LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RT HON. THE LORD JUDGE

JURY TRIALS

JUDICIAL STUDIES BOARD LECTURE, BELFAST

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Lovely as it is to be here with you, you did not invite me to take up your time with a catalogue of good jury stories extolling the virtues of trial by jury, or indeed reminding ourselves the moments when perhaps it could be politely said that the jury was taking an idiosyncratic view of a case, or a piece of the evidence, or indeed for that matter of the trial judge.

My starting point is simple. Everything in my own personal career, both at the Bar and then on the Bench, has served to demonstrate the value of our jury system, and the reason for its pre-eminence in our constitutional arrangements for the administration of criminal justice. The jury system ensures that in our jurisdiction no one can be convicted of a serious crime or subjected to a lengthy term of imprisonment unless he has admitted his guilty in open and public court or a body of his fellow citizens has considered the evidence and satisfied itself on the basis of that evidence that they are sure of guilt.

None of this is to say that the jury system cannot be subverted, and in this jurisdiction above all, you need no reminder from me of how the jury system can be subverted. Subversion can be generic, and it can be individual. But the fact that remedies have to be found for subversion does not alter the essential reality that the jury system has a resonance for us, and indeed for every common law system which has embraced it, which it is difficult to underestimate and unwise to ignore.

That is not to say that different systems of trial are unfair or lack legitimacy. After all, in our jurisdiction the overwhelming majority of criminal cases are decided by lay magistrates. In your jurisdiction, the Diplock Courts have been, and are regarded as a model of how a trial of serious offences can take place without a jury, and that such a process provides a fair trial and a reasoned judgment explaining the reasons for the verdict. It is perhaps worth underlining the tribute paid by Lord Trimble to the judiciary in this jurisdiction in September 2007 when, in the House of Lords, in the context of an expression of what he described as distaste for non-jury trials, he said:

> "I do not share that approach at all. In this debate, it is appropriate that we record our appreciation of the judges in Northern Ireland who, during the past 30 years, have sat in Diplock courts in very difficult circumstances. Despite the difficulties and dangers they have managed during that time to achieve a good result. That must be said".

And much of the basis for support for the jury system is just factually wrong. For example, Magna Carta is said to have established the right. You cannot forget – well some of you will

not have seen – the great moment when Tony Hancock was replicating the juryman in the famous "Twelve Angry Men" film:

> "Think of your roots,
> Think of your history.
> Magna Carta, did she die in vain?"

It may be bad history, but in the context of criminal justice in very many ways perception is a fact, a real fact, and perceptions matter hugely.
It is not an accident that for very many years now there has been a widespread belief, crossing all political and social lines, that from the time when the jury system ceased to be trial by immediate neighbours who would know the facts, the responsibility for the verdict was vested in the jury as a body examining the evidence, this system helped to ensure the administration of justice as well as the preservation of civil liberties. As long ago as 1618 the Great Charter for Virginia, drafted by Sir Edwin Sandys established the rights of settlers in the new colonies and the plantations, and their children, and provided guarantees for trial by jury. And it was the removal of the right to trial by jury in the Stamp Act in 1765 that triggered off the concerns of those then described as the colonists in the United States of America. What I am driving at is that we must not assume that our national devotion to the principle of trial by jury is newly minted.

In his remarkable and outstanding review of the criminal courts of England and Wales, published in October 2001, my friend Robin Auld questioned the ability of jurors to acquit "in defiance of the law and disregard of their oath". This he argued was more than illogical, rather it was a "blatant affront to the legal process. That was because the role of the juries to find the facts as they are and apply the law to those facts, not to substitute "their view of the propriety of the law for that of Parliament or its enforcement for that of its appointed Executive, still less on what may be irrational, secret and unchallengeable grounds."

Of course, in one sense Robin is absolutely right. Jurors should apply the law in accordance with the directions of the judge.

As you would expect with Robin, he makes a number of telling points. What, for example, about prejudices in the jury room that may lead to perverse acquittals, for example, in a sexual offence where a number of misconceptions relating to the issue of consent to sexual activity tended to reflect a dangerous combination of ignorance and prejudice which deprived the victim of unwanted sexual attention of justice?

I see all that: nevertheless the jury system does provide a safeguard against oppression and dictatorship. It is not a guarantee, because of course a dangerous dictatorship – and all dictatorships are dangerous – could as easily pervert our constitutional arrangements as they could our democratic principles, by ensuring that although jury trial was preserved, juries would be "packed" with malleable and frightened individuals. All that is true. But even in a democracy, it is possible for the legislature to create potentially oppressive and unjust criminal laws. The very fact that such laws will be exposed to the scrutiny of a jury in the event of a prosecution may – and for my own purposes "may" is enough – cause the legislature to pause and reflect on whether it is wise to enact such a law. It is one small aspect of the very subtle relationships which govern the operation of our society and the well being of the community.

I want to address two specific questions relating to jury trial which I believe need to be addressed, and which I do not think have yet been sufficiently addressed.

The Impact of Modern Technology

I have spoken publicly on this subject, but not here, and in any event my thinking on the subject has been developing, in truth, as technology itself has developed.

(1) The jury system depends on twelve good citizens and true, selected at random, coming to court and listening to the case. "Listen" is a crucial word, although increasingly jurors are also required to and assimilate documents. But we all know that orality, the spoken word, is at the heart of the system. Witnesses are asked questions which they answer. Counsel address the jury. Judges give directions, increasingly summarised in writing, in the form of guides to verdict, and so on, but essentially the process is an oral one.

Let me now consider my grandchildren. Not perhaps the youngest two, but the teenagers. They are technologically proficient. Much of their school work is done by absorbing information from machines. They consult and refer to the internet. When they do so they are not listening. They do not, as we did, sit in class for 40 minutes listening to the masters and mistresses providing us with information. They are provided with information in written form, which they assimilate into their own technology.

Now, what this form of education lacks is training in the ability to sit still and listen, and I emphasise, listen and think, I repeat, listen and think simultaneously, for prolonged periods. Yet that is an essential requirement for every juror.

But, assume they are naturally gifted with this ability, that they can learn it from life as life goes on (although in truth the lives that they will lead will be even more technology based than their current days at school). How long before they seek for all the evidential questions on which they have to make up their minds to be provided in ways which adopt to modern technology? And here, I am speaking not of today, but of 10 or 20 years time, and none of us need much reminder of the speed with which technology has been developing. Now, of course, in our current processes, we have assimilated modern technology, and in major trials much material is made available to jurors on screens. But in the end, what will they make of a process which becomes screen and paper and illustration and mockup when, as is so often the case, the task of the fact finder is to decide where the truth lies when two witnesses are telling dramatically different stories. Was the child indecently assaulted, or is it a fabrication? Was the sexual activity consensual, or not? And we all know, do we not, of cases which on paper look very strong against the defendant, which as the trial unfolds, through oral testimony, and cross examination, demonstrate that the entire prosecution case was structured on paper, and is no stronger than paper.

(2) Next there is the problem of the jury consulting the internet. You all know of the kind of directions that we give. They are in truth no more than a development of what we have always said to jurors about discussing the case with others, and the reasons why that should not happen. As you all know but they may not appreciate, this is to do with the fairness of the trial, and the preservation of the principle that the trial must be fair. So we give clear directions to the jury that they should not consult the internet. Sometimes, I am told, they find this difficult to believe. Not least because they are so accustomed to looking at the internet. Huge numbers of people visit the internet to discover whether the symptoms from which they are suffering may be an indication of a profound disease. The search for information is genuine. Its object is to discover answers. So if you have such a habit in the context of your health, or that of your family, you will inevitably be tempted to consult the internet to see if you can get further assistance in the achievement of the difficult task of doing justice in the trial in which you are participating.

We have recently suggested that in the light of the research by Professor Cheryl Thomas, who came to speak to you some months ago, the collective responsibility of the jury extends to the good behaviour of each member of the jury. Maybe we must go much further.

It is of particular concern that her research suggested that jurors are developing the habit of looking on the internet for information about the case they are trying. Professor Thomas asked whether the jurors were just looking for information, or did they then go on and discuss the case on social networking sites. It is significant that this search for information appears to be greater in high profile than in, if I may call them so, standard cases. In high profile cases something like one in four said they had seen information on the internet, although interestingly enough, only 12%, that is one in eight, said they actually looked for it. In the more standard cases 13% said they saw the information, although only 5% admitted to looking. One wonders at the number of times any jury man or woman can *accidentally* have stumbled across information about the case they are trying when using the internet for other purposes. What we do not know is how far this search or innocent accidental stumbling across information went, or how the technology used, if at all But all her research is consistent with the fact that from time to time judges receive information which shows that a juror has consulted the internet. Once received this information has to be investigated, and an investigation involves an examination of the question whether an individual juror did so, and the extent to which the jury as a whole may have been contaminated.

At present I am aware of a case where allegations of rape and serious sexual activity involving middle aged women when they were very young girls and a defendant who was adamantly denying the allegations was brought to an end when the judge felt obliged to discharge the jury because of internet research.

The case demonstrates one of the fundamental problems. This trial will have to start again. This is not a mere formality. A re-trial is not a non event. Those women will have to give their stories in public, again. The defendant, too, will have to give his evidence again and then await the outcome of the trial. It is arguable, and until I hear the argument I obviously have an open mind, but it is at least arguable that for a juror to examine the internet for information relating to the case is a contempt of court, and a criminal contempt. If it is, and if nevertheless, jurors continue to ignore the directions given by judges at the outset of the case that they should not consult the internet, one consequence of the use, or rather misuse of modern technology in the course of the trial would be that they may be liable to a finding of contempt of court, and indeed a sentence.

Now I suspect that this is a problem which we have not fully addressed until now, and that is why I am raising it with you for your consideration, and for a judicial discussion of these issues. What we seem to do at the moment, is to assume that the occasions when jurors go to the internet for information are rare indeed. It is therefore easy to brush them aside as odd moments of aberration. I wonder whether we will still be thinking that in a year or two from now. Professor Thomas suggests that we should be thinking of it immediately. I respectfully agree.

I should just add that I must record my entire disagree with the view of the former Director of Public Prosecutions in England and Wales, now Lord MacDonald, that judges are “giving up trying to stop jurors using Google, Facebook and Twitter to access potentially false and prejudicial” information about defendants. He is reported as suggesting that a trial should not be invalidated if jurors are found to have conducted online research while a case is in progress. The thesis, as reported in the Guardian Newspaper, is that we should expect jurors to follow directions to try the case on the evidence, but to assume that there will be occasions when online research will take place, and that this should not “invalidate a trial”.

Where he and I are agreed is that this is an issue of great sensitivity. I would find it wholly unacceptable to create a system in which every juror, once sworn, had somehow to allow access to his or her private systems, so as to enable some authority (which authority?) to make sure that the internet was not consulted. In any event, that would be pretty pointless, because they could go to an internet café if they were so minded. But I do believe that if it is

not addressed, the misuse of the internet represents a threat to the jury system, which depends, and rightly depends, on evidence provided in court which the defendant can hear and if necessary challenge. He is not to be convicted on the basis of material which from his point of view is secret material – not only secret material, which is bad enough, but material which may be inaccurate and could also be false. Sight of such material will create conscious, or perhaps more pernicious, unconscious prejudice. In any event it is fundamental that the defendant should be able to address it. And we must not assume that this prohibition against the misuse of the internet is designed only for the protection of defendants. The victim of an alleged crime is equally entitled to a completely fair trial. All of us, and the community as a whole which is represented by the twelve members of the jury, has an interest in ensuring that juries return verdicts which are true to the evidence produced in court. If there is to be a system of open justice, and how can anyone brought up in our traditions envisage criminal proceedings behind closed doors? what has to be open is the evidence on which the verdict depends. So we cannot accept that the use of the internet, or rather its misuse, should be acknowledged, and treated as an ineradicable fact of life, or that a Nelsonian blind eye should be turned to it or he possibility that it is happening.

I have to be blunt about this, but in my view, if the jury system is to survive as the system for a fair trial in which we all believe and support, the misuse of the internet by jurors must stop. And I think we must spell this out to them in yet more clearly. It must be provided in the information received by every potential juror. It must be reflected in the video which jurors see before they start a trial. Judges must continue to direct juries in unequivocal terms from the very outset of the trial. And I should like the notice in jury rooms which identifies potential contempt of court arising from discussions outside the jury room of their debates, to be extended to any form of reference to the internet.

My final observation in this context is this. To date the way in which we have addressed these problems is, where necessary to discharge the juror, or where the jury as a whole has been contaminated as a result of what an individual juror has done, to discharge the whole jury. But this is a luxury. And I am not focusing exclusively on cost of a trial, although given our current financial circumstances, the cost of the trial actually matters. I am focusing on the problem of an increased number of re-trials, or more than one trial leading to a verdict, and in every such case, quite apart from the financial cost, the cost of delays to other cases which need to be tried, whether for the sake of the witnesses and victims or the defendants, some of whom will be in custody, and ultimately for the sake of the witnesses, victims and defendants of the case where the jury has to be discharged and a fresh trial start. These are significant costs. They cannot be counted in pound notes, but as you know, the emotional trauma will be considerable. And let me offer a pertinent example.

The allegation is that a girl of twelve has been badly molested sexually. The problem recurs: is the best course immediate treatment and psychiatric attention to enable the child to come to terms with how to live with the experience? Or is the primary need for the protection of society that a man who has perpetrated such an offence should be tried as quickly as possible, and if the evidence is sufficient, convicted and sentenced. Sometimes we know that the process of rehabilitation for the victim can make it easier for the offender to escape justice. (You do not need me to expand on why) Which is in the public interest? How can the public interest be improved if the processes which are already subject to delay, are subjected to the further delay and trauma of re-trials.

These risks are not merely theoretical is demonstrated by *Thakrar* [2008] EWCA Crim 2359 where the search of the internet by a member of the jury provided him with apparent information about the defendant's previous convictions which in fact was completely false and conveyed this information to the other members of the jury. They remained silent until after the defendant had given evidence. The only reason this information came to light was that he jurors asked a question of the judge about why they heard nothing about those

convictions. If the question had not been answered, the defendant might have been convicted on wholly false basis, and no one would have been any the wiser.

In the end the issue for discussion is whether, in the light of the latest research, we have to be yet more emphatic against the use of the internet, and whether nowadays the direction to the jury should be backed up with an express warning that breach of the order might constitute a contempt of court, and whether one day it may become necessary to deal with it as if it is, and then to treat it with the seriousness it requires, depending on the consequences to the ongoing trial.

(3) May I come to a third consideration to which modern technology gives rise. Its importance to the jury system is not immediately obvious, and its ramifications are much wider. The impact of "Twitter" and other social media, as they are called, on the criminal Courts has hardly yet arisen for consideration. You all know what Twitter is. Twitter may be accessed from any device which is internet enabled with the correct software, and most modern mobile phones are compatible with Twitter. Of course the court has jurisdiction to regulate all behaviour in court, and the ambit of the law of contempt of court extends to the internet, unofficial blogs, e-mails and websites and so on. That however begs the question whether and if so what form of regulation is appropriate. Twitter technology has come into existence long after the law of contempt and reporting of proceedings was developed or enacted. It involves an engagement between the legal processes and live-text based broadcasts directly from within the courtroom. For the purposes of this lecture, but I emphasise that I am not giving legal advice to anyone, I could not find a statutory prohibition on the use of text-based remote transmission of material from a courtroom, whether transmitted by an internet-enabled mobile phone, or a laptop computer, or in any other way. Yet section 9 of the 1981 Contempt of Court Act prohibits the use in court of any tape recorder or other instrument for recording sound, except with the leave of the court. Does this extend to Twitter? Arguably, at any rate, no. But should it? This question has yet to be decided, and the decision may have a considerable impact on our processes.

How is the principle of open justice compatible with preventing an ongoing, live and text-based dialogue to the outside world from a courtroom? If a reporter of member of the public is permitted to write notes to himself or herself in court, and then "file them" from a telephone outside the court, what is the qualitative difference if they are permitted to do so when sitting in court, say, by sending a email. If it is possible to file a story via email from a laptop in court, then why is Twitter any different? On the other hand tape-recordings are prohibited by statute. Why is Twitter in the form of text-based transmission of material from court any different?

These are, as I say, questions for thought. In considering them we have to remember that "tweets" stay on the internet, and to allow court-based tweeting is likely to increase the potential for prejudicial material regarding defendant or a witness to become available on the internet. Thus, it will be possible for tweets originating from an earlier trial involving a defendant, when a re-trial has been ordered, to be retrieved by a mischievous juror – or indeed a journalist – in the context of the second trial. And the next problem is that even if a tweet originating in the courtroom itself may indeed be a "fair and accurate" observation or report, the responses of other users of the Twitter system may not be. The publication of a defendant's previous convictions, or for that matter a victim's previous convictions, when the judge has ruled them inadmissible provides a classic example. There is no way in which we can control these responses, so that gives rise to questions of how to limit the potential damage to trials and their fairness.

My instinctive reaction is the criminal trial process must always be open. I use the word "instinctive", but in truth it is deeper than that, it is visceral. But not all tweeting comes from within the court. It is, I have no doubt, all too easy for campaigners for one cause or another,

to bombard the system with Twitter which is intended to seek to influence the outcome of the hearing. Some of it will be well meaning, and some pernicious: if it is a campaign, it is unlikely to be balanced, and more likely to be prejudicial to one side or the other.

We cannot stop people tweeting, but if jurors look at such material, the risks to the fairness of the trial will be very serious, and ultimately the openness of the trial process on which we all rely, would be damaged.

We must always welcome new technology. When jury trials began there was no electricity: there were no typewriters: people came to court by foot or on horse back. We now use technology for many purposes, to the public advantage. We do turn on lights: we even put some heating into the building. So judges are not anti-diluvian. We welcome advances in technology, provided that we are its masters, and it is our tool and servant. But we need to examine the impact on our jury system with great care, and an increasing need for urgency, just because technology is developing at an astonishing rate.

Can I bring these thoughts to a conclusion. We must not assume that we would always and in every circumstance discharge the jury following information that the internet has been used. In *Thompson and others* [2010] EWCA Crim 1623 we suggested that the approach should be

> "...just as it would in any other instance where it was satisfied that extraneous material had been introduced, the approach of this court is to make inquiries into the material. If, on examination, this material strikes at the fairness of the trial, because the jury has considered material adverse to the defendant with which he has no or no proper opportunity to deal, the conviction is likely to be unsafe. If the material does not affect the safety of the conviction, the appeal will fail."

This, of course, applies after, not before conviction. We have no means of knowing in the event of an acquittal whether it was unfair because the jury or a juror had made inquiries into material adverse to the prosecution's case or the prosecution witnesses which would have struck at the fairness of the trial.

In Thompson we offered suggestions for the way in which jurors should be directed to approach the internet, recognising that although the internet was part of their daily lives, the case which they were trying should not be researched on the internet, or discussed on the internet on social networking sites, any more than it should be researched with, or discussed amongst friends or family, and or the same reason. The result might affect their decision, whether consciously or unconsciously, so that neither side at trial would know the considerations which might be entering into their deliberations and would therefore not be able to address submissions about it.

> "This would represent a departure from the basic principle which requires that the defendant be tried on the evidence admitted and heard by them in court."

We recommend a direction on which the principle is explained not in terms which imply that the judge is making a polite request, but that he is giving an order necessary for the fair conduct of the trial.

Such a direction will naturally fall to be given at the outset of the trial, in the same way that the direction as to the collective responsibility addressed earlier in the judgment.

The case of Taxquet v Belgium

It was at one time thought that this case may have a significant impact on all systems of trial by jury in countries which are adherent of the European Convention of Human Rights. Today we have received the decision of the Grand Chamber, and I rather think that it will not undermine the system of trial by jury.

It is perhaps worth a little detailed analysis.

Taxquet was charged with seven co-defendants of murdering a government minister, and attempting to murder his partner. They appeared before the Assize Court at Liege. Taxquet was convicted. He appealed on the basis of the lack of reasoning in the judgment of the Assize Court. The Assize Court included a President and two other judges known as Assesseurs, sitting with a jury. The qualifications necessary for jury service are irrelevant for present purposes save that jurors must be registered on the electoral roll, and be aged between 30 and 60, and literate. The jury consists of twelve jurors. They take an oath to return a verdict:

> "According to your conscience and your innermost conviction, with the impartiality and resolution which befit a free and upright person."

The oath is a very long one, but it is driving at impartiality and integrity, not at reasoning.
The process of jury trial is rather different to what we expect. The entire process has of course been considered by an investigating judge. The clerk to the court may be asked to read out the judgment which led to the committal for trial. The jurors are then circulated with the indictment and the statement for defence if one has been filed. And these are read out. So, as I understand it, are the depositions of the witnesses.

At the end of the proceedings the President then puts a number of questions to the jury. In this case the jury was asked whether Taxquet was guilty "as principal or joint principal".

> either through having perpetrated the office or having directed co-operated in its perpetration,
> or through having, by any act whatsoever, lent such assistance to its perpetration that without it the offence could not have been committed,
> or through having, by gifts, promises, threats, abuse of authority or power, scheming or contrivance, directly incited another to commit the offence,
> or through having, by means of speeches in a public place or assembly, or by means of any written or printed matter, image or emblem displayed, distributed or sold, offered for sale or exhibited in a place where it could be seen by the public, directly incited another to commit the offence,
>
> Of having knowingly or intentionally killed the (victim) in Liege on 18 July 1991.
> If the answer was "yes" the jury was asked the further question whether the intentional homicide referred to in the previous question premeditated? Identical questions were asked of the jury in relation to the charge of attempted murder.

The questions were then handed to the jury. The critical feature of the process, from our point of view, is that there is no judicial summing up. The jury retires and return a verdict. The foreman reads out a simple instruction (paragraph 28). Taxquet was convicted. He appealed to the Court of Cassation which dismissed his appeal in June 2004. A number of issues were addressed by the Court of Cassation which included:

> "That it should not be inferred from the alleged inexperience of the jurors or the speed with which they deliberated or the lack of reasons given for their verdict that they were incapable of impartial adjudication in a case which had attracted considerable press coverage."

And that the procedure of their appointment and their verdict "without having discussed the issue with court" did not undermine their independence and impartiality as a tribunal.

The application to the European Court of Human Rights was based on the assertion that Taxquet was deprived of his right to a fair trial because "his conviction before the Assize Court had not included a statement of reasons and could not be appealed against to a body competent to hear all aspects of the case". A number of other grounds were advanced, which need no attention here.

The reasoning of the Commission was found in paragraph 48:

> "The questions to the jury were formulated in such a way that the applicant could legitimately complain that he did not know why each of them had been answered in the affirmative when he had denied all personal involvement...the court considers that such laconic answers to vague and general questions could have left the applicant with an impression of arbitrary justice lacking in transparency. Not having been given so much as a summary of the main reasons why the ...court was satisfied that he was guilty, he was unable to understand – and therefore to accept – the court's decision. This is particularly significant because the jury does not reach its verdict on the basis of the case file but on the basis of the evidence it has heard at the trial. It is therefore important, for the purpose of explaining the verdict both to the accused and to the public at large – "the people" in whose name the decision is given – to highlight the considerations that have persuaded the jury of the accused guilt or innocence and to indicate the precise reasons why each of the questions has been answered in the affirmative or the negative".

As to the Court of Cassation it was "prevented from carrying out an effective review and from identifying, for example, any insufficiency or inconsistency in the reasoning."

The Belgian government asked for the issues to be re-heard by the Grand Chamber. The re-hearing took place in October 2009. As I have said, the judgment was delivered today, and I have tried to absorb it during the flight over to Belfast.

My immediate impression is that the Grand Chamber has understood the essential features of the jury system as it operates in our jurisdiction and, for that matter, in the Republic, with whom I know you are about to have an exchange of views. Indeed if I may say so the arguments advanced on behalf of Ireland before the Grand Chambers were extremely powerful, beginning with the proposition that this was the method of trial which defendants and the public actually wanted. What seems to me to be clear from the judgment is that a properly structured summing up followed by a verdict of the jury, which is confined to the verdict, provides an ample understanding to the defendant, and to the public, of the reasons why the jury decided that the case against the defendant has been proved. What is more, there is nothing in the judgment of the Grand Chamber which suggests that it is a necessary step to achieving the objective that the reasons for the decision should be understood that the directions in the summing up must be reduced to writing. Adequate oral directions are as acceptable as adequate written directions.

In short, the decision of the Grand Chamber is that within our jury system it does not follow that the verdict given by juries are unreasoned, or that the defendant is ignorant of the reasons. This, it seems to me on proper analysis is a judgment which endorses our system of trial by jury in the context of the performance by the judge of his well understood responsibilities, and the ability of the Court of Appeal Criminal Division to examine every aspect of their performance.

Our trial process is trial by an independent and impartial judge as well as an independent and impartial jury. You do not need me to set out the responsibilities of the judge. But in the context we are considering the judge has a number of obligations which include ensuring that admissible evidence only is deployed before the jury, and that even if the evidence is admissible in law, if its prejudicial effect outweighs its probative value, it should be excluded. He must also ensure that cases do not proceed to the jury where a reasonable jury could not properly convict. But all that pales into insignificance compared to the summing up. Directions of law are given. The facts are summarised. The summary of the facts includes identification of the issues, and the way in which the decisions reached by the jury on fact dovetail with the directions of law. In reality nowadays, as Lord Justice Hooper aptly put it in a recent lecture, the summing up can be seen as a "judgment...on the central issues in dispute", although in the end the conclusions are for the jury.

You are all familiar with the process.

In his 2001 report Robin Auld expressed the view that the time come for the jury to be given a series of written factual questions in every case, questions tailored to the law and to the issue in the evidence, the answers to which would logically lead to the verdict.

In ABCD [2010] EWCA Crim 1622 the Court of Appeal explained that the judge's decision:

> "To give the jury both (commendably brief) written directions, and, even more helpfully, a "route to verdict" should be applauded. Judges need to decide cases by case whether such aides are required, but a multi-handed murderer with more than one possible basis for verdict to be considered is one which will ordinarily call for a "steps to verdict" document at least".

In Thompson we addressed the issue in the light of the concerns expressed following the publication of Professor Thomas report, some of which was reported in rather more portentous terms than the examination of the results of the research would have justified.

> "The trial judge had to decide whether to reduce his directions of law, or some of them, into writing, or whether written "steps to verdict", which might be particularly useful if there were several basis for conviction, or several possible offences or defences to consider, might be of assistance to the jury. Whether either practice would be helpful to a jury in a particular case had to remain for the judgment of the judge. In a single issue case he might conclude that no document was needed. In others, he might be concerned that reducing directions to writing would either burden the jury with over-long material or would isolate, potentially unfairly, and give prominence to, some parts of the directions rather than others. In others, it would be apparent that either the central parts of the legal direction would be helpfully produced to writing, or more often perhaps, that a one-page "steps to verdict" written analysis would enable the jury to remember the more discursive legal directions and apply them systematically".

That, in England and Wales, remains our current final word: we must continue to leave these decisions to the judgment of the trial judge.