



JUDICIARY OF
ENGLAND AND WALES

THE RT HON LADY JUSTICE ARDEN DBE

**ADDRESS TO THE ASSOCIATION OF WOMEN BARRISTERS' ANNUAL GENERAL
MEETING**

3 JUNE 2008

I would like to thank the Association for asking me to address the Annual General Meeting of the Association today.

I am delighted to come here to lend my support to the activities of the Association. I consider that the Association has a vital role to play in helping women in their professional lives at the Bar and in due course in seeking appointment to the judiciary. I am concerned that there should be more women judges, particularly on the High Court bench. I am especially concerned about the position on the High Court because of the important role played by the High Court in our legal system and because the succession to the appellate courts is through the High Court. I appreciate that women have done well on the circuit and district bench, and I do not underestimate that achievement, or the work done by circuit and district judges. Nonetheless, it is important that women should also be appointed to the High Court. I want to address the question how this might be achieved.

In January 2007, I gave a speech to the Chancery Bar Association in Lincoln's Inn. I drew attention to the fact that since October 2005 no women had been appointed as High Court judges. We are now in June 2008. The percentage of women on the High Court bench is a mere 10.19%. It took until 4 April 2008 for there to be a new woman High Court judge, namely Mrs Justice Eleanor King. She is the only woman to have been appointed to the High Court bench since 3 October 2005. In the same period, 29 male High Court judges have been appointed. I have no doubt that Mrs Justice King's appointment was well-earned. However, since Mrs Justice Bracewell very sadly passed away in January 2007, the appointment of Mrs Justice King simply brought the number of women judges on the High Court back to what it was in October 2005. In addition, since Mrs Justice King was assigned to the Family Division, no women at all have been appointed as judges of the Chancery or Queen's Bench Divisions of the High Court. So on 3 June 2008 we are in the same position as we were on 3 October 2005.

I find this result extremely disappointing, as I feel sure you do too. There are many reasons why it is desirable to appoint women judges. The judiciary needs to reflect more accurately the composition of society. When I spoke to the Chancery Bar Association in January 2007, I also referred (among other things) to the perspectives which women are able to bring to the bench. But, when I said this, the response from some was that men could equally have social awareness through their activities, perhaps as school governors or in voluntary work, and that

therefore there was no particular reason to appoint women as judges. Undoubtedly, it is essential that both men and women judges have a broad social awareness. However, the point I am making is that men and women often bring different perspectives to bear on a problem. The Times Law Supplement for 22 April 2008, in placing Baroness Hale of Richmond in sixth place in the top 100 most powerful lawyers, specifically commented on her bringing a different perspective to her rulings. It is that potential for different perspectives that men and women often have that in my view has the potential to enrich judicial decision-making. I am not saying that other under-represented groups do not have different perspectives too, but women are by far the largest group under-represented in the judiciary.

The value of women has been accepted in many other walks of life. For instance, 17% of ambassadors, 19% of Members of Parliament, 23% of permanent secretaries and 61% of the Government Legal Service are women.

There are far fewer women judges in England and Wales than in many other jurisdictions throughout the world. I have the privilege of meeting judges from far and wide as part of my responsibility, delegated by the Lord Chief Justice to me, as Judge in Charge of International Judicial Relations for England and Wales. Even in developing countries, there are many more women judges than we have in this country. Here are some statistics: women judges account for 17% of the judges of the European Court of Justice; 18% of the judges of the High Court of New Delhi, India; 19% of the judges of the Federal Constitutional Court of Germany; 27% of the judges of the Constitutional Court of South Africa, 29% of the judges of the High Court of Australia; 30% of the judges of the Court of Appeal of New South Wales; 31% of the judges of the European Court of Human Rights; 44% of the judges of the Supreme Court of Canada and so on. Of course, there are some courts where there are fewer women than on the High Court of England and Wales, but there are not many comparable courts in this position.

Given the position overseas, it would be extraordinary if the judiciary of England and Wales were left behind for long. Our judiciary, which is charged with keeping the common law up to date, will surely keep its own composition up to date and in keeping with modern conditions, so far as it lies within its power and so long as there are appropriate candidates. But it will require effort.

So how *is* the flow to be started? Since 2006, with the commencement of the new provisions for the selection of High Court judges by the independent Judicial Appointments Commission, we have had a new system for High Court appointments. This may not be the first time that public appointments for women have fallen in number when a new system of appointments has been introduced. But we need to find out why it is happening in High Court appointments. There needs to be research so that we can know why it has happened. We also have to make up for lost time. As I see it, the number of women on the High Court bench will have to double for that number to reflect more accurately the percentage of women in the eligible pool.

The expression "diversity", for all its virtues, suggests that the reasons for the under-representation of women or any disadvantages that they have are exactly the same as for other under-represented groups. The problems of each under-represented group need to be addressed, but we should not assume that the reasons for the under-representation of women, or any disadvantages which they have, are

necessarily the same as for other under-represented groups.

So far as the women candidates are concerned, while it is never possible to generalise, there is evidence that many women need encouragement to apply. Women must have the confidence to apply, and they must get as much relevant experience as they can so that they do well in the application process.

On the other side of the equation, there has to be constant vigilance to avoid any residual disadvantage for potential women applicants. Great care has to be taken to ensure that the approach to potential women candidates is not through inadvertence inappropriately influenced by the fact that most of the role models (except in the Family Division) are male or by the fact that women advocates may be less visible than male advocates. I am confident, however, that there will be more women judges and advocates in time. If, moreover, there were to be any residual feeling that women are in some way less suited for positions of authority, that should be dispelled.

There also has to be constant vigilance against the less visible factors that may act as a disincentive to women candidates. There are well-known societal reasons, life-style reasons and reasons connected with the organisation of the professions why there are relatively few women eligible for appointment. It is also interesting to me that a number of women prefer to be mediators rather than become members of the judiciary. It would be useful to know why this is the case. It may indicate that some women prefer a less gladiatorial approach to civil litigation, and that this is one of the matters on which they have a different perspective and on which they could no doubt make a quite special contribution to the development of the civil justice system.

And now I come to the Association's role. There is a role for collective responsibility in the development of under-represented groups, which associations like yours can carry out. As I said at the outset, the work of the Association is important both in helping women to succeed at the Bar and in helping them to prepare for appointment to the bench. The Association can be a vehicle for providing career development and encouraging all women to expand their capabilities. This will help form a "pipeline" of suitable women to apply for appointments. The Association already represents the views of women in the profession on such matters as judicial appointments. The Association already helps to increase the confidence of women by providing support networks and mentoring. If promotion to the bench were a natural progression within a single organisation, no doubt the organisation could provide all these things. However, that is not the case, and professional organisations must step into the breach. Suitable candidates in the pool may find it helpful to be guided as to how and when to swim to the top so that they can be fished out at the relevant time. Women must show that there are plenty of fish in the pool ready to be pulled out.

But so much for the present and the past. Let us think of the future that lies ahead. There is an old saying about two prisoners looking out from behind the bars: "One saw mud, the other stars!" Women have not done as well as I for one would have expected in the last two and a half years or so. But we must try not to look at the mud, and be discouraged. Even a little bit of progress now (and surely there has got to be some progress sometime soon!) would represent a great breakthrough. It would be hugely symbolic as an acceptance that women candidates have the requisite merit. But we want progress, real progress and progress that we can

believe in. Any progress also has to be maintained. The flow may start as a trickle, but it must become a regular stream.

We must also support the Judicial Appointments Commission. The appointments system is new and the JAC have had to hit the ground running. The JAC has made enormous strides in improving the processes for judicial appointments. We must turn our backs on any non-constructive criticism and move forward with an eye to the future. We must press the JAC to look at every way of realistically fulfilling its special statutory responsibility of having regard to the need to encourage diversity in the range of persons available for appointment. We have never before had the opportunity to contribute to, and help fashion, the appointments process as we do now. We must utilise that advantage. If we think that improvements can be made, we should put forward to our views to the JAC.

Moreover, as it seems to me, the existence of a strong, forward-looking and independent JAC has important consequences for all the members of this Association, whatever their seniority. The JAC will turn the spotlight on those factors which cause women to leave the profession in greater numbers than men, or which mean that a smaller proportion of women get to the top of the profession, so as to form part of the pool for appointment, than men. Those matters will have to be investigated and action taken, where action is needed.

I will end with a story that I hope you will find encouraging despite difficulties that you may face in practice. My husband and I were recently in India. In a small Indian hill station, my husband asked the local Judicial Magistrate (male, of course) whether there were any women judges.

"Pardon, sir?" he asked.

My husband repeated his question.

"Why, sir, we have about 30% women judges here and I hope that there will be more!"

Thank you for listening. I wish you all a very successful and fulfilling year.

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