Annual Dinner for Her Majesty's Judges: Mansion House 2003: Speech by Lord Woolf, Lord Chief Justice of England and Wales

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

It is hugely rewarding to be once again attending the dinner given by the Lord Mayor for Her Majesty's judges. It is reassuring that there is still an important event in the judicial calendar that has not changed dramatically since we last enjoyed the hospitality of the Lord Mayor. This year's dinner does have one distinguishing feature, but that is a feature of which we wholly approve. It is, of course, that our host this evening is the first Lord Mayor to be a practising member of the bar and our hostess is also a member of the legal profession, a solicitor. We are extremely grateful for your hospitality. We are also indebted to you, Lord Mayor, for your powerful remarks. During the current year, you have convincingly demonstrated how an ancient office can evolve so that it can still be a power for good in the land.

I cannot allow this occasion to pass without again congratulating the Lord Falconer of Thoroton, on behalf of the judiciary, on his appointment both as Lord Chancellor and Secretary of State for the Department of Constitutional Affairs (a department which is already rejoicing in being known by the anodyne acronym 'Decaf'). We know that during his term of office he will strive faithfully to uphold the heavy responsibilities of his role as Lord Chancellor while, at the same time, performing his other role as Secretary of State which involves planning and then executing the abolition of that ancient office. I fully recognise the difficulties involved in these dual responsibilities. It is as though Gilbert and Sullivan had combined the roles of The Lord Chancellor in Iolanthe (who "has no kind of fault or flaw"), with that of the Lord High Executioner of the Mikado (who "by a set of curious chances" has got the Lord Chancellor on his list and is sure he will not be missed).

Having congratulated Lord Falconer, it is right that I should also express the judiciary's great appreciation of Lord Irvine's contribution as Lord Chancellor. No one, not even Sir Thomas More, who has held this great office could have worked harder to fulfill his responsibilities. Importantly, he implemented great reforms. Others remain to be implemented - those contained in the Courts Bill, including the unification of the courts, have not yet become law. I will remember Lord Irvine especially warmly for the courageous way that he stood up for the independence of the judiciary and the dedication and complete impartiality he displayed when it came to the appointment of judges and QCs.

In times past, the judicial year has been rather like a carousel. It has revolved gently, and the riders, in a manner designed not to frighten the children, have ascended and descended as they rotated within a familiar landscape. This year has, at times, been rather more like a roller coaster with sudden changes of direction and a sometimes breathtaking rate of progress. There have been frightening proposals as to pensions which, if they are not modified, could gravely damage recruitment to the judiciary and lead to mass exodus from the existing judiciary before 'A day'. There have been other dramatic changes. Indeed, so dramatic have those changes been, I have recently acquired the habit of scanning the papers before breakfast each morning to see whether I am still the Chief Justice. So far the experience has been reassuring!

In this country we do not have a written and entrenched constitution. We have benefited from the flexibility this provides. It means our constitution is capable of evolving to meet the changing needs of our society. The almost indefensible and, in the eyes of those who did not understand how our constitution works, eccentric office of Lord Chancellor was an essential part of our unwritten constitution. It has been one of the foundations on which our constitutional arrangements have rested.

As long as the office of Lord Chancellor is held by an individual of integrity (as it has been during my 50 years in the law) it provides significant protection for the judiciary. When the office of Lord Chancellor is abolished, the question will arise as to who is to take on the Lord Chancellor's role of speaking up for the judiciary in Government and Parliament. If it is intended that the Secretary of State will play this role, then

it will be critical to ensure that those appointed as Secretary of State are appropriately qualified in terms of background and experience to fill the vacuum which will otherwise exist. The Secretary of State will, however, no longer be able to act as head of the judiciary - he will not be a judge, so it will not be appropriate for him to undertake this role.

I recognise that decisions as to who is Lord Chancellor are for the Government alone. The same is true of whether we continue to have a Lord Chancellor. Though, of course, Parliament must implement any decision to transfer his statutory duties or legislative responsibilities to another body or individual. But it must be a cause for concern that a decision to abolish such an historic office - with its pivotal role in the administration of justice as head of the judiciary - can be taken without any consultation with the judiciary. It does raise questions as to whether our constitution provides the protection it should for our constitutional institutions? However, the decision has been taken that there should cease to be a Lord Chancellor and that there should be a Judicial Appointments Commission for England and Wales and a new Supreme Court for the United Kingdom. What matters now is how to ensure that these proposed new institutions will be as effective as possible and operate in a manner that enhances the independence of the judiciary and our justice system.

To this end, I am pleased that the Government intends that there should be fullest discussion as to the form the proposed Appointments Commission and Supreme Court should take. In addition, there is also to be consultation as to future appointments of Queen's Counsel. Consultation papers on these subjects are shortly to be published and, even though those papers have been prepared within a remarkably short time scale, the senior judiciary have been fully consulted as to their contents.

Fortunately, the judiciary are in a better position now to take part in that consultation than we would have been in the past. This is because the Judges Council has been remodelled and, under its new constitution, is capable of speaking for the entire judiciary. The Council contains representatives of all levels of the professional judiciary and, as soon as Lord Irvine's Courts Bill becomes law, we will invite the lay judiciary (that is, magistrates) to join the Council. This is because that Bill will establish a unified court in England and Wales of which the 30,000 magistrates will be a very important part.

The judiciary's response to the forthcoming consultation papers will therefore come from the Judges' Council and a senior magistrate will be on the drafting team. The response should, and I hope will, command the greatest respect. This does not mean that individual judges should not make their own responses to the consultation paper. On the contrary, I encourage and expect them to do so. I am glad to say that dissenting judgments are as common and as important today as they were when Lord Atkin gave his judgment in *Liversidge v Anderson*.

That case was an illustration of the critical importance of the independence of each individual member of the judiciary, even when this country is battling for survival in a world war. What was true then, is true now. If an enemy from within or without wishes to attack our freedoms he has to undermine the independence of judiciary.

There are still, alas, countries where this is happening. It is very easy to engineer. It can be done by having a Chief Justice who is prepared to act on the dictat of the executive. India experienced this. So they have a rule that they are well aware has huge disadvantages. When a Chief Justice retires, he is automatically replaced by the next longest appointed Supreme Court Justice. This happens even if the successor will himself have to retire in a few weeks. The inconvenience of having frequent changes in the office of Chief Justice is considered to be justified by the need to prevent interference in the appointment of the top post, particularly, since, once appointed, the Chief Justice plays an important role in the appointment and promotion of other judges.

If you look round the world to countries which have inherited our legal system it is not difficult to find examples of judiciaries who have been undermined by a Chief Justice who is prepared to do the bidding of the executive. I am certainly not suggesting that any Government that at present could be expected to hold power in the UK would appoint other than on merit. However, as the Chief Justice of Canada explained most eloquently when she spoke in a meeting held in the Houses of Parliament last week, what is merit (like what is beauty) depends on the eye of the beholder. In the eyes of a future Government, a judge who

is "one of us" might appear to have the qualities of the ideal Chief Justice when this is far from apparent to others.

That is not to say that judges appointed because it is thought that they would be compliant would not after appointment be contaminated by the culture of independence which, happily, is deeply ingrained in our judiciary. I have always found instructive Sir Sydney Kentridge's story of what happened in South Africa in the days prior to the end of apartheid. The then president decided to appoint compliant judges. Within a short time of their appointment, they were deciding cases against the government. The President was subsequently heard to complain "these bloody judges are behaving as though they were appointed on merit".

It must not be thought that my previous comments are any reflection on the present Government. No-one, as far as I am aware, has criticised the appointments which were made either by, or on the recommendation of, the Lord Chancellor. The concerns were limited to the process. What we must ensure is that the proposed Appointments Commission maintains the quality of our judiciary.

We are indeed fortunate that we have judges who are admired around the world for their ability and integrity. They are independent and I admire their courage. They are not deterred from giving just decisions even though they are well aware this can result in their, and their families, being subject to unjustified abuse and stress. The judiciary are also prepared to take on greater and greater responsibilities outside their immediate duties in court to improve administration and judicial training.

Here I single out two outstanding contributions. The first by Igor Judge who, after nearly five years, is retiring as Senior Presiding Judge (SPJ). He has been a quite brilliant SPJ. The other is Mark Waller who has also served his sentence as a marvellous Chairman of the Judicial Studies Board (JSB). I am immensely grateful to them both. They have undertaken extremely onerous administrative responsibilities on top of their 'day jobs' and have fulfilled them admirably. In this they are not alone. Both the public and I have reason to be grateful to all the judges around the country who take on extra tasks without complaint. Our judiciary has a proud history of embracing reform and actively seeking to improve the justice system. I have every confidence that this tradition will continue as we embark upon a further programme of significant change.

As we have heard from the Lord Mayor, this judiciary are working without the necessary resources. In determining what are to be the new arrangements for funding 'ADLC', it will have to be remembered that there is a great deal of truth in the saying that he who pays the piper, calls the tune. The present system of funding, involving as it does an assumption that full recovery of civil fees is an attainable goal and the ability to dip into the court service resources to meet the legal aid bill, must cease. If it does not the public will never have the justice system they deserve. The Courts must be assured of having the resources they need to provide justice. If they are not provided with the resources then, quite simply, the public could be deprived of their right to justice.

I have long hankered after a properly resourced Supreme Court. However Lord Irvine considered it would have to wait until we could afford it. Other priorities, including a new Commercial Court and the need for proper court facilities in Manchester, have to be met. So far, we have heard nothing about the additional resources which the Supreme Court will require.

Perhaps like the young shepherd in the fable I have been crying wolf without cause. I do not think so. Though I do recall that, when the Lord Chancellor's Department (LCD) sent me on a trip where it was thought unwise for me to travel in my own name, they sent me as Mr Sheep!

Thank you Lord Mayor for your good wishes and for once again allowing me to have an opportunity to address my concerns to such an illustrious gathering.