



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

**LORD PHILLIPS OF WORTH MATRAVERS
LORD CHIEF JUSTICE OF ENGLAND AND WALES**

LORD MAYOR'S DINNER FOR THE JUDGES

THE MANSION HOUSE

15 JULY 2008

(CHECK AGAINST DELIVERY)

My Lord Mayor, My Lord High Chancellor, My Lords, Master of the Rolls, Aldermen, Mr Recorder, Sheriffs, Ladies and Gentlemen.

Once again Her Majesty's justices have been entertained in the most elegant home in London and, as usual, royally entertained. Thank you so much my Lord Mayor for your warm welcome, your kind words and the delicious fare with which you have regaled us. Thank you also for the copious quantities of your best claret – I have little doubt that we will have preserved our record, although I shall have a little catching up to do when I sit down.

Being called Phillips I am often asked if I have Welsh ancestry and have to confess that I know of none. You my Lord Mayor have ancestors who fought with the Welsh Bowmen at Agincourt and for 400 years your family has farmed in the Cothi valley, a valley famed for providing the best lamb in Britain. Over the last year you must have yearned for the peace of that valley.

If at times I have felt the cares of my office to be a little burdensome, I have only had to think of the magnitude of your task to realise that I was well off. You have recently, I am told, been meeting with a Head of State once a month and with a prime-minister or finance minister once a week, and they have not always been accompanied by a consort as attractive as Madame Sarkozy.

In your year you will have made over one thousand speeches, and these involve personal input, as that which you have just delivered demonstrates.

We marvel my Lord Mayor at the skill and energy with which you have discharged duties which are so important, not just for the City, but for the country.

Your entry in Who's Who tells us that your activities include spoiling your dogs. One dog has acquired a certain fame – your black Labrador called Cothi, after your valley in Wales. In Your shrieval year you took him with you

to the Old Bailey, to stand guard outside the door of the sheriff's flat. Alas, you failed to lend Cothi to your successor. The sad consequence was that his flat, within the Old Bailey, was burgled earlier this year. I understand that it is no longer the practice of the Old Bailey Judges to grant bail over the lunch adjournment within the precincts of the court.

As you have remarked, this is the last time that I shall have the privilege of making this speech, and it is natural to look back and to look forward. I took up office with the prospect of the constitutional changes that, after negotiations led on behalf of the judiciary by Lord Woolf, had been embodied in the Concordat and subsequently the Constitutional Reform Act 2005.

The implementation of those changes did not, at first, proceed without problems. Some aspects of the new procedure for making judicial appointments proved unduly bureaucratic, giving rise to excessive delays and to uncertainty for candidates. Lessons have been learnt, procedural changes have been made, and causes of delay removed. Furthermore successful candidates for the High Court and Circuit Bench will now be told with certainty that they will receive a judicial appointment, rather than being told that this would depend upon whether a suitable vacancy occurred.

The Judicial Appointments Commission was given a very difficult task, without any trial or shadow period, being expected to hit the ground running at a time when, because of the possibility that they might be required to relocate outside London, they were having great difficulty in recruiting and retaining adequate staff.

They and their Chair, Usha Prashar are to be congratulated on the way that they have faced and overcome their difficulties.

The Act requires the JAC to appoint on merit but to do their best to attract a more diverse pool from which such appointments will be made. Some, unrealistically, expected an immediate increase in the diversity of appointments made.

This is of significant importance, and great efforts have been and are being made to attract more ethnic minority candidates and more women candidates of the necessary calibre to apply to become judges. My Lord Mayor, you have rightly emphasised the importance of this. I have reason to believe that as appointments to the bench are made consequent upon the recent High Court Competition you will discover that these efforts are beginning to bring their reward.

Another area where there were originally problems was the relationship between the Court Service and the judiciary. We were concerned that we were not properly involved in the determination of the funding needed by the Court Service and that, if the necessary funds were agreed, they were at risk of being cut back to help to meet overspend in other areas of the Departments activities.

Quite apart from this it had not been established that the Court Service owed allegiance not just to the Lord Chancellor but also directly to the judiciary. Over the last year these concerns have been allayed by the negotiation of the

Framework Document that makes provision for the safeguarding of the funding of the Court Service and its independence from interference in day to day management and makes it clear that its members owe duties both to the Lord Chancellor and to the judiciary. This is reflected by the new structure of the Court Service under a Board on which the judiciary is properly represented.

The terms of that document would not have been agreed without the constructive attitude of the Lord Chancellor, Jack Straw and of Suma Chakrabarti, his Permanent Secretary, who have, if I may say so, been a great pleasure to work with. They have made it plain that they welcome the active involvement of the judiciary, as partners, in the efficient and effective operation of the courts.

They have also accepted that, if we are to play our part, those judges, and there are now quite a lot of them, who have administrative responsibilities, must be provided with the assistance that they need to discharge these without undue encroachment on their primary task of sitting as judges. By the end of March the Court Service intends to put forward proposals for the provision of this assistance.

I have remained concerned by some ill-informed attacks on individual members of the judiciary, in particular in relation to the grant of bail. Statute defines the circumstances in which it is mandatory to grant bail and it is inevitable that, on occasion, a defendant who has been granted bail, will commit a serious offence while on bail. This is not something that the media all appreciate.

We now have a small team of judges, who have received media training, and who are available to provide informed and authoritative correction where this is desirable. They have to date been called on to do this on four occasions.

Sentencing used to be relatively straightforward for a judge, albeit never an easy task. It is so no more. As a magistrate you will, my Lord Mayor, be only too well aware of this.

The frequent intervention of Parliament has beset sentencing with so many statutory requirements that it has become something of a nightmare. That intervention has recently been having effects on the prison population that we are told were not intended. I believe that Parliament and the judges each have a role to play in producing a sentencing regime which makes proper provision for both punishment and rehabilitation. I also believe that Parliament has, in the past responded, to perceived public concern about crime by legislation the implications of which have not been properly considered.

For this reason I was happy to agree that Lord Justice Gage should chair a working group set up to consider proposals for a Sentencing Commission that might assist Parliament to be better informed in this area. Some proposals went so far as to suggest that we judges should be imprisoned in a kind of sentencing grid, where all we would need would be particulars of the offence,

some data about the defendant's antecedents and a calculator to arrive at a specific and predictable sentence.

Happily the working group has rejected such proposals, but it has suggested that the Sentencing Guidelines Council be given access to the necessary statistical data – data that is not presently available – so that it will be in a position to inform Parliament of the resource implications of the guidelines that it publishes and of any proposed change in the sentencing regime.

I commend the Report, produced under exacting time constraints and hope that it will receive proper consideration by all Parties.

I have now finished looking backwards and am looking forwards. You had my Lord Mayor the distinction of being for six years the senior partner of Norton Rose, one of the giants in the firmament of the City law firms. You have mentioned the vital contribution that commercial law and commercial lawyers make to the prosperity of this country, and I hope that the Senior Salaries Review Body will take note of the contribution that commercial law makes to the prosperity of the partners of the six big city firms.

For over a century our Commercial Court has provided a service of dispute resolution that has made it the forum of choice for contracting parties around the world. The inordinate length of the earlier stages of the BCCI litigation – the latter stages were never reached – led the Court to conclude that it was time it reviewed its procedures.

Last December a report was published that was the product of the co-operation between the judiciary, lawyers and court users that has always characterised the Commercial Court.

It made proposals for the reform of the court's procedures and, in particular, of the management of the really heavy cases that are brought before it. The proposed reforms are now being piloted and I am hopeful that they will mark a new and dynamic chapter in the history of the Court.

It has long been recognised that the Commercial Court has another urgent need, and that is a modern building with facilities worthy of the business conducted in it. The antithesis, in short, of the disgraceful accommodation in St Dunstan's House. The City, particularly under the leadership of Sir Robert Finch when he was Lord Mayor, put its weight behind the demand for this and I am happy to say that it is now in the course of construction.

The new Rolls building, to open in 2010, will accommodate not only the Commercial Court but the Chancery Division and the Technology and Construction Court. It will thus bring together important areas of commercial litigation that so often overlap in a working environment that is worthy of the City of London.

It is rare at this dinner, which brings together the Lord Chief Justice and the Lord Chancellor, that the former does not take the opportunity to say a word about resources, and I fear that this evening will be no exception. First a positive comment.

It is remarkable and commendable how the legal fraternity, and many outside that fraternity, are giving their services and sometimes reaching into their pockets, to compensate for deficiencies of public funding. I speak of the increasing numbers of lawyers who give their services 'pro bono'. I speak of the Sheriffs and Records Fund, where so many whose duties include sending offenders to prison show their humanity by funding the supply of the bare necessities that many offenders lack when they come out of prison. I speak of the numbers, doubling year by year, who join in the London Legal Walk. This year some 3,300 walkers raised about £325,000 for those charities that provide assistance and advice to litigants in person. And I pay particular tribute to the City solicitors, whose support is so critical to these ventures.

I have to tell you that 'pro bono' assistance is now being sought at the highest levels. A couple of months ago I received a letter from a Member of Parliament, to whom, I propose to accord anonymity and to whose constituent I shall give a *nom de plume*. It read as follows:

"I am writing on behalf of my constituent, Mr Johnson, of the above address, on the issue of his desire to appeal against a recent court ruling that was made against him. Mr Johnson believes that by not being permitted to pursue this matter through appeal he is being discriminated against.

Having known Mr Johnson for some time I would like to offer this letter of support on his behalf. I have always found Mr Johnson to be of sound mind and character and would like to see all appropriate legal assistance made available to him. I would greatly appreciate your giving Mr Johnson's complaint full consideration and forwarding me any information regarding the options that are currently open to him in pursuing his right to appeal further. Please find enclosed the voluminous documentation that relates to this matter".

'Pro bono' assistance is no substitute for the basic funding requirements of an efficient justice system. Looking ahead there are real concerns as to whether we are going to achieve that funding. Funding that enables us to stand still is not enough. There are areas where we must move forward. Almost more important than anything else is the implementation of a new strategy for judicial education that has been prepared with great care by the Judicial Studies Board.

This will ensure the training and support that is needed for those who are appointed to the bench, and continuing education that is tailored for the needs of the individual judge. You have, my Lord Mayor, a special interest in education and have said that a good education is priceless.

A good judicial education has a price – the new strategy will bring a considerable increase in expenditure – but it is a price that must be paid. I am well aware that we are in a period of financial stringency, but I am relying on the Lord Chancellor to fight with us to ensure that we can afford to modernise and improve our judicial education, for we cannot afford not to.

I would like to end by mentioning two people. First Lord Bingham of Cornhill who, for four years gave this speech at this dinner with memorable elegance and who has led the Law Lords for the past eight years. Tom Bingham is the great lawyer of our generation. From the time that the Bar was robbed of his talents by his early promotion to the Bench, his lucid and learned judgments have fashioned the development of the common law in this jurisdiction and upheld the rule of law in the face of challenges unprecedented since the last war. He has been a powerful advocate both of the Human Rights Act and of the Supreme Court.

It is sad that the time that has been needed to prepare the Supreme Court building has prevented him from presiding there. We are all indebted to him.

Finally, I turn to the man who will be making this speech next year – Sir Igor Judge. I would like to take this opportunity publicly to thank Igor for the support and encouragement that he has given me over the last three years, and particularly the load that he has shouldered as the Head of Criminal Justice. We have worked shoulder to shoulder together and I have leant on his. Igor has all the experience and all the attributes, including that most important quality of humanity, to make an outstanding Lord Chief Justice. I wish him well.

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