

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Thursday 6 November 2003

**PRESS CONFERENCE**

Held by

**THE LORD CHIEF JUSTICE OF ENGLAND AND WALES**

**(The Lord Woolf of Barnes)**

and

**THE DEPUTY CHIEF JUSTICE**

**(LORD JUSTICE JUDGE)**

---

Computer Aided Transcription by  
Smith Bernal, 190 Fleet Street, London EC4  
Telephone 020-7421 4040  
(Official Shorthand Writers to the Court)

---

Thursday 6 November 2003

**THE LORD CHIEF JUSTICE:** Good morning, and thank you for coming. I hope that you have had a chance to read some of the paper -- I am sure you have not had a chance to read it all yet. Sitting with me is the Deputy Chief Justice, Lord Justice Judge. It was intended that there should be a trio here, the third person in the trio being Lord Scott. The reason we thought we would have a trio is that I was responsible for preparing the paper dealing with the position generally and appointments on behalf of the Judges' Council; Lord Justice Judge was responsible for preparing the paper dealing with Queen's Counsel; and, as he is a regular member of the House of Lords, Lord Scott was responsible for preparing that paper. The position is that, unfortunately, Lord Scott is in a hearing in the Privy Council this morning and so could not possibly be here because the hearing had to continue.

The document that you have seen represents the judiciary's collective response produced by the Judges' Council to those of the Government's constitutional reform proposals which impact on the judiciary and the administration of justice. All levels of the judiciary, including magistrates, have been involved in preparing the responses.

As you know, on 13 June the Government announced its decision to abolish the office of Lord Chancellor and create a new Supreme

Court. That was a decision of policy by the Government. In the responses we have not gone into whether that was a good policy decision or a bad policy decision. We have mainly confined ourselves to the consequences.

What the Judges' Council is primarily concerned with is that the public may not yet appreciate the full importance of the proposals which the Government is making and that there are matters not raised in the consultation papers which need to be considered by the public. Most important of all is that it is our view that the only satisfactory way in which to deal with the proposals is an entirely new constitutional settlement. The new arrangements that have to be put in place must be sufficiently robust to meet not only the immediate challenges, but also any that may have to be faced in the foreseeable future. In addition, we must not forget that what we do will have an impact beyond this country. We know that there is a great deal of interest internationally in what happens in this jurisdiction on constitutional issues of this sort.

The overriding issues are the independence of the judiciary and justice. The public have a strong interest in robust arrangements being put in place to ensure that judges are safeguarded. This is because the individual liberties of the public depend in the last resort upon the judiciary. Particularly where there are issues between the individual citizen and the Government or public bodies, this is the case. If I may say so in this company, it is also true

to say that the independence of the media is dependent upon the judiciary as a last resort. I only make that point to indicate that everyone is concerned that in this country, like in all other democracies, there should be a judiciary which plays its proper role. It can only play its proper role, and can only appear to play its proper role, if it is independent.

We have identified six key issues which have to be protected. First of all, there is Appointments. The Government has made clear that judicial independence was one of the main drivers behind its decision to establish a new Judicial Appointments Commission. Any future involvement in judicial appointments on the part of the executive will come from a Secretary of State rather than a Lord Chancellor. It is essential, therefore, that this involvement is clearly set out and appropriately confined. The Judges' Council does not think it is appropriate for the Government to retain control of the policy in respect of appointments. In particular it should not retain, as is suggested in the consultation, the ability to control the criteria which will be used to select individual judges.

Discipline is another matter which is important. Judges have responsibilities, especially to the public. There therefore must be an effective discipline system. However, it is of limited value appointing judges independently if, once they are appointed, they can be subjected to improper pressure through a disciplinary

process. We propose in the papers a system which seeks to achieve fairness and transparency, while protecting judicial independence. We believe that this should be contained in legislation where it has the sanctity of an Act of Parliament.

Deployment and Listing are matters of importance which we see should be protected by legislation. Judges are involved in the administration of the judicial system at all levels. The Lord Chief Justice of the day must be able to choose which judges take on particular judicial administrative responsibilities. These internal appointments, together with decisions as to the listing of cases and the deployment of judges between courts, have a direct impact on which judges try cases. It is the judiciary's responsibility to draw a balance between competing interests when it is decided in which order cases are taken. It will be very important that the new Secretary of State is consulted about such matters; but it would be entirely inappropriate for the executive to be able to exercise control, since if it were able to do so in relation to these matters, the executive could decide which judges try which cases. I think it is obvious why that would be undesirable.

Resources. Judicial independence is meaningless if judges are not given sufficient resources to enable them to operate effectively. We set out in the paper both the need for the judiciary to be involved in the decisions that are taken about funding of the justice system and the need for the Chief Justice in particular to

be given adequate resources to enable him to carry out his new responsibilities.

The next matter is Judicial Training. Training is another mechanism by which inappropriate pressure could be brought to bear on the judiciary. It is for this reason that in this country we have an excellent independent Judicial Studies Board controlled by the judiciary. This independence must be preserved under the new arrangements.

Finally, the sixth item is the Head of the Judiciary. Up until now the Lord Chancellor has been the Head of the Judiciary. The judiciary, as a separate arm of the State, must have a leader. All sorts of issues of importance to the judiciary will arise and the judiciary will need a spokesman. A number of functions previously carried out by the Lord Chancellor cannot appropriately be transferred to the Secretary of State. The Chief Justice is the natural successor to the Lord Chancellor as Head of the Judiciary for England and Wales. We do not, however, say that the Secretary of State cannot remain the Head of the Court Service. We consider it critical that the legislation through which the Government will introduce its reforms establishes a new statutory framework which clearly sets out the respective responsibilities of the judiciary, the Secretary of State, the Department of Constitutional Affairs and the Court Service. We are already engaged in discussions with the Lord Chancellor about these issues and are hopeful that an agreement

can be reached which will maintain and develop the existing partnership.

With regard to the matters that are being consulted upon, such as the appointment system and the Supreme Court, we accept that there is no one ideal solution to the many matters discussed in the Government's consultation paper. However, providing the key issues that we have identified are addressed, we are confident that if there is a new statutory constitutional settlement reached, this can protect the interests of the public and the independence of the judiciary and enable all those involved in the administration of justice to work together.

I am happy to take questions.

**JOSHUA ROZENBERG:** Joshua Rozenberg for the Daily Telegraph. When you say you are calling for a new constitutional settlement, I take it you mean that the statute that we are expecting should cover these key issues and preserve the judge's independence, which is obviously the theme that is running through your paper and your remarks just now. You must have told Lord Falconer that these are your concerns, and I do not suppose he was necessarily planning to put these points in the bill that he is presumably preparing at the moment. How confident are you that he will give you these provisions in the bill? And how damaging would it be if he did not?

**THE LORD CHIEF JUSTICE:** We are in discussion. I have said that we are in discussion. These points the judiciary regard as being critical and, as I hope I have made clear, they are critical not for the sake of the judiciary themselves -- we get our salary whether or not these provisions are contained in the legislation -- but we see them as critical for the protection of the public, not only today but also in the future. I would be very disappointed -- I cannot say any more than that -- if this protection is not in the bill. The Judges' Council and I will be urging as strongly as we can -- as we are doing today -- that they should be included. I think this is why it is so important that these matters are publicly discussed because the matters I have been identifying, apart from appointments (and to a limited extent discipline), are not actually matters which are raised by the consultation paper. That is why we have put in in our response a first paper which deals with the situation generally, stressing the importance of these wider issues which do result from the Lord Chancellor ceasing to be the central focus of our administration of justice. We see a radical difference between a Lord Chancellor, who is a judge -- he may also be a minister, but he is a judge and would sit in cabinet as a judge as well as a minister -- and a situation where we have in charge of the Court Service, as I am accepting, but also in playing a role in the administration of justice generally, who is a full-time politician, who is not holding himself out to be subject to the constraints of a Lord Chancellor and who does not take the oaths that a Lord Chancellor has to take.

**JOSHUA ROZENBERG:** You seem to be saying, if I may say so, that unless you can get these assurances -- and they appear from what you say not yet to be guaranteed -- we would be better off keeping the Lord Chancellor?

**THE LORD CHIEF JUSTICE:** I am bound to say that because that would be the logical result.

**JOSHUA ROZENBERG:** So if it is not in the bill, you would be campaigning to keep the status quo and to keep the Lord Chancellor?

**THE LORD CHIEF JUSTICE:** Well, the Judges' Council are drawing a distinction. We are not going into campaigning about the policy which the government has announced on 13 June. What we are saying is: if you are having that policy, then you must put in safeguards which will protect the public for the future. That is the emphasis that we want to make.

**MARGARET GILMORE:** Margaret Gilmore for the BBC. Lord Woolf, two questions, if I may. The Government saw their consultation document as a move to make the judiciary more independent. What you are saying seems to indicate the opposite. Do you think they have been misleading us? The second question: is your biggest concern this issue over who is going to be boss?

**THE LORD CHIEF JUSTICE:** I do not think the Government have been deliberately attempting to mislead us. What I do think is that the way the reform process was announced, it meant that a lot of matters had not been considered, and indeed the consultation papers which had been issued had not considered these issues, and I think, and the judiciary thinks, that it is very important that they are considered because otherwise the independence of the judiciary could be affected. It goes much wider than merely the question: who is Head of the Judiciary? It goes into fundamental issues which may not be obvious to the public. They were not obvious to the Lord Chancellor, otherwise they would have been in his consultation paper. Why we are having this meeting this morning is to try and get over this message because it is, we think, very important to the public.

**DANIEL SANDFORD:** Daniel Sandford from the BBC. To what extent do you think that the Government was downright rude by just suddenly making this announcement without talking to anyone about it beforehand -- perhaps that is too strong, but inappropriate just to launch into this without any discussion?

**THE LORD CHIEF JUSTICE:** I do not think it helps to apply adjectives to what has happened. I think that these are changes that require consultation.

**HUGH DOUGHERTY:** Hugh Dougherty from the Evening Standard. Lord Chief Justice, you say that it appears it was not obvious to the Lord Chancellor the issues that you have raised. Would you expect that somebody who was a Minister of the Crown and a Member of the Bar would have been able to appreciate the significance of these changes?

**THE LORD CHIEF JUSTICE:** I think you have to study the consultation papers and what is proposed to see just how wide-ranging are the issues that are raised. At first sight it was obviously not understood that the proposals would have the dramatic effect which we have indicated. I do not believe it was fully understood just what a central role the Lord Chancellor plays within our constitution. I see it as absolutely the central core on which the whole of our justice system was suspended. You take away this unusual individual -- no other country has a Lord Chancellor, and I would never recommend for any other country to have a Lord Chancellor -- but we do not have a written constitution and most developed countries have a written constitution. Our system worked on checks and balances, and part of the checks and balances was the Lord Chancellor. If you take away that very important support of our system, you have to put something back in place. What we are trying to do in our consultation papers is to identify what we feel are the essential features that must be replaced.

**ROBERT VERKAIK:** Robert Verkaik from The Independent newspaper. I

want to ask you two questions. First of all, on the consultation, how much notice did you get that the Government planned to abolish the Office of Lord Chancellor as the Head of the Judiciary?

**THE LORD CHIEF JUSTICE:** Well, it was in matters of minutes rather than days.

**ROBERT VERKAIK:** Presumably you would have preferred much more notice than that?

**THE LORD CHIEF JUSTICE:** Well, I have got to be frank and answer straight. The fact is that I think it would have been preferable for more consultation. This is something which did seriously affect our administration of justice. After the Lord Chancellor I am the senior judge and I could have fed into what was proposed the views of the different judges. But the approach adopted by the Government was to decide on the policy, announce the policy -- which they did -- and then to have a consultation process. I do not think it is for me to say that that is not the way the Government should have gone about it. We know the way they did go about it, and you know that I would have preferred to have had an opportunity of being consulted. I do not think I can add more than that.

**LORD JUSTICE JUDGE:** May I make a point, Lord Chief Justice?

**THE LORD CHIEF JUSTICE:** Yes.

**LORD JUSTICE JUDGE:** I am just a little troubled. This is a series of very interesting questions about what went on last June when the papers that we have prepared and are putting before you for your consideration and for the public's consideration actually deal with the consequences. That seems to me, with great respect to all of the questioners, much more important. The story tomorrow has to be about the issue of the public's entitlement to an independent judiciary -- not whether or not last June something may or may not have gone right or wrong.

**ROBERT VERKAIK:** I did have a second question relating to your proposals and that was the Judicial Appointments Commission and whether or not the Lord Chief Justice would have any place on that Commission. You have ruled yourself out as the Head?

**THE LORD CHIEF JUSTICE:** Yes. I think that the membership of the Commission is a more practical possibility for the Head of the Judiciary. Certainly it would be my view that senior judges must be represented on the Commission -- after all, senior judges have been judges for a substantial period of time and they know an awful lot about judging and therefore the people who need to be judges.

**MARGARET GILMORE:** So what would happen if they wanted to apply for a job? They would then stand down?

**THE LORD CHIEF JUSTICE:** The Commission members generally I think will be part-time. So it will be possible for judges to be part-time members. We feel this job is so big that it will be very difficult for the chairman to be other than full-time -- or virtually full-time -- which rules out anybody who holds my office.

I think it rules out any active judge, but it would be possible for a retired judge, for example, who is a distinguished judge, to chair the Commission, but I think we have got to get the best person for the Commission because the appointment system is very important.

Frances, you were going to ask a question?

**FRANCES GIBB:** Frances Gibb, The Times. It is really just asking you to amplify what you said before that given the current package of proposals on the lack of a Head of the Judiciary in the Cabinet and the proposed Appointments Commission, as it is proposed, how great is the danger of political interference in the justice system?

**THE LORD CHIEF JUSTICE:** I think the dangers in the future are great. I am not saying that in relation to this Government, but we have to have a system in place which is going to stand the test of time. One just does not know what will be the position in the future. It cannot be a bad thing to decide what should be there and to put it in legislation so that if someone wants to change it, they have to go back to Parliament in order to change it.

**STEVE DOUGHTY:** Steve Doughty, Daily Mail. Lord Woolf, may I ask you a question about the section on Queen's Counsel?

**THE LORD CHIEF JUSTICE:** Yes?

**STEVE DOUGHTY:** You say that the Secretary of State should not have the power to advance names for appointments as QCs on its own initiative. Has it been the case that in the recent past Lord Chancellors have advanced names of QCs on their own initiatives?

**THE LORD CHIEF JUSTICE:** I do not think in fact -- I cannot recollect a Lord Chancellor ever doing that. So far as my experience goes, it has always been by application. A Lord Chancellor would never nominate names --

**CLARE DYER (THE GUARDIAN):** Although he has invited people to apply.

**THE LORD CHIEF JUSTICE:** He has invited people to apply? Well, I did not even know that.

**LORD JUSTICE JUDGE:** I thought that everybody who wished to be a Queen's Counsel applied for it, unless they were those considered as honorary Queen's Counsel -- distinguished academic lawyers and so on -- but as for the working profession, I have always been under the impression that anybody who wanted to take silk had to apply directly for it. The concern is that if the Lord Chancellor's

office ceases, then we simply have a political figure, the Secretary of State, and it is very difficult to equate a system in which there is independence of the judiciary with a system in which the Secretary of State has a particular role to play in the choice of people who are regarded as heads of the legal profession.

**BOB SHERWOOD:** Bob Sherwood, Financial Times. How concerned are you about the lack of financial details -- funding commitments or even building for a new Supreme Court? How confident are you that, as the Government seems to intend, there really can be any kind of working Supreme Court?

**THE LORD CHIEF JUSTICE:** I think the question of resources, as we have indicated, is a very important issue. There is no doubt that the system at the moment could do with a great deal more resources than it has. But we know that that applies right across the public service. At the moment I would be disturbed if very substantial sums, which I believe are necessary, were to be taken from the system at present and used, for example, for the sort of Supreme Court we need to have. It will be an expensive business. We have courts, I am afraid, which have leaking roofs. Our maintenance, not by this Government alone, but over a substantial period, our courts, many of which are in very old buildings, have been neglected and I think we have got to get our priorities in order.

**JOSHUA ROZENBERG:** Surely the answer to all of this is for the

Government to put this off for at least a year, not to bring in the bill in the next session of Parliament, trying to get the Supreme Court set up by April 2005, and not to rush this. That is the only way in which they can rectify what quite reasonably you do not want to talk about, which was the lack of consultation in the summer. Have you put that to the Government, or do you think they are determined to go ahead on all of this?

**THE LORD CHIEF JUSTICE:** Well, the setting of the timetable for this is the Government's responsibility and we have not interfered with the timetable they have set. But we want to have a full consultation exercise, and we have done our best to get a full response to you so that it fits in with their timetable.

**JOSHUA ROZENBERG:** Can I ask you something specific? In general can it be done, but completely separately and specifically, paragraph 45: "The duty to uphold the continued independence of the judiciary should be extended beyond those with responsibility for the administration of justice to all Ministers." Now, "all Ministers' include a minister who is often before these courts who is a respondent to judicial review. Are you calling on the Home Secretary (just to take one example of a minister) to adjust the approach he takes towards the administration of justice? What do you want ministers such as the Home Secretary to do that they are not doing now?

**THE LORD CHIEF JUSTICE:** What I have indicated in this situation is that, whereas in Cabinet in the past the Lord Chancellor would be there not only as a minister, but as Head of the Judiciary, and therefore could speak up for the judiciary, now in the new arrangement I would like to see a situation where it is clear that taking on the grave responsibilities of being a Minister of the Crown responsible for the Government of this country includes the responsibility for playing your part in upholding the independence of the judiciary; and the other side of the coin is that you do not then do anything to damage the independence of the judiciary. Again, echoing what the Deputy Chief Justice said, that is looking to the future.

**RACHEL BAIRD (DAILY EXPRESS):** You are talking an awful lot about the independence of the judiciary and the changes that perhaps these proposals pose to it, can you give us a couple of very concrete examples of the sort of situations that you are concerned about -- not with this Government but with any?

**THE LORD CHIEF JUSTICE:** Yes. Let us take the area of this building where they are most in contact with the activities of Government: the judges in the Administrative Court who deal with judicial review. I would think it would be a very serious situation if because a particular judge had given two or three decisions which the Government did not like, then the consequence would be that that judge would be taken away from dealing with judicial review cases in

future and put on other work for which the Government would feel, genuinely, that judge was better suited. They would take the view that the fact that the judge had found against the Government in the three cases indicated that he was not very good at this type of work. Others might take the view that he was just the sort of judge who should be doing this sort of work. It is that sort of issue which we see as being important.

But it also applies in a case in the criminal courts. If there is somebody charged with doing something contrary to national security and it is thought that there is a particular judge who would be sympathetic (whether rightly or wrongly) towards the Government's position, it would be wholly inappropriate that the method of listing or the method of selection should achieve that purpose.

Taking another example, if there is a particular policy or Government initiative that certain types of crime are to get priority, that would mean that other areas of crime would not get priority, or people would have to be taken away from hearing civil cases to hearing criminal cases, then, speaking for myself, I would have thought that that is something which the Government should not be in a position to control. The judges should have the responsibility of balancing the respective interests of the different people for whom the courts act.

**JOSHUA ROZENBERG:** But how can that be done unless you have your

constitutional settlement? How would the Government be able to do all that in practice, which I presume it is not able to do at the moment while you are in charge. How would they be able to do this?

**THE LORD CHIEF JUSTICE:** Well, one has seen it in other countries. First of all, if judges know that the result of their giving an unpopular decision is that they will be moved to an unpopular court with judges, that can affect the way judges behave. It does not necessarily involve removing the judge, but it involves making life unpleasant for the judge. If the judge knows that if he gives decisions against the Government he will not be promoted, he will be a little less than human if that does not affect him. If he knows that what will happen if he gives a decision which is unpopular that he will be attacked vigorously in the media by a populist minister -- these are the things that can affect independence. Judge are human beings. They are by tradition very independent and they behave independently. But they are also human beings and, if I can say so, that is why from time to time I urge the media to be the moderate in the way they react to decisions that judges make which they do not like because that can affect the independence of the judiciary.

**MARGARET GILMORE:** Can I pick up on that one for clarification? Are you actually saying that the Government's proposals bring a big risk of the Government interfering when they do not like judicial

decisions?

**THE LORD CHIEF JUSTICE:** I do not say that of this Government, but I do say it could happen in the future.

**LORD JUSTICE JUDGE:** The future is long as well as short. What we are concerned with is the long-term future. That is why the constitutional settlement that will follow these proposals has to secure the long-term future. I do not think anybody is suggesting that any political party that we can currently envisage as forming a government would dream of undermining judicial independence. But the fact of the matter is, we have seen all sorts of democratic processes subverted and all sorts of judicial independence subverted. That is what we have to avoid.

**MARGARET GILMORE:** And these proposals, you say, would allow for that political interference?

**LORD JUSTICE JUDGE:** No, I am not saying that. I am saying that the proposals have to be examined and the solutions to the proposals reached which prevent it happening.

**DANIEL SANDFORD:** You have talked a lot about the abolition of the post of the Lord Chancellor and what that means, but obviously another very central change is the creation of the Supreme Court. I am wondering to what extent there is support in the judiciary for

saying, "Okay, that's it. The Law Lord stops now and we get a new Supreme Court"? To what extent do you feel that that is rather cosmetic -- in fact it will do just the same thing and really will not have any great impact at all?

**THE LORD CHIEF JUSTICE:** Well, I certainly would not go so far as to say that it will not have any great impact, the new Supreme Court, but I do not believe -- and I have sat in the House of Lords -- that in the consideration of cases the House of Lords will come to a different result from that which the new Supreme Court would come to, and I do not believe the reasoning would be any different. The judges under the proposals are going to be the same. Of course the nature of the judges who are appointed changes -- and we have just recently the announcement of the first woman member of the House of Lords, and I, and most of my colleagues (if not all of my colleagues; I know of none otherwise) welcome the addition of a woman in the House of Lords. So that is changing be evolution. But the resources that can be made available in the House of Lords are to some extent limited, although they have improved from when I sat there regularly. They are better now than they were. But what I think is important is that those who say this Supreme Court's time has come are saying: you need to have separation not only from the executive, you also separation from the legislature. I know that that is the view which will be taken in most democracies today. On the other hand, we have had a system which has evolved over the centuries and if we are not going to do it well -- if we cannot

afford to do it well -- I would like it perhaps to be postponed until we can do it well.

**DANNY SHAW:** Danny Shaw, BBC Radio. Lord Woolf, can I ask you about diversity in paragraph 80? You seem to be concerned about the danger of political correctness in the appointment of judges by the Commission in order to achieve diversity. You talk about them being "so anxious to achieve diversity that sight is lost of the primacy of merit." Are you concerned about political correctness coming in to get more women and members of the ethnic community?

**THE LORD CHIEF JUSTICE:** Let me make it clear straightaway that I would like to see more women judges and more members of the judiciary who come from the ethnic minority. I remember when I was appointed Master of the Rolls, I had a press conference and I said that I hoped my successor might be a woman or a member of the ethnic minority -- perhaps I did not keep the job long enough to enable that to happen. But the fact is that I would like to see better representation. I do believe that the whole of the quality of our justice system depends on appointing the very best candidate, whatever their background, to become a judge. It is my belief that insofar as we have not got better representation that I would like to see in the judiciary of those from the ethnic minorities, and women, depends upon the structural arrangements within the profession from which judges are appointed. We appoint as judges lawyers, and if you look at the make-up of the legal profession,

then it is not surprising that we do not appoint more because the paper makes the point that if you look at the eligible women and those from the ethnic minority who are there, we are appointing at least the appropriate percentages, but they are too small a percentage. I hope that the Commission will look at the structural inhibitions in the system so that it will be possible to appoint more women and more from the ethnic minorities. Once they are appointed then we have to ensure that they do rise through the system. At the moment if one looks at the bottom of the system, the figures are improving rapidly; but it does take time to get to the top. It has taken me 25 years to get to my present job. When I was first appointed the position was worse with regard to ethnic minorities and women than it is now.

**LUCY ATHERTON:** Lucy Atherton, BBC News 24. Would it be fair to say that you were broadly in favour of a Supreme Court provided it is done well?

**THE LORD CHIEF JUSTICE:** I am broadly in favour of a Supreme Court if it is done well.

**FRANCES GIBB:** Given everything you have said in relation to judicial appointments, why are the judges divided over the continuing role of the executive?

**THE LORD CHIEF JUSTICE:** The extent to which the judges are divided

on the role of the executive is limited to this: should the executive be wholly excluded or should they have a limited role? We put forward, therefore, two choices. There is a special argument there. The argument is this. It actually is in accord with our traditions that the executive should have a limited responsibility in respect of appointments, and the role we see is a negative role -- a role to say: "I do not like that particular candidate. Please give me another candidate", and as long as they give reasons for that -- speaking personally -- I do not see any harm and I can see advantages in it. On the other hand, some of my colleagues say, "Well, look, this is all done to achieve independence from the executive. Let us now have a clear line. That is where the appointment system is, that is where the executive is, and the executive should not intrude across the line", but it is a limited distinction between the members of the judiciary and it is a matter of judgment.

**JOSHUA ROZENBERG:** Are you in the majority view and are your colleagues who want no involvement by the executive, are they in the minority?

**THE LORD CHIEF JUSTICE:** I think it would be difficult to say what that is. What would your impression be?

**LORD JUSTICE JUDGE:** Speaking only for the Judges' Council, I would say it is a pretty 50/50 difference of emphasis -- but it is only

that.

**HUGH DOUGHERTY:** Lord Woolf, if we could go back to the independence of the judiciary, could you give some sort of parallel historically? When in the past has there been a change of this magnitude? Is it in the recent past or is it very far back or is there any parallel?

**THE LORD CHIEF JUSTICE:** I think you have got to go a long way back in this jurisdiction before you find that there are threats to the independence of the judiciary. There were certain threats in the seventeenth century -- a lot of judges lost their heads. But Lord Justice Judge is a better historian than I and he might be able to give you a better answer.

**LORD JUSTICE JUDGE:** I think the answer to your question is not to examine whether in the recent past in the United Kingdom we have had such a problem because the plain simple fact is that we have not. But we cannot run through the future and say: "This is Great Britain. Everything is perfect here. Things like this do not happen here." I am not making a party political point against anybody, but we do have to remember the popularity of the second person in the recent presidential election in France. We do have to remember that Hitler came to power in a democratic country by getting a significant popular vote and then subverting the constitution. There are nasty people out there and there is no

guarantee that because we are Great Britain none of them will ever, ever come to power.

**THE LORD CHIEF JUSTICE:** I think there is something which is more subtle as well. That is the overt interference, but, you know, governments have their agenda. They are anxious to see things that are done which they believe are necessary, and it can be very inconvenient to have a judiciary which is holding up their ability to implement their policies. It can be very tempting then not deliberately to interfere with the judiciary, but to take action which they see is necessary to ensure that the interference is reduced to a minimum. It is these sort of matters that can occur even in a benign system such as ours.

**JOSHUA ROZENBERG:** But you would not disagree with headlines which say that you said that this is the biggest threat for four hundred years and you said that this is the biggest threat since Hitler?

**LORD JUSTICE JUDGE:** I would completely disagree with those headlines, and I hope, Joshua, even you picked up the care with which I answered the question.

**MARGARET GILMORE:** How important is all this then in terms of your distinguished and lengthy career?

**THE LORD CHIEF JUSTICE:** All I can say is that I think it is very

important.

**MARGARET GILMORE:** But you have delayed your retirement?

**THE LORD CHIEF JUSTICE:** Well, what I feel is that I happen to be in office when this started. I have had experience of discussing issues with the Government which were sensitive and needed the Government's position placed clearly in its proper context and that they should understand the way the judiciary see the matter. Rightly or wrongly, I took the view that this was not the time for a change of the senior full-time judge. That may have been very arrogant and conceited of me to take that view, but I hope that when I do retire, which will not be long hence, we will be back into calm waters for my successor when he or she starts performing the role.

**MARGARET GILMORE:** Do you think these are the most important changes for one hundred years, five hundred years?

**THE LORD CHIEF JUSTICE:** I would not want to put a mathematical scale upon it. All I can say is that we are indicating very clearly -- the judiciary as a whole; myself included -- that we regard these changes as being very significant and what we want to make sure is that the public understands how significant they are. We feel that if they are adopted by Parliament, they should be adopted in a way which provides the protection our funny old constitution has provided in the past because our constitution in the past has

provided protection. I have worked with four Lord Chancellors now and each one of them with whom I have worked -- and my mathematics are not as good as they should be; it is actually five if you include Lord Falconer -- each one of them was concerned with protecting the independence of the judiciary -- and I emphasise, not for the judiciary's sake, but for the country's sake.

**JOSHUA ROZENBERG:** Do you include Lord Falconer in that?

**THE LORD CHIEF JUSTICE:** Yes, because he has both roles.

**FRANCES GIBB:** The duty that you propose to put on ministers to uphold that independence, does that extend to ministers not being able to criticise judges' rulings?

**THE LORD CHIEF JUSTICE:** No. I think that public discussion of judicial rulings is perfectly appropriate, but I think it should be conducted in a responsible way. I think that Lord Irvine put it very well when he said (I paraphrase him and do not express it as well as he did): "Ministers should not cheer when they get a result in their favour and should not boo if they get a result which is against them." But they are entitled to appeal and if in the end they do not like a decision, they are entitled to legislate. But what they must not do, it seems to me, is to attack individual judges who have tried their best to get the right decision but which a Court of Appeal may say was the wrong decision.

**HUGH DOUGHERTY:** Sorry to press you, but in terms of trying to understand the scale of change would it be useful to look at countries, for example, like Zimbabwe or Ghana which, when they were given independence had adopted essentially similar common law systems and which founded the independence of the judiciary? Is that a useful parallel?

**THE LORD CHIEF JUSTICE:** I would not like to select -- there are plenty of countries around the globe where this has happened, and they are countries which have had common law systems like our own, and who actually had constitutions, but they were undermined, notwithstanding their constitutions.

**LORD JUSTICE JUDGE:** I am very troubled, if I may say so, about the constant refrain of threat. The whole point of these papers is for there to be a public discussion. The whole point of you taking an interest in this is you performing your function as the people who inform the public of what is going on. The essential point in the end is that the public will have to decide how independent it wants its judiciary to be and how that independence should be secured. I do not myself see anything in these papers that implies there is a threat. What I see in these papers is issues which the public ought to be considering.

**THE LORD CHIEF JUSTICE:** Furthermore, there are issues which are not in the papers, which we think arise out of these reforms, which we

consider have to be elevated so that they can be discussed and that is what we have done in our response.

**FRANCES GIBB:** If you had a final message then to Lord Falconer to up sum, what would it be?

**THE LORD CHIEF JUSTICE:** Well, our message would be: these are, if you look at them, proposals which are not judge-motivated in the sense that they are not designed to give judges more power. They are designed to put forward a sensible way of filling the vacuum which the removal of the Lord Chancellor in particular will leave. So we adopt the example of the Appointments Commission and say: "Fine. Let us have a good Appointments Commission". We are not saying that the judges should have the sole say about discipline. But what we do say is: use the disciplinary process in a way which enables the conduct of the person concerned who is being disciplined to be judged appropriately by a judge and that if there needs to be an appeal the Secretary of State, on behalf of the public, should be able to refer it to a higher tribunal to review the earlier one. We recognise judges are fallible.

Thank you very much. I am very grateful for you for coming.