



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RIGHT HON. THE LORD THOMAS OF CWMGIEDD
LORD CHIEF JUSTICE OF ENGLAND AND WALES

DINNER FOR HER MAJESTY'S JUDGES
WEDNESDAY 8 JULY 2015

My Lord Mayor, Ladies and Gentlemen.

My Lord Mayor and Aldermen, may I thank you first of all on behalf of the judiciary and your other guests for your magnificent hospitality this evening. It is always an evening to which we all look forward.

Your year began, My Lord Mayor, with a herald for this great year of anniversaries – bringing the City's own 1297 reissue of Magna Carta in its own coach to the Royal Courts of Justice. Since then much has been said about Magna Carta. This evening I refer to Magna Carta not only because of the role it has played in your mayoralty, not only because it stands as a symbol of the continuing commitment to equality before the law, to access to justice and the rule of law, but for the purpose of mentioning one oft forgotten clause – clause 45. This demanded of the King that only those “as know the law of the land and [who] will keep it well” be appointed as judges.

There are, of course, some famous historical exceptions. I will not dwell on those. But the demand has been well met, at least up to now. Instead, I should like to consider the judges who try the most important and difficult cases – the judges of

the High Court and other senior trial judges such as those that sit at the Central Criminal Court. For, as you have said, my Lord Mayor, this evening is a setting for a debate about the issues of the day and of the future.

The High Court

In many legal systems, it is the highest appellate courts that are normally seen as the barometer of the quality and effectiveness of a nation's system of justice. If you will forgive the analogy after tonight's munificent feast, an observation has recently been made that a court system is like a pizza – even if the topping is excellent, it will be spoilt if the base is no good. That analogy has been applied to some systems where, although the highest appellate courts can be viewed as an excellent topping, the same cannot be said of the quality and the strength of the base: their highest trial courts.

The distinguishing strength of our legal system is not the excellence of its highest appellate courts, excellent though they are. It is the outstanding ability of the judges of the highest trial courts. We depend on their excellence to see that cases are tried justly, and expeditiously. We depend on their expertise in many different areas of the law. As was once said, judges breathe the sea air when dealing with admiralty cases one day, to find the measure of market practices when considering commercial disputes the next. Judges must also grapple with the very considerable social and financial problems that are a feature of the family and criminal cases they hear on a daily basis.

We call on their specialist expertise, built up over many years in practice, of discrete areas of law. And we further call on their expertise to manage cases in the public interest and to secure due process and justice for all litigants – all the more important when we remember that for the vast majority of the public the only judge they will ever deal with is a trial judge. It is therefore vital for the future that

we continue to attract the best to the bench as judges of the highest trial courts; and that we do so with a commitment to delivering diversity. We all appreciate, My Lord Mayor, your recognition of the enormous contribution to welfare, prosperity and democracy in United Kingdom made by the judiciary and especially by those who try cases; above all we thank you for your real understanding of the value that their work brings to everyone in society.

There is, of course, in underlining the importance of trial judges the risk that such praise could be confused with the hubris of Lord Hewart who told this banquet on one occasion between the Wars that “Her Majesty’s Judges are well satisfied with the almost universal admiration in which they are held”. But that is not a risk that we face; we all know that the legal system is in need of reform and none more so than the trial judges on whom falls the further burden of developing and leading the successful implementation of reform.

The Financial List

At this dinner last year I said that the judiciary would be looking closely at how the Commercial Court of the Queen’s Bench Division and the Chancery Division could work together to provide a faster, more efficient and economical forum for financial dispute resolution. Thanks to the commitment and expertise of the judges of the Commercial Court and the Chancery Division, we are now ready to introduce a Financial List. This will be a specialist list for financial claims of £50 million or more, or cases that raise issues concerning the domestic and international financial markets: the equity, derivatives, FX and commodities markets. It will include provision for an innovative test case procedure, the aim of which will be to facilitate the resolution of market issues on which there is no previous authoritative English precedent.

Why introduce such a new list? There are a number of reasons. First, it will promote access to the courts and the expertise of trial judges, for market actors in

an area that is of significant importance to the development of both the domestic economy, and to open markets internationally. Secondly, and particularly through the test case procedure, the Financial List will help to avoid costly and time-consuming litigation, through providing a mechanism for authoritative guidance before disputes have arisen. It thus helps to provide the necessary environment, identified by Adam Smith, for economic activity to thrive.

Thirdly – and flowing from the first and second points – I hope that this initiative will promote the rule of law both nationally and internationally. At the national level it does so for the reasons I have already outlined. At the international level it does so through acting as a beacon. The courts and the judiciary of this jurisdiction are widely respected throughout the world, for their expertise, knowledge of the markets, their incorruptibility and their independence.

The new Financial List – embodying these virtues – will set an international benchmark. The new list will not only encourage international litigants to continue to use our courts, the principles they embody and their jurisprudence, but in doing so they will help to raise standards. Setting the bar high here will help to raise the bar high across the world.

Professional standards

But providing such a list is not in itself enough; it is important that, where possible, the judiciary uses its expertise to support the broader financial system, including its improvement. So, for example, the judiciary is supportive of the work being done to set proper professional standards for bankers. In recent weeks the Governor of the Bank of England has spoken trenchantly of the need for readily accessible and understood standards of personal accountability and a culture of ethics. I am

particularly grateful to the judges of the High Court who have supported this work, and the work of the Banking Standards Board chaired by Dame Colette Bowe.

Effective criminal process

Even with high ethical standards, there will always be those who transgress. The Governor of the Bank of England has spoken of a culture of impunity in certain areas of the market and called for the updating of criminal sanctions with maximum prison terms being lengthened. The lengthening of prison terms for bankers and others in the financial markets is a matter of policy for HM Government. But in addition, it is of the greatest importance that the perception of impunity is removed by more effective and speedy trials.

We used to be able to achieve this. Early in 1931 an investigation was undertaken which showed that the accounts of a major shipping company had been false; moreover a prospectus for an issue of debentures issued in 1928 had not disclosed the true position of the company. The chairman of the company and its auditor were charged. They appeared at the Mansion House Police Court, sitting at Guildhall with your then predecessor as Lord Mayor presiding as the City's Chief Magistrate. The committal proceedings lasted six days in June 1931 and resulted in a committal of both for trial at the Old Bailey.

The trial started a few weeks later in Court 1, and took a mere nine days. The opening occupied the first day. The prosecution case, calling 15 witnesses, took the next 3 days. Submissions of no case to answer were made on the fifth day. When they failed, the principal defendant began his evidence. By the end of the seventh day, each defendant had given evidence and called witnesses. Closing speeches occupied the eighth day. The judge's charge to the jury took place on the ninth day. It lasted four hours. At 3:33 the jury retired. The verdicts were given at 6:33. The chairman was found guilty of the offence in relation to the prospectus, but

acquitted of the other offences as was the auditor. He was sentenced to 12 months imprisonment that same evening. After his appeal failed, he served 10 months.

The rights and wrongs of this case have been much debated, as has the conduct of the chairman, Lord Kysant, a very prominent figure in the City as well as a politician; and the auditor, a partner in Price Waterhouse. However, the interest of the case is the way the case was opened to the jury, the cross-examinations and the summing up. They were models of their kind. That is hardly surprising as the prosecution was conducted by the Attorney General, Sir William Jowitt, Lord Kysant was defended by Sir John Simon and the auditor by Sir Patrick Hastings. The trial judge was Wright J, a commercial lawyer, who had been a judge for 6 years. The following year he was appointed to the House of Lords.

Lord Devlin, who as a young barrister watched the trial, commented in the 1980s that it was unthinkable then that a case could be conducted within such a timescale:

“The case could have been made to look as difficult as any serious fraud case and it could have been made to last as long. ...In this instance the defendants were represented by highly skilled counsel. They were all men of the top quality who had learnt by practice to say a great deal in a short time.”

Can we achieve something similar today in cases of serious fraud? I have no doubt that our trial judges are equal to the task. With the reforms to procedures outlined in Sir Brian Leveson’s report, we must strive to achieve this. But we cannot do this alone. What we do need is first a commitment of the necessary resources to the prosecution of serious financial crime; and, second and of equal importance, action to continue strengthening the standards of advocacy. Only those who have been properly trained and have achieved those standards should receive public funding to practise before the higher criminal courts.

Overhauling the machinery of justice

What the judiciary has been doing for the international and financial markets is but an example of judges' commitment to significant, far reaching and radical change. It is an example of such change that is taking place across our system of justice, in the Family Courts, in the tribunals, in administrative law, the general work of the Queen's Bench Division, the Chancery Division and of the County Court.

Just as the judiciary is committed to underpinning the work of the international markets, we are also committed to reform that will seek to restore access to justice generally. There are few individuals in our nation who today would willingly contemplate using the current system to resolve a dispute, as the cost has become prohibitive for all but the very wealthy. That must be unacceptable. Courts exist for the benefit of everyone.

My Lord Chancellor, you noted at your swearing in, Dr Fuller's famous comment "be you never so high, the law is above you". That has an important, unstated, counterpoint. Just as none can soar above the law, neither should anyone fall below its protection. If we are to ensure that none can fall outside the law, it is incumbent on us all to consider innovative ways to maintain access to it.

The most powerful force for innovation in the service of making the justice system more accessible is, at the present time, technology. Its greater use in the justice system has long been desired, albeit that has not previously translated into acceptable action. As a consequence the overhaul of our machinery of justice is long overdue. The delay has, however, a silver lining, as technology should enable us to do today what we could not have achieved 15 years ago when reform was last contemplated. At that time we could only have used technology to improve existing processes. Today we can and we must recast much of the way in which justice is delivered.

It is therefore with gratitude this evening that I thank your predecessor as Lord Chancellor for securing the commitment of HM Treasury, subject to the presentation of detailed investment plans, to the overhaul of the machinery of justice through the reform of HMCTS. I also particularly thank you, my Lord Chancellor, for your recent statement on, and HM Government's continuing commitment to, HMCTS reform. It is a reform programme that the judiciary has taken a leading role in developing. Its importance cannot and should not be underestimated. It is one that is necessary to ensure that courts and tribunals, through the use of modern technology, move out of the paper-age. Improved, more cost-effective and accessible procedures will seek to bring the justice system within the reach of everyone. It will also help secure access to justice as a right for all, and not a privilege of the wealthy.

In doing so we will all benefit: the better, the more accessible our public institutions, the better and more prosperous society will be. Legal institutions – the criminal, civil, family and tribunal justice systems – are no different in this respect. An overhaul of the machinery of justice carried out effectively with the enthusiastic participation of the judiciary, drawing on their knowledge and experience, and with the prudent use of resources provided by HM Treasury, will provide us with a justice system fit for 2050.

My Lord Mayor, on behalf of Her Majesty's judges may I thank you and thank this City for the enormous help and support that you provide to the judiciary in our many joint endeavours. May I especially thank you and the City of London for this opportunity for setting out some of the key issues facing the judiciary, and enabling me to tell a good tale of judicial achievement; and also for your most generous hospitality this evening.