LORD CHIEF JUSTICE
OF ENGLAND AND WALES

LORD JUDGE

ENCOURAGING DIVERSITY IN THE JUDICIARY

MINORITY LAWYERS CONFERENCE

SATURDAY 25TH APRIL 2009

Attorney General, Ladies and Gentlemen, lawyer colleagues, journalists and others who happen to be in attendance.

It is a privilege for me to be asked to address this conference. I have not come here to offer you all a speedy route to judicial office. I do not know any tricks. If I tried to pretend that I had easy answers, I would be trying to pretend to major, but actual rather dangerous, quality I do not have. Happily, the days of the shoulder tapping are over. So would you therefore allow me a few minutes to wish the conference well, to explain my own perspective and to share my thoughts with you on some of these issues, and least to offer you some encouragement to consider a judicial career, whatever the difficulties?

I have been concerned about the equality issue for many years. I have recounted to the Association of Women Judges my youthful amazement at a dinner my old Circuit gave to the first woman High Court judge, Elizabeth Lane. She had been a member of the Circuit for many years. Those of you who have heard me tell this same story before will forgive me.

Elizabeth Lane stood up after some nice things had been said about her by the Leader of the Circuit and began by saying, “Mr Recorder, this is the first time I have been allowed to dine in Mess”. Because she was a woman she had never done so before her appointment as a county court judge. By the time of her appointment to the High Court, women were

permitted to dine in Mess. Her comment horrified me. It horrified others. Many of them were horrified that she should be so discourteous as to make the important point that she did. Others of us were horrified that her experience had been has she had described, and admired her courage in drawing attention to it. When I told this story – which is completely true – to the Association of Women Judges, I noticed that sitting at the same table as I was sitting was a woman Silk who had been elected Leader of my old circuit, and Lizzie Lane's old circuit, and at another table a woman who had been the Recorder when I was Leader of the Circuit, was now one of its Presiding Judges. Today just about half of our lay magistrates, who try the vast majority of criminal cases in this country, are women. When Lizzie Lane was speaking at that dinner, that prospect would have seemed risible. The tide is not always fast, sometimes it is very slow, but in the end the tide always wins.

As a junior member of the Bar I used to wonder from time to time, when my client was black, and the judge, and counsel, and solicitors, and jury, and usher, and prison officers and dock officers were all white, how would the defendant feel? Putting myself in his position, how would I as a white man feel sitting in a dock in which the judge, counsel, solicitors, jurors, usher and prison officers were all black? Would it feel better or worse if the court in question was abroad or was a court which I thought of and was entitled to believe was my own country? Such questions focus the mind. Happily, I did not endure the experience of being a defendant.

I hope that my imagination was quite strong enough, and at any rate in due course it led to my being able to proclaim proudly, and I do proclaim it, that it was when I was Chairman of the Judicial Studies Board Criminal Committee that I invited Henry Brooke to join me on the platform, for the very first time ever, to address the issue of judicial behaviour towards litigants from minority ethnic communities. Now all that process is now encapsulated in the Judicial Studies Board Equal Treatment Bench Book. A remarkable success. But then, although some judges did not appreciate it, they needed help and advice. Many of them genuinely thought it enough to be well mannered. There was much to learn. Two of those who lent us help, Oba Nsugbe and Anesta Weekes, both now in well merited Silk, are here today and they will forgive me for reminding them that they were younger then than they are now. So, too, was I. It cannot have been easy for two young black barristers in those days to address those groups of white judges. I admired their courage and the balanced way they approach the problem. I still do. I regard them as friends. And who could hear of the energy and achievement of the five award winners last night without being moved and humbled?

So the journey has begun. There is a long way to go. It is not unreasonable to be impatient, to wish for progress to be more speedy. That after all is the point of progress.

The essential principle seems to me to be encompassed in the language used by Thomas Jefferson in his Inaugural Address in 1801 when he said:

> "Though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; the minority possess their equal rights, which equal law must protect, and to violate would be oppression".

I have never agreed with the status of virtual sainthood bestowed on Thomas Jefferson as the author of the first rough draft of the American Declaration of Independence in which all men – not women – were stated to be created equal, but who deliberately failed to address the slavery question which was later to haunt the United States and produce a Civil War in which 600,000 American – more than their total fatalities in the two World Wars – died. But great principles can be expressed by flawed humanity. The point of Jefferson's observation, as it applies to us today, is that members of minorities do indeed possess equal rights, and that there is an obligation on the law to protect those equal rights.

Implicit in what Jefferson said was the concept that minorities should be entitled to equal opportunities, to be protected by equal law. Implicit it may have been then, but for the avoidance of doubt, we must proclaim it and declare it and work for it and ensure that in the legal profession that we will and must achieve it.

That begs this further question. How does a society show to the minorities, and indeed the majority, that this principle of equality applies? Notice the way I put it. In the end it is no less important to society that the majority should appreciate that it applies as that the minority should. That is because majority and minority, we are all members of a single society.

Bare assertion will not do. There need to be outward signs which demonstrate that the principle is not merely accepted, but flourishing. If this virtue exists, then like justice itself, it cannot be cloistered. The presence of men and women from minority ethnic communities on the judicial bench, or like Patricia Scotland, holding one of the most ancient offices in this country, demonstrate to everyone that in this respect, at any rate, we live in an inclusive society. The ambition is that the time will come when it will be a matter of no surprise or moment for any litigant, or defendant, or witness, or jury member, if the colour of the judge's

skin is not white and indeed when a Minority Lawyers' Conference will be a memory from the past, at last quite unnecessary. It will be a long road.

The list of judicial qualities is a long one, and you can pick and choose among your favourites. You can also identify judicial failings, and no doubt you have all experienced examples of them. But what I have said before, and I do not hesitate to repeat now, is that none of the qualities have anything whatever to do with gender, or colour, or creed, or origins. Neither gender, nor colour, nor creed, nor origins has the slightest relevance to the identity of those most fitted to be judges or indeed to the judiciary as a whole. Justice is depicted blindfold. The selection process should be blindfold. The JAC is blindfold.

In the end your gender, the colour of your skin, your religious belief, your social origins, are all utterly irrelevant because it is the individual who is the judge, and it is he or she who carries the judicial responsibilities and the judicial burdens. The judicial conscience which governs all judges is utterly without colour.

As you all know, judges in this country are not appointed, or very rarely appointed, to judicial office before the age of 40, or indeed in many cases before 50. This is significant. At the time when I was listening to Lizzie Lane, the vast majority, the overwhelming majority, of practitioners at the Bar, and in the Solicitors' profession and the newcomers to the Bar were white men. Black and minority ethnic barristers were rare indeed. But perhaps I should add, that much the same applied to all the other professions, and the City, and the public and political life, and indeed so far as the men were concerned, professional footballers and cricketers. Don't forget the struggles black footballers had running up and down just inside the touchlines.

Gradually, very gradually, into all these professions including the law, a few brave souls launched themselves into what must have seemed an abyss. But by setting the example they did, and that others are now following, the door to judicial office has opened.

It is to encourage these processes that the Lord Chief Justice's Diversity Conference was held on the 11th March this year. It is to encourage this process that my office – the Directorate of the Judicial Office – co-ordinates a judicial work shadowing scheme, a sort of judicial mini pupillage open to all. It is for this reason that I supported the expansion into the categories of legal practice which qualify an individual for judicial office in the Tribunals, Courts and Enforcement Act 2007 which enabled Fellows of the Institute of Legal Executives, Registered Trademark Attorneys and Registered Patent Attorneys to qualify for judicial appointment.

And it is for this reason that I supported, and still enthusiastically support the creation of the Judicial Appointments Commission as an independent statutory body responsible for judicial appointments. These are all steps in the right direction.

In recommending the candidates for appointment the JAC is required to have regard to one statutory criterion – that appointment should be made on the basis of merit for judicial office. I make no secret of the fact that I am an advocate of the merit test. Others disagree. It is a legitimate point of view and we may have to disagree. My belief is that the public interest requires that the judiciary should be constituted of individuals of the highest possible available calibre, and the single consideration for the selection panel must be to discover the person or persons most fitted to perform the office to which they are seeking appointment. Candidates must merit their place on the Bench, whether it is as a magistrate, a part-time recorder or indeed for that matter Law Lord.

The number of black and minority candidates who have entered the legal profession, whether as barristers or solicitors or fellows of the Institute has been increasing year on year. This is a welcome trend. Hopefully, but I shall come back to this, the pool of eligible candidates for judicial appointment will in due course be much richer and much broader.

There nevertheless remain some serious and difficult questions, and these are issues for you to address today.

Do a sufficient number of black and minority ethnic candidates put themselves forward for appointment?

If they do not, what is it that deters them?

Do we need to increase the encouragement and support to be offered to such candidates at the very earliest stages of their careers?

Do we indeed need to increase the encouragement and support to be offered to potential candidates, years before, while they are still at school?

How do we encourage them to give serious consideration to a judicial career? How do we help them to do so?

Is there anything in the structures of the professions, and the opportunities which they offer, which contributes to the relative scarcity of such candidates?

Perhaps, today, most of all, how do we ensure that those who have come into practice in very recent years can afford to continue in practice? Without that, the future is less bright than it should be. These are difficult questions. They are not confined to the legal profession. But it is the legal profession with which we are concerned today.

It still takes courage to enter the legal profession. Many of those seeking to enter it have vast debts. Many of them will not, in the end, find pupillages. The solicitors' profession is not in ebullient health. And those who do, certainly so far as those doing criminal work are concerned, will not be driving around in gold plated Cadillacs. But if you have the determination and courage, notwithstanding all these difficulties, to go into practice as a barrister or solicitor or legal executive you can aspire to a judicial career. Being a judge is not without its difficulties. The nature of the burdens and responsibilities means that it does not suit everyone.

But I have come here to give you a simple message. If you are legally qualified then you should not rule out the possibility of a judicial career. If you say to yourself, that is not for me, I do not want to make those sorts of decision – I am not prepared to send someone to prison, I'm not prepared to order that a mother should give up her children – if you do not want to become a judge because by becoming a judge you are accepting that there are some restraints which you do not have to accept if you are a barrister or a solicitor or a legal executive – well and good. That's fine. But, please, do not ignore the possibility of a judicial career because you think that the colour of your skin, or your creed, or your origins may make you unsuitable, or ineligible, or indeed may mean that you will not be successful.

I hope you won't mind my being a little portentous, and just addressing for a moment, the young among you. In life you have to live with yourself. Those of you who have got this far in the profession have had to make very difficult decisions about whether to go on, and you have done so. You have given it your best shot. And you will not, unlike those who have not pressed on as you have, you will not have to spend the rest of your life regretting that you lacked the courage and determination to try to do what you wanted to do. The same is true for a judicial career. None of us wants to end our days regretting that we lacked the courage to try. If in the end it might suit you, I urgently urge you to go for it.

But there is, quite apart from your own personal position, a separate and important consideration. Our society is a diverse society. That is one of its glories. It is enriched by diversity. The diversity should be reflected in all areas of society. It should be reflected in the judiciary.

The journey to diversity is a long one. Progress is slow. It should be quicker. It will come. It will come. And I am here with you today to proclaim that I have a passionate belief that our community will be enriched when the judiciary properly reflects its broad diversity. The tide is for diversity. The tide is inexorable, and the tide always wins.

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