



JUDICIARY OF
ENGLAND AND WALES

LORD JUSTICE MOSES

ANNUAL LAW REFORM LECTURE: SUMMING DOWN THE SUMMING-UP

THE HALL, INNER TEMPLE

23 NOVEMBER 2010

SUMMARY

Given that juries are not going to be abolished, can we really not do them the service and pay them the respect of dealing with them in a better manner than we have achieved so far?

We should start by identifying the problem. It is the problem of how we help a jury reach a conclusion of guilt or innocence. We seem to have hit upon a system designed to ensure, in any but the simplest of cases, that the path we require them to follow should be as obscure, as tortuous and as arduous as could possibly be devised. The problem lies in the function of the judge and his role as guide, when he embarks on a summing-up.

It should not be forgotten that however clear the new directions are to a lawyer, they are in a foreign tongue to a member of the jury.

Let us no longer pretend that judges can assist a jury's recollection by a recitation of the facts.

In England and Wales the problem has already been solved. Lord Justice Auld's Review of the Criminal Courts was published in October 2001. In the ensuing debate as to the right to trial by jury, important and clear recommendations as to procedure were forgotten.

At the start of the trial the judge should explain the case and the issues to the jury, the nature of the charges...a brief narrative with the facts which are agreed and the facts which are likely to be required for decision...mindful of Professor Griew's injunction in 1989 that the jury should be spared from the law, and ample research, Auld recommended that there should be a list of likely questions with little if any reference to the law. The judge should explain to the jury their function and the burden and standard of proof...he should provide them with a written case and issues summary prepared by the advocates and approved by him. He should remind them that the issues may narrow or widen, in which event the written summary may be changed. I

propose this addition: defence counsel should be required to tell the jury what the defence is at the outset.

But that does not go nearly far enough...the factual issues should be debated in court by counsel, resolved by the judge and the issues in the form of questions written down before speeches to the jury.

The jury will have heard warnings as to how to approach particular types of evidence, when the evidence is called, and can be reminded of those directions in a short note, annexed to the list of witnesses, each of whom will be linked to the issues and questions to which their evidence relates.

The reforms are cheap, will save money and be cost effective. A criminal trial costs about £4300, a day and £7,000 a day at the Old Bailey. Summings-up regularly last a day in trials lasting more than two weeks: there were 389 of such trials in the year to April 2010. £4000 or even £7000 is an expensive ticket to listen to a replay of the drama delivered in monotone. The judges' summing-up is a frequent source of appeals against conviction. Conviction appeals cost about £14,000 day.

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