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THE RT. HON. LORD JUSTICE LEVESON

L.J.M.U. ROSCOE FOUNDATION FOR CITIZENSHIP

THE ROSCOE LECTURE: CRIMINAL JUSTICE IN THE 21ST CENTURY

ST. GEORGE'S HALL, LIVERPOOL

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Introduction

May I start by thanking Lord Alton and the LJMU Roscoe Foundation for Citizenship for the very great honour that they do to me in asking that I take part in the 13th series of Roscoe Lectures? For some 44 years, Liverpool was my home and I still remember my feeling of sadness as the pressures of my professional life caused me to move to London over 17 years ago. My family regards itself as Liverpudlian – and I intend no reference to football – so it is a very real pleasure to be back here in St George's Hall where I spent so many years moving around this wonderful court complex from the High Court Judge in Court 2, to the Recorder of Liverpool in Court 1 or over the road to the Sessions House. Just to be in this Hall is a reminder of a different time which ended some 27 years ago with the opening of the Queen Elizabeth II Law Courts.

William Roscoe showed great moral courage in speaking out against the slave trade, one of the great injustices of his day, and I hope that he would have approved of the theme of this lecture which is not intended to show moral courage but rather to raise issues about how our approach to criminal justice should be fashioned for the 21st century, issues which I believe each one of us, as members of our society, should be prepared to consider and think about, particularly as we address all the changes that we have experienced including those which follow the increased use of technology and the far greater public awareness of what is going on, all now in the context of enormous fiscal pressure, or simple lack of money.

I have been involved in the criminal justice system as a barrister and judge for 40 years and I have no doubt that it is a system that we can be – and should be – proud of. Our pride, however, does not mean that the system cannot or should not change; neither does it mean that it cannot improve. So this evening, I would like to explain why I am proud of our approach to criminal justice but also to ask some questions about what we want a future criminal justice system to look like. Justice is, of course, sacrosanct but it is all too easy to say things should stay the same. But society is not the same as it was, change occurs in every area of our lives. We therefore always need to be looking for improvement and in these times

of very real shortage of public funding, we need to be particularly aware of the cost implications of the system that we take forward.

Why do I say we should be proud of our criminal justice system? We have a system that is envied by many across the world for its transparency, independence and lack of corruption. From my own perspective, it is not the admiration that I value: it is because I genuinely believe it that our system 'does what it says on the tin'; it administers justice so that the rule of law is enforced and crime is curtailed, and it makes us safer as citizens as a result.

I know that my pride and confidence in the system is not necessarily shared by everyone. The British Crime Survey shows that 60% of people are confident that the Criminal Justice System is fair and 41% are confident that it is effective[1]. So views are mixed. But my 40 year experience has brought me into contact with the individual police officers, crown prosecutors, defence lawyers, staff in Her Majesty's Courts Service, probation officers, many who work in the voluntary sector such as Victim Support and, last but by no means least, judges who work tirelessly to deliver this system. It also means that I know not to believe the headlines in the press consistently suggesting that judges sentence too leniently or that the guilty "get away with it". Rather that what is happening on a daily basis is that justice is being served. To prove my point let me share with you some statistics that might not quite align with the perceptions you might have from newspaper headlines:

- 56% of those convicted of burglary offences (which includes putting your hand through an open door and pinching a bottle of milk) are sentenced to immediate custody and the average sentence length is 1.6 years
- 89% of those convicted of robbery offences were sentenced to immediate custody, with an average custodial sentence length of 3.5 years
- 98% of those convicted of rape offences (which includes sexual intercourse which was begun with consent, but continues after the victim has changed her or his mind) were sentenced to immediate custody, with an average sentence length of 8.8 years

People do get convicted and they do go to prison. But crimes range in gravity and there is a wide range of penalties including non-custodial options which are by no means soft. Indeed, it is not unusual for a repeat offender to prefer a custodial sentence rather than have to address the demands of a substantial community penalty.

Principles

Our criminal justice system provides fundamental safeguards to us as citizens in a democratic society. However a common misconception that I think many people have is that the way our criminal justice system works has been the same for centuries.

Let me ask you to consider whether you agree with these three principles:

- that if accused of a crime, you should be taken before the court and subject to a process that is visible to the public and open;
- that you have the right to trial by jury;
- that you are innocent until you are proved guilty.

I imagine most of you will nod in agreement with these principles, although perhaps some of you, who have studied or worked in criminal justice, have some concerns about some of the details but even then, still, broadly you agree with them. At the level of principle, I agree with them too; it would be hard not to.

[1] British Crime Survey, 2009/2010

But let me take you through them in a bit more detail. How did we get to where we are now? Are these principles unfettered? Where do we want to go in the future? Let us also consider how what we believe in principle balances against some other concerns that I think we will all have:

- the need for efficient justice;
- the need for swift justice;
- the desire to put victims at the heart of the system.

Being Taken to Court

Let me start at the least serious end of offending and ask what types of cases are not sufficiently serious to get to court.

For incidents that do not need to be brought before the court, there has long been a system of informal warnings. Nobody would suggest that thirteen year olds caught for the first time pinching a packet of sweets should formally be brought before a court and solemnly prosecuted. A warning or caution from a senior officer as to the significance of theft and what will happen if they do it again is entirely appropriate and has long been available to the police both for youngsters and, in certain cases, for adults. In 1984, that system was formalised in a Home Office Circular and there are up to date circulars that govern the practice today[2]. Equally, parking infringements are perfectly sensibly dealt with by fixed penalty notices and I say nothing more about them. But over recent years we have seen an increase in these so called 'out of court disposals': between 2004 and 2009, the number of cases dealt with in that way has almost doubled. Quite apart from simple cautions – of which there were 282,500 in 2009, most commonly issued for theft and handling stolen goods and then for common assault, there are also 'Penalty Notices for Disorder' of which 170,000 were issued in 2009 most commonly for retail theft[3], Conditional Cautions[4] (8,500 on top of the 282,500 simple cautions) in which a prosecutor can impose conditions on a caution including attending a course or making reparation and cannabis warnings for those found with small amounts of the drug. None go before the court, unless the penalty notice for disorder which is a financial penalty is not paid or the conditions of the caution are not met.

On the basis of efficiency and speed, a strong case can be made for the use of these types of disposals in appropriate cases but, just to take penalty notices for disorder and cautions, were over 450,000 cases truly appropriate? Further, when we consider issues such as transparency and open justice the picture becomes a little more blurred. In issuing an out of court disposal the police are essentially acting as prosecutor and judge, outside the environment of an open court. Although these disposals are not convictions, they are kept on record and at the least serious end can risk 'criminalising' people who on a one off occasion do something out of character and who feel that the quickest thing to do is to accept the penalty or caution that is being proposed by the police even if further analysis might have revealed no offence. Three years ago, I made a speech about these disposals and said:

> "I do not believe that I am alone in expressing concern about these powers. It is not a question of not trusting the police or the CPS, or challenging the will of parliament. It goes back to the origins of our system of summary justice, carried out in public by members of the public, appointed as magistrates, whose decisions can be scrutinised by the public, can be the subject of public debate and, if

[2] Cautions for adults are now governed by H.O. Circular 016/2008. In relation to children and young persons, as from 1st June 2000, cautions have been replaced by 'Reprimands' and 'Final Warnings': see s. 65-66 Crime and Disorder Act 1998.

[3] Criminal Statistics 2009: Ministry of Justice (2010) (Available at: http://www.justice.gov.uk/publications/docs/criminal-statistics-annual.pdf,)

[4] sections 22-27 of the Criminal Justice Act 2003. The practice is governed by Code of Practice which has since been incorporated into the Director of Public Prosecutions' Guidance on Charging

> appropriate, appeal to the court in public. A drunken 18 year old of prior good character ends up in the cells. He is not entirely sure what he did but does not want his parents to know that he has been in trouble. What would he admit and accept rather than risk going to court, whether or not he could truly be proved to have committed an offence? And what impact would such a conditional caution, part of a record, have upon him that an absolute or conditional discharge, which could be appropriate depending on the circumstances, would not? Where is the mechanism for accountability for these important decisions, taken behind closed doors?"

These questions remain and although some chief officers are enthusiastic supporters, the Commissioner of the Metropolitan Police has publicly expressed concern about the extent to which police officers are required to act as judge and jury and far outside a traditional police role. On a slightly different note, we should also want to be wary of dismissing the harm that ostensibly trivial offences can cause: shoplifters can ruin a shopkeeper's livelihood; people are sometimes obliged to move house because of noisy neighbours. It is obviously a matter of proportion and, in relation to out of court disposals, I make my view clear that we have got the proportion wrong. But let me return to the question: for this century, is this the right way for society to go given the expense of taking someone to court? Is the approach proportionate and appropriate? Again, it is an issue on which every one here is entitled to have a view because justice in this country is administered in your name.

Right to Trial by Jury

While we continue to muse on those questions let us turn to the second principle that I asked you to consider: the right to trial by jury.

It is often thought that our present system originates with Henry II and, in some ways – but not perhaps as you might have thought – it does. It was in 1166 that Henry II ordered his judges to travel around the country trying crime at what were known as the Assizes: twelve men from each hundred were chosen to take oath and make accusations to the royal justices: the jury then acted as the prosecutors, the witnesses and the adjudicators: far from our present system which requires jurors to have no knowledge of those whom they are trying, that system depended on the personal knowledge of the jury both as to the crime and the offender. By way of contrast, I ought to add that it ran alongside trial by ordeal which was only prohibited by statute in 1219. Jury trial was formally established in the Statute of Westminster in 1275 and ten years later, in 1285, magistrates' courts were charged in the reign of Edward I with keeping the King's peace.

So the combination of trial in the magistrates' court for certain crimes and trial by jury has been with us for centuries. And some of the questions that we face today about whether we have got the balance right between these two forms of trial have also existed for a long time. In the 19th century the appetite for a simpler, speedier and less costly justice system led to a series of acts of parliament that increased the volume of cases that could be tried in the magistrates' court and accordingly reduced the number of cases being tried by jury.[5]

At the beginning of the 21st century we are now in a position where about 95% of criminal cases are disposed of in the magistrates' court. Obviously, the most serious cases – murder, rape, robbery and the like – are all tried in the Crown Court by judge and jury. But, in addition, it is a cardinal principle that a large number of other offences are triable either way, so that even if the magistrates consider the case suitable for summary trial, the defendant has the right to elect trial by jury. So theft, which could include shoplifting a leg of lamb or a bottle of beer, although perfectly appropriate for trial by magistrates can be the subject of

[5] Summary Jurisdiction Act, 1848; Criminal Justice Act 1855: Summary Jurisdiction Act 1879.

election by the defendant and so find itself in the Crown Court with judge and jury. Similarly for less serious assaults where the injury is limited.

Many of those who elect trial by jury go on to plead guilty, perhaps because they simply wanted to delay the moment when they admitted their guilt because it is undeniably true that cases come on for trial very much later in the Crown Court than the magistrates court and that all other Crown Court trials can be delayed as the queues get longer. Others are also affected by this additional delay. In a recent report, Louise Casey, the Victims Commissioner, highlighted the "significant cost for victims when crown courts are clogged up. It is known that waiting for a criminal trial often means that victims put their lives on hold; bereaved families of murder victims cannot grieve until the trial is over. Victims have no control over the length of time it takes for a case to come to court, yet it seems that it is victims who suffer most as a result of delays in the court process"[6]. Reverting to the financial difficulties which we all face, you will not be surprised to hear that the daily cost of a Crown Court is very much higher than the daily cost of the magistrates court and furthermore that trials take far longer in the Crown Court than they do in the magistrates court, not least because of the training and experience of the magistrates, contrasted to the jury who have to be taken through every aspect of the law procedure in each trial. Excluding the costs of legal aid for the accused, it may not be unrealistic to say that the average cost of trials in the Crown Court is nine times that of trials in the magistrates court. With legal costs, it will obviously be higher.

When looking at jury trials, there is another element to consider: that is the experience of the twelve jurors. In 2009, almost 400,000 people received summonses to be jurors[7], perhaps some of you were among them? When I tried cases with a jury, I always explained that jury service was the highest duty of citizenship: the responsibility on twelve members of the public chosen at random to decide whether they are sure that charges brought by the state against a fellow citizen have been proved.

So what is the experience like? There is always a degree of waiting around, not least because planned trials sometimes do not take place perhaps if the defendant pleads guilty at the last moment, or a witness is ill and cannot attend but if the jurors end up trying a serious case, I have no doubt that they find the experience fulfilling. I have often wondered, however, how the members of the jury feel when, having arranged their lives to enable them to attend, usually at some inconvenience and cost, they find themselves faced with a case of shoplifting with little to explain why so much public money – their money – has been expended. I have recently said that if the jury appear to express that type of concern, it is the judge's task to explain that Parliament has specifically provided that this type of case can be tried by a jury and that, however lacking in gravity they perceived it to be, it is important to those involved and to the public.[8]

To provide a little more context, let me tell you a story of a young adult with a drug dependency problem. Twice, he borrowed his parents' car, and each time obtained petrol from a petrol filling station making off without paying, once to the value of about £5 and the second time about £10. I am sure that you would agree that these offences, known as bilking, are eminently appropriate for summary trial, rather than requiring a judge and jury of 12. But despite the magistrates' court saying it was suitable for trial in the magistrates' court, he elected trial by jury. He fully understood the system because, on his arrest, he made it absolutely clear that he would elect trial in the Crown Court.

I yield to no one in my admiration of and support for jury trial. I have spent my professional life addressing juries as a defence barrister, as a prosecutor and as a judge and I never cease

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[6] Casey, L (2010) *Ending the Justice Waiting Game: A plea for common sense*

[7] Central Summoning Bureau data cited in Judicial and Court Statistics 2009: Ministry of Justice (2010) (Available at: http://www.justice.gov.uk/publications/judicialandcourtstatistics.htm)

[8] *R v SH* [2010] EWCA Crim 1931 para 63

to be impressed at the way in which they embark on what is, for them, a new and potentially very difficult challenge. But let me ask the question have we got the balance right? You may say we have and you may think that the costs that have to be expended as a result of allowing defendants to elect trial by jury are appropriate. Alternatively, you may think that, as a society, we should reserve this Rolls Royce approach to our most serious cases or cases where the outcome will be life affecting for those involved and use the money saved in some other way. Louise Casey suggests that it should be used for victims but, in the justice system itself, there are many calls upon resources: the question is how to prioritise. Policy is not for me and I express no opinion; it is for the government and for society as a whole and, again, in that number I include every one of you.

Innocent until Proved Guilty

Let me now turn to the 'golden thread' of criminal justice, that is the prosecution that must prove the guilt of the defendant. Although there has been a general burden on the prosecution, the unambiguous articulation of the presumption of innocence came as recently as 1935 in a case that reverberates throughout the common law, *Woolmington v Director of Public Prosecutions*[9].

The details of the case were this. Three months after her marriage, the wife of a 21 year old farm labourer, Reginald Woolmington, left him and went to live with her mother. Woolmington then stole a double-barrelled shotgun and cartridges from his employer, shortened the barrel and cycled over to his mother-in-law's house where he shot and killed his wife. He claimed he did not intend to kill her but wanted to win her back. He said that he planned to scare her by threatening to kill himself if she did not. He showed her the gun but, by accident, it went off and the bullet killed her. Relying on a decision from 1762 the trial judge and the Court of Criminal Appeal concluded that the case was such that the burden fell on Woolmington to show that the shooting was accidental. He needed to prove he hadn't intended to kill her.

But when the case reached the House of Lords the conviction was quashed. Viscount Sankey stated:

> "Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt... No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

You will appreciate the significance of the quashing of this conviction when I tell you that Mr Woolmington was three days short of his execution and was then released: there was then no provision for ordering a re-trial.

So this 'golden thread', that you are innocent until proven guilty, and the linked 'right to put the prosecution to proof' are principles that we are all likely to want to retain into the future. As part of proving the case and recognising the burden of proof on it, the prosecution also have to disclose to the defence all the evidence upon which it is intended to rely, the statements of the witnesses, the expert evidence, the exhibits. But where does the balance lie between this and the legitimate expectation of the state to know what case you will mount in your defence?

Let us again return to the archives. Until 1898, those charged with crime were not able to give evidence on oath in their own defence. This was associated with the fact that the burden

[9] [1935] AC 462 (Viscount Sankey LC, Lord Hewart LCJ, Lord Atkin, Lord Tomlin and Lord Wright)

of proving the case fell on the prosecution, so there was a parallel principle that nobody charged with crime could be required to self incriminate: the right to silence.

I could have asked you when I set out my principles earlier if you believed in the principle of the "right to remain silent". I didn't because as I am sure that many of you will know that it is no longer open to someone accused of crime simply to say nothing. From 1967[10], if the defence of a defendant in the Crown Court was that he was elsewhere, that he had an alibi, he had to provide details of the alibi and the names and addresses of any witness on whom he intended to rely. Later, details of any expert evidence had to be disclosed[11]. In 1994 the untrammelled right to silence when interviewed was amended. No longer was a suspect to be told simply that he had the right to remain silent. The warning has become rather more complicated and has since been to the effect that the suspect has the right to remain silent but that if he fails to mention when questioned some fact that he later relies on in court, the court may draw inferences from that failure[12].

So the case must be proved against you but you have to say what your defence is – some might see this as the erosion of a fundamental right of an accused person, others as an appropriate way to avoid unnecessary delays and, more particularly, avoid attempts by dishonest defendants to fashion a defence case so as to take account of the evidence that the prosecution has served. But the change in 1994 wasn't the only significant change in what the parties to criminal proceedings had to disclose.

In response to the enormous concern generated by a number of cases especially emanating from the Irish troubles and, in particular, cases like the Birmingham 6, the Guildford 4 and the Maguire 7 the government introduced legislation in the form of the Criminal Procedure and Investigations Act 1996 ("the CPIA") to ensure that the police and prosecution were much more open about material in its possession.

The laudable aim of the Act was to try to impose a system for ensuring that appropriate disclosure was made by the Crown. Section 3 provided that the prosecutor must disclose to the accused any material which might reasonably be considered capable of undermining the case for the prosecution or of assisting the case for the accused. This was called primary disclosure. The problem became, what would help the defence? If the prosecutor did not know what the defence was, how could he know what would assist? Section 5 provided that where the prosecutor had provided primary disclosure, the accused had to provide a defence statement setting out in general terms the nature of his defence and indicating the matters on which he took issue with the prosecution and why. What was the value of doing that – of disclosing your hand? The answer was that it generated what was known as secondary disclosure because the prosecutor then had to re-evaluate what was in his possession and disclose any additional material which, in the light of the defence statement, might assist that defence case. That provision has now been replaced by a continuing duty on the part of the prosecution to review disclosure.

But what about the defence? Is a criminal trial like a game with the prosecution revealing all its evidence and the defence able to keep all its cards close to its chest, except for alibis and expert evidence? Is that the true effect of the right to remain silent and is it appropriate, today, not to require a proper discussion about the nature of the prosecution and the defence and an identification of the issues so that they can be tried as efficiently as possible. Following criticism of this defence disclosure regime[13] the approach was rewritten in the Criminal Justice Act 2003.

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[10] s. 11 Criminal Justice Act 1967

[11] s. 81 of the Police and Criminal Evidence Act 1984 and the Crown Court (Advanced Notice of Expert Evidence) Rules 1987

[12] s. 34 Criminal Justice and Public Order Act 1994

[13] In 2001, Lord Justice Auld conducted a review of the Criminal Courts of England and Wales which ranged from management, juries, the judiciary, the unification of the criminal courts and all aspects of the preparation and conduct of

So what was the effect of the amendments introduced by that Act that are now in force? First a defence case statement must set out the nature of the defence of the accused including any particular defences on which he intends to rely[14]. The same provision also updated the requirement to provide notice of alibi adding the address and date of birth of any named witness. Next, a defendant must give notice of any intention to call defence witnesses along with details[15]: that provision recently came into force from 1 May 2010.

What was the sanction for failure to take these steps? The sting in the tail came in another provision to the effect that if an accused person failed to serve a defence statement, or did so late, or set out inconsistent defences, or put forward a different defence, or adduced evidence in support of an alibi without giving particulars, the court or, with leave of the court, any other party – that is to say the prosecution or another defendant - could "make such comment as appears appropriate" and the court or jury could draw such inferences as appeared proper in deciding whether the accused was guilty[16]. It is worth adding that the court had to have regard to the extent of the differences and whether there was a justification for them and the Act made it clear that nobody should be convicted solely on any inference drawn. So the approach has become more complex. However that is not the end of the story because the provisions were further amended after the Criminal Justice Act 2003 and the circumstances in which this came to happen is itself a story worth telling.

You will be all too familiar with the events that took place on 7 July 2005 when a number of bombs exploded in London on tubes and on a bus: there were fatalities and, not surprisingly, enormous public concern. Two weeks later, on 21 July, there was a foiled attempt at yet further bombings and a number of arrests were made. Explosive devices were recovered and there was a wealth of other evidence which was clearly going to lead to a very substantial trial. Literally just before that trial was due to commence, the defence tack changed: at this very last moment, it was conceded that these devices had been prepared but it was contended that they were not intended to be effective bombs but merely to be hoaxes to bring attention to the defendants' grievances. That led to an adjournment for further, potentially very dangerous tests to examine the new assertions – a delay of 9 months in the start of the trial and then a considerable increase in the length of the trial itself. The consequences were described by the trial judge, Fulford J. Because he describes the issue graphically, I hope you will forgive me if I quote a small part of what he said:

> "...I have no doubt that those two defendants have attempted cynically to manipulate the processes of this court. Extra time – running into months – was not required for the simple narrative and factual explanations that were provided in these extremely late documents. ...
>
> Although there is a "right to silence" and a linked "right to put the prosecution to proof", in my view it should not be permissible, without penalty, for defendants to use those rights in order to ambush the prosecution, as I have no doubt was attempted in this case."

The result was a further amendment of the law with effect from November 2008 which in effect requires an accused person to set out far more detail than was previously required, so that the real issues can be identified[17]. Once again, failure to do so or advancing a different

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criminal trials. He dwelt at length upon the disclosure regime and noted that the provision of defence case statements was more honoured in the breach than with compliance. He did not recommend a change in the law but took the view that a change in professional conduct rules would promote compliance.

[14] S 6A of the CPIA 1996 (as amended by the Criminal Justice Act 2003)

[15] S 6C of the CPIA 1996 (as amended by the Criminal Justice Act 2003)

[16] S 11 of the CPIA 1996 (as amended by the Criminal Justice Act 2003)

[17] This is s. 60 of the Criminal Justice and Immigration Act 2008 adding into s 6A(1) of the CPIA a new provision remarkably numbered s. 6(A)(1)(ca).

defence permits the Crown or another defendant to make adverse comment and the jury can draw such inferences as appear proper in deciding whether the accused is guilty but cannot convict solely on the basis of that inference.

So we preserve the 'golden thread' that you are innocent until proven guilty. But in the interests of transparency, efficiency and speed we require those accused of crime to engage in the process more extensively than previously although, if they are prepared to suffer adverse comment and potential adverse inference, it does not force them to. But you will well imagine, discussions on whether the level of disclosure has been appropriate and timely can take up time.

So have we got the balance right? Would you want to change anything for the future?

Our Role in Criminal Justice

I hope that I have given you the sense of a principled, yet complex system, one that has evolved and is still evolving, trying to balance the legitimate wish of society to convict the guilty and acquit the innocent against the rights of those accused of crime. The system works, and can work well, but takes time and money. But it can't work on its own. It requires all of us to take part and to involve ourselves, however painful and difficult that might sometimes be.

That brings me to a slightly different point and to correct what is, I fear, a real misunderstanding of the way in which crime can be investigated and detected. It is what I have called the effect of CSI. I have no doubt that many of you have heard of it. It is a television programme which focuses on forensic science. A crime occurs; a scientist turns up and with a bit of DNA, a flake of skin, a hair and some unbelievably clever graphics, the crime is solved in 30 minutes and witnesses do not seem to be involved. I cannot think of a better place than in a discussion about citizenship to tell you that the programme does not present an accurate picture.

In most cases, there is no question of a scientific investigation. If you're on a jury and hear the defence lawyers ask, where is the scientific evidence? Where is the DNA? The answer can be that nobody looked, not because the police were sloppy; not because anyone did not think the crime was serious enough; but because the criminal justice system simply does not have the resources – the trained police officers, the scientists, the money to do that sort of investigation in every case. Even then, science simply does not solve crime; it assists but cannot do it on its own. That means that the police, and our criminal justice system needs every one of you. Every one who witnesses crime needs to come forward and speak out as I say however painful and difficult that might be. If you're a witness, saying what you have seen and turning up in court remains vital, you can't neutralise your conscience and say that the whole thing can be proved forensically, it often wont be. Society has obligations to each of us; we also have duties to society to play our part in the maintenance of the rule of law.

Conclusion

So what do all the things I have talked through reveal? I hope that you can see a principled system, one that we can be proud of, but one that reflects the complexity of our times. The changes over recent years certainly allow modern juries to hear very much more than their predecessors; they mandate far greater transparency in disclosure by the prosecution and they require those accused of crime to engage in the process more extensively than previously although, if they are prepared to suffer adverse comment and potential adverse inference, it does not force them to. In particular, there have been a number of changes introduced into trials in an effort to ensure that the jury can approach the task in an informed, but balanced, manner.

But all this takes longer in time and therefore costs more and, I regret, considerably more. Are the changes detrimental to the interests of justice? For my part, I do not accept that requiring rather more openness impacts adversely on the right of silence or the presumption of innocence: nobody can be convicted on the basis of their failure to provide appropriate disclosure and the presumption that every defendant is innocent until the Crown has proved guilt beyond reasonable doubt remains the touchstone of every criminal case.

But I do think that the questions we need to be asking ourselves are what sort of system do we want for the future and how much are we prepared to pay for it? The answers to these questions are not for me, they are for the government and parliament of the day. But I believe I have an interesting perspective as someone who has worked in the system. And I also believe it is valuable for us all as citizens to think about what difficult decisions we will accept and those that we will not. We need to be aware of the risk that I think exists. Failing to take difficult decisions, to leave the system operating as it does and simply slash the budget in the hope that it will "find the savings" is unlikely to work. The system will simply get slower and slower. The "bureaucracy" in justice comes in large part from the legal framework, the legislation, that has been passed – if the system must cost less, difficult decisions about what we wish to retain must be taken. The responsibility is on all of us.

Thank you very much.
