let us not forget, in its **implementation** preserved the judiciary, for far too long, as the private fiefdom of a very narrow kind of white heterosexual male. What is really important is that wholly genuine efforts are now being made to secure a system that works; this will, undoubtedly, involve an element of trial and error, but there is every reason to believe that those who are the custodians of this process are committed to finding the most effective system, assisted no doubt by outside support and including the excellent initiative that David Spens has just outlined.

I have one proposition, therefore, tonight. It is my conviction that in the not-too-distant future the composition of the bench will reflect far more realistically than hitherto the composition of the legal professions, which are in turn undergoing radical transformation. My personal experience has been that times really do change – indeed at an accelerating rate, and I urge you not to give up (and tell your friends not to give up), and, by your persistence and involvement in the process, you will ensure that the judiciary is truly open to all those who, on merit alone, deserve to be appointed.

And it is a great job. I enjoyed the bar, but I really **love** being a judge: it is challenging in the best possible way; it provides endless interest and calls on a wholly new set of skills at a time in one's life when most people are contemplating retirement. The tap on the shoulder may have been a lot quicker, and although it produced a highly competent judiciary, their perspective was always at risk of being far too narrow; the appointments system was palpably unfair; and it failed to ensure that the judiciary represents the rich diversity of modern society.

So, a bit of continuing courage (though perhaps avoid the dungarees), and for those of you who are, or will be, engaged in this daunting process, I wish you the very best of luck.

Adrian Fulford

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