The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

28th Meeting, 2012 (Session 4)

Tuesday 2 October 2012

The Committee will meet at 9.45 am in Committee Room 2.

1. **Role of the media in criminal trials:** The Committee will take evidence from—

   Aamer Anwar, criminal defence lawyer;

   Helen Arnot, Head of Legal and Regulatory Affairs, and Matt Roper, Digital News Editor, STV;

   Alistair Bonnington, former principal solicitor, BBC Scotland;

   Detective Chief Superintendent John Cuddihy, Association of Chief Police Officers in Scotland;

   Donald Findlay QC, Chair, Criminal Bar Association, Faculty of Advocates;

   David Harvie, Director of Serious Casework, Crown Office and Procurator Fiscal Service;

   Magnus Linklater, former Scotland Editor, The Times;

   Alan McCloskey, Head of Victim and Witness Service, Victim Support Scotland;

   Iain McKie, campaigner and former police officer;

   Steven Raeburn, Editor, The Firm.

2. **Decisions on taking business in private:** The Committee will decide whether to take items 3 and 4 in private.

3. **Draft Budget Scrutiny 2013-14:** The Committee will consider its approach to the scrutiny of the Scottish Government's Draft Budget 2013-14.

4. **Scottish Civil Justice Council and Criminal Legal Assistance Bill:** The Committee will consider a revised draft Stage 1 report.

5. **Prisons (Interference with Wireless Telegraphy) Bill (UK Parliament legislation) (in private):** The Committee will consider possible witnesses or recipients of a targeted call for evidence in relation to the legislative consent memorandum lodged by Kenny MacAskill, Cabinet Secretary for Justice (LCM(S4) 13.1).

Peter McGrath
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
Email: peter.mcgrath@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda item 1

Written submission from The Firm	J/S4/12/28/1
SPICe Briefing: Role of the Media in Criminal Trials	

Agenda item 3

SPICe briefing on the Draft Budget 2013-14: Justice	J/S4/12/28/2
Paper by the Clerk (private paper)	J/S4/12/28/3 (P)

Agenda item 4

Draft report (private paper)	J/S4/12/28/4 (P)

Agenda item 5

Paper by the Clerk (private paper)	J/S4/12/28/5 (P)

Papers for information

Letter from the Scottish Government on redesigning the community justice system	J/S4/12/28/6
Letter from the Scottish Government on tackling sectarianism	J/S4/12/28/7

Additional submissions for agenda item 1

Written submission from Iain McKie	J/S4/12/28/8
Written submission from Alistair Bonnington	J/S4/12/28/9
Written submission from BBC Scotland	J/S4/12/28/10
Written submission from the President of the Law Society of Scotland	J/S4/12/28/11
Written submission from Channel 4	J/S4/12/28/12
Written submission from Aamer Anwar	J/S4/12/28/13

Justice Committee

28th Meeting, 2012 (Session 4), Tuesday 2 October 2012

The role of the media in criminal trials

Written submission from The Firm

[Note by the Clerk: the following two articles have been previously published in The Firm magazine and have been provided by Steven Raeburn to narrate his views on the topic.]

Time to bring broadcasting to Court (published 13 January 2010)

As Sky News initiates a campaign for cameras to be allowed to cover court proceedings in England and Wales, it is worth revisiting the constantly recurring debate as to whether such a development is welcome, desirable or even necessary. In my view, a reappraisal is well overdue, and the arguments against cameras in court are getting thinner to the point of dissipation.

“If the legislature is to be subject to far greater scrutiny so too must the judiciary, so the public can fairly judge the balance of responsibility between them,” says head of Sky News, John Ryley, launching their campaign.

“Far from being the downfall of the judicial system, I believe exposure to public scrutiny could be its saviour." He added that it would enable the public "to understand the constraints under which our judges operate - the complexities of many of the cases before them which are inevitably over-simplified in a 30 second news piece."

The significance of the democratic function of proper scrutiny of our judicial system cannot and must not be lost sight of. The presence of cameras in court is nothing new in Scotland, although their use has been very tightly controlled since they were permitted in 1992. In 2008 the Nat Fraser and Luke Mitchell appeal advisings were covered by cameras, but only under tight provisos which ensured that only the judge and the macer could be seen. Whilst this was welcome, it is overcautious, and there is no reason why proper televised court coverage cannot fully simulate the experience of attending court in person, warts and all.

The potential for the court to become a form of theatre or entertainment is often touted as a justification for evading the arguments for increasing the coverage. Aside from legitimate issues of juror anonymity or the temptation for advocates or even judges to perform to their increased audience, the real danger –it is said- that may insidiously arise from increasing the exposure of the court’s workings beyond its own walls of the court is that administration of justice itself may somehow become perverted.

This argument is specious and does not bear close scrutiny. Court itself is often very boring to all except the enthusiastic or those with special interest. The days of fearing the eyes of the television passed half a century ago, and whilst the quality of

much of what is offered up by television as entertainment can be challenged, the maturity of the medium itself, and its potential, are tried, tested and woefully under exploited. The added dimension of near-universal digital access, a phenomenon only certain to expand as time passes, allows dedicated niche channels to broadcast any special area of interest without alienating the space available to the broad audience. They are capable of producing content that will not require editing, filtering, exposition or added filling to appeal to a common denominator. A specialist audience will lap it up. The model to follow and take inspiration from is not The X Factor, Cash in the Attic or Judge Judy. It is BBC Parliament that provides the template, where lengthy sessions of Parliamentary debate play out all hours of the day and night, no doubt to a small audience, but one that definitely welcomes it.

Even Holyrood TV has pioneered skilled, informative and well packaged live streams of its committees and consultations for years without attracting controversy or diluting the gravity and significance of its content. The ongoing sessions scrutinising the Legal Services Bill have been required desktop viewing at the offices of the Firm. If the process of making the law itself is capable of being wrested into a coherent television package, its denouement and execution in court itself should able to be translated too, with no fear of diminishing its import or prejudicing its conduct.

The Firm magazine is about to embark on its next poll of the Judges of Scotland. One of the reasons it is necessary to carry this exercise out is because there is no other forum or means of accounting for the behaviour of the Senators of The College of Justice. The court has demonstrated through the centuries that it does not fear scrutiny, which is why their doors are open to the public without restriction. Newspapers and the press have traditionally been the eyes and ears of the wider world who cannot make it in person, but now that technology allows the courts to be accessed with desktop or even smartphone ease, there is no sustainable argument that can be advanced to prevent the public observing the courts through the medium of a screen and a microphone, rather than in person. There are enough smart heads in television production to devise a package that ensures the administration of justice is not adversely affected. The presence of an audience beyond the walls of court should not give the judiciary or the advocates either stage fright or an opportunity to grandstand that is not in fact present every day before the live audience already.

Contempt of Court restrictions already exist to restrain the reporting of the wider media, so there is little danger of adverse follow up coverage. And if any outlet decided to try to cover the courts with a daily digest of drivel as they do populist shows such as Big Brother, if the existing contempt provisions are not sufficient, they can easily be updated. It has been long argued that they are ripe for an overhaul in the digital age. Now is the time to take the opportunity to update our legal coverage and the laws attending it, and in doing so, perhaps some proper understanding of justice could be provided to those with the patience and interest to follow it, as well as those who hitherto did not.

Edward R Murrow said over fifty years ago that television was a medium that had great under-exploited potential, and he argued that it should in fact be used for “exposure to ideas and the bringing of reality into the homes of the nation.”

“To those who say people wouldn't look; they wouldn't be interested; they're too complacent, indifferent and insulated, I can only reply: There is, in one reporter's opinion, considerable evidence against that contention,” he argued.

“But even if they are right, what have they got to lose? Because if they are right, and this instrument is good for nothing but to entertain, amuse and insulate, then the tube is flickering now and we will soon see that the whole struggle is lost.

“This instrument can teach, it can illuminate; yes, and it can even inspire. But it can do so only to the extent that humans are determined to use it to those ends. Otherwise it is merely wires and lights in a box.”

Now is the time, I would argue, to reverse the trend towards facile and trivial television by providing court coverage that is full, thorough and ranges across the work of the courts. To do so would advance the function of our democracy in the forum where it affects us most, when we are at the mercy of the state and our very liberty is at stake. If that does not deserve an audience, what does?

Steven Raeburn
Editor

The Law and Social Media: A bow and arrow against chemical warfare
(published on 22 November 2011)

Lord Levesen said yesterday that the spread of defamatory gossip online using social networks was the “elephant in the room” of the inquiry into phone hacking.

Within 24 hours a YouGov study has been published which concludes that 48% of Twitter users do not consider whether their tweets could be breaking the law before they send them, and only 19% read the terms and conditions of sites.

Perhaps most importantly, only one in ten knew their own legal rights.

The law governing the rights and duties of twitter users pre-dates VCRs, and was written in a time when a newspaper was the primary source of news for the majority of people. No 24 hour news, no mobile phones, no internet, no social media, and most importantly, no means for a lay member of the public to transmit their thoughts to a mass audience. Almost nothing is left of that lost, analogue media world. With one exception.

The Contempt of Court Act 1981 remains the cornerstone of the law applicable to social media, despite being as unfit for purpose as a bow and arrow against chemical attack. Earlier in the year its frailties were so ridiculously exposed over the super injunction farce, in which newspapers were barred from reporting on the existence of and the identities pertaining to a series of newspaper injunctions, whilst those on social media could disseminate the same information widely and without consequence. The farcical anomaly led to the Sunday Herald’s courageous use of the situationism defence, by publishing a prominent picture of Ryan Giggs with his eyes minimally and ludicrously blacked out.

The invention of the internet rendered the Act obsolete in a theoretical technical sense, but the explosion of Facebook and Twitter in the last several years has rendered that obsolescence practical and very, very real.

All those twitter users who openly disseminated the same information (and indeed, more) as the Sunday Herald were as equally in breach of the Contempt of Court Act as any newspaper editor would have been, although action against them would have been utterly impractical, impossible even, given their impenetrable veil of anonymity and absence of accountability.

Their likely ignorance of the legal consequences now established by YouGov is perhaps the most revealing factor. The Contempt of Court Act is so utterly beyond relevance for players in the online world, it can hardly be a surprise it is so easy to ignore. Editors of responsible social media websites adhere to its provisions, but editors make up the tiniest conceivable fraction of the online population, and anyone with the legally protected knowledge can project it around the world without a trained editor’s restraining hand in moments, reaching a potential circulation audience most publications could only dream of. It would be impossible to try to train every twitter user in the subtleties of the Act's provisions. That battle is long since lost.

The Act has struggled to cope with the evolved media, although its unwieldy provisions are still the only weapon in the armoury of the online defamed. For that reason alone education of the online masses may be a first step, but new tools are required, and this area of law needs urgent reform.

SPICe
The Information Centre

SPICe Briefing
Draft Budget 2013-14: Justice

27 September 2012

Frazer McCallum

This briefing has been prepared to assist the Justice Committee in its scrutiny of the Scottish Government's draft budget for 2013-14. The Committee has indicated that it intends to include consideration of both police and court budgets as part of this year's scrutiny. It has also noted an interest in looking at monies available to implement the recommendations of the Commission on Women Offenders. Taking forward the Commission's recommendations may be expected to have financial implications in a number of areas (eg for the work of the Scottish Prison Service and criminal justice social work).

In light of the above, the following areas are considered:

- spending on Justice and Crown Office & Procurator Fiscal Service portfolios plus ring-fenced central government grants to local authorities to help pay for justice related activities
- spending on police and courts at a more detailed level, as well as policy and other developments which may impact on the level of spending required for police and courts
- the work of the Commission on Women Offenders and any significant costs involved in implementing its recommendations

The SPICe briefing Draft Budget 2013-14 (Financial Scrutiny Unit 2012) provides information on spending plans for all subject portfolios.

The Scottish Parliament
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EXECUTIVE SUMMARY

Justice and COPFS Spending

The most striking features of Justice and COPFS spending plans, as set out in the Scottish Government's draft budget for 2013-14, are:

- the very large increase in funding within the Justice portfolio (rising from £1,341m in 2012-13 to £2,547m in 2013-14)
- the disappearance of two central government ring-fenced grants to local authorities from 2013-14 (Police and Fire Capital grants)

These changes flow from reforms provided for in the Police and Fire Reform (Scotland) Act 2012, which will replace the current eight police forces and eight fire brigades with a single Police Service of Scotland and a single Scottish Fire & Rescue Service. Funding arrangements for both services will change significantly under the new arrangements, with all core funding coming directly from central government (rather than a mix of local and central government funding). The Scottish Government's intention is that the new arrangements will come into effect on 1 April 2013.

Scottish Government figures indicate that more than £1,253m of police and fire service funding for 2013-14 is being moved from the Local Government settlement to the Justice portfolio. If one removes this sum from the Justice portfolio, the portfolio budget falls (in cash terms) by £48m between 2012-13 and 2013-14. Last year's Scottish Government spending review provided for a similar fall within the Justice portfolio budget over the same period.

Apart from the structural changes to police and fire service funding, the cash terms figures for Justice and COPFS spending set out in this year's draft budget are broadly similar to those which were set out in the 2011 spending review (for the same years). One of the more significant changes is an additional £20m of Scottish Prison Service capital funding for 2014-15.

Police

As noted above, the Police and Fire Reform (Scotland) Act 2012 includes provisions which will significantly reform the police. They will:

- abolish the existing eight territorial police forces, the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency
- establish one national police force (the Police Service of Scotland) along with a single Scottish Police Authority
- create new police governance and funding arrangements

One of the main drivers for police reform was a desire to achieve efficiency savings, thereby protecting frontline police services during a period of general financial cuts. However, the Scottish Government has indicated that transitional costs involved in the changes are predicted to increase the overall costs of policing during 2013-14.

One of the issues raised during scrutiny of the Police and Fire Reform (Scotland) Bill was whether the police will be able to maintain an efficient, balanced workforce if they have to operate within constraints imposed by:

- the Scottish Government commitment to maintaining an additional 1,000 police officers
- the Scottish Government commitment to no compulsory redundancies
- the need to make savings in budgets

Stephen House (the current Chief Constable of Strathclyde Police and recently appointed first Chief Constable of the new Police Service of Scotland) has been reported as stating that the process of police reform may involve the loss of large numbers of police support staff.

Comparing the cash terms figures for police spending in 2013-14 as set out in this year's draft budget, with those set out in the 2011 spending review (for the same years):

- Scottish Police Authority plus Police Central Government – the combined total is very similar to the sum allocated for Police Central Government in the spending review plus elements of the Local Government settlement which have been moved to police spending within the Justice portfolio
- Police Pensions – the figures are identical

Courts

The Scottish Court Service (SCS) has, in response to proposed justice reforms and restrictions on its budget, started to formulate options for changes in court locations and structures – including possible court closures. It has recently published a consultation paper on the topic (with responses sought by 21 December 2012).

Various reviews into the delivery of justice have reported over recent years (including one into the civil courts and another looking at sheriff and jury procedure). The SCS anticipates that proposed justice reforms flowing from these reviews will have a significant impact on court business.

The work being taken forward by the SCS in relation to court structures, as well as planned reforms arising from the above mentioned reviews, form part of the Scottish Government's Making Justice Work programme. It was set up in 2010 and comprises five projects:

- delivering efficient and effective court structures
- improving procedures and case management
- widening access to justice
- co-ordinating IT and management information
- establishing a Scottish Tribunals Service

There are only small changes to the cash terms figures for courts spending set out in this year's draft budget, as compared with those set out in the 2011 spending review (for the same years).

Commission on Women Offenders

In 2011, the Scottish Government established a Commission on Women Offenders chaired by Dame Elish Angiolini (the former Lord Advocate) with a remit to: "consider the evidence on how to improve outcomes for women in the criminal justice system; to make recommendations for

practical measures in this Parliament to reduce their reoffending and reverse the recent increase in the female prisoner population".

The recommendations set out in its report (published in April of this year) included a number which may involve additional costs (at least initially) for a range of organisations, including the Scottish Prison Service and those involved in criminal justice social work services.

In its formal written response (published in June) the Scottish Government accepted the majority of the Commission's recommendations. In August 2012, the Scottish Prison Service published a consultation paper as part of a process aimed at informing the Government's approach to implementing various recommendations made by the Commission on Women Offenders. Both documents highlighted resource issues.

JUSTICE AND COPFS SPENDING

Table 1 sets out information, derived from the Scottish Budget: Draft Budget 2013-14 (Scottish Government 2012a) (hereafter referred to as the Draft Budget 2013-14), on the following areas of spending:

- the Justice portfolio
- the Crown Office & Procurator Fiscal Service (COPFS) portfolio
- ring-fenced central government grants to local authorities (forming part of the Local Government budget) to help pay for certain justice related activities – Police, Criminal Justice Social Work and Fire Capital

Unless stated otherwise, all real terms figures in this briefing (ie figures adjusted for the effect of inflation) are expressed in 2012-13 prices.

Table 1: Spending on Justice, COPFS and Grants to Local Authorities, 2012-13 to 2014-15

		2012-13 budget £m	2013-14 draft budget £m	2014-15 plans £m
Cash terms				
Justice		**1,341.0**	**2,546.6**	**2,527.4**
COPFS		**108.1**	**108.1**	**108.7**
Grants	Police	480.3	-	-
	CJ Social Work	86.5	86.5	86.5
	Fire Capital	16.4	-	-
	Total Grants	**583.2**	**86.5**	**86.5**
Real terms				
Justice		**1,341.0**	**2,484.5**	**2,405.6**
COPFS		**108.1**	**105.5**	**103.5**
Grants	Police	480.3	-	-
	CJ Social Work	86.5	84.4	82.3
	Fire Capital	16.4	-	-
	Total Grants	**583.2**	**84.4**	**82.3**

Source: Draft Budget 2013-14 (tables 6.01, 6.02, 6.16, 11.01 and 11.02)

The most striking aspects of the above table are:

- the very large increase in spending within the Justice portfolio (a cash terms increase of £1,205.6m between 2012-13 and 2013-14)
- the disappearance of two central government ring-fenced grants to local authorities (leaving only the Criminal Justice Social Work grant from 2013-14 onwards)

Both flow from the reforms provided for in the Police and Fire Reform (Scotland) Act 2012. The 2012 Act will (once relevant provisions are commenced) replace the current eight police forces and eight fire brigades with a single police force (the Police Service of Scotland) and a single fire service (the Scottish Fire & Rescue Service). Funding arrangements for both services will change significantly under the new arrangements, with all core funding coming directly from central government (rather than a mix of local and central government funding). The Scottish Government's intention is that the new arrangements will come into effect on 1 April 2013 (thus applying to 2013-14 budgets).

The increase in spending within the Justice portfolio is only partly accounted for by the movement of funds from the Local Government portfolio to the Justice portfolio following the

ending of the Police and Fire Capital grants. This reflects the fact that the two grants are not the only elements of police and fire service funding which are being transferred from Local Government to Justice. For example, current police funding includes significant sums which local authorities spend on policing over and above the monies provided by the ring-fenced Police Grant. This additional spending is drawn from general local authority funds (which include monies provided by central government – eg by way of revenue support grant). In fact, Scottish Government figures indicate that £1,259.4m of police and fire service funding for 2013-14 is being moved from the Local Government settlement to the Justice portfolio (although £5.8m of this transfer does not appear in budget lines for police spending within the Justice portfolio due to the accounting treatment of loan charges).[1] If one removes £1,253.6m (ie £1,259.4m minus £5.8m) from the Justice portfolio, the portfolio budget falls (in cash terms) by £48.0m between 2012-13 and 2013-14. Last year's Scottish Spending Review 2011 and Draft Budget 2012-13 (Scottish Government 2011a) (hereafter referred to as the Spending Review 2011) provided for a slightly larger fall of £49.3m within the Justice portfolio budget over the same period.

More detailed (level 2) figures for spending within the Justice portfolio are set out in Tables 2 and 3 below. Apart from the significant changes to police and fire service funding, the cash terms figures set out in Table 2 are broadly similar to those which were set out in the Spending Review 2011. Further information on police reform and police funding is set out later in this briefing. In relation to other areas of justice spending, changes include:

- Scottish Resilience – the figures for 2013-14 and 2014-15 are lower than those set out in the Spending Review 2011. The reductions reflect the fact that certain elements of funding are being moved from this budget line to the new Scottish Fire & Rescue Service budget
- Scottish Prison Service – planned spending for 2014-15 is £20m more than set out in the Spending Review 2011. The Draft Budget 2013-14 notes that, during the stage 3 debate on the 2012-13 Budget Bill, this additional sum was allocated for capital funding, with the intention that it should be targeted towards the needs of the female prison population
- Office of the Scottish Charity Regulator (OSCR) – responsibility for OSCR was transferred from the Justice portfolio to the Finance, Employment and Sustainable Growth portfolio in June 2012. As a result, the relevant budget line no longer appears within the Justice portfolio

Table 2: Justice Spending in Cash Terms, 2012-13 to 2014-15

	2012-13 budget £m	**2013-14** draft budget £m	**2014-15** plans £m
Community Justice Services	31.3	31.8	32.3
Courts, Judiciary & Scottish Tribunals Service	52.4	52.1	51.6
Criminal Injuries Compensation	25.5	20.5	17.5
Scottish Resilience	17.9	14.0	14.0
Legal Aid	155.8	149.3	142.8
Scottish Police Authority	-	1,085.5	1,040.6
Scottish Fire & Rescue Service	-	293.1	288.1
Police Central Government	242.4	115.8	106.1
Drugs & Community Safety	38.3	38.7	39.7
Police & Fire Pensions	281.9	291.8	309.8
Scottish Prison Service	400.6	364.5	398.7
Miscellaneous	17.9	16.2	16.8
Scottish Court Service	77.0	73.3	69.4
Total	**1,341.0**	**2,546.6**	**2,527.4**

[1] See Draft Budget 2013-14 (p 74-75) and Financial Scrutiny Unit 2012 (p 9-12).

Source: Draft Budget 2013-14 (tables 6.01)

Table 3: Justice Spending in Real Terms, 2010-11 to 2014-15

	2012-13 budget £m	**2013-14** draft budget £m	**2014-15** plans £m
Community Justice Services	31.3	31.0	30.7
Courts, Judiciary & Scottish Tribunals Service	52.4	50.8	49.1
Criminal Injuries Compensation	25.5	20.0	16.7
Scottish Resilience	17.9	13.7	13.3
Legal Aid	155.8	145.7	135.9
Scottish Police Authority	-	1,059.0	990.5
Scottish Fire & Rescue Service	-	286.0	274.2
Police Central Government	242.4	113.0	101.0
Drugs & Community Safety	38.3	37.8	37.8
Police & Fire Pensions	281.9	284.7	294.9
Scottish Prison Service	400.6	355.6	379.5
Miscellaneous	17.9	15.8	16.0
Scottish Court Service	77.0	71.5	66.1
Total	**1,341.0**	**2,484.5**	**2,405.6**

Source: Draft Budget 2013-14 (tables 6.02)

POLICE

DEVELOPMENTS

Legislative Reform

The Police and Fire Reform (Scotland) Act 2012 includes provisions which will (once they are fully commenced):

- abolish the existing eight territorial police forces, the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA)
- establish one national police force (the Police Service of Scotland) along with a single Scottish Police Authority
- create new police governance and funding arrangements

One of the main policy objectives behind the reforms in this area is to:

> "protect and improve local services despite financial cuts, by stopping duplication of support services eight times over and not cutting front line services" (Police and Fire Reform (Scotland) Bill: Policy Memorandum, para 3)

The Police Service of Scotland will replace the eight territorial forces and take over most of the work of the SPSA and SCDEA. It will be headed by a single Chief Constable whose responsibilities will include:[2]

[2] Stephen House (current Chief Constable of Strathclyde Police) has been appointed as the first Chief Constable of the new Police Service of Scotland. It is expected that he will work with the chair of the new Scottish Police Authority, in advance of next year's formal establishment of the single police force, to prepare for the transfer of functions.

- direction and control of police officers and civilian police staff
- administration and planning within the Police Service of Scotland
- ensuring that all local authority areas have adequate arrangements for policing
- designation of a local commander for each local authority area, with responsibilities relating to policing in that area
- securing best value in the use of resources

The Scottish Police Authority will be a new public body comprising members appointed by the Scottish Ministers.[3] It will have the ability to appoint its own staff and may also engage police officers on secondment. It will also be able to borrow money with the prior consent of Scottish Ministers. Its responsibilities will include:

- promotion of the policing principles and continuous improvement in the policing of Scotland
- preparation of a strategic policing plan (in conjunction with the Chief Constable)
- provision of appropriate resources for the Police Service of Scotland (eg providing the Chief Constable with a budget to spend, buildings and equipment, as well as being directly responsible for the provision of forensic services to the police)[4]
- holding the Chief Constable to account for carrying out the responsibilities of the post (including the proper use of resources)

The role of the Scottish Ministers will include:

- providing the Scottish Police Authority with the funds to resource the Police Service of Scotland and cover its own costs
- setting strategic priorities for the Scottish Police Authority and approval of its strategic police plan
- holding the Scottish Police Authority to account for the delivery of effective policing

Many of the tasks currently carried out at local authority level by police authorities and joint police boards, including the setting of police budgets, will form part of the work of the Scottish Police Authority. Although the current statutory police authorities and joint police boards will cease to exist under the new arrangements, local authorities will still have a role in local policing (eg monitoring local performance and working with local police commanders in setting local priorities). Local authorities will also retain the ability to provide additional funds for policing in their areas.

The Scottish Government is working towards the new arrangements coming into effect on 1 April 2013.

As indicated above, one of the main drivers for police reform was a desire to achieve efficiency savings, thereby protecting frontline police services during a period of general financial cuts. The financial memorandum published along with the Police and Fire Reform (Scotland) Bill provided estimated set-up costs and efficiency savings for a fifteen year period (2011-12 to 2025-2026). In addition to what it described as 'best estimates', it provided adjusted figures in relation to which:

[3] Vic Emery (current convener of the SPSA board) has been appointed as the first chair of the Scottish Police Authority.

[4] It is intended that the transfer of forensic services from the SPSA to the Scottish Police Authority, rather than the Police Service of Scotland, will help protect the impartial nature of such services.

- costs were adjusted upwards to take account of 'optimism bias' (a method of mitigating the risk that the costs of major projects are underestimated)
- savings were adjusted downwards to account for potential margins of uncertainty

The predicted impact during years 2012-13 to 2014-15 is summarised in Table 4. It indicates whether overall costs (after comparing set-up costs with efficiency savings) are predicted to rise or fall. All of the figures are at 2011-12 prices.

Table 4: Predicted Impact of Reforms on Policing Costs, 2012-13 to 2014-15

	2012-13 £m	2013-14 £m	2014-15 £m
Best estimate figures	-9.1	+9.1	-28.4
Adjusted figures	+3.2	+38.2	+13.2

Source: Police and Fire Reform (Scotland) Bill: Explanatory Notes (and other accompanying documents) (table 1A)

As can be seen from the above table, the police reforms are predicted to increase the overall costs of policing during 2013-14 – the first year during which the new Police Service of Scotland will be operational. (It should be noted that both best estimate and adjusted figures in the financial memorandum predict significant overall savings from 2015-16 onwards.)

Current Funding Arrangements

Under current arrangements (ie those applying in 2012-13) policing is paid for through a mix of:

- central government expenditure on policing within the Justice portfolio (Police Central Government and Police Pensions)
- central government expenditure on policing within the Local Government portfolio (mainly the ring-fenced Police Grant paid to local authorities)
- monies which local authorities choose to spend on policing (around one-third of total police funding)[5]

The level of spending on policing by local authorities used to be directly linked to the level of Police Grant. However, this was ended following the 2007 Concordat between the Scottish Government and Local Government, under which local authorities were given more flexibility in managing their budgets and agreed to play a part in delivering certain Scottish Government commitments (including one relating to police officer numbers).

New Funding Arrangements

The Police and Fire Reform (Scotland) Act 2012 provides for the consolidation of the various elements of police funding discussed above into a single funding stream. This will be provided directly by the Scottish Government to the Scottish Police Authority. This funding is subject to the approval of the Scottish Parliament through the normal budget process. As noted above, local authorities will retain the ability to provide additional funds to supplement policing in their areas. The new funding arrangements will apply to the 2013-14 budget.

Under current funding arrangements, provisions in the Value Added Tax Act 1994 allow Scottish police forces to recover VAT costs. This is on the basis that they form part of the services provided by local authorities. One of the issues covered during scrutiny of the Scottish Government's proposals for police reform was whether a move to a single national police force

[5] The funds from which any local authority draws upon for policing and other services include monies provided by central government (eg through revenue support grant).

would result in the loss of this ability to reclaim VAT. It is understood that the Scottish Government and HM Treasury explored options under which VAT could still be recovered but that HM Treasury has now confirmed that a national police force will not be able to recover VAT. The financial memorandum (para 178) published along with the Police and Fire Reform (Scotland) Bill estimated that this would cost the Police Service of Scotland in excess of £21m per annum.[6]

Police Officer and Staff Numbers

The most recent police officer quarterly strength statistics published by the Scottish Government (2012b) indicate that Scottish police forces had a total of 17,373 police officers (full-time equivalent posts) on 30 June 2010.[7]

In 2007, the Scottish Government outlined a commitment to make "an additional 1,000 police officers available in our communities through increased recruitment, improved retention and redeployment" (Scottish Government 2007b, p 61). Table 5 sets out quarterly figures for the total number of police officers since 31 March 2007 (the baseline used for the commitment). As at 30 June 2012, Scottish police forces had 1,139 more police officers than they had on 31 March 2007.

Table 5: Number of Police Officers, March 2007 to June 2012

2007	
date	number
31 Mar	16,234
30 Jun	16,265
30 Sep	16,306
31 Dec	16,267

2008	
date	number
31 Mar	16,222
30 Jun	16,339
30 Sep	16,526
31 Dec	16,675

2009	
date	number
31 Mar	17,048
30 Jun	17,278
30 Sep	17,217
31 Dec	17,273

2010	
date	number
31 Mar	17,409
30 Jun	17,424
30 Sep	17,371
31 Dec	17,217

2011	
date	number
31 Mar	17,263
30 Jun	17,339
30 Sep	17,265
31 Dec	17,343

2012	
date	number
31 Mar	17,436
30 Jun	17,373

Source: Scottish Government 2012b, table 2

The above figures do not include police support staff. Scottish police forces employed a total of 6,890 support staff (full-time equivalent posts) on 30 June 2012. This is 462 less than they had on 31 March 2007 (and 972 less than the recent peak of 7,862 support staff on 31 March 2010). Table 6 sets out quarterly figures for the total number of support staff since March 2007

Table 6: Number of Police Support Staff, March 2007 to June 2012

2007	
date	number
31 Mar	7,352
30 Jun	7,543
30 Sep	7,411
31 Dec	7,621

2008	
date	number
31 Mar	7,528
30 Jun	7,577
30 Sep	7,529
31 Dec	7,579

2009	
date	number
31 Mar	7,713
30 Jun	7,691
30 Sep	7,808
31 Dec	7,841

2010	
date	number

2011	
date	number

2012	
date	number

[6] The estimated financial implications of police reform, as set out in the financial memorandum and reproduced in Table 4 above, assumed that VAT costs would not be recoverable.

[7] The figures for both police officers and police support staff include those working within the SPSA and SCDEA.

31 Mar	7,862
30 Jun	7,841
30 Sep	7,833
31 Dec	7,708

31 Mar	7,447
30 Jun	7,109
30 Sep	7,001
31 Dec	6,957

31 Mar	6,947
30 Jun	6,890

Source: Parliamentary Questions S4W-09275, S4W-06611, S4W-06043 and S4W-02796

One of the issues raised during scrutiny of the Police and Fire Reform (Scotland) Bill was whether the police will be able to maintain an efficient, balanced workforce if they have to operate within constraints imposed by:

- the Scottish Government commitment to maintaining police officer numbers at no fewer than 17,234
- the Scottish Government commitment to no compulsory redundancies
- the need to make savings in budgets

The Justice Committee's Stage 1 Report (2012) on the Bill noted "concerns regarding the ability to achieve the projected savings" and sought "clarification as to the impact of the projected redundancies of civilian posts on the front line" (para 265). In its Response to the Justice Committee's Stage 1 Report (2012c), the Scottish Government stated that:

> "We are entirely confident that these projected savings – the calculation of which has erred on the side of caution – are deliverable and we will look to the new Chief Constable and Scottish Police Authority to identify the right balance between protecting police officer numbers and the level of support staff required for an effective, efficient service. (…)
>
> A projected level of voluntary redundancy which would deliver the appropriate efficiencies and removal of unnecessary duplication was factored into both business cases. We expect this reduction to be managed through not replacing people leaving the service and voluntary redundancies, rather than through compulsory redundancies." (p 10-11)

Stephen House (the current Chief Constable of Strathclyde Police and recently appointed first Chief Constable of the new Police Service of Scotland) has been reported as stating that the process of police reform may involve the loss of large numbers of police support staff (eg see 'Stephen House Warns of Police Service of Scotland Job Losses', BBC 26 September 2012).

SPENDING

Table 7 (below) draws together the following elements of police spending (all within the Justice portfolio):

- Scottish Police Authority – funding for the new Scottish Police Authority and, through it, the Police Service of Scotland
- Police Central Government – funding for police support services and national police funding and reform
- Police Pensions – provides funding to meet the pension costs of retired police officers

From 2013-14, general police spending is met through funding for the Scottish Police Authority. However, the Police Central Government budget line does not disappear. The Draft Budget 2013-14 notes that much of the funding previously included in that budget line is moved to the Scottish Police Authority:

> "£236.9 million of funding was set out within the [Police Central Government] PCG budget for 2013-14 in the Scottish Spending Review 2011. A significant part of this is now part of the wider Scottish Police Authority (SPA) funding, including funding for 1,000 additional officers, forensics services, police training, criminal records, ICT, serious crime and drug enforcement and counter terrorism. The funding transferring from PCG to SPA also reflects the savings expected from police reform." (p 76)

It indicates that:

> "Funding remaining in the Police Central Government (PCG) budget in 2013-14 includes spending on building the new Scottish Crime Campus at Gartcosh, funding the Police Investigation Review Commissioner (PIRC), the Scottish Safety Camera Programme and Airwave" (p 76)

Table 7: Police Spending, 2010-11 to 2014-15

	2012-13 budget £m	**2013-14** draft budget £m	**2014-15** plans £m
Cash Terms			
Scottish Police Authority	-	1,085.5	1,040.6
Police Central Government	242.4	115.8	106.1
Police Pensions	222.6	231.0	249.6
Total	**465.0**	**1,432.3**	**1,396.3**
Real Terms			
Scottish Police Authority	-	1,059.0	990.5
Police Central Government	242.4	113.0	101.0
Police Pensions	222.6	225.4	237.6
Total	**465.0**	**1,397.4**	**1,329.1**

Source: Draft Budget 2013-14 (tables 6.08, 6.10 and 6.12)

Comparing the cash terms figures for police spending in 2013-14 as set out in the Draft Budget 2013-14, with those set out in the Spending Review 2011:

- Scottish Police Authority plus Police Central Government – the combined total of £1,201.3m set out in the Draft Budget 2013-14 is very similar to the sum allocated for Police Central Government in the Spending Review 2011 plus elements of the Local Government settlement which have been moved to police spending within the Justice portfolio
- Police Pensions – the figures are identical

COURTS

DEVELOPMENTS

Future Court Structure

The SCS has, in response to proposed justice reforms and restrictions on its budget, started to formulate options for changes in court locations and structures. During May and June 2012, it held a number of events with users of court services (including local authorities, legal professionals, and consumer and victim organisations) to discuss its ongoing work in this area. An associated news release (SCS 2012a) noted that:

> "The Scottish Court Service is faced with some quite significant changes to the way in which court services are provided. Challenge is also found in the increasing expectations of court users, particularly victims and witnesses. Recommendations within Sheriff Principal Bowen's review of Sheriff and Jury business and Lord Gill's review of the civil courts anticipate significant changes to how and where court business will be conducted in the future, with an emphasis on specialisation and a move away from the model where all types of business are conducted at all court locations. We have been looking at whether the current structure of the courts could sustain all these changes. A guiding principle of this work has been to look at how the court estate can be structured to deliver the best possible services at less cost, whilst anticipating and benefiting from potential future changes.
>
> From our work, the SCS Board have asked four underpinning questions:
>
> (i) Could the High Court circuit be reduced and, if so, where should it sit?
>
> (ii) Could Sheriff and Jury cases be consolidated into fewer centres and, if so, where should they be?
>
> (iii) Could we manage with fewer buildings where we have more than one in a town or city?[8]
>
> (iv) Could we manage with fewer courts where we have more than one within a reasonable travelling distance?"

Those attending the above meetings were provided with a paper entitled Shaping Scotland's Court Services: a dialogue on a court structure for the future (SCS 2012c). It highlighted planned reductions in the operating budget of the SCS. It also outlined a number of planned justice reforms which might be expected to have an impact on court business:

> "Assuming the recommendations of the Gill and Bowen reviews are implemented, the main changes to which the SCS will have to respond are:
>
> • a new salaried judicial office of summary sheriff, below the level of sheriff, dealing with summary criminal cases, summary cause and small claims cases and some family cases
>
> • a new sheriff appeal court dealing with both civil and criminal appeals from the sheriff courts and justice of the peace courts
>
> • a sheriff personal injury specialist court, probably in Edinburgh, with other judicial specialisation managed within sheriffdoms
>
> • the redistribution of civil cases from the Court of Session to sheriff courts, and at the lower level from sheriffs to summary sheriffs
>
> • more active management of sheriff and jury cases, in particular a sheriffdom-wide approach to matching cases to court capacity
>
> • increased use of videoconferencing and other arrangements to support vulnerable witnesses and victims of crime". (p 5)

The paper also provided an illustration of how the courts might be restructured, including possible court closures.[9] In relation to potential savings from such restructuring, it indicted that:

> "The actual savings achieved will depend on the final proposals that are approved. However, the current estimate of the potential on-going revenue savings from the court structure proposals illustration in this paper, if taken to their fullest extent, are in

[8] A recent example of a court building being closed, with business moved to another building in the vicinity, is the move of Glasgow's Justice of the Peace and Stipendiary Magistrate court to share the same building as Glasgow Sheriff Court (SCS 2012b).

[9] See pages 14 to 17 and appendix 2.

> the region of £2 million a year, through the closure of split site courts, rationalisation of the High Court and possible court closures. There would also be a saving of an estimated £6-9 million on outstanding building maintenance.
>
> Opting to rationalise the court estate would seem to us to preserve the essential judicial and staff resources to operate the system and allow future investment, particularly in facilities for jurors, victims and witnesses and in communication technology, to be targeted across a smaller group of buildings, maximising the benefit of that investment in the services delivered to court users." (p 9)

Following the above discussions with court users, in July 2012 the SCS published a summary of what was covered, including an outline of concerns raised (eg the possibility that greater centralisation of court services would lead to increased travel and costs for court users). In relation to next steps, it stated that:

> "The points raised at the events are being taken into account during the further work the SCS is now doing to refine the initial thinking and develop proposals for consideration by the SCS Board later in the summer. We would anticipate a three month public consultation on final proposals being launched in the autumn of 2012. Only after the outcome of that consultation would final decisions be made, and, as necessary, statutory orders laid before the Scottish Parliament for approval." (SCS 2012d, p 5)

The above mentioned consultation paper was published on 21 September 2012 and runs for three months – Shaping Scotland's Court Services: a public consultation on proposals for a court structure for the future (SCS 2012e).

Reviews into the Delivery of Justice

As noted above, the SCS anticipates that proposed justice reforms will have a significant impact on court business – in particular, reforms arising from the reviews headed by Lord Gill and Sheriff Principal Bowen.

The first of these reviews – the Scottish Civil Courts Review or 'Gill Review' – began its work in 2007. Its 2009 report made a raft of recommendations relating to the principles, structures and procedures which, it argued, should underpin the delivery of civil justice. It also made significant recommendations affecting criminal justice. The Scottish Courts website provides a useful synopsis of the review and report. In 2010, the Scottish Government published a response to the report which, broadly speaking, accepted the review's recommendations. It expressly acknowledged the impact of budget constraints on implementation:

> "the reforms recommended by Lord Gill must be viewed in the context of the current pressures on public spending which will constrain the scope for additional investment, and at the very least will require that reforms are managed carefully and phased in over a period of years". (Scottish Government 2010, para 31)

The Scottish Civil Justice Council and Criminal Legal Assistance Bill (currently before the Scottish Parliament) includes provisions seeking to create a Scottish Civil Justice Council. This body will be responsible for (amongst other things) implementing some of the reforms to court procedures flowing from the Gill Review. The financial memorandum published along with the Bill notes that:

> "The Scottish Government's planned programme of reform of the civil courts is expected to give rise to additional costs for the Scottish Court Service including in relation to the operational costs of the [Scottish Civil Justice] Council. The potential

costs of the Council in relation to implementation of civil courts reform are provided, for illustrative purposes only, at paragraphs 125 to 144 below." (para 104)

The timetable for introducing other reforms recommended in the Gill Review, including those requiring further legislation, is still unclear. However, the Scottish Government's Programme for Scotland 2012-13 (2012d, p 67) stated that a Courts Reform Bill taking forward Lord Gill's recommendations will go out for consultation by the end of 2012.

The Independent Review of Sheriff and Jury Procedure undertaken by Sheriff Principal Bowen reported in 2010. It followed on from earlier reviews of the High Court (led by Lord Bonomy) and summary criminal justice (led by Sheriff Principal McInnes). Recommendations flowing from the review of sheriff and jury procedure included ones relating to compulsory business meetings between defence and prosecution lawyers, and better use of pre-trial hearings (first diets).

The Scottish Government's response (2011b) to the review of sheriff and jury procedure stated that it "is of the view that the overall shape of the recommendations made by Sheriff Principal Bowen are to be welcomed" (p 5). The relevance of budgets when considering implementation was again highlighted:

> "Ultimately, any proposals which the Scottish Government may wish to take forward must be viewed in the context of the current pressures on public spending which will constrain the scope for additional investment, and will require that all reforms are managed carefully. It is likely that the recommendations would lead to cost savings in significant areas of the current system, such as the citation of witnesses, but we must be careful to account for any investment required to change processes and procedures." (p 7)

Only some of the recommendations relating to sheriff and jury procedure would require legislation. In relation to those which would, the Scottish Government's Programme for Scotland 2012-13 (2012d, p 67) states that it will legislate in a Criminal Justice Bill to take forward recommendations of the review of sheriff and jury procedure.[10] It is currently anticipated that the relevant legislation will be introduced around spring 2013. The Scottish Government intends to consult on Sheriff Principal Bowen's recommendations before introducing relevant legislation.

Making Justice Work

The work being taken forward by the SCS in relation to court structures, as well as planned reforms arising from the above mentioned reviews, form part of the Scottish Government's Making Justice Work programme. It was set up in 2010 and comprises five projects:

1. Delivering efficient and effective court structures
2. Improving procedures and case management
3. Widening access to justice
4. Co-ordinating IT and management information
5. Establishing a Scottish Tribunals Service

[10] It is intended that the same piece of legislation will also deal with reforms resulting from the Carloway Review. Recommendations made in that review may also have significant implications for court business (eg the possibility of Saturday courts if needed to ensure that suspects are not kept in police custody for unduly lengthy periods of time prior to a first appearance in court).

The Scottish Government wrote to the Justice Committee in August 2012 providing an update on the programme. It noted that:

> "The programme contains a number of projects and work streams which are being taken forward by different partners in the justice system. The programme overall is managed from within the Scottish Government's Justice Directorate. The Scottish Court Service is managing the work on court structures (project 1) and the Scottish Legal Aid Board is managing the work on access to justice (project 3). The Crown Office and Procurator Fiscal Service and Association of Chief Police Officers in Scotland are also leading important projects within the wider project on improving procedures and case management (project 2). The Scottish Tribunals Service is leading project 5." (Scottish Government 2012e, p 1)

Further information on each project (background and progress) is set out in the Scottish Government's letter. The work involved in these projects is of relevance to various priorities outlined in the recently published Strategy for Justice in Scotland (Scottish Government 2012f). For example, see 'Priority 9: Transforming civil and administrative justice' (p 55).

SPENDING

Scottish Court Service

The responsibilities of the Scottish Court Service (SCS) include providing the staff, buildings and technology to support Scotland's courts and the work of the independent judiciary. It has, since April 2010, been run as an independent statutory body governed by a board chaired by the Lord President (the most senior judge in Scotland). The SCS budget covers the main operating costs of the courts (including the employment of around 1,500 staff but excluding judicial salaries) and the maintenance and development of court buildings.

Table 8 reproduces level 3 cash terms figures from the Draft Budget 2013-14, as well as providing figures in real terms.

Table 8: Scottish Court Service Spending, 2010-11 to 2014-15

	2012-13 budget £m	**2013-14** draft budget £m	**2014-15** plans £m
Cash Terms			
Operating Expenditure	68.5	67.3	65.4
Capital	8.5	6.0	4.0
Total	**77.0**	**73.3**	**69.4**
Real Terms			
Operating Expenditure	68.5	65.7	62.2
Capital	8.5	5.9	3.8
Total	**77.0**	71.5	66.1

Source: Draft Budget 2013-14 (table 6.15)

Comparing the cash terms figures for SCS spending as set out in the Draft Budget 2013-14, with those set out in the Spending Review 2011, the only differences are small reductions in the 2013-14 and 2014-15 budgets for operating expenditure (minus £0.1m in each year). The Draft Budget 2013-14 indicates that:

> "Figures for 2013-14 and 2014-15 have been adjusted to include a transfer to the Scottish Tribunals Service to support the funding for shrieval conveners." (p 81)

Courts, Judiciary and Scottish Tribunals Service

This budget line covers the costs of judicial salaries and pensions, the running costs of a number of justice agencies (eg the Judicial Appointments Board for Scotland) and the Scottish Tribunals Service (which provides support to a number of tribunals operating in Scotland).

Table 9 reproduces level 3 cash terms figures from the Draft Budget 2013-14, as well as providing figures in real terms.

Table 9: Courts, Judiciary and Scottish Tribunals Service, 2010-11 to 2014-15

	2012-13 budget £m	**2013-14** draft budget £m	**2014-15** plans £m
Cash Terms			
Courts, Judiciary Services	10.8	10.3	10.0
Scottish Tribunals Service	11.8	11.5	11.0
Judicial Salaries	29.8	30.3	30.6
Total	**52.4**	**52.1**	**51.6**
Real Terms			
Judicial Costs	10.8	10.0	9.5
Scottish Tribunals Service	11.8	11.2	10.5
Judicial Salaries	29.8	29.6	29.1
Total	**52.4**	**50.8**	**49.1**

Source: Draft Budget 2013-14 (table 6.04)

Comparing the cash terms figures as set out in the Draft Budget 2013-14, with those set out in the Spending Review 2011, the only differences are increases in the 2013-14 and 2014-15 budgets for the Scottish Tribunals Service (plus £0.7m in each year). The Draft Budget 2013-14 indicates that:

> "Additional funding was allocated in 2012-13 to support the potential transfer of administrative functions for reserved tribunals operating in Scotland to the Scottish Government. The delay of this transfer will require the resources to be made available in 2013-14. Figures for 2013-14 and for 2014-15 have been adjusted to include funding to be transferred to the STS from relevant Level 3 budgets outwith Justice for the costs of tribunal administrations incorporated into the Service." (p 70)

COMMISSION ON WOMEN OFFENDERS

Commission Recommendations

In 2011, the Scottish Government established a Commission on Women Offenders chaired by Dame Elish Angiolini (the former Lord Advocate). It was given the following remit:

> "To consider the evidence on how to improve outcomes for women in the criminal justice system; to make recommendations for practical measures in this Parliament to reduce their reoffending and reverse the recent increase in the female prisoner population."

The recommendations set out in its report (published in April of this year) included a number which may involve additional costs (at least initially) for a range of organisations, including the

Scottish Prison Service and those involved in criminal justice social work services.[11] For example:

- community justice centres – one stop shops based on the 218 Service, Willow Project and Women's Centres in England should be established for women offenders to enable them to access a consistent range of services to reduce reoffending
- Cornton Vale prison – should be replaced with a smaller specialist prison for women offenders serving long-term sentences and those who present a significant risk to the public
- community reintegration support – should be available for all women offenders during and after a custodial sentence
- Community Justice Service – a new national service should be established to commission, provide and manage adult offender services in the community

In relation to possible costs, the Commission's report noted:

> "While we recognise that practitioners in the criminal justice field are operating in an environment of significant financial constraints and increasing demands upon them, we consider that many of our recommendations could be achieved through reconfiguration of existing funding, rather than significant new investment. To enable some of our recommendations to succeed, we consider it imperative that mainstream service providers, such as health, education and housing work, recognise their responsibilities and work collaboratively with each other and with criminal justice partners to facilitate the provision of all necessary services to women offenders." (para 9)
>
> "The establishment of a Community Justice Service will have resource implications. In a time of significant financial constraints in the public sector, the creation of a new service could be achieved largely through reconfiguration of existing resources (money, staff and buildings). In line with the findings from the Commission on the Future Delivery of Public Services, the Scottish Government should carry out a cost-benefit analysis, as well as considering whether there are functions in other existing agencies that might be incorporated into the new Community Justice Service." (para 331)

Scottish Government Response

The Scottish Government's Response to the Commission on Women Offenders was published in June 2012. It accepted the majority of the Commission's recommendations, including the first three referred to above. In relation to the fourth (setting up a national Community Justice Service), the Government accepted that the current arrangements should be reformed and indicated that it would consult later in the year on the structures that support community justice.

The Government's response also noted:

> "It is important to recognise that far-reaching and radical changes cannot be delivered overnight. Changes to our prison estate cannot be delivered quickly or cheaply, and a system that is run by a diverse range of stakeholders cannot simply be directed to change by central command. (…)

[11] The successful implementation of recommendations in the Commission's report may also be expected to lead to the future reduction of some costs (eg by reducing the use of imprisonment).

As the Commission recommends, the Cabinet Secretary for Justice will report to the Scottish Parliament in October 2012 on progress against implementing the report's recommendations, and then annually thereafter." (paras 10-11)

In relation to costs, it stated that:

"We are living in exceptionally challenging financial times with great uncertainty in the European and world economies, and huge cuts imposed on Scotland by the UK Government at Westminster. Despite this, the Scottish Government retains the highest ambitions for Scotland and for our public services, and we share the Commission's view that much of what it recommends can be achieved through the reconfiguration of the significant resources that we already invest in this area. We have committed significant funding to community justice activities year on year, allocating just under £100 million in this financial year through the eight Community Justice Authorities. We have also allocated £20 million additional capital funding to the Scottish Prison Service for 2014-2015 that will be targeted towards the needs of the female prison population.

To underline our commitment to the implementation of the changes the Commission recommends, we will invest £1 million in this financial year to support projects that will demonstrate how the envisaged changes to service delivery can be put into practice." (paras 13-14)

Scottish Prison Service Consultation

In August 2012, the Scottish Prison Service (SPS) published a consultation paper, entitled Women in Custody, as part of a consultation process aimed at informing the Government's approach to implementing various recommendations made by the Commission on Women Offenders. In relation to the future of Cornton Vale prison, it included the following comments:

"The SPS is committed to establishing a regime for women based on the recommendations in the Commission's Report. However, at this point, the SPS does not have the resource to build a new national prison for women either stand alone or as part of a larger complex. Even if resources were available immediately, it takes around 6 years to design and build a new facility wherever it is located.

The SPS supports the view that it is not acceptable to maintain a regime that centres on HMP Cornton Vale in its current form for this length of time.

The challenge facing the SPS is therefore to devise proposals that deliver the essence of the Commission's recommendations within a reasonable timeframe and, as far as possible, within existing resources. SPS considers however, that in a shorter timeframe and for the most part within its current budget, it has the opportunity to create the desired improved regime for women on a national scale by:

- Building a new specialist unit at HMP Edinburgh; and
- Fully utilising the accommodation and the opportunities presented by the planned HMP Inverclyde.

(…) The 2 units combined would in effect provide a national prison which could be functioning by around 2015-16". (p 6)

The consultation paper went on to consider longer term options for a national prison for women offenders, as well as other issues raised in the Commission's report.

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Justice Committee

28th Meeting, 2012 (Session 4), Tuesday 2 October 2012

Letter from the Scottish Government

Redesigning the community justice system: consultation process and timetable

As you know, the Commission on Women Offenders published its report on 17 April setting out a number of practical recommendations to improve outcomes for women offenders in the criminal justice system. The Commission concluded that there were significant structural and funding barriers to the effective delivery of offender services in the community and that radical reform was required. In response to the report, the Cabinet Secretary for Justice stated that the status quo was untenable and that the Scottish Government would publish a consultation on the options for redesigning community justice later this year. This piece of work sits under Phase 2 of the Reducing Reoffending Programme, which started in April this year, and links closely to other projects in the Programme on performance management and funding.

You will be aware there are also wider changes afoot, with plans for the integration of health and social care to improve the quality and consistency of adult care. I know that health and local authority partners are currently considering how best to set up the new Health and Social Care Partnerships and the implications for children and families and criminal justice social work. Given this, I thought it was timely to provide further detail on the consultation process and timetable for resdesigning the community justice system.

We intend to publish a consultation paper, with a range of options, in December. This allows us to take account of the findings from the Audit Scotland report on reducing reoffending which is due to be published in November.

We are keen to engage in an open dialogue with partners on what should replace the current arrangements and therefore we plan to make available a range of opportunities for everyone to contribute. This will include a number of consultation workshops across Scotland aimed at practitioners. The consultation period is likely to last until spring 2013, with an announcement on the way forward being made later that year, and introduction of new arrangements in 2015/16.

I hope this is helpful. We will write again when the consultation paper is published.

Joe Griffin
(Acting) Deputy Director
Community Justice Division
25 September 2012

Justice Committee

28th Meeting, 2012 (Session 4), Tuesday 2 October 2012

Letter from the Minister for Community Safety and Legal Affairs to the Convener

Advisory group on tackling sectarianism

I am writing to update you on work that the Scottish Government has been developing and delivering to tackle sectarianism, and achieve our shared goal of creating a Scotland free from bigotry and hatred.

On 23 November 2011, I announced my intention to develop a co-ordinated, community-based approach to tackle sectarianism, backed by funding of £9 million over 3 years. Since that announcement, a wide range of projects have been testing different approaches to tackling sectarianism, in a variety of locations across Scotland. These projects include work with schools and youth groups; adult education; arts based projects; mediation; and action research. While some of these projects are based in Glasgow, they also incorporate areas across the country.

We will be gathering evidence on the impact and effectiveness of these different interventions, using the feedback and outcomes generated to further test approaches and inform the future development of work in this area. To assist me with analysing the evidence from the projects, and wider information and evidence on sectarianism in Scotland, I have established an Advisory Group on Tackling Sectarianism in Scotland consisting of academics and practitioners with experience of working with sectarianism and in communities. This group is chaired by Dr Duncan Morrow, formerly the chair of the Community Relations Council in Northern Ireland for ten years, who brings a wealth of practical experience and academic knowledge.

Alongside Dr Morrow will be Dr Cecelia Clegg, Senior Lecturer at the University of Edinburgh, who has researched and published extensively on the subject of sectarianism and religious conflict. Also sitting on the group will be the Reverend Ian Galloway, who ministers to a Gorbals parish and has worked at the grassroots to tackle social issues for over 25 years, and Mrs Margaret Lynch, Chair of Citizens Advice Scotland and a board member of the Conforti Institute.

Finally, the group will also contain Dr Michael Rosie, Co-Director of the Institute of Governance at the University of Edinburgh, who has a longstanding research interest in sectarianism and will bring additional academic rigour to the evidence being gathered. I believe that bringing together such non-Governmental expert opinion and advice will be extremely beneficial and will add real value to our approach.

It is important for the Advisory Group members to hear a wide range of opinions and views on sectarianism in Scotland, and how we can effectively address this insidious menace, and it is important that the group understands how sectarianism is viewed from across the political spectrum. I have therefore asked that the group contact the

spokespeople of all of Scotland's political parties to allow you the opportunity to meet with the group's Chair and feed into their considerations on these issues. I hope that you will take advantage of this opportunity to help inform the group's thinking, and that we can have a positive and constructive dialogue which will allow us to build safer, stronger and sectarian-free communities.

Roseanna Cunningham MSP
Minister for Community Safety and Legal Affairs
27 September 2012

Justice Committee

28th Meeting, 2012 (Session 4), Tuesday 2 October 2012

The role of the media in criminal trials

Written submission from Iain McKie

I thought it might be useful before the debate to lay out some random thoughts that I have about the subject under discussion.

I am totally committed to the principle that open justice is central to the rule of law and that the media play a major part in keeping justice open. I would be concerned about any new legislative limits on the power of the media to challenge injustice.

I do not see it as my task as a layman however to point to detailed changes required in the law but more to outline general trends which I believe act against the reformation necessary.

At the outset I must nail my colours to the mast and state that given my experience fighting my daughter Shirley's case for 14 years I am a strong supporter of the freedom of the press to report what the authorities might not want reported. Subject of course to the edicts of progressive and open legislation. Had it not been for the media and their challenges to government, Police, Crown Office and many others within our justice system my daughter could well now be dead.

My experience as a police officer and ultimately justice campaigner on issues like Lockerbie convinces me that we have a justice system which while professing to embrace openness and accountability often acts against it. Freedom of information requests appear at times to be a moveable feast with government and Crown Office becoming ever more inventive in refusing requests.

I believe that the Scottish Justice System is outdated and resistant to change. Its often restrictive approach to issues like 'freedom of information' and 'disclosure' does of course impact on the ability of the media to do its job and serves to incite the social media into often inaccurate and speculative reaction. The solution is not, as arguably happens in Scotland, even more repressive legislation and an inflexible judiciary more interested in protecting the status quo than the principle of open justice.

Despite moves by the UK Government, English Law Commission and Director of Public Prosecutions among others to encourage debate about updating laws of defamation and make them fit for this digital age I fear that the Scottish Justice System is not so amenable to change and is firmly rooted in the past.

In Scotland we appear afraid to challenge the status quo and favour the first aid approach to change rather than looking to root and branch reforms. Challenges from outside our border like the recent 'Cadder' Supreme Court decisions are seen as interference with Scotland's superior justice system. Such conceit is counter productive and of course threatens progress and reform.

It is no use changing legislation without first changing this somewhat arrogant culture within which that legislation operates. Sadly our justice system, when faced with the choice of reforming its structure, systems and culture, often prefers to control others rather than take a long hard look at itself.

The digital age we live in has of course radically altered the way we transmit and receive information and has opened up apparently unlimited areas where individuals and groups can express themselves. It has also to a greater or lesser extent limited the power of government to control that expression.

The English Law Commission recognises these changes.
'Many aspects of the law have failed to keep pace with cultural and technological advances that mean information about trials can be easily published on the internet. This poses particular problems since, once material gets onto the internet, the original publisher can very easily lose control of it and any precautions he or she takes to minimise impact on a trial may be ineffective. In addition, the growth in the use of blogs and social networking sites means that members of the public have the opportunity to publish opinions and information about imminent and on-going criminal proceedings that can reach a wide audience.

A liberal and empowering legal regime will allow media to publish hard-hitting investigative reports and fulfil their function as watchdog of democratic society without fear of legal sanction, thus helping to make governments more accountable.
http://lawcommission.justice.gov.uk/areas/contempt.htm

What people do in the absence of information is to speculate and in this digital age they can do so instantly and with no borders to contain that speculation. Unfortunately in this explosion of information the truth is often a victim.

It could be argued that in this digital age the established print and broadcast media become even more important as a source of accurate and independent information. It can also be argued that the present control legislation limits the power of the established media to respond to the new digital sources of information but is not effective in curbing the effect of the latter. A more even playing field requires to be developed.

The question is how the law can facilitate this freedom of expression while legitimately protecting the rights of the individual?

One thing is clear the law, courts and our justice system need to fully engage with the digital age and not seek to play 'Canute 'with the waves of information that threaten to engulf us.

In Scotland it is possible to see two entrenched and immovable forces firmly engaged on a collision course.

On the one hand we have the print and broadcast media and the burgeoning internet ever more hungry for information and on the other we have a justice system anchored to precedent and the past incapable of responding in innovative and

positive ways. The fact that is it is impossible does not stop systems trying to put the 'internet genie' back in the bottle for their own narrow ends.

It is arguable that our courts should be more concerned with what jurors are accessing via the social media than via the established media and should find more effective ways of limiting its effect other than issuing injunctions and legislating. The reality is that jurors and others involved in our justice system will garner information from digital sources and no amount of burying of heads in the sand will alter that.
It seems clear that we still require to have effective contempt and control legislation, rules and guidelines in place that will protect victims, accused and witnesses in criminal trials.

Restrictive legislation cannot however on its own provide the full answer to the information explosion and new and innovative ways have to be found of protecting those caught up in our judicial system while allowing fair and reasonable comment to flourish in the media and on the internet.

Conclusions

- It is no use changing legislation without first changing the culture within which that legislation operates.
- The Scottish Government and those within the justice system should be encouraging open debate and research before any change is implemented.
- The rules relating to the interface between the media, new digital phenomena and the law are international in significance and should be examined at that level.
- Contempt of Court legislation and the systems and procedures for implementing it require urgent updating to take account of the digital age.
- Great care must be exercised in expanding the use of live text based communication from courts.
- Televising the administration of justice in courts should be encouraged with the emphasis being on how we can facilitate it rather than how can it be restricted.
- Authorities like the Crown Office should be examining its procedures in respect of openness and accountability and disclosure as their failures often lead to frustration, speculation and media excesses.

Iain A J McKie
27 September 2012

Justice Committee

28th Meeting, 2012 (Session 4), Tuesday 2 October 2012

The role of the media in criminal trials

Written submission from Alistair Bonnington

Prior to Tuesday's meeting could I make a few observations on the Briefing Paper which has been prepared for the Committee. These are as follows:-

(1) Page 3: Common law contempt is not a crime of specific intent as the paper says. The author is confused with the crime of attempting to pervert the course of justice - which remains a competent basis for prosecution against the media in both Scotland and England. What S6 of the 1981 Act does, is preserve the possibility that the media can be prosecuted not only for contempt as set out in S2 of the 1981 Act (called "statutory contempt" in this Paper) but also for contempt at common law.

Contempt, as has been repeatedly pointed out by the courts, is not a crime but an offence *sui generis.* But it requires both the *actus reus* and the *mens rea* of a crime to be proved. The test to be applied in a case of common law contempt is not intent - it is the much lower test to be applied to crimes in general.

It follows that the penultimate paragraph on Page 3 is simply wrong.

(2) Page 3: - last paragraph. S5 has never been successfully pled by the media in any Scottish case. It is very limited protection to the media.

(3) Page 4: The final paragraph of the section on Contempt seems to suggest there could be restrictions imposed on public access to historic material on the internet. It should be noted that there never has been a similar suggestion that libraries for example should be prevented from stocking old newspapers and magazines and allowing the public (including jurors and witnesses) to read them.

Any such attempt to restrict access by the public would potentially fall foul of Article 10 of the ECHR.

The burning of books has never been a reputable occupation. The fact that the "books" may now be electronic makes no difference.

It should also be noted that the USA will ignore any such laws on the basis of the First Amendment. The US already refuses to enforce Scottish defamation decrees as being “repugnant to the Constitution".

(4) Page 5: section on witnesses. Witnesses, unless they happen to be called the same day as the original evidence is given, are perfectly free to read newspaper reports, see TV reports etc of what prior witnesses have said in the same case. If there were some sort of danger in this, it would be a matter for the court to deal with exercising its common law power to regulate its own procedure. I am not aware of

any Scottish court case where the Judge/Sheriff has been asked to make such an order.

(5) Page 5: Televising court proceedings. I was intimately involved with this process since its inception in 1992. Basically the failure of the Scottish experiment has been caused by Judges and defence lawyers refusing to give access. England is now in the process of overtaking Scotland in this area

(6)The filming of witnesses arriving at and leaving the court is also a matter which can be regulated by the presiding Judge/Sheriff on a case by case basis. The powers exist.

(7) Page 6 and 7: Newspaper commentary on witness's character. There might be some confusion here. There was no "active" case at the time of most of the publicity about Mr Jeffries. So while statutory contempt was not in play, a prosecution against the newspapers mentioned for common law contempt or attempting to pervert the course of justice would have been competent. In the event Mr Jeffries sued successfully for defamation - which it must be remembered is a further restraint on the media in this kind of situation.

(8) Media reproduction of trial material. The copyright position is not as simple as stated here. There is a Scottish decision by Lord Woolman to that effect. Generally, the media and the public in England are much better served by the Courts than is the case in Scotland. The English courts release productions (often including video) to the media during the trial (once their purpose has been served in court) so as to make the media's court reports more accurate and thorough. The Scottish courts in contrast are very uncooperative, almost invariably refusing media requests for material. This results in the Scottish public knowing less about court proceedings than people in England.

(9) Jury deliberations. It is an offence under the Contempt of Court Act 1981 to make enquiries of juries as to how they carried out their function. So we don't hold much hard evidence about the jurors' use of internet material -despite the Judge's strictures against this.

But as Lord Hope pointed out in HMA v Montgomery and Coulter (Chokar case) there has been research done in New Zealand - a society not unlike our own, his Lordship said.

As Lord Hope observed, the New Zealand research suggests that jurors try the accused according to the evidence (as their oath requires) and do not take into consideration extraneous material from other sources - such as the internet.

The realities of the use of the internet in the modern world are such that if, at some future point, there is evidence-based serious concern about this, then juries should be abolished.

Alistair Bonnington
28 Sept 2012

Justice Committee

28th Meeting, 2012 (Session 4), Tuesday 2 October 2012

The role of the media in criminal trials

Written submission from BBC Scotland

This submission follows the structure used in the SPICe Briefing: "Role of the Media in Criminal Trials", 2 August 2012

Contempt of court

The BBC archive is generally acknowledged to be a national treasure – universally accepted to be one built at public expense. The digital revolution has enabled the BBC to make parts of that archive more readily available to the members of the public who funded it. UK citizens are able to establish what the BBC news was on any given day within the online news archive. This is surely a valuable and appropriate use of a public resource which radically outweighs the risk that of one of 15 individuals, all of whom will be unequivocally directed to make their decision as to guilt or innocence on the basis of the evidence heard in court, may disregard such an instruction or stumble across a conceivably prejudicial piece of information. There are many safeguards within the Scottish criminal process short of the evisceration of a free public library. That said, the BBC is committed to acting responsibly at all times and has, on rare occasions where individual circumstances have warranted it, "taken down" part of the archive.

The use of live text-based communication from court

Texting, like any other form of communication, may have unintended consequences – or even be abused. If the principle of fair and accurate *contemporaneous* reporting is regarded as especially desirable – and Section 4 of the Contempt of Court Act 1981 suggests as much – then some unintended consequences may appropriately be tolerated. Neither the very limited Scottish experiments so far, nor the English presumption in favour of texting, suggests that live text-based communications by the media are highly problematical.

Televising court proceedings

It would be fair to say that Scotland's bold approach to the televising of court proceedings, pioneered by Lord Hope nearly 20 years before the recent Queen's speech, has resulted in a mere handful of instances where televising has actually been allowed. It is submitted that the reasons for the Scottish failure are three-fold: first, the absence of a clear procedure under which broadcasters can seek permission to televise; secondly, a lack of consistency in the approach taken to such applications; thirdly, the number of conditions within the Practice Note, trammelling practical access until very recently, as regards the obtaining of consent. Less specific difficulties are, it might be thought, knee-jerk legal conservatism and the extreme economic and administrative burdens placed on broadcasters who attempt to televise the court system. As the Briefing says, there will be differing opinions on

whether televising court proceedings will lead to a greater understanding of, and increased confidence in, the justice system. It is certainly reasonable to assume that broadcasters and viewers are not likely to be interested in the vast majority of cases, so much as in high-profile cases dealing with more serious crimes. Certainly, responsible broadcasters would regard cases dealing with serious crimes as typically raising matters of high public interest – hence the BBC's two attempts to televise the Lockerbie trial, of which no permanent publicly-available record now exists. If the televising of any court proceedings should decrease confidence in the justice system, however, that might itself raise matters of serious public interest.

Filming witnesses arriving and leaving court

Citizens in a democracy with an established legal system, such as Scotland, have the privilege of safely making allegations of the utmost seriousness against other citizens and, if themselves accused, of being entitled to the presumption of innocence in relation to such allegations. Indeed, they will legitimately regard this as a right. Similarly, they will regard it as their right to be represented by a competent legal team, if accused, and to have their allegations put forward by a competent prosecutor, if the accuser. Equally, they will take it for granted that the court buildings and administration will be dedicated to this purpose without, in the case of criminal trials, either the accuser or the accused being expected to make any personal financial contribution (at present). Finally, they will expect that citizens with no personal stake in the allegations will be compelled to come to court, in their own time, and that jurors, at what may be significant personal inconvenience or distress, will also give up their time to participate effectively in proceedings which, in compliance with Article 6 of the European Convention on Human Rights, will take place in public.

Against that panoply of rights, each citizen must accept the obligation to take part in an open trial – as accused, court officer, complainer, witness or juror – as the court may direct.

In the absence of particular circumstances, there is no obvious reason why an adult witness, participating in a public event in discharge of a public duty, should be able to prevent the media from doing their job as seems to them editorially appropriate. Open court proceedings in Scotland have a history going back to the Court of Session Act 1693.

Newspaper commentary on witnesses' character, etc

As the writer suggests, both the Contempt of Court Act 1981 and the Defamation Act 1996 are in full operation.

Media reproduction of material relating to trial

We would respectfully point out that the consent of the owner of copyright is not required prior to images being published for court reporting. As Lord Woolman made clear in *HMA v Hainey* in January 2012, Section 45(2) of the Copyright Designs and Patents Act 1988 expressly addresses this point: "Copyright is not infringed by anything done for the purpose of reporting [parliamentary or judicial] proceedings …"

We would also disagree with the notion that, categorically, material could be considered inappropriate for release. Whatever rights the subject or the person other than the accused may have in relation to his or her own image, it cannot and should not extend to a veto on material which might, for example, be pixilated. More specifically, it is not difficult to think of cases where a person other than the accused should have any such right as might exist restricted – for instance, a false accuser.

The BBC is subject both to its own Editorial Guidelines and to regulation under the Ofcom Code. It is not, it is submitted, for the Crown Office, for reason of its physical custody of material which is not its own and which it is presumably in the public interest (it can hardly be contended that material used in a criminal trial is not, *per se*, a matter of legitimate public interest), to pre-censor the activities of a responsible broadcaster. Citizens retain whatever rights they have in relation to intellectual property, privacy and defamation. It is not for the Crown Office to police or to pre-judge such private law rights.

Police comment in the media during and after trials

It is accepted that, once a case becomes active, the police are subject to the constraints of contempt of court. So are the media. BBC Scotland cannot accept that, "It has to be assumed that following a criminal trial, the police would still be required to be cautious as to information which is released about a case or an investigation should it hamper future investigations". In enacting the Contempt of Court Act 1981, the UK Parliament was responding to the clear view of the European Court of Human Rights that the UK as a State had not adequately addressed the right of freedom of expression in relation to criminal proceedings, as Lord Prosser pointed out in the appellate level case of *Cox & Griffiths* in 1998. It did so, in part, by setting out a timescale within which criminal proceedings are treated as "active". If the police were to continue to be cautious about information once a case is no longer active, then the police would effectively be undermining the will of Parliament by treating the statutory timetable as irrelevant. It will be noted that the Contempt of Court Act 1981 extends to appellate proceedings where they exist.

Jury deliberations, the internet and social media

It is indeed increasingly difficult to control information which is accessible to almost everyone. Against that background, if juries' ability to decide cases on the evidence alone as the result of access to such information is seriously in doubt, it would seem more practical to address the future of the jury system, rather than to attempt to silence the World-Wide Web, technology expressly designed from its Arpanet days to thwart attempts to counter the dissemination of information.

Miscellaneous concerns about freedom of expression in Scotland from the media's perspective

There are several ways in which Scotland lags behind England and Wales in protecting the Article 10 rights of the media and their audiences.

Specifically, the protection of journalistic material given to journalistic material under the Police and Criminal Evidence Act 1984 and the Terrorism Act 2000 is not

available in statute. As a matter of legislation, there is nothing directly to prevent a repeat of the notorious Zircon raid on the BBC in Scotland.

There is no equivalent in Scotland of the “Guidelines for prosecutors on assessing the public interest in cases affecting the media” issued by the CPS.

The period in which an action for defamation may be raised in Scotland is three times longer than in the south, and Scots law contains no single publication rule.

Recently, the media have encountered refusals to release copies of indictments in criminal cases. The risks to fair and accurate court reporting are egregious.

In all these respects, the Scottish media stand disadvantaged in their role as democratic watchdogs, including the full reporting and contextualising of criminal trials.

BBC Scotland
28 September 2012

Justice Committee

28th Meeting, 2012 (Session 4), Tuesday 2 October 2012

The role of the media in criminal trials

Written submission from the President of the Law Society of Scotland

1. Justice must be seen to be done – there are few enough ordinary citizens who go, or get a practical chance to go, to see cases being conducted in our courts. The court is a public place or else it is almost worthless. Over all the years I have been doing tv and radio phone-ins and newspaper columns, there has been and is a real public interest in the law and the administration of justice, and the courts should bear their share of accountability.

2. I appreciate that someone who is innocent of a crime would not wish to be shown on tv in the dock or the witness box, enduring aggressive cross-examination perhaps, but if found not guilty, he or she would no doubt prefer that decision to be given substantial publicity and prominence. Justice is already rightly a public event, and at a purely practical level frankly better for an accused person to be shown in video than in a snapped newspaper or web photo which can often make the subject look, or be made to look, negative/shifty/unpleasant. In other words, there is no sacrosanctity about press reporting as we currently have. Tv exposure would give a more rounded portrait of participants.

3. There is a rule that ignorance of the law is no excuse. How can this be fair unless the public have an opportunity to learn about the law and the courts?

4. TV is already in Parliament, the highest place of public law-making and enforcement. It would be almost perverse if we said that the courts are to be entirely different.

5. I entirely understand the issues of witness intimidation (both overt and subjective) and the need to protect the vulnerable, as well as not prejudicing trial outcomes by showing accused persons before witnesses have given evidence etc, but those are management and production issues – the how, and not the why. Our Scottish tv industry is premier league and would be able to follow guidelines and rules laid down by the court authorities.

6. Allowing cameras into courts will help in some way at least to break down the preconceptions that the public have – partly through seeing fictional representations of court cases, often from the USA and England, and partly through plain lack of access to our courts.

Austin Lafferty
President of the Law Society of Scotland
28 September 2012

Justice Committee

28th Meeting, 2012 (Session 4), Tuesday 2 October 2012

The role of the media in criminal trials

Written submission from Channel 4

Introduction

Channel 4 is grateful for the opportunity to provide written submissions to the Justice Committee.

In the following submission we make these points:

1. Any discussion of the role of the media in observing and reporting criminal trials and any proposed legislative changes should be undertaken and measured against the requirements of Article 10 of the European Convention on Human Rights which safeguards freedom of expression.

2. That the filming of, and broadcasting of, criminal trials in Scotland is possible, welcome, and should be facilitated.

3. That any consideration of the Contempt of Court Act 1981 especially with regard to the treatment of material available on the internet, should be carried out in conjunction with the UK Parliament and have regard to the practicability of sanitising the internet of content for jurors who disobey judicial instruction to have regard only to the evidence before them.

4. That there are concerning gaps in protection for journalists and journalistic activity in Scots Law that should be debated.

We have had sight of BBC Scotland's submission to the Committee and agree with their observations regarding the miscellaneous matters we do not address in this submission.

Channel 4

Channel 4 is the UK's only publicly-owned, commercially-funded public service broadcaster, with a statutory remit to be innovative, experimental and distinctive. Unlike other commercially funded broadcasters, Channel 4 is not shareholder owned - commercial revenues are the means by which Channel 4 delivers its public purpose ends, and Channel 4's not for profit status ensures that the maximum amount of revenues are reinvested in the delivery of its public service remit.

Channel 4's remit requires it to provide content that offers alternative views and prompts debate, which at times means that its output tackles controversial and challenging subject matter. The remit was recently updated in the *Digital Economy Act 2010*, to require Channel 4 to participate in the making and distribution of UK film

and digital media content, provide content for older children, as well as to promote alternative viewpoints and support and develop new talent.

In response to changing viewer demand, Channel 4 has broadened its portfolio to offer a range of digital services. In addition to the main Channel 4 service, the Channel 4 portfolio includes E4, More4, Film4, 4Seven and 4Music, as well as an ever growing range of online activities including channel4.com, Channel 4's bespoke video-on-demand service 4oD and stand-alone digital projects.

As a licensed UK broadcaster all Channel 4's TV channels are subject to the Ofcom Broadcasting Code (the Code). The same principles are applied to provision of content on digital platforms, such as on-demand platforms. The code includes provisions regarding fairness and accuracy and contains particular rules to reduce potential distress to the bereaved.

As a publisher broadcaster without an in-house production base, Channel 4 commissions original programming from the independent production sector. Under our duties to ensure that all our content is compliant with the Ofcom Code we work closely with suppliers to ensure that programming is legal and compliant with relevant laws and regulations. In doing so we are mindful of our rights and duties arising out of the Human Rights Act and the European Convention on Human Rights.

Channel 4 does not provide a separate broadcasting schedule for Scotland. Our broadcast transmission and internet provision is not and cannot be restricted to other parts of the UK only.

Freedom of Expression and Article 10 of the European Convention on Human Rights:

The European Court of Human Rights has repeatedly emphasised that freedom of expression is an 'essential foundation of a democratic society' and stressed the duty on the media to play "*the vital role of public watchdog*" (see e.g. *Observer & The Guardian v UK* (1991) 14 EHRR 153 at [59]). Although the media must not overstep certain bounds, its duty is nevertheless "*to impart information and ideas on all matters of public interest*." Not only does the media have the task of imparting such information and ideas; the public has a right to receive them without interference from public authority under Article 10. The consequence of this is that any interference with speech of this nature must be treated with strict caution and scrutiny. See e.g. *Bergens Tidende v Norway* (2001) 31 EHRR 16 at [52]:

> "*Where...measures taken by the national authorities are capable of discouraging the press from disseminating information on matters of legitimate public concern, careful scrutiny of the proportionality of the measures on the part of the Court is called for.*"

The European Court has emphasised the importance of journalistic latitude and editorial discretion. It is not for the national courts or authorities to substitute their own views for those of the press as to what techniques of reporting or editorial decisions should be adopted in a particular case. Article 10 protects not only the

substance of ideas and information expressed, but also the form in which they are conveyed (see e.g. *Von Hannover v Germany (No .2)* at [102]); *Jersild v Denmark* (1994) 19 EHRR 1).

In Von Hannover v Germany (No 2) (App no. 40660/08, dated 7 Feb 2012) the European Court stated "*it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case*" ([102]).

Scottish judges have been at the forefront of reinforcing this approach in the House of Lords and now in the Supreme Court:

The House of Lords in *Campbell v MGN Ltd* was unanimous on the underlying principle that reasonable latitude must be given to journalists as to the manner in which information is conveyed to the public, otherwise there would be a serious chilling effect on freedom of expression. See e.g. *per* Lord Hope:

> *"There is no doubt that the presentation of the material that it was legitimate to convey to the public in this case without breaching the duty of confidence was a matter for the journalists. The choice of language used to convey information and ideas, and decision as to whether or not to accompany the printed word by the use of photographs, are pre-eminently editorial matters with which the court will not interfere. The respondents are also entitled to claim that they should be accorded a reasonable margin of appreciation in taking decisions as to what details needed to be included in the article to give it credibility. That is an essential part of the journalistic exercise."* (at [112])

Lord Hope also cited with approval the following passage from *Jersild v Denmark* (1994) 19 EHRR 1:

> *"It is not or this court, nor for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists. In this context the court recalls that Article 10 protects not only the substance of ideas and information expressed, but also the form in which they are conveyed."* (at p.26, [31])

In *Re BBC* [2010] 1 AC 145, it was suggested that it would be open to the BBC to raise an issue of general interest without mentioning the individual's (D) name or in any way disclosing his identity. However, the House of Lords held that the BBC should not be required to restrict the scope of their programme in this way. It was a matter for the BBC to judge whether the publication of the name would give added credibility to the programme. See *per* Lord Hope at [25]:

> *The freedom of the press to exercise its own judgment in the presentation of journalistic material has been emphasised by the Strasbourg court. In Jersild v Denmark (1994) 19 EHRR 1 ,*

> *the court said, at para 31, that it was not for it, nor for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists. It recalled that article 10 protects not only the substance of the ideas and the information expressed but also the form in which they are conveyed. In essence article 10 leaves it for journalists to decide what details it is necessary to reproduce to ensure credibility: see Fressoz and Roire v France (1999) 31 EHRR 28 , para 54. So the BBC are entitled to say that the question whether D's identity needs to be disclosed to give weight to the message that the programme is intended to convey is for them to judge. As Lord Hoffmann said in Campbell v MGN Ltd [2004] 2 AC 457, para 59, judges are not newspaper editors. They are not broadcasting editors either. The issue as to where the balance is to be struck between the competing rights must be approached on this basis.*

This dicta was affirmed by Lord Rodger in In re Guardian News and Media [2010] UKSC 1 at [63] –

> "*Writing stories which capture the attention of readers is a matter of reporting technique, and the European Court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed: ...This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive*".

In exercising Article 10 rights a broadcaster like Channel 4 must have regard to any competing rights such as an individual's Article 8 right to respect for private and family life and Article 6 right to a fair trial.

The Article 10 rights afforded to journalists can of course be legitimately infringed if necessary in a democratic society, for example to protect the public interest (including the prevention of crime), competing individual rights (such as a citizen's right to reputation) and the authority and impartiality of judges.

However, the European Court of Human Rights has emphasised on repeated occasions that any exception to Article 10 must be "*narrowly interpreted*". See for example:

> "*As set forth in Article 10, this freedom is subject to exceptions, which... must however, be construed strictly and the need for any restrictions must be established convincingly*" (*Handyside v UK* (1976) 1 EHRR 737).

Therefore any new legislation which could affect freedom of expression must attend to these principles and limit itself to that which is strictly necessary.

Ofcom Broadcasting Code

Channel 4 is of course regulated by Ofcom and must abide by the Ofcom Broadcasting Code. This imposes duties to be fair and accurate and has rules designed to ensure that broadcasters avoid any unwarranted infringement of privacy in programmes.

The Code at Rule 8.19 also requires broadcasters to try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes involving crime:

> "*8.19 Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes.*
>
> *In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past."*

The Channel 4 Independent Producer's Handbook, (which sets out the Ofcom obligations and Channel 4's legal and compliance requirements for the independent production companies Channel 4 commissions programmes from), provides that people in distress, e.g. victims or grieving relatives should not be placed under any pressure to be interviewed or to be filmed. When making and broadcasting programmes that concern past events that have involved trauma to individuals e.g. crime programme makers and broadcasters should always carefully consider the likely impact on those involved e.g. any victims and their family (at paragraph 4.91).

Channel 4 filming the English Courts

Under the Criminal Justice Act 1925 filming in English Courts is prohibited. However the UK Supreme Court is not covered by that Act and is recording and streaming live its cases via its website.

In addition Channel 4 were granted permission in 2010 to make a documentary about the Supreme Court. This included filming of cases, interviews with litigants and their solicitors and counsel, and extensive interviews with judges. This documentary was broadcast in 2011.

Channel 4 filming the Scottish Courts

Practice note

On 6 August 1992 the Lord President (Hope) issued a Notice with respect to requests to televise court proceedings:

> *"(a) The rule hitherto has been that television cameras are not allowed within the precincts of the court. While the absolute nature of the rule makes it easy to apply, it is an impediment to the making of programmes of an educational or documentary nature and to the use of television in other cases where there would be no risk to the administration of justice.*
>
> *(b) In future the criterion will be whether the presence of television cameras in court would be without risk to the administration of justice.*
>
> *(c) In view of the risks to the administration of justice the televising of current proceedings in criminal cases at first instance will not be permitted under any circumstances. ….*
>
> *(h) Requests from television companies for permission to film proceedings, including proceedings at first instance, for the purpose of showing educational or documentary programmes at a later date will be favourably considered. But such filming may be done only with the consent of all parties involved in the proceedings, and it will be subject to approval by the presiding Judge of the final product before it is televised."*

By a Notice dated 23 January 2012 the Lord President (Hamilton) made the following alteration to paragraph (h):

> "*In a Notice dated 6 August 1992 it was explained that the then Lord President (Hope) had issued directions (to the Principal Clerk of Session and Justiciary) about the practice to be followed in regard to requests by the broadcasting authorities for permission to televise proceedings in the Court of Session and High Court of Justiciary; paragraph (h) of that Notice provides that filming might only be done with the consent of all parties involved in the proceedings.*
>
> *The Lord President has today directed that, for a trial period, filming may be done without the consent of all parties but only where the production company and broadcaster have provided the presiding Judge with an undertaking that the final broadcast will not identify those who have not consented to the filming. In addition, no member of a jury may be filmed."*

Accordingly, as of 24 January 2012, for a trial period, the Lord President has directed that filming may be permitted without the consent of all parties provided that the production company and broadcaster have provided the presiding judge with an undertaking that the final broadcast will not identify those who have not consented to the filming and that no member of the jury be filmed.

Channel 4 has been attempting to film (not televise live) Scottish High Court trials for a number of years. It commissioned an award winning independent company, which specialises in high quality, intelligent and thought provoking factual programming, to make a landmark documentary series in the Scottish High Court. Channel 4 is committed to "High Court Trial" (working title) and provided funding to explore access with the Judicial Office for Scotland, the Crown Office and Procurator Fiscal Service and with defence representatives. The series' aim is to educate and inform viewers about the administration of justice by showing the preparation and presentation of High Court trials for serious offences in Scotland. As such, the project sits firmly within Channel 4's remit as a public service broadcaster.

With Channel 4's assistance, and following meetings with a working party set up by the Lord President, the Production Company has negotiated an agreement with Scottish Courts Services ("SCS"). The agreement makes it clear that it is for the trial judge to make the final decision about whether or not a trial can be filmed and that the trial judge may decide to allow filming even in the event that some of the participants do not wish to appear in the final broadcast. No part of the proceedings will be transmitted before the conclusion of the trial. The agreement provides that SCS will grant the Production Company sufficient access to the High Court to produce the programmes subject to agreed Guidelines for filming trials.

The Guidelines set out the main groups of individuals who will be informed about the filming of the trial including SCS staff, the accused, his/her counsel and solicitors, the advocate depute and members of the fiscal's offices in attendance, the witnesses and the next of kin of any deceased victim, any police officer who may appear as a witness, escort or in any other capacity, any member of staff of the prisoner custody and escort contractor and court security staff.

The jury will not be filmed or identified. No participant in the trial will appear in an identifiable way in the final broadcast unless they have given their express written or on camera consent. However, they may be filmed/recorded during the trial in order that the Production Company has an accurate record to enable them to replace some participants' voices with those of actors or take other steps to ensure the narrative of the documentary is complete[1]. This will allow for the possibility that those involved in the trial may change their minds about appearing in a broadcast once the trial is over. Some witnesses – or even the accused – may not wish to appear on camera in the event of an acquittal, but may feel differently in the event of a conviction, or vice versa.

[1] There are a number of ways to disguise identity of those who do not wish to appear in an edited film or can ensure the narrative is complete including: blurring, shooting only from behind or using non-identifiable details like hands only; using only the voice of a trial participant; replacing the participant's voice with an actors' voice; reconstruction.

In accordance with the regulator Ofcom's approach to privacy, Channel 4 and the Production Company make a distinction between filming and broadcast. A criminal trial is a public process and - if permission is granted by the Court - filming participants without consent would be sanctioned by Ofcom.

However, identifiable broadcast of participants requires their consent in terms of the amended Practice Note and such consent has to be sought at a later date. The Production Company maintain a consent log so that details of the consent relationship are maintained throughout. The Production Company agrees with Crown Office and SCS the wording of any letters and consent forms for trial participants, including witnesses.
A Scottish qualified programme lawyer is assigned to this series to ensure compliance with the regulatory and legal obligations contained in the Ofcom Code and the Channel 4 Handbook.

HMA v Nat Fraser

Earlier this summer Channel 4 filmed the trial of Nat Fraser in Edinburgh High Court.

Recording equipment, monitors, and technicians remained out of sight in a guarded room away from the court, accessible only to authorised production personnel. The remotely operated cameras placed in the courtroom for filming were small and silent. These, and the additional microphones (mostly placed alongside the court's own microphones), were unobtrusive, particularly given the technical paraphernalia – computers, viewing screens, microphones, etc already present in court.

The letter advising witnesses was agreed by the trial judge Lord Bracadale and the Crown Office in this trial. The Production Company also informed the victim's family of their intentions about filming and advised them about filming the trial: whether or not they wish to appear in the final broadcast, they will be kept informed of the progress of the series. If during the trial or after the trial, the victim's families have concerns about the filming, the Production Company have undertaken to discuss those concerns with them and Crown Office in order to resolve any difficulties.

Further specific safeguards are provided for the SCS in terms of the agreement: SCS staff who do not wish to appear will not be filmed.

Before broadcast Channel 4 and the Production Company will correct any genuine errors of fact brought to their attention and consider any other comments regarding fairness and accuracy in good faith in accordance with their obligations under the Ofcom Broadcasting Code. There will be a viewing by the trial judge in each featured case.

It is submitted that in considering whether or not to grant permission to film, the test to be applied is whether the presence of television cameras in court would adversely affect the administration of justice. If a trial judge concludes that filming would not cause any such adverse effect during proceedings, it is respectfully submitted that concerns as to the effect of broadcast are not relevant. These are concerns about the broadcasting of the programme rather than filming of the trial. As happens with the reporting of trials post-verdict by the printed press, only in those cases where a

postponement order is required due to the existence of connected proceedings or where contemptuous comment has been made, would the effect of broadcast after a verdict require to be considered by a trial judge.

Channel 4 agree with the observations of the Lord President in 1992 that it is in the public interest that the public become more aware of the way in which justice is being administered in their own courts. There is a risk that the showing on television of proceedings in the courts of other countries will lead to misunderstandings about the way in which court proceedings are conducted in our own country. The Lord President's Practice Note indicates that applications for permission to film proceedings including requests at first instance for the purpose of showing educational or documentary programmes will be looked at favourably. The Lord President has recently specifically amended the Practice Note to direct that permission may be granted without the consent of all parties provided that the appropriate undertakings are given. The existence of the mechanism in the Practice Note suggests that it is accepted that there is nothing inherently prejudicial to the administration of justice by allowing proceedings to be recorded for future broadcast. Proceedings will not be televised contemporaneously.

When Lord Bracadale granted permission to film the trial proceedings in HMA v Nat Gordon Fraser, he drew attention to the agreed guidelines which state:

> "…where the trial judge has given his/her consent for filming to take place, it will be open to him/her to revoke or qualify consent as he/she sees fit at any stage in the light of circumstances which emerge in connection with the proceedings. In particular, he/she will be entitled to require that any part of the proceedings be excluded from recording where satisfied that its recording would not be in accordance with the interests of justice (for example where evidence is given in a 'closed court' or vulnerable persons are involved)"

The filming of the HMA v Nat Gordon Fraser took place without incident and to the satisfaction of the trial judge, Lord Bracadale, who noted:

> "…the filming of the Nat Fraser trial went very smoothly. The operation of the cameras was unobtrusive and after a day or two we scarcely noticed them. I and my team found [the Production Company] at all times pleasant and sensitive in their dealings with us."

Further, the Advocate Depute, Alex Prentice QC, noted:

> "…I found the filming process quite unobtrusive and was greatly encouraged by [the Production Company] in the professional and courteous approach taken…"

The Production Company held good on its promise to be unobtrusive and low key. Over the course of a five-and-a-half week trial, only one witness raised prior

objections to being filmed. The family of the victim also agreed to take part after meeting with the Production Company.

As explained above, arrangements are in place to ensure that anyone who does not consent to appearing in the documentary will not be identified. In addition, there is an offer to arrange a viewing of the documentary to family members (whether or not they wished to take part). This viewing will be in addition to a viewing by the trial judge in each featured case.

Although a trial can heighten anxiety of participants, in Channel 4's experience of filming with families in crisis (filming in hospitals, with social services, police and other institutions), once the period of increased stress is over, families may change their minds about being included in the broadcast. That is why a distinction is made in the Filming Guidelines between filming and broadcasting as explained above. Procedures are in place to ensure that an accurate record is kept of consent.

In addition to the safeguards set out in the agreement and the guidelines, Channel 4 are regulated by Ofcom and required to comply with their overriding duty to broadcast fairly and accurately and to reduce distress to families of victims of crime as explained above. If there are also reporting restrictions in place regarding the trial, Channel 4 and the Production Company would be bound to comply with any interlocutors of the Court in that respect. We continually check for the existence of reporting restrictions.

Channel 4 are making further applications to film trials for this documentary series. A number of applications have been refused by the trial judges sometimes partly for reasons which Channel 4 disagrees with including some which seem concerned with the effect of post-verdict broadcast. In the same way that post-verdict press reporting of trials is beyond the control of the judiciary, except in limited circumstances to protect other trials, we cannot see that concerns about the effects of broadcast are relevant to whether or not permission to film a public process should be granted. As is made explicit in the Practice Note, the relevant criterion is can filming take place without interfering with the course of justice.

Channel 4 have been working on this series for 3 years. Applications to the Court have involved much time and expense unlike that required for filming other public institutions. Despite the great enthusiasm of the senior judiciary towards the idea of filming and the welcome assistance we have received from them, SCS and Crown Office, the lack of a routine procedure which accompanies the pre-disposition to permit filming is a hindrance to making programmes about the Scottish Court system.

Desirability of filming the courts

Scotland has led the way in permitting filming in the Courts. BBC Scotland have filmed two documentaries The Trial and Sheriff Court and the High Court of Justiciary has also permitted the live televising of sentencing.

Live televising of criminal trials is not permitted by the Lord President's Practice Note. Any steps towards live broadcast of criminal trials would require careful

discussion to ensure that the course of justice was not impeded and that witnesses and their evidence were not affected by televising. Other jurisdictions are able to achieve televising of proceedings and this should be possible in the same way that contemporaneous press reporting of trials is permitted. The criminal courts are public places where justice is done for the public at the public's expense. Members of the public are able to attend trials and therefore televising proceedings as an extension of that attendance should be permitted. Obviously any reporting restrictions imposed by a trial judge require to be obeyed.

As has been permitted before, and as is evident from the televising of the Supreme Court, live televising of judges sentencing or of entire Appeal Court proceedings where there is no witness evidence, are easily capable of being broadcast live without any risk to the administration of justice.

Recording of trials for future broadcast post-verdict either in full, or more likely in excerpts for inclusion in documentary programmes, is easily achievable without any risk to the administration of justice. In previous eras trial transcripts were published for the public and there is no compelling argument that the public process of a criminal trial should not be publicised using modern technology after a verdict has been returned.

Educating the public about how their institutions work is truly in the public interest. The public are potential witnesses, victims, police officers, lawyers and other participants in the criminal justice system. They should be able to see that system at work in the courts using the medium of television.

In recent years Channel 4 have filmed with police forces investigating murders, rape, sex trafficking and also the daily low level crime encountered by beat officers. We have filmed in A&E units, maternity units and classrooms. It does seem extraordinary that the public work done on behalf of the public in our courts cannot be seen on television as a matter of course. A genuine understanding of the work of the courts will increase public confidence in the justice system and enable the public to engage with the criminal courts from a position of knowledge rather than from an expectation gleaned from foreign jurisdictions or dramatic fiction.

It should be noted that much of our documentary output has shown the daily occupations of workers such as police officers, teachers, doctors and midwives. The assumption that broadcasters would only be interested in high profile murder cases is wrong although obviously such cases would be of interest especially for news programmes.

Contempt of court

The Contempt of Court Act 1981 has proved an effective way of protecting trials. Any perceived laxity by the printed press in England and Wales has been arrested by the recent prosecutions instituted by the Attorney General in, for example, the Joanna Yeates case.

However, as the Ryan Giggs injunction case demonstrated, it is impossible to prevent the dissemination of prohibited information on the internet with complete

success. Likewise the publication of information about that injunction by the Sunday Herald illustrated the futility of one jurisdiction attempting to control information beyond that jurisdiction.

In reality, although responsible publishers and broadcasters will attempt to remove archive material if a court orders it, material may well have moved beyond the control of the publisher and broadcaster. Much of Channel 4's material is illegally copied and moved across the internet. Trying to close down all such piracy is impossible. In addition information is copied, blogged about, tweeted about and repeated on websites facilitated by servers in locations well beyond the United Kingdom. Therefore attempts to prevent jurors from accessing material they are ordered by trial judges not to find are doomed to failure. It is like asking a library not to stock back copies of a newspaper when copies have been sent all around the world.

Any solution to the problem of disobedient jurors will have to be based on the jurors, not on the availability of archive material furth of the Scottish jurisdiction.

Protection of journalists in Scotland

Regrettably many protections for freedom of expression available in England and Wales are not readily available in Scotland.

Specifically, the protections under the Police and Criminal Evidence Act 1984 and the Terrorism Act 2000 which prevent the police and other investigative bodies from arbitrarily seizing journalistic material is not available in statute in Scotland.

There is no equivalent in Scotland of the "Guidelines for prosecutors on assessing the public interest in cases affecting the media" issued by the CPS. These guidelines explicitly direct prosecutors to consider if the public interest requires prosecution of journalists who may have infringed the criminal law in pursuing stories in the public interest.

Scottish criminal legislation (like many English statutes) very rarely contain public interest defences to protect journalistic activity. Such activity is often potentially affected by legislation which legislators never contemplated would involve journalistic activity.

The period in which an action for defamation may be raised in Scotland is three times longer than in England, and Scots law contains no single publication rule.

A mature democracy demands an inquisitive press. That press requires the full protection that Article 10 demands and it would be helpful if these matters could be addressed.

Dominic C Harrison S.S.C
Lawyer, Legal & Compliance
28 September 2012

Justice Committee

28th Meeting, 2012 (Session 4), Tuesday 2 October 2012

The role of the media in criminal trials

Written submission from Aamer Anwar, criminal defence lawyer

This submission considers the following issues: contempt of court, jury deliberations, the internet and social media, televising of court proceedings and the use of live text based communication from court

Contempt of court

The administration of justice requires that it is free from interference and obstruction. Whilst the courts have significant power to punish contempt uncertainty remains as to the remit of contempt. The mere mention of Contempt of Court Act appears to have a chilling effect on proceedings, even though certain reporting may not prejudice proceedings.

Recent events surrounding Phone-hacking, Hillsborough and the Leveson Inquiry have raised the level of public distrust in the press to unprecedented levels. However the guarantee to an open and fair justice system is underpinned by coverage of proceedings by a free press. The press will argue that this is about "transparency", "openness", "a fairer and accessible court system". But the only group that actually benefits from this arrangement is the press who can sell advertising or boost their ratings.

There are however legitimate concerns within the legal profession that a move towards the televising of court trials will degenerate into 'prime time entertainment' as it did with the OJ Simpson trial or the Michael Jackson murder trial.

The Los Angeles Times reported that out of a potential jury pool of 147 LA citizens who indicated they are able to serve on the two-month trial, only **three** reported that they knew nothing about the case—due, no doubt, to extensive media coverage of the pop-star's death in 2009 and the accusation of Dr Murray that followed.

Had this happened in Scotland, we would have to have searched for 15 impartial peers in time for a speedy trial in line with his European Court of Human Rights and Freedoms. Ironically, one of these protections under European jurisprudence is the right to a public trial. There is a general consensus that the European Human Rights Act public trial provision includes allowing citizens to attend court proceedings in criminal matters, but whether that right extends to allowing the media to bring the courtroom into Scotland's living rooms is a wholly different matter.

So historically, the arguments against cameras in the courtroom have been about high-profile cases. They are about how the press intrusion may affect the trial participants, especially the jury and how they may be distracted by them; the potential of public speculation may unfairly sway the outcome for either side; and the media spotlight diminishes the dignity of the court.

Before I address these specific issues, it is important to recognise the role that the media has to play in the courts. Had it not been for the free press then it is likely that issues such as child abuse, forced marriages, rape, honour killings and trafficking of women would have remained hidden away.

The treatment of such cases by the media meant that the criminal justice system was held to account for its failures in addressing such issues, as we recently saw in the Rochdale 'child grooming' cases.

The real question that arises for Parliament and the Justice Committee is whether there a need for further legislation in light of advances in technology?

There are those who will argue that instant access to information on the internet leaves the Contempt of Court Act redundant and unfairly focused on the print media. I do not accept such an argument as the internet reinforces an even greater need to protect the right to a fair trial.

The internet has profoundly impacted on our lives in the last decade as well as the relationship between the courts and the media. We live with a 24 hour news culture in which information can accessed by anyone be they juror, witness or member of the public at the touch of a button. And the major difference between the press and the press using the Internet comes down to gatekeepers. The editors that check the legality and content of the article, a website manager that can remove any erroneous articles, etc. and the limitation of the length of a tweet – 140 characters.

People that choose to read an article on the BBC or on STV will likely read the ENTIRE article, ensuring the counterpoints of both side of the editorial process. A tweet, for example, is limited to only 140 characters, not words, but characters. A challenge to anyone in itself, but it is nearly impossible for a journalist to summarize both sides of a direct and a cross examination in 140 characters.

Twitter's architecture and design is simple. One is limited to seeing tweets from those you follow; those who follow you; and those "RE-TWEETS" of those who you don't follow but one of your followed chooses to Re-tweet.

This means that the audience for any single tweet can theoretically be seen by millions, and in a judicial context, it means that a 140 character tweet about a particularly damning piece of testimony by a crown witness could be seen and/or RT'ed to an audience of millions. A picture of Barack Obama was retweeted over 60K times, a Justin Bieber tweet over 200K. But there is absolutely no guarantee that a user on twitter will see any subsequent tweet by its original author.

This means that a Journalist who in good faith tweeting both sides of a trial in a fair and impartial manner might have one tweet RT'ed hundreds of times, but a tweet describing the cross examination might never get seen by anyone remotely interested in the case. In this manner, the technology is not meant to be fair and impartial, even though the journalist may be.

In the age of new media public prosecutors, Judges, lawyers and Police Officers feel an ‘intense’ pressure to use twitter, internet and the more traditional ‘forms’ of media to get their message across. This should be the limitation of Twitter and other forms of social media in the courtroom.

This means that the Contempt of Court Act is more relevant than it has ever been. In conjunction with other safeguards it balances the right to free speech with those of a fundamental right to a fair trial. It is unlikely that would be possible without the threat of prosecution which always ‘helps concentrate minds’.

There is no room for complacency. It is of increasing concern that sufficient safeguards for jurors are not built into our trial process. There is an over reliance on jurors simply being told to ignore what they may have read in or heard about in the media.

15 ordinary men and women can be asked to step into the High Court and will sometimes sit for several weeks, listening to evidence and at the conclusion of legal arguments will decide on an accused’s guilt or innocence. Yet there is little research into what actually goes in the Juror’s room, or whether Jurors even understand the verbal instructions given to them by trial judges.

There is much opinion and suspicion on what happens in the Jury room or what jurors do with their computers when they go home, but it is no more than speculation. For example, if someone tweets the discussion of what was argued between both Crown and Defence out-with the presence of the jury, this tweet could go “viral” and compromise the integrity of the jury.

Surely now is the time that Jurors should be provided written guidelines on what their roles and responsibilities are, as well as an explanation of what is unacceptable conduct. It takes a great deal of ‘guts’ for one individual to stand up to 14 strangers if they believe something has gone wrong, yet for some reason the courts do not provide written guidance. I strong suspect that ’12 Angry Men’ is not the experience of every Jury room in our jurisdiction.

Parliament should consider whether legislation should be extended to advise Jurors of the serious criminal sanctions if they were to breach their oath and to carry out internet research, particularly focusing on the jury accessing social media in any form during the duration of the trial.

The implementation of the Contempt of Court Act 1981 dispensed with any need for jurors to be sequestered. But in 2012 I do not feel that there are sufficient safeguards to ensure the right to a fair trial in light of the advances in technology.

The United States of America has a first amendment which allows ‘free speech’, yet it also has other safeguards such as jury vetting to ensure the right to a fair trial. In the absence of such safeguards in our Jurisdiction it is essential that the Contempt of Court is enforced rigorously and updated to take account of technological advances.

When a judge instructs a jury to put out of their minds material they may have read in Newspapers or the Internet, how can he ensure that they have not already made

their minds up? In the absence of vetting there surely must be a process by which a fair trial can be ensured?

Our traditions rightly guarantees trial before a jury for serious crimes, it is a necessary protection for the rights of an individual against the abuse of power whether by corrupt police officers or the state. Of course some would argue to do away with the Jury system, this is not a viable option, however now is the time to address the concerns relevant to 21st Century Justice system.

Being tried by a jury of your peers means that the Jury must be drawn from a genuine cross section of society. They are selected at random from the electoral roll, but it is often the case that that there can be a jury made up of 90% men or one without any ethnic minorities.

In a recent trial, where the accused was of Asian descent and involved evidence related to Islam, a motion was made to the trial judge for the jury to be reflective of society and to include an ethnic minority. However, this was not considered possible on the grounds that the Judge felt it was a matter for Parliament to legislate upon. The resulting jury is often one with 15 white men and women. Whilst this is not the forum to raise such an issue, I merely raise it as an example of a genuine need to update and bring our Jury system into the 21st Century.

Of course our courts have faith in a jury exercising their duty, but in the light of the internet, now is the time for Parliament to consider how we can ensure a jury's impartiality.

Juries do an extremely difficult job, often sitting for weeks on end listening to evidence conscientiously but should that Juror read material on the internet then it is always going to be difficult to remove it from one's mind.

For those who believe that the Contempt of Court Act should mean a policing of the Internet for accuracy, they fail to understand the nature of the 'beast'. Once information reaches the net, it replicates and reforms and divides acting like a virus. Policing such material is *'practically impossible'*, which is why we would should consider taking steps to ensure the impartiality of the jury.

It is human nature that when one is told about a matter and later in the day expected to give an opinion or decision on it, if one does not have personal knowledge then there will be a desire to find out some more.

It is now inevitable that research will involve going onto Google, downloading material which one might consider helpful in arriving at a decision. Transfer this process to the scenario of the court room. Quite often in complex fraud or terrorism trials, lawyers themselves never mind the Jury will be bamboozled by evidence that requires a PHD to interpret what was said.

The concern is that if a juror goes home and secretly downloads material to carry out research there is no way of challenging this information. There is simply a lot of bad information on the Internet.

An Internet theorist and academic, Castells, argues in his work that the user reinforces their content with the "Daily Me" as we tend to surround ourselves with personalized content that reinforces our own ideals and values. The danger here is that jurors search out peoples' opinions that are like their own to reinforce their own ideals. This may have devastating effects on accused who is outside a jury pool's cultural norms.

Ultimately the Jury's deliberations and verdict must be based exclusively on the evidence heard in court. Research of this type will affect the juror's decision making consciously or unconsciously.

At the present the trial Judge's directions are not in a language that are '*severe and unequivocal*' enough for the Jury to understand the 'severe' consequences to themselves if they were to carry out such research.

Surely the Jury should be told that in the event of suspicion or specific allegations arising, their Facebook, Twitter or computers could be checked and in the event of evidence of such research being found, they could pay the ultimate price with imprisonment.

To be explicit our Jury system remains the' Jewel in the Crown', but needs to be brought into the 21st Century. I also remain concerned that the wide remit of the contempt of court inhibits freedom of expression.

There is a failure to strike a balance between the right to freedom of expression and ensuring the right to a fair trial both guaranteed by ECHR articles 10 and 6. In the United States the First Amendment guarantees the right to free speech and there must actually be a genuine, serious and imminent threat to the administration of justice before the courts will even consider the threat of contempt.

The lack of guidelines on what constitutes Contempt tends to mean there is little comment or discussion on court proceedings. Our Courts do not operate in a vacuum and just because proceedings are 'live' should not mean certain matters cannot be reported on provided that:

"*it does not overstep the bounds imposed in the interests of the proper administration of justice reporting, including comment, on court proceedings contributes to their publicity and is thus perfectly consonant with requirement under Article 6 & 1 of the convention that hearings be in public. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them. This is all the more so where a public figure is involved…Such persons inevitably and knowingly lay themselves open to close scrutiny by both journalists and the public at large…Accordingly, the limits of acceptable comment are wider as regards a politician as such than as a regards a private individual. However public figures are entitled to the enjoyment of the guarantees of a fair trial set out in Article 6 which in criminal proceedings include the right to an impartial tribunal, on the same basis as every other person. This must be borne in mind by journalists when commenting on pending criminal proceedings since the limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the*

chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of criminal justice"[1]

Clearly in the event of a horrendous crimes it is inevitable that there will be intense media and public interest, but this does not mean an individual cannot be tried simply because of the facts of it are being reported no matter how 'intensive' it is. The issue at stake is what the 'content' of the reporting is and whether it can be considered prejudicial.

Lord Taylor CJ in the notorious case of Rosemary West rejected an argument based on prejudicial publicity by stating:

"the question raised on behalf of the defence is whether a fair trial could be held after such intensive publicity adverse to the accused. In our view it could. To hold otherwise would mean that if allegations of murder are sufficiently horrendous so as to inevitably shock the nation, the accused cannot be tried. That would be absurd." (*R v West (Rosemary)* [1996] 2 Cr App R 374, at 386)

It is essential that clear guidelines be provided by the courts as to what can be allowed. Whilst Editors of national newspapers can rely on a team of lawyers to advise them as to their liability, what does a Blogger or member of the public using Twitter do?

The use of Google and other search engines has seen a huge amount of material appearing on the internet which could be considered prejudicial to a right to a fair trial. But there is a massive contradiction in the use of law to punish the perpetrators, whilst editors can be hauled up before judges to explain themselves, the fact remains that the courts have never ruled that a right to fair trial under Article 6(1) has been breached due to prejudicial reporting.

On each and every occasion a judge's directions to a jury are seen as an effective remedy despite substantial prejudicial reporting. In recent cases such as those of Tommy Sheridan, Nat Fraser, Luke Mitchell and Peter Tobin it is absolutely clear that reporting and 'blogging' has taken place on huge scale with internet hits prior to trial numbering in their hundreds of thousands, yet the courts were unwilling to take the step of halting proceedings against an accused, relying on the Trial judge advising the Jury '*to put such material out of their minds*'.

Whilst jurors are expected to put out of their mind details of high profile cases freely available on the internet and disseminated through the population, the problem is that there is no research on the impact of such material on a Jury.

Nor under the present law are we allowed to ask a jury as to what they understood of the directions or whether they have any knowledge from the internet about a case prior to trial.

The last decade has also seen an increased 'manipulation' of the media in high profile murder trials to ensure convictions. A failure to clamp down on Intensive pre-

[1] Worm v Austria (1997) 25 EHRR 454

trial publicity and public interest means that jurors are placed under an intolerable pressure to do what everybody expects of them and to convict the person in the dock. Frankly it is insulting to the intelligence of Jurors to assume because of some Judge's instructions they will automatically develop selective amnesia.

From my involvement in high profile trials over the years I am aware that whether it be my return to family, a ride in a taxi or simply socialising, everyone has an opinion and wishes to engage in discussion on a particular case, warranted or not.

Therefore I have always wondered what happens to the Juror as she returns home at 6pm to Jackie Bird on *'Reporting Scotland*' to be bombarded with questions by her husband, only to be followed by her teenagers bombarding her with details of what they saw on the internet about the case, then going to the pub with friends anxious to hear and tell her what they know. It's time that we realised that our jurors do not live in a vacuum and are subject to the same pressures and influences that we are in our daily lives.

In the case of Luke Mitchell the Crown/Police did little to halt pre-trial publicity and stood accused of playing to the expectations of the politicians or the general public. There is a danger an approach dictated by the grabbing of headlines is at the expense of the independence of our prosecutors conducting a fair trial in the public interest.

Whilst as defence lawyers, some of us as a result of personal experiences tread 'extremely carefully' at speaking out on behalf of our clients, there seems to be a scramble by the authorities to get their 30 second sound bite onto the news.

Victims already conduct campaigns through the media, some of which can be at the expense of the accused. Thanks to the internet, blogs and twitter comment some are considered guilty long before a trial even starts, this must have a knock on effect when 15 ordinary men and women are expecting to only consider the evidence before them.

Trial by media strikes at the heart of a jury's impartiality yet it seems the courts are unwilling to take the view that it is impossible for a trial to proceed because of prejudicial reporting preferring to issue standard instructions to jurors.

Televised proceedings

I believe the introduction of cameras in court is long overdue, if properly controlled the outcome will be an increase in public confidence in the justice system.

There is a natural conservatism amongst practitioners in the courts as to the proposal, however the argument is that television will make the public gallery open to all is a valid one.

The importance of public scrutiny stated by Master of the Rolls, Lord Woolf could equally apply to the use of cameras in court.

"First it is my view that taking evidence from witnesses out of the glare of public scrutiny in fact allows such witnesses to embellish their testimony rather than be a more adhering to the unvarnished truth. It is often an opportunity to cast blame on others. Second far from the distractions of intensive media interests yielding a far greater depth of information my view is quite the contrary.

The media welcome the opportunity to report public inquiries and in the whole, act responsibly by contrast, the media resents being shut out of a public inquiry conducted behind closed doors.

They will endeavour to obtain information from those who have been present at the hearing. At the Kimberly Carlisle Inquiry, wholly inaccurate reports appeared as leaks in the press. This militates against an orderly inquiry.

However the Master of the Rolls Lord Woolf also pointed out why courts nearly always sit in public. It is important not to forget why proceedings are required to be subjected to the full glare of a public hearing. It is necessary because of the public nature of the proceedings deters inappropriate behaviour on the part of the court.

It also maintains the public's confidence in the administration of justice. It enables the public to know that justice is being administered impartially. It can result in evidence becoming available which would not become available if the proceedings are conducted behind closed doors or with one or more of the parties or witnesses identity concealed. It makes uniformed and inaccurate comment about the proceedings less likely".[2]

Whilst I am supportive of the use of cameras there must be strict limitations on what can be shown for obvious reasons. The experience of the Supreme Court and live streaming has garnered significant support for the introduction of cameras into all criminal trials. However the presence of cameras at an appeal stage is unlikely to interfere with the course of justice, nor impact on the accused or how a witness gives his evidence.

The media argue that cameras will enhance public understanding of the courts and allow everyone to see justice being done. I remain suspicious of such a generalised approach.

From my experience of 'high profile' trials I am conscious that the print and TV media are driven by resource issues. It is impossible for them to remain in court throughout the whole day for proceedings and therefore the entire trial.

The result is journalists will have a tendency to pick the most 'meaty' items of the day to report on, and the two minute sound bite will appear in the News usually weighted in favour of the Crown and unable to do justice to what a jury has sat through over that day or the course of several weeks.

How exactly is the introduction of TV cameras into a court room expected to be any different? There is unlikely to be a massive increase in resources for the media in the

[2] Lord Woolf MR in R v Legal Aid Board ex Parte Todner [1999] QB 966 at 977

present financial climate, which means the cases of choice will be those that cause significant public disquiet or are salacious in their nature.

Whilst the media is used to highlighting public dissatisfaction with the judicial process to argue for cameras they fail to look at their own role in perpetuating such dissatisfaction.

Without sufficient safeguards it is inevitable that there would a trivialising and sensationalising of the court trials in the same way that the OJ Simpson made a mockery of the law in the US. It is of significance that there has been a reduction of televised proceedings in the US since that trial, but their system of justice did not collapse as a result of cameras.

However we should tread extremely carefully in opening the 'floodgates' and allowing a 'Hollywoodisation' of our courts. What the media fail to understand when proposing opening the public gallery via TV, is that when the general public visit the High Court, the first thing that strikes them is the gravitas of the proceedings and how respectful and formal it is- it is impossible to replicate that for television and there is a danger that the proceedings will simply become 'entertainment' rather than a court case that impacts on the victim, the accused and wider society.

Unless safeguards are introduced as to the use of cameras then it is more than likely that they will merely serve their sound-bite culture. Imagine being accused of the repeated historic rape, where the allegations made by the victim's mother are recorded. It is likely that they will be emphasised and available for ever to be replayed. But if you were subsequently found not guilty, how does one go about erasing such quotes or images? It is an impossible task and does not serve the administration of justice well.

As stated above it is unlikely that the media will guarantee that every step of the trial will be filmed.

There is also much rehearsed argument that cameras in the court will encourage efficiency and raise standards expected, drawing a parallel with Televising of Parliament.

This is a false analogy, unlike Parliament the courts are not dictated to by public opinion or personal party interests but it is the rule of law that should apply. Public outrage over certain cases should not translate into pressure on judges and lawyers in doing what is already an extremely difficult job.

Giving evidence during trial or being an accused can be extremely difficult and emotional, it is unlikely that exposing that process to millions of people on TV is likely to assist or encourage others to come forward. Whether one is a victim or an accused, the revealing of personal details can radically change one's life for ever, but transfer that to TV and it has the potential to destroy those lives.

Any proposals to implement cameras in courts claims that Jurors will remain anonymous, this is welcome, but it does little to tackle how the filming of witnesses

will stop them embellishing their evidence or tailoring it, due to the fact that they will be judged by millions watching at home?

Conclusion

I would like to summarize my thoughts now on both the use of Twitter and of the use of social media in general.

During the course of the Sheridan trial Twitter was used for the very first time in a Scottish High Court Trial. There was the inevitable excitement that followed such a decision as the assembled media pack awaited the verdict. I for one can see no problem with journalists making use of social media to give a live feed on cases that are of public interest. There is however a caveat to such an endorsement- as in Televising of proceedings there must be strict guidelines of what can be tweeted and when?

There is again a natural conservatism when dealing with the use of a social media device such as twitter in the courts. This is even more understandable when one considers that potentially 80% of the profession are simply unaware of what it involves.

However the education of the profession as to the merits of Twitter is really a matter for them rather than the administration of justice. The concerns I have are as follows:

i) How can the maximum use of 140 characters per post being transmitted as a live feed ever do justice to what is said in court? It is simply impossible to even take two sentences from a witnesses answer to a question and relay them to twitter without summarising the content as well forming a judgement on what are the most important aspects of that reply.

ii) The next issue that would arise is that how would one ensure that once this material has reached Twitter, it is not re tweeted, quoted out of context and subjected to others providing an opinion on its content. To allow this to happen would during an on-going trial would be in itself a contempt of court and has not really been considered.

iii) Whilst Journalists would be responsible for transmitting ‘fair and accurate’ material, it is inevitable that use of this form of social media will invite opinions warranted or not. Such opinions are unacceptable under the Contempt of Court Act and I suspect that the media has failed to assess who will be held liable in the event of a full blown discussion taking place as the result of a journalist tweeting material from a trial?

iv) An even more pressing concern is that at the moment those who are due to give evidence are not unless they are expert witnesses allowed to come into the court room and hear what others have said before them. Those witnesses may well be controversial or significantly contradict the evidence of the next witness. There is an inherent danger that if live feed is introduced by means of twitter that all a potential witness could ‘overtly’ or ‘inadvertently’ read what is said on Twitter and tailor their evidence to fit with what is described on twitter.

Again there appears to be no recognition of this is the headlong rush for use of Twitter in the courts.

v) During the course of a trial day material may emerge which subsequently will mean that a reporting order is issued, however can this be reconciled with if it has already been tweeted on earlier on in the day?

vi) The advantage of twitter is that it is instant and user friendly. It has 500 million users worldwide, generates 1.6 billion search engine queries per day and is described as 'the SMS of the internet', but from that one can see the dangers inherent in such a device that where a mistake is posted, it is simply too late to remove.

vii) The final point I would raise on the use of Twitter is who is actually allowed to engage in its use during proceedings. The concern here is that many eminent bloggers and internet journalist consider themselves legitimate parties in the reporting of news as it happens. The concern is that such parties without sufficient guidelines and legal training may find themselves prejudicing trials as well as interfering with the administration of justice.

In relation to the use of Twitter I believe that because of its format and inability to control opinion and commentary that arises out of posting 140 characters, it should be stringently controlled and available only for verdict and sentencing procedures.

There should continue to be strict guidelines issued following an application being made at specific trials for the use of such a format and not an absolute agreement to allow its use in all trials as took place in England and Wales.

If this is not done then we risk opening the 'floodgates' and allowing trials to be deserted because of the prejudicial reporting and subsequent opinion formed as a result of 140 characters.

Yet the most important reason for limited use of the camera in the courtroom and the use of twitter and other social media tools during live trial reflect around the symbolism of the Courts.

First, due the nature of the structure of the Courtroom, TV would likely be available in every court in the country, especially criminal cases. When you have television in some, not all, criminal cases, there are risks.

The risks are that the witness AND the accused is hesitant to say exactly what he or she thinks because he or she knows "the neighbours are watching". The risk might be with some jurors that they are afraid that they will be identified on television and thus could become the victims of a crime.

There are risks involving what the solicitor or the QC might or might not be thinking. Is he influenced by that television camera and the manner in which he delivers it when he decides what evidence to present?

The other issue is that in my experience, crown witnesses give evidence in perfect sound-bite form. A good defence is a slow, methodical deconstruction of that witness or the crown's case, and rarely leads to a sound-bite. If this is the case, then there will be a significant imbalance in the accused's right to fair and impartial trial.

Whilst cameras should be allowed into court in limited circumstances, we have to ensure that there are sufficient safeguards to protect the accused, victims, witnesses and jurors and that filming is a controlled manner and does not interfere with the course of justice. Ultimately the trial judge should have the right to veto such proceedings.

There is a danger that in the case of High Profile trials that cameras could succeed in trivialising the proceedings and whilst the debate has purely focused on the rights of victims, nobody has answered the question as to why an accused who is ultimately acquitted should have his trial shown on television. In the days of YouTube, an 'innocent' accused could have his testimony essentially replayed for eternity haunting him for his lifetime. That of course is an argument that many can relate to, but what about where the accused is found guilty? Again YouTube ensures his testimony for an eternity, potentially damaging any rehabilitation. Despite 'vigilante justice' incited by some sections of our media, imprisonment remains the ultimate sanction.

The problem with televising of certain trials is that many offenders are vulnerable on entering the prison system and could endanger co-accused who co-operate with the police and/or the Crown. Some could be killed simply because of a television report. Whilst there are those that believe that is the price they must pay for their heinous crimes, I do not believe we should encourage 'mob justice' in a democracy and have a duty to protect the guilty as well as the innocent.

Aamer Anwar
1 October 2012