PRESIDENT OF THE FAMILY DIVISION

Address by the President, Sir James Munby,

at the Annual Dinner of the Family Law Bar Association

in Middle Temple Hall

Friday 28 February 2014

Madam Chairman, Mr Vice Chairman, Officers and Members of the Family Law Bar Association, Former President of the Family Division, Ladies and Gentlemen –

Since I stood here last year much has happened. I look back on a year when, between us, we have managed to achieve more than most of us had dared to hope. I look forward to a year of what I am sure will be continuing challenges.

Last year the focus was very much on public law – the revised PLO – and setting up the new Family Court. The result of everyone's dedication and hard work has been a continuing reduction in the time that care cases are taking. Large numbers of the older cases have now been resolved. The backlog is reducing both in size and in age. This is a remarkable achievement in which every one of us in the family justice system can take pride.

Work is almost completed on the amendment of the current Pilot PLO and the supporting rules. The final version (PLO 2014) will be finalised by the Family Procedure Rules Committee next Monday. The changes to be incorporated in the light of experience with the Pilot PLO are few.

In large measure the new Family Court is already up and running for most practical purposes. In some places – not as many as I would wish, though financial resources for such works are limited – work is going on in finding space in existing buildings which can be adapted for additional courts or hearing rooms. This is particularly important where the consequence is that magistrates will for the first time be able to sit in the same building as their professional judicial colleagues – something which is very important if we are to make a reality of the Family Court.

Early in the New Year I issued the much-heralded Practice Guidance on Transparency in the Family Courts – the first step in the vitally important process of opening up the family courts to appropriate public scrutiny.

This year we must continue all that good work. But the focus must now be on the necessary changes and reforms in relation to private law. The task here is, if anything, even greater and more challenging than all the changes associated with the revised PLO.

Earlier this week, I received the final report of the Private Law Working Group chaired by Cobb J and the final draft of the proposed Child Arrangements Programme. They will be considered by the Family Procedure Rules Committee next Monday. In matters of substance the final version is unlikely to differ that much from the draft put out for consultation. Stephen's report recommends fundamental changes in our whole approach to private law cases. A system based on the assumption that parties are represented must be radically re-designed to reflect the reality that parties will not be represented. And the concept of the court's continuing monitoring and review function following the substantive hearing – the legacy of ideas rooted in old wardship practice – will in large measure become a thing of the past. There can be no room for complacency about our current practices. Reform is urgently needed. We are all indebted to Stephen and his team for showing us so clearly and convincingly the way forward.

We are rapidly approaching the date for formal implementation of the family justice reforms. It will be 22 April 2014. Accordingly, 22 April 2014 will see the creation of the new single Family Court, the implementation of the final version of the revised PLO in public law cases and the implementation in private law cases of the Child Arrangements Programme.

The most visible changes in April 2014 will be in London. The vision for London is about to become a reality. The works at First Avenue House – the home for the new Central Family Court – are on schedule, as is the move from Wells Street. All will be ready by 22 April 2014. The DFJs for the new East London Family Court and West London Family Court, Her Honour Judge Carol Atkinson and Her Honour Judge Judith Rowe QC, have been appointed and are busy planning their new courts. The other judges who will be sitting in their courts have been selected. The West London Family Court will be based at Hatton Cross as the Designated Family Centre. It will open for business in April. Things there are going smoothly. The same, unhappily, cannot be said for the East London Family Court. Late in the day, and in circumstances that have still not been fully explained to me, though I am determined to get to the bottom of what happened, it emerged that the landlord of the preferred premises was unable to give vacant possession in accordance with our requirements. Other premises have been found, which I believe will be entirely satisfactory but which will not be available until late autumn 2014. In the meantime, and starting in April, the administration and some of the judges of the East London Family Court will be based at Gee Street, the other judges sitting at the Royal Courts of Justice. So the East London Family Court will be up and running on schedule, albeit not initially at its final location.

When I became President I set myself the challenge of visiting every care centre by the end of last year. I failed in that task. But I am on the final lap. My only outstanding visits are to Oxford, Stoke, Worcester, Cambridge and, last but not least, Norwich. All will have been completed before the new Family Court opens its doors. I have found these visits exhilarating and uplifting. I am immensely grateful to all of you who have made them so enjoyable and so useful. I hope in due course to return to sit in as many places as possible – and not just places where judges of the Division are accustomed to sit. This part of the process begins in late March when I shall be sitting for a week in Bournemouth.

England is often referred to as the 'Mother of Parliaments'. Parliamentary democracy is indeed one of our great gifts to the world. But an older and even greater gift, and to a much wider world, is the English common law; indeed, the very idea of the rule of law.

We have in this country the oldest continuously functioning legal system in the world. In a year's time we, and the world, will be celebrating the eight hundredth anniversary of Magna Carta. We eat tonight in what is probably the greatest architectural monument to the common law to be found anywhere in the world. When this hall was built in 1570, in the age of the first Elizabeth, the common law was already of venerable antiquity. So also was the Bar. The oldest Act of Parliament still in force is the Statute of Marlborough of 1257. But our judge-made law is yet older. Even before Magna Carta the King's judges had been travelling on their circuits around the country, as the Queen's judges in unbroken succession still do today. And our law reports, the recorded judgments of the judges, stretch in unbroken continuity for well over 700 years, indeed, since the days of Kind Edward I. Those able to translate the Norman French in which the medieval Year Books were written, and able to decipher the black letter type in which they were first printed in the 17th century, can still read the arguments of the barristers and the decisions of the judges in the Middle Ages.

Now you may think that this is merely of antiquarian interest. But there are some principles of our law that ring down the centuries. Only a year or two ago, Peter Jackson J had cause to criticise a local authority which had unlawfully removed a man with learning difficulties from the care of his family. He pointed out that this was not merely a breach of the Human Rights Act 1998; it also offended chapter 29 of Magna Carta: "No freeman shall be taken or imprisoned, or [deprived] of his … liberties … but by lawful judgement of his peers, or by the law of the land." And in a recent case with which all family lawyers will be familiar, the Court of Appeal cited the Statute of Marlborough in explaining why the disgruntled must have recourse to court process rather than simply taking the law into their own hands by resorting to self-help.

The rule of law is fundamental: the principle that all are subject to the law and equal before the law; the principle that governments and officials are subject to the law and accountable before the law. As long ago as the 18th century, and before we had democracy, the English judges had established the fundamental principle that a

Minister of the Crown, however senior, has no inherent power, simply by virtue of his office, to interfere with a citizen. He must point to some specific power conferred upon him by the law. It is no valid return to a writ of habeas corpus to assert merely that the prisoner is detained by virtue of an order from a Secretary of State: both the legal power to imprison and the proper exercise of the power must be proved before a judge, otherwise the prisoner goes free and the Secretary of State has to pay damages. Of how many countries, even today, can that be said?

The English common law is an astonishing achievement. It has retained its vigour down the centuries. It has developed, continues to develop and will no doubt continue to develop, not merely in this country but around the world in continents whose very existence was undreamed of by the medieval judges who set us on the course which we continue to follow today.

The Bar was fundamental to the development of the common law and remains vital if our legal system is to retain its vigour today and in the centuries that lie ahead. There has perhaps been no better acknowledgment of this than in some words which Hankford J uttered over six hundred years ago, in 1409, a century and a half before this hall was built. I translate the original law French:

“One does not know of what metal a bell was made if it has not been well hit, in other words, by good disputation will the law be well known”

In a world inconceivable to Hankford J and in a forensic context he would find baffling, the point remains as true today as then. “Good disputation” is surely what the Bar is all about. But the Bar is also, and we must never forget this, about something even more important.

May I repeat what I said in the very first judgment I gave as President:

“the ultimate safeguard for the parent faced with the might of the State remains today, as traditionally, the fearless advocate bringing to bear in the sole interests of the lay client all the advocate’s skill, experience, expertise, dedication, tenacity and commitment. There are some principles that ring down the centuries, and the efficacy of the adversarial process is one of them … Most family judges will have had the experience of watching a seemingly solid care case brought by a local authority being demolished, crumbling away, at the hands of skilled and determined counsel. So the role of specialist family counsel is vital in ensuring that justice is done and that so far as possible miscarriages of justice are prevented … May there never be wanting an adequate supply of skilled and determined lawyers, barristers and solicitors, willing and able to undertake this vitally important work.”

There can be no higher call on the honour of the Bar than when one of its members is asked to act on behalf of a client facing the might of the State. The Bar, I am sure, will never fail in its obligation to stand between Crown and subject. And the same goes, I am sure, for the other profession.

I know all too well that the Bar is facing enormous and daunting challenges. The criminal Bar is facing a great crisis, and the family Bar difficulties perhaps almost as great. But you are skilful and resourceful people. And with determination and courage and wise leadership I am confident that you will meet the challenge and overcome the crisis.

Look around! This is not some gimcrack building on a 35 year lease funded by a PFI arrangement. It was built by proud and confident men; men proud of their profession; men confident of the future of the Bar; men building for future generations and future centuries. And here we are 450 years later.

We are the inheritors of great traditions – the traditions of the common law and the Bar. We – judges and barristers alike – are but the temporary custodians of something we have received on a trust conferred on us by generations long gone and held by us for the benefit of generations as yet unborn and for the centuries to come. We cannot, we must not, betray that trust. I know that there are siren voices, acting in good faith and in the conscientious belief that they are doing right, urging various actions to meet the current crisis. But we must take the long view. We must be careful that we navigate the storm without ending up shipwrecked on the rocks.

The Bar has little to fear if you are willing to adapt what you do and how you do it. As one door closes, another always opens.

The role of the advocate is timeless. Advocates have been around for a very long time. The challenges you face echo down the millennia. The point is nicely brought out in the account of a robing room conversation with a fellow advocate some two thousand years ago which Pliny recounts in a letter to his friend Tacitus. Regulus says to Pliny: “You think you should follow up every point in a case, but I make straight for the throat and hang on to that.” Pliny answers him:

“I can’t see the throat, so my method is to feel my way and try everything – in fact I leave not stone unturned….”

In his letter to Tacitus he comments:

“On my farms I cultivate my fruit trees and fields as carefully as my vineyards, and in the fields I sow barley, beans and other legumes, as well as corn and wheat; so when I am making a speech I scatter various arguments around like seed in order to reap whatever crop comes up. There are as many unforeseen hazards and uncertainties to surmount in working on the minds of judges as in dealing with the problems of weather and soil”.

How often in court have we not all thought that?

Today, of course, Pliny would have to face an additional hazard: a judge infused with the principles of robust and vigorous case management.

And on that contemporary note I will leave it.
