LORD CHIEF JUSTICE
OF ENGLAND AND WALES

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KEYNOTE SPEECH

COMMONWEALTH MAGISTRATES' AND JUDGES' ASSOCIATION CONFERENCE

13 SEPTEMBER 2010

You are all most welcome to England for this meeting.

This is a gathering of my brother and sister judges and magistrates, and some of their partners, from 35 nations of the Commonwealth. I thank the organisers for allowing me the privilege of addressing the meeting. As I have said, you are all most welcome, but perhaps you will not take offence if I particularly welcome our brother judge from Malta, Justice Filletti.

Most of you will assume that the Lord Chief Justice of England and Wales is English, and therefore would speak and think from an exclusively English perspective, but the fact is, not only was I born in Malta, as the generous introduction said, but I am half English, and proud of it, but also half Maltese, and equally proud of that. My mother is Maltese. I was indeed born there during the war, born in the George Cross island, a special decoration awarded by the King to bear witness to the heroism of a small island people in what was the most bombed place on earth. As a child I lived there: I understand the language: I speak it, but ungrammatically. The Maltese are a proud independent nation, small, indeed by the standards of virtually every country here, very small indeed, but it is a nation with a proud history.

Large or small, the issues for judges and magistrates in every country are identical. Each of our jurisdictions is where it is today as a result of its history. And all our histories are different, whether we come from Britain or Barbados or the Bahamas, or for that matter from Malta or Malawi. So the communities which we serve as judges are different. We have arrived where we are because of where we have come from. Our constitutional arrangements, secured by commitment to democracy, are different. The democratic processes by which our governments are elected varies. The political arrangements are different. And even in the same country, they vary. In this country alone, the government of the United Kingdom was, until May this year, the responsibility of the Labour Party. Now it is based on a Conservative and Liberal Democrat coalition. In Scotland, the Scottish Nationalists are the ruling party, while in Wales there is a coalition between Labour and Plaid Cymru, or Welsh Nationalists. There is much diversity. And that indeed is healthy. But what all our communities have in common includes a passionate belief, desire, and I like to think, expectation that justice shall be done in all our courts. They want and expect fair dealing for all who appear in them, equality of treatment for everyone, and justice to be administered firmly according to law, not according to judicial prejudice, or for that matter, political pressures.

And we know, and deep down every man and woman in all our communities appreciate that the first ingredient of the fulfilment of these expectations is an independent judiciary. When brother and sister judges meet on occasions like these they frequently speak of, discuss, and

ponder together the issue of judicial independence. We do so in part because all of us know that it is unwise to take judicial independence for granted: but a brief look around the world shows us countries which do not enjoy the privilege of an independent judiciary; and, worse, countries which have enjoyed that privilege but which have lost it, for whatever shift of the political pendulum, or the ill fortunes of war. For proof that it happens, look around mainland Europe. These are mature democracies. They were mature democracies many years ago. But on mainland Europe you are very pushed to find a single country which on at least one occasion during the last century was not deprived of the privilege of an independent judiciary, sometimes through war, and sometimes through perversion of the democratic process.

In other words, society does not evolve to a particular point of perfection whether democratic process has produced a government and community committed to the rule of law, as applied by an independent judiciary, and then having reached that point of perfection, freezes, so that everyone can sit back and take it for granted. As the President's wise observations about some of our troubled jurisdictions indicated, that is a mistake which it is easy but foolish to make.

But there is another aspect to the question. Our independence is an essential ingredient in our abilities as judges to fulfil our responsibilities. Sitting in our courts we must, adapting the works of Edmund Burke, be sure that we can offer the litigant seeking justice, the calm neutrality of the impartial judge. Throughout the world justice is symbolised as a blind folded goddess, weighing the scales, but blind folded. And that is why the oaths that we take on assuming office all involve language very like my own in England, where I swear that I will do right to all manner of people, and that I will do it "without fear or favour, affection or ill will". As Lord Chief Justice one of my duties is to swear in all newly appointed Circuit and High Court Judges. So I hear men and women take the same oath. When I listen, it never fails to charge me. And I believe that it has the same electrifying effect on all those members of the family of the new judge, whether parents or children, spouses or partners, as they hear the words spoken by the man or woman they love.

When I was invited to address this meeting on the subject, and I had agreed to do so, I had not appreciated that this meeting last year had had the advantage of receiving the scholarly and learned observations of Sir David Simmons, Chief Justice of Barbados, on this very topic. You will find his speech at page 23 of the 2009 Conference Report- and I respectfully but admiringly recommend you to study it. When I had read it, I realised that I could not improve on his formulation of the principles, besides which Sir David had used all my favourite quotations from around the Commonwealth.

So I have decided to identify three features which are sometimes mistakenly believed to be involved in the concept of judicial independence. And to examine them. Before doing so, however, can we just reflect on the fact that judicial independence has two manifestations. First there is the independence of the judiciary as an institution, which is a concept well understood by right thinking men and woman within our communities. What is much more difficult to understand and to convey is that the concept of judicial independence means the independence of every individual judge from one another. It is indeed sometimes more difficult to grasp that we are indeed all independent of each other. Whether we are sitting in a court of three judges, say in the Court of Appeal, we have our individual responsibility to disagree- to descent- if in the end we cannot conscientiously agree with our colleagues. But more important, and even harder for others to grasp is that even in a hierarchical system, the independence of each judge from each other judge means that no judge, however senior, can seek to influence the decision of any other judge however new, however junior. If there is an appeal, of course, then the judges hearing the appeal must do whatever they believe to be right, but that is not the same. The decision under appeal must and must only be the decision of the newest most junior judge himself or herself, totally uninfluenced by anyone else,

including a more senior judge. I think it is sometimes difficult for politicians and administrators to appreciate that even in an hierarchical institution, for the purposes of our decisions in court we are all entirely equal. We can only be equal if we are fully independent of each other. And our independence of each other reinforces our independence of everyone else. So it is an essential ingredient of the independence of the judiciary as an institution, and it must be appreciated for the important foundation of judicial independence that it is.

Of course, just as our independence has both an institutional and an individual aspect, so too we have a collective as well as an individual responsibility for the efficient and economic administration of justice. I am on record advancing and shall repeat here what I regard as self evident: the principle of judicial independence is not and cannot be an excuse, let alone a justification, for judicial inefficiency or idleness. Between us, in the countries represented here today, we have hundreds if not thousands of judges who serve their own communities. The vast, overwhelming majority are hard working dedicated men and women doing their very best on each and every occasion that they sit to achieve a just result according to the laws of the country. As ever, in a human institution, there are a few who for whatever reason do not pull their full weight, who sometimes always manage to finish their lists early, and do not offer to help the other judges who are busily getting on with their lists, and who, despite good health, and the absence of any particular disturbing personal worry, somehow avoid any reserved judgments, and who never take on any side of the additional responsibilities that increasingly have to be shared by judges out of the court process itself. When called to account, as they should be, the principle of judicial independence cannot be invoked as an answer, let alone a defence. If we allow it to constitute an answer or a defence, we shall end up by sacrificing the very principle of judicial independence itself. As advocates we all once knew that the fastest way to loose a good case was to advance a thoroughly bad point. If you advance the principle of judicial independence to protect the idle judge, you weaken its legitimacy when it is needed to protect the decent hard working man or woman who happens to be unpopular with the government or the institutions of the day. So if we do not address it ourselves, others may question it, questions which ultimately undermine the principle of security of tenure. So, just as our independence is collective as well as individual, the discharge of our responsibilities is collective as well as individual. Collectively we have to work together to provide an efficient system by which justice is administered in the courts of our respective countries. That too is part of the price which we must contribute to sustain our independence.

Next, I do not believe that the principle of judicial independence necessarily and inevitably leads to judicial isolationism. Whatever may have been the views of an earlier generation, and their views are well known and well documented, we cannot be divorced from the realities of the world we live in, and in particular the new methods of communication with their inevitable impact on public thinking and public perception, nor can we assume that our adherence to the principles of judicial independence will be understood if they are never explained. There are times when the judiciary should be accessible beyond and over and above the pronouncements that individual judges make in court. I am not suggesting that every judge should automatically make himself or herself available for interview with any media representative. And we must beware the judge who is seeking headlines for himself or herself. But there is room for avoiding isolationism.

I shall speak for myself, giving examples from my own commitments to reduce judicial isolationism.

Last autumn I gave an address at the Annual Conference of the Society of Editors. We judges have to understand the pressures under which the media and the press in particular are operating, and if we listen to their concerns and convey ours to them, we do not in my view compromise either their independence of us or our independence of them. We must surly respect this, and understand that if it is believed that criticism of a judge is appropriate, the

editors will not hesitate to make the criticism. But what am I driving at? One of my constant refrains is that our judicial independence and the existence of an independent press are mutually self supporting. Find me, I ask, and I ask you to find me a society or state in which you have an independent judiciary and a subservient media, or a subservient judiciary and an independent media. The short answer is that the pressures that would remove the independence of the judiciary are identical to the same pressures that would remove the independence of the media. Either both institutions are independent, to the public advantage, or both are cowed or subservient, to the great public disadvantage.

Editors over the years have expressed concern at the number of orders made in courts up and down this country which restrict publication of those proceedings. The principle of open justice is paramount. But there are exceptions, in our country, the result of statute, or the exercise of a discretion granted to the judge by statute. But editors from newspapers from around the country cannot afford to go to London, to the High Court, every time a magistrates' Court makes an inappropriate order restricting publication. So, the result is a handbook prepared for use by the Crown Court and the Magistrates' Court as a mutual operation, with the clear understanding that the handbook maybe used by any journalist in court, without the need for him to obtain legal representation, to point out why, in his submission, a restriction order would be inappropriate or wrong as a matter of law. Provided the journalist acts with appropriate respect and courtesy, and in my experience this invariably happens, it is open to the court to reconsider its decision, or indeed to ask for assistance before making it. So, together, judges and the media have worked together and produced a better system. I do not believe that this arrangement demeans the judiciary.

My observations about the absence of any necessary link between judicial independence and what I have endeavoured to identify as judicial isolationism lead me to my third area for exclusion from the concept of judicial independence. If we are not clear about what the principle means it can sound like special pleading, almost like trade union activity for groups of judges simply asserting the principles. But for our purposes mere assertion will not do. We must understand that judicial independence is a prize enjoyed by our communities. It is their privilege. Of course, the principle of independence properly understood in the community advantages the individual judge sitting in judgement in a particular case, reaching the conclusion that provides justice according to the law, but it is not really about us. If I may rephrase something I have said before, when we as judges sit at these meetings advocating and defending the principle we are not, are we?, talking about a piece of flummery or privilege which goes with our offices. Our objective is to assert that the community as a whole, and each individual citizen in it, is entitled to have its disputes, particularly when it is in dispute with the government of the day, or any of the large institutions which play a dominating part in our lives, decided by an impartial judge, independent of all of them. It is after all our responsibility to see that the rule of law applies to every single litigant equally and without distinction or discrimination or prejudice, favourable or unfavourable to one side or the other. So when we are discussing judicial independence we are doing no more but no less than cherishing a crucial ingredient of any community that truly embraces the rule of law.
