

Baroness Usha Prashar

Speech at the

Annual ILEX luncheon

*Clothworkers' Hall, London
17 May 2006*

1. Thank you John (Wells – President), for your welcome and invitation to speak today.
2. Yours was the first official lunch invitation which I received and that is a real tribute to the tenaciousness of ILEX in promoting the cause of its membership. Indeed, the invitation arrived before I even had an office to work in. The illustrious guest list is also a testament to the importance of ILEX in the legal world. I am honoured to be your guest speaker.
3. Today, I shall be talking about the Judicial Appointments Commission and how I see our work developing. But I am sure you will appreciate that we are only six weeks old and that at this stage I can only but share with you our initial thoughts and explain the working of the JAC. I am also conscious, that at lunchtime events, short speeches are more likely to aid digestion than long ones, so I will be brief.
4. First let me explain something of the working of the JAC and its composition. There are fifteen Commissioners including myself and, with the exception of three Commissioners selected by the judges' council, we were recruited and appointed through open competition.
5. Membership of the commission is drawn from the judiciary, the legal profession and includes five lay people. It is a misnomer to call them lay as they are all highly distinguished in their respective fields. The

commissioners are appointed in their own right and are not representatives of the professions that they may come from. The specific make up of the Commission does mean that members bring a breadth of knowledge, expertise and above all independence of mind.

6. Under the Constitutional Reform Act 2005 we have very specific duties in the selection of judges and tribunal members, both legal and lay. We are required to select solely on merit, we are required to only select people of good character, and we must have regard to the need to encourage diversity in the range of persons available for selection for appointments.
7. We are a selecting Commission and not an appointing Commission. For each vacancy the Commissioners will select one candidate to recommend for appointment by the Lord Chancellor. The Lord Chancellor can reject that recommendation but he is required to provide his reasons to the Commission. For the first time in 700 years, the Lord Chancellor will no longer have the power to select which judge to appoint.
8. Our mandate is clear. How we work is as important as what we do. We are determined that excellence and independence will be our hallmarks. Excellent in our processes, independent in our decisions.
9. As a new organisation we have decided that in carrying out our duties we need to thoroughly review and revise current ways of working and decision making. We have therefore set ourselves three tasks:

one: defining merit, that is what makes a good judge;

two: determining effective and fair methods for assessing merit, and

three: how best to encourage a wide range of applicants.

10. I have no doubt that appointments to date have been made on merit and the proof is that we have an excellent judiciary with a very high reputation. A worldwide reputation. We want to enhance that reputation and excellence by ensuring that candidates in future are drawn from a much wider circle. Let me make one thing absolutely clear diversity and merit are not incompatible. The benefit of widening the range of applicants has a powerful simplicity. If more, well-qualified people apply to be judges, the merit of those selected will either remain the same as now or be enhanced. And if the appointments process excludes consideration of irrelevant factors then we might also expect appointed judges to come from a very wide range of backgrounds. Merit is our bedrock.

11. My initial conversations with a whole range of people have highlighted a number of issues. I have already begun to hear that many potentially excellent candidates rule themselves out because the process for appointing judges is felt too cumbersome and that there are too many barriers that prevent the widest range of candidates considering a career as a judge. Then there are commonly held views and perceptions.

12. Let us take one common perception. That judges, by and large, need to be advocates. There are many advocates who are very fine judges but it

is not a pre-requisite for the job and that perception prevents many talented and well-qualified people from seeking judicial office.

13. Some argue that the current system of consultees – what in other appointment processes is called reference giving – works against solicitors, legal academics and other suitably qualified people becoming judges.

14. And there is that old myth, that unless you are male, white, upper-class and Oxbridge educated you should not even think about trying to become a judge.

15. We as a Commission will have to work hard not only to develop methods of appointment which are simple, fair and transparent; encourage applicants from diverse backgrounds to apply – but also dispel some of the widely held myths and perceptions.

16. On diversity we are starting out on the task in partnership with the Lord Chancellor and the Lord Chief Justice. I have today welcomed the Lord Chancellor's announcement of a trilateral strategy for judicial diversity as I share his aim of a more diverse judiciary of the highest quality [that contributes to increased public confidence in the justice system]. We will play a major part by encouraging a wider range of applicants and promoting diversity through fair and open processes for selection but we cannot do it alone. I know the Lord Chancellor and Lord Chief Justice

agree with me that close and collaborative working between ourselves and our organisations is essential.

17. One example of this interrelationship will be familiar to you. It is still for the Lord Chancellor to propose policy on who should be eligible. As you know one of his key proposals is to introduce legislation that would open up appointments for appropriate judicial posts – such as District Judges and Tribunal chairmen – to legal executives. This, if the Government does find the necessary legislative time, would mean that Fellows of this Institute will become eligible to apply for Judicial Office. As and when this happens, we would treat each forthcoming candidate on his or her merits as we would any applicant.

18. The Commission is currently engaged in defining ‘merit’ and working out appointment procedures which are simple and flexible. We will do whatever we can to streamline appointment process and ensure that it does not in any way disadvantage any particular group or does not put off good applicants from applying.

19. This is a challenging agenda. We cannot do this on our own. We will need to work in collaboration with a wide range of actors in the legal field. Although our justice system is based on the rule of law it is also dependent, as any system is, on retaining confidence from the public, the legal profession and the judiciary. That is why we will work with others – to understand their perspectives and build confidence in our work. But also

expect others to play their part in taking meaningful steps to encourage a wide range of candidates to apply.

20. So to conclude:

- Our objectives are to select for appointment judges of the highest possible quality by recruiting judicial officer holders from the widest possible range of talent.
- To ensure that every person with the right qualifications and qualities will be certain that they will be considered on merit - whatever their background.
- To contribute to greater confidence in the justice system as a result of a judiciary with an enhanced understanding of the society it serves.

21. We are at the beginning of a journey, but we are starting on this journey with a clear view of what our guiding principles are and what we want to achieve. Ultimately we will be judged by the results. But with a strong Commission and co-operation of the legal world I am confident that we will maintain and enhance the worldwide reputation of our judiciary.

22. Thank you again for inviting me and for listening to me.