

JUSTICE 1 COMMITTEE AND JUSTICE 2 COMMITTEE (JOINT MEETING)

Wednesday 19 September 2001
(*Morning*)

Session 1

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JUSTICE 1 COMMITTEE

24th Meeting 2001, Session 1

CONVENER

Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Lord James Douglas-Hamilton (Lothians) (Con)

Maureen Macmillan (Highlands and Islands) (Lab)

Paul Martin (Glasgow Springburn) (Lab)

*Michael Matheson (Central Scotland) (SNP)

*Nora Radcliffe (Gordon) (LD)

*attended

JUSTICE 2 COMMITTEE

22nd Meeting 2001, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)

Mrs Margaret Ewing (Moray) (SNP)

*Mrs Mary Mulligan (Linlithgow) (Lab)

*Tavish Scott (Shetland) (LD)

*Stewart Stevenson (Banff and Buchan) (SNP)

*attended

WITNESSES

Colin Boyd (Lord Advocate)

Mr Jim Wallace (Deputy First Minister and Minister for Justice)

CLERK TO THE COMMITTEE

Lynn Tullis

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

The Chamber

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Fiona Groves

ACTING ASSISTANT CLERK

Graeme Elliot

Scottish Parliament

Justice 1 Committee and Justice 2 Committee (Joint Meeting)

Wednesday 19 September 2001

(Morning)

[THE CONVENER opened the meeting at 09:32]

The Convener (Pauline McNeill): Good morning and welcome to the 24th meeting of the Justice 1 Committee and the 22nd meeting of the Justice 2 Committee.

I welcome the Lord Advocate and his team to this morning's joint stocktaking meeting. I remind members that we had a stocktaking meeting in the previous Justice and Home Affairs Committee and it seemed sensible to bring the two justice committees together this morning so that we can jointly question the Lord Advocate and the Deputy First Minister and Minister for Justice. As both are quorate, we can begin.

I ask members to do the usual and check that their mobile phones are switched off. We have received apologies only from Margaret Ewing, who cannot be with us this morning.

Michael Matheson (Central Scotland) (SNP): There are also apologies from Christine Grahame.

The Convener: Thank you.

Crown Office and Procurator Fiscal Service

The Convener: I propose to allow questioning of the Lord Advocate for half an hour, until about ten o'clock. After that we will question the Minister for Justice for the same length of time. I am trying to create a bit of a break between this meeting and the meeting of the Justice 2 Committee, which, it is proposed, will take place at 11 o'clock. I trust that what I propose is okay with members.

I invite the Lord Advocate to make an introductory statement, if he wishes. We will then go straight to questions.

The Lord Advocate (Colin Boyd): I will make a short introductory statement if that is appropriate, but I do not want to take up too much time. I would like as much time for questions as possible. I hope that my statement has already been circulated to members.

The Convener: It has.

The Lord Advocate: Perhaps I could just give a

shorter version of my written statement, if that is convenient. The rest could be taken as read, or whatever is thought to be appropriate.

The Convener: That will be fine.

The Lord Advocate: It seems to be appropriate to start by marking the fact that we meet just eight days after the terrible events in the United States. Our thoughts are obviously with those who have been killed and injured. As Lord Advocate, and because of the special relationship that we have with the Americans, I have sent appropriate messages to the Attorney General of the United States and Bob Mueller, who is the director of the Federal Bureau of Investigation. Mr Mueller is well known to the Lockerbie prosecution team because of his work on that case in the early days.

We have a lot of friends in the United States, particularly in the terrorism and violent crime section of the United States Department of Justice, but also in the Office for Victims of Crime and in other agencies in the United States. We have been in touch with those people and we appreciate the anguish that they feel as a result of the terrorist attack. We also know that they are going to be exceptionally busy over the next weeks, months and even years. Members should be aware that the people in the Crown Office and Procurator Fiscal Service who work closely with their American colleagues are as affected by the tragedy as anyone else. The Americans know that if there is anything that we can do to help, we will do it.

We can learn lessons from the experience of the Lockerbie trial. I am happy to go into some of those lessons. The international community recognises that what we managed at Camp Zeist, irrespective of the result of the trial, was a remarkable achievement. I also want to record that we received two special achievement awards for our work in the Lockerbie trial from the International Association of Prosecutors at their conference in Sydney. I hope that members share some of the pride that I feel in those awards. Internationally, Scottish prosecution is highly regarded and, in many respects, envied.

Nevertheless, I am all too aware that we face significant challenges in Scotland. We have seen the balance of offences continue to shift towards the more resource-demanding serious end of the scale. Although the total number of cases that are reported to the Procurator Fiscal has remained fairly static over the last five years and the number of summary prosecutions has fallen, the clear perception is that our work load is getting heavier.

We have, during the financial year 2000-2001, recruited additional staff including 21 lawyers to meet the increased work load. Funding increased with the spending review 2000, which provided

£22.5 million of new money over the next three years to meet the priorities, which are drugs offences, racially motivated and sexual offences and crimes of violence.

We are conducting a recruitment process for precognition officers, who will continue to contribute to serious cases for prosecution. We are making progress with efforts to ensure that the needs of victims and witnesses are properly met and, as planned, new victim liaison offices are being piloted in Aberdeen and Hamilton. We shall digest the lessons that we learn from that and apply them in extending the service to all regions. We are on track to meet our commitment to have a victim liaison officer in each region by next spring.

I am aware that the Justice 2 Committee, in its inquiry, has been looking at the resources of the Crown Office and Procurator Fiscal Service. We have also been addressing that matter. In particular, I have been concerned to ensure the effectiveness of resource planning and management within the department. The current arrangements were developed following departmental management reviews in the early and mid-1990s. However, we need to ensure that we have the right systems and management skills for the 21st century, to meet the new pressures on the department and to suit the new devolved arrangements.

Accordingly, after discussion with the department's senior management, and in consultation with the rest of the Executive, I have commissioned and announce today a major review of the planning, allocation and management of resources in the department. The objective is to ensure that we have robust systems and appropriate management skills to allow the department's resource needs to be assessed accurately.

We need to ensure that the department's resources are deployed and managed efficiently and effectively. The review will start in October and will report to the Crown Agent and me. I attach considerable significance to the review and will take a particular interest in its outcome and the implementation of recommendations as appropriate. I expect the review to help to inform the department's involvement in next year's spending review.

I recognise that the Crown Office and Procurator Fiscal Service is under greater scrutiny than it has been at any time in its history. The Justice 2 Committee is conducting an inquiry into the Crown Office and Procurator Fiscal Service, which I welcome. I know that the committee has been impressed and enlightened by face-to-face discussions with staff, but concerned by some of the comments that it has heard.

I share much of that concern. However, the organisation is undergoing profound change. We have coped well with some of the challenges, such as Lockerbie and the introduction of the European convention on human rights. The continued rise in serious crime, the growing complexity of cases, the introduction of new technology, the needs of victims and witnesses and the demand for greater openness are but a few of the other challenges that we face.

I want a service that is professional, independent, efficient, well resourced, well managed and has the confidence of the community. That is not only my objective, but the objective of the staff in the service.

The Convener: Thank you. That was helpful.

As the Lord Advocate said, the Justice 2 Committee is conducting an inquiry into the Crown Office and Procurator Fiscal Service, so I do not want questions to go too deeply into the terms of that inquiry, although I will allow some latitude.

Tavish Scott (Shetland) (LD): I am mindful of the Justice 2 Committee's inquiry. I will ask the Lord Advocate and his team two questions: one on the children's panel service and one on—dare I say it—fishing policy. The department has produced detailed guidelines for the children's panel service on the prosecution of children and on the policy that children should be kept out of court, as far as possible. How well is that policy being followed? How achievable is that goal? How effective is the approach?

My question on fishing policy is simple. Given that European regulations change rapidly and are implemented differently by member states, do the Lord Advocate and his team have any comment on how easy it is to keep up to date with regulations and therefore to prosecute in sheriff courts?

The Lord Advocate: Children's panels are a matter for the minister who is responsible for children. Prosecution of crime depends on the age of the child involved. For my part, there is a strong presumption that children will be diverted into the children's panel system. Guidelines exist that set out when the Lord Advocate's personal intervention is necessary during consideration of the prosecution of children. Those guidelines are working well. We consider the prosecution of children only in the most serious cases, but the decision depends on the age of the child. The older the child, the more likely we are to take action, in some cases.

I have been reminded that we have a close relationship with the Scottish Executive solicitors office. That is working well, too. I have no evidence that guidelines are not being adhered to. On my department's interest, I am happy that the

prosecution of children is being dealt with appropriately and sensitively.

09:45

Tavish Scott also asked about fishing policy and European Union regulations. I am aware that EU regulations offer their own complexities, not only in fishing, but in other matters. It can sometimes be difficult, particularly for lawyers from Scottish and English jurisdictions, to cope with EU regulations. The procurators fiscal who deal with such cases build up experience in EU fishing cases and receive support from others, usually in fishing communities, who can give guidance to those who are less experienced.

I suspect that Tavish Scott's interest is prompted by his constituency and constituents who are trying to make a livelihood by fishing and are trying to cope with EU regulations. Interpreting EU regulations for such people is a matter for advice from solicitors in individual cases and from Government departments generally. My department cannot offer advice, for obvious reasons. Tavish Scott will understand the point that I make. We rely on experienced procurators fiscal in the prosecution of fishing cases.

Tavish Scott: How quickly can those regulations change and to what extent must fiscals keep up to date with change?

The Lord Advocate: Off the top of my head, I cannot give an estimate, but I could make inquiries about that and get back to you, if that is all right.

Tavish Scott: Thank you.

Scott Barrie (Dunfermline West) (Lab): An issue that the public have with the Procurator Fiscal Service concerns victims of crime not knowing how their cases are progressing. On fatal accident inquiries, has any consideration been given not so much to instructing as to advising PFs and PF deputies to interface more effectively with the public on the conduct of cases and on the reasons why some actions have not been taken?

The Lord Advocate: As the member knows, victim liaison offices are being piloted in Aberdeen and Hamilton. That is a major initiative that will offer such information and support. It will cover cases in which people have died and in which the procurator fiscal is involved.

When a death is the subject of an investigation, deputy fiscals always attempt to meet the family of the deceased. Deputy fiscals spend much time doing what Scott Barrie talked about. I hope that victim liaison offices will enhance that part of the service. A lot of work is done to try to allow the next of kin at least to understand the processes and why actions are taken or not taken.

With fatal accident inquiries, one of the questions that is always asked at face-to-face meetings is whether the family wants a fatal accident inquiry to be considered. However, if the family does not want a fatal accident inquiry, that is not a decisive factor because issues of public interest might transcend the interests of the family. Unfortunately, it is sometimes necessary to begin a fatal accident inquiry in the face of family opposition. Equally, if a family wants a fatal accident inquiry when it is clear that there is nothing to investigate, the family's desire will not be decisive. The interests of the family are a factor that we take into account and in appropriate cases are a strong or decisive factor in our decision on whether there should be a fatal accident inquiry.

Michael Matheson: I know of people who have been cited as witnesses or who are to attend cases as victims, but who find, either when they attend court or close to the hearing, that the case has been rescheduled or has moved on, which causes inconvenience. Your annual report states that the regional procurator fiscal in Glasgow was trying to come to an agreement with the Scottish Court Service to alleviate that type of problem. Will you comment on what progress has been made on that and on whether there are similar problems in courts throughout the country and similar intentions to reach agreements?

I am conscious that police constabularies are keen to set up local initiatives, particularly in connection with drugs issues. Those initiatives can have an impact on the number of cases with which local procurators fiscal must deal. Will you comment on what type of liaison there is between the police and the procurator fiscal prior to the setting up of such initiatives? How do local procurators fiscal redistribute their resources to deal with those local police initiatives?

The Lord Advocate: Those questions are important and raise particular issues. On the inconvenience to witnesses, I am conscious of the problems that some courts encounter. Glasgow has a problem with the number of summary trials that are arranged for each day. The SCS wants to ensure that targets are met and that courts keep up with particular cases. The results of that are twofold. First, a lot of cases are adjourned because there is no way to get through them all. Secondly, there is a knock-on impact on our staff in Glasgow, because members of staff sometimes go into court armed with a load of files for trials that are set for that day, but which have no prospect of going ahead. That causes stress to our staff, so we have taken the matter up with the sheriff clerk. I wrote to the sheriff principal about the issue and the result was the setting up of a working group to try to address and alleviate the problem.

There are two factors. One is the inconvenience to the victims, the accused and people who are cited who come along and find that cases have been adjourned. The other is the inconvenience to our staff, who find themselves overburdened. There are ways to address those problems and that is being done. I hope that that answers Michael Matheson's first question adequately.

On local initiatives by police, in almost every case there are good working relationships between local police commanders and procurators fiscal. There are regular meetings—although how they are set up depends on the area—at which operational issues are discussed. In the ordinary course of events, procurators fiscal expect to be told about those initiatives, but I cannot say whether that happens in every case.

Michael Matheson is right that there is a knock-on effect. For example, if there is a successful initiative on drugs or knives one would expect a lot more police reports on that topic. One problem—although it is a good thing—is that the police are becoming more effective and their detection rates are going up. The Scottish Drug Enforcement Agency is having a positive impact on the reporting of cases, but that has a knock-on effect.

That is one of the reasons for a review of the allocation of resources. We must build in provision for anticipating—as far as possible—changes in reporting rates and in the types of cases that arise. We must have a degree of flexibility so that we can pinpoint areas in which there might be particular pressures and try to alleviate those pressures before they build up to unmanageable proportions.

Mrs Mary Mulligan (Linlithgow) (Lab): One of the actions that can be taken during the process is plea adjustment. Given that procurators fiscal act in the interests of the general public, rather than that of individuals, how much discussion would you expect with the victim or the victim's family in cases that involve a plea adjustment?

The Lord Advocate: That depends on the type of case. If a procurator fiscal has a dozen cases with which to deal, there is little prospect of a discussion about plea adjustment with a victim in a summary case. When more serious cases such as sexual offences are being dealt with in the High Court, a genuine attempt is made to discuss the possible acceptance of a plea. However, the views of the victim will not and could not be decisive in such a situation. Part of the consideration in serious sexual offences, in particular when children are involved, is whether it is better to accept a plea and to avoid the trauma for a witness giving evidence. That is the type of thing that might be gauged from a face-to-face interview.

We are always conscious of the victims, in particular in serious cases, and we attempt to discuss the matter with them. That is not always possible or effective, because the victim does not always agree with our decision, but an effort is made.

Michael Matheson: Your annual report states that you have undertaken a survey among the staff in the Crown Office and Procurator Fiscal Service, which indicated problems of stress, pressure on the staff and low morale. What strategy are you putting in place to deal with that? Are there certain groups of staff in your service who feel particularly undervalued or who are suffering from stress and pressure?

10:00

The Lord Advocate: A stress survey highlighted issues of low morale. After the senior management team discussed the matter, a more thorough stress audit was agreed with the trade unions to attempt to pinpoint where and why the stresses were occurring. That audit continues and we have received advice on its results.

On particular staff feeling under pressure, it would be invidious for me to pick out people who might be under more stress than others. Low morale is more of an issue in certain offices than it is in others, and depute procurators fiscal have raised issues about pay and pay comparability. Part of the offer that was made—and that will be followed through—is a study of pay in comparable grades in other areas of public service. I hope that that will address the problem.

As far as other stress issues are concerned, it appears from my discussions that the issues are complex. Part of the problem is work load, but there is also a feeling among staff that they are not valued. Such a feeling stems not just from the service itself, but from an image of the Crown Office and Procurator Fiscal Service in the press that has had a knock-on effect on staff. I have noticed that effect myself. I am very keen to tackle the issue.

Stewart Stevenson (Banff and Buchan) (SNP): My point develops the Lord Advocate's comments and raises issues of perception and reality. Last year in Grampian and the Highlands and Islands, 17,000 cases were dealt with through summary disposal, but a substantially lower number of individuals were up for trial. Often in our community, a backlog of outstanding cases for summary disposal is built up. One of the difficulties that the public perceive—and which they express most commonly as "Ach well, they'll just get a pat on the head and let aff"—is that the cases are dealt with individually instead of being brought together in a single diet. If people appear initially in

one sheriff court, it is subsequently impossible to consolidate—even within one area—the outstanding cases against an individual into one diet in one sheriff court. Will the Lord Advocate comment on the benefits of consolidating cases into a single diet, especially from the point of view of appropriate sentencing and dealing with the backlog of cases efficiently?

The Lord Advocate: When a procurator fiscal's office receives a police report, one of the first questions that is asked is whether there are any other outstanding cases or reports. If there are, the next question is whether there will be any consolidation or not. Sometimes consolidation is appropriate, sometimes it is not. For example, consolidation is probably inappropriate if wholly different characters of criminal offences are alleged against an individual. Also, in certain instances, the individual has the right to ask for the separation of trials. However, where a report of two housebreakings is received and another report of three housebreakings has still to be dealt with, the appropriate question is whether we can consolidate all five cases.

Although sentencing is a matter for the judge or sheriff, they will take into account an individual's criminal record, which might include a long list of previous convictions for—say—housebreaking.

Stewart Stevenson: What about consolidating cases that are heard in separate sheriff courts? Once someone has appeared in a particular sheriff court, is there any way that offences can be consolidated into a diet at another court?

The Lord Advocate: Yes. The new information technology system—which we call the future office system—will help to identify such cases by immediately flagging up to a depute looking at the computer screen whether there are any outstanding cases against a particular individual. Instead of having to go away and look through a separate system, the depute will be able to find out such information there and then. As a result, consolidation should be much easier.

The Convener: I still have three members to call and we are running out of time. If those members are prepared to be brief, I will ensure that they get priority when the Minister for Justice appears.

Lord James Douglas-Hamilton (Lothians) (Con): The Lord Advocate should be congratulated on the international achievement awards that he has received. Is he receiving sufficient international co-operation and support from senior law officers throughout Europe and further afield on matters such as the prevention of international fraud, prevention of serious drugs trafficking and, of course, prevention of terrorism?

The Lord Advocate: Yes. There are a number

of answers to that question and I do not want to take up too much time. One of the great lessons of the Lockerbie prosecution was that when investigators and prosecutors act together, a case can be put together. Lockerbie showed us that we need international co-operation, because it not only allows us to ask for advice and support through letters of request, but allows investigators to visit another country—no doubt with investigators from that country—and put questions to witnesses.

A body called Eurojust has been set up under the European Union. Although it is in its nascent stage, its intention is to provide support to individual prosecutors; to have a network of contacts; and to have an exchange of evidence. Someone involved in Eurojust recently told me of one of its particular successes: under the organisation's auspices, someone from Germany spoke to someone from Spain and found out about another connection in Italy. They were then able to bring everything together and start to mount a prosecution.

There are other questions about the wider international stage. For example, are the right structures in place? Perhaps we could consider further international co-operation. We are active members of the IAP, which is an important body for promoting such co-operation. The structures are beginning to be put in place at a European level.

The Convener: I wish to ask a further question on this morning's news that the European Union has been quick off the mark to see what steps should be taken in reaction to last week's events. The justice committees are beginning to get their heads round what Eurojust is about and the role of the European Union. We have some concerns about the legal basis on which member states are marching ahead on mutual recognition of each other's legal systems, albeit that they are doing so for the greater good. Would some of the issues be better dealt with by international treaties, given that some of the countries that you would wish to co-operate with are not members of the European Union?

The Lord Advocate: That is one reason why I said that more could be done. At the European level we are doing well with Eurojust, although more probably could be done at the international level. We have to consider whether we can put in place structures to assist international prosecution. That view arises from my experience of the Lockerbie trial and does not represent anybody else's view. You asked the question, so we have to ask whether more could be done, and also strengthen mutual legal assistance, which is a formal and bureaucratic process.

The Convener: We will return to that subject

another time.

Bill Aitken (Glasgow) (Con): On our attitude to Europe, two and a half years after the importation of the ECHR provisions into Scots law, we seem still to be having resource difficulties. Is the Lord Advocate in a position to quantify those difficulties, bearing in mind that a great deal of time, even in the summary courts, is devoted to debating so-called devolution issues? Will he also comment on the fact that there are now so many High Court adjournments—which on the street are felt to be a result of the fact that under ECHR regulations most accused persons are admitted to bail—that the pressures and disciplines of the 110-day rule are being diluted?

The Lord Advocate: Adjournments in the High Court are a problem, but they are not due to ECHR issues; they are due to the continuing pressure on the High Court. For example, the number of indictments in the past four months is up 7 per cent on the equivalent period last year. That produces pressures, with cases remaining in the system and not being dealt with.

Adjournments in the High Court, which are a real problem, are not due to ECHR problems. Challenges are heard under the ECHR, but they are fewer than one might have expected, given experience in other countries, in particular Canada and New Zealand. The Crown Office and Procurator Fiscal Service is now used to dealing with such cases. They are part of the everyday system and human rights issues are now at the forefront not only of defence, but of prosecution.

I am not in a position to quantify the difficulties in hours or days—I do not think the information is available. I am not in a position to quantify in man-hours the resources that are used by the prosecution in dealing with ECHR challenges.

Nora Radcliffe (Gordon) (LD): I will address the more mundane topic of the difficulty in raising prosecutions against people who breach planning or pollution regulations. There is a perception among developers and some businesses with a lot of pollution potential that they can breach regulations with impunity. Is there a formal or informal mechanism to protect time to prosecute such offences?

10:15

The Lord Advocate: I challenge the view that people can do those things with impunity. I used to be a planning lawyer, so I know a little bit about it. I am aware that we sometimes get complaints about non-prosecution. The people who report such offences to us do not regularly report all sorts of cases, as the police do; they do so irregularly. We must ensure that when they put a case together they are aware of our requirements. We

encourage an on-going dialogue with bodies such as the Scottish Environment Protection Agency, to ensure that we get it right.

We must also ensure that procurators fiscal are trained to deal with such issues when they arise, in the same way as some of them get experience of dealing with fishing cases. I hope that the use of information technology will assist in that. It will allow for greater information to be passed around the service and will enable people to build up experience and share it with others.

I would not like it to be thought that there was any relaxation of the requirements on the prosecution in relation to certain offences because it was inconvenient or the offences did not seem to be as serious. We should bear in mind that a range of planning enforcement measures are available to local authorities and that they may be more effective in dealing with certain issues. For example, in a case of building without permission, it is more effective to tell the guy to rectify the situation by taking the building down than it is to prosecute.

Nora Radcliffe: But the person might say, "Well, I am not taking it down."

The Lord Advocate: A time comes when prosecution has to be seriously considered, but it comes down to enforcement. Prosecution should not be seen as the first call. If you talk to people who are involved in the sector you will find that they want to ensure that when prosecution is considered, it is effective, because it is the last call.

Nora Radcliffe: The point I am trying to get at is that, as you say, we need to ensure that a procurator fiscal attaches priority to the matter. That type of case is competing for time with serious offences. Is there a mechanism to ensure that there is some protected time for that type of case?

The Lord Advocate: It would be difficult to have protected time for such cases, but fiscals must recognise that when they are reported it is often because other enforcement measures have not worked. They must discuss with the reporting agency whether they can take a prosecution, whether the evidence is there to take a prosecution and whether it is in a form that can enable a prosecution to go ahead. That is often an issue.

The Convener: I am afraid that we will have to end the discussion. I thank the Lord Advocate and Andrew Normand and Dr Alasdair Brown for attending. I am sure that both the Justice 1 Committee and the Justice 2 Committee will return to many of the subjects later in the year.

Scottish Executive

The Convener: Under our second item on the agenda this morning we will hear from the Minister for Justice, Jim Wallace. I will have to be strict about ending the meeting at 10:45. The minister will make a statement. It would be helpful if members could be focused in the points that they make.

I welcome Jim Wallace and his team to the Justice 1 Committee and Justice 2 Committee joint meeting on stock-taking issues. My notes state that the Minister for Justice will address the committee for 10 minutes. He might be pleased to know that I have already told members of the committee that I must finish this meeting at 10:45. It would be helpful if his introduction was shorter, so that we have time for as many questions as possible.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): Thank you. That request was conveyed to me about a minute ago. I will do my best to truncate my comments.

I thank the committee for the opportunity to take stock and set out what we have achieved so far in pursuing our aim of working together for a safer and fairer Scotland. Before I do that, I would like to associate myself with the remarks the Lord Advocate made about the terrible events in the United States last week.

It might be helpful to the committee if I mention some of the action that has been taken in Scotland in the aftermath of the attacks. The establishment of the Scottish police information and co-ordinating centre has been of particular importance. It has co-ordinated the security and intelligence response in Scotland and it has liaised with forces throughout the United Kingdom. That has included direct liaison with the Metropolitan police casualty bureau, where work on identifying UK victims of the atrocities has been taking place.

The situation has been changing daily, as members of the committee will appreciate. So far, the Scottish co-ordinating centre is aware of four persons who appear to be missing in connection with the incidents and have close family in Scotland. That number may well rise. It could be some time before formal confirmation of identities can be made and the next of kin informed. The time scale will be dependent on the judicial, post mortem and release procedures determined by the US authorities. We are working closely with the Foreign and Commonwealth Office on these matters, which in turn is working closely with the American authorities.

The police are properly in the lead in following up information on possible victims. Police liaison

officers have been appointed to assist the families of missing Scots. The UK Government has made it clear that it will meet the uninsured US hospital treatment costs of British victims and the cost of repatriation of the remains of those who have been killed. Travel and accommodation costs for three days in New York for the close families of those believed dead in the tragedy will also be met. Careful consideration is also being given by the appropriate health and social agencies to the longer-term counselling and other support that will be necessary for bereaved families.

More generally, a heightened level of security has been put in place at Scottish airports and local emergency planning networks have been put on alert. Emergency plans for dealing with serious incidents are kept under constant review and are rehearsed regularly. The current tense situation will continue for some time. We must all be vigilant.

I will now return to the theme of taking stock. The two committees will be aware of the 24 acts that the Scottish Parliament has passed in its first 28 months. The justice committees have made a big contribution to that. I take this opportunity to express my appreciation of the work that has been done members of the committees, clerks and others who serve the committee.

Listing all the legislation would take up too much time. We have passed some important pieces of legislation in the past year. Some of the legislation passed early in the session, such as the Adults with Incapacity (Scotland) Act 2000, is now coming into operation. It will do a lot of good for many vulnerable people.

Looking ahead, a major criminal justice bill will introduce a range of measures, which will include those for dealing with serious and violent offenders: those will be based on the recommendations of the MacLean committee. The bill will also implement our commitment to increase protection from stalking and harassment. Members may remember that I announced our plans on that in January. The bill will introduce a new power of arrest when a non-harassment order is breached. We will publish a white paper shortly with details of the measures to be included in the bill.

We are also committed to introducing a bill to provide a workable and humane alternative to poidings and warrant sales. A broadly based working group that included some members of Parliament has made detailed and constructive proposals, which were published in July. We are consulting on them. The deadline for legislation is the end of 2002.

The wider review of diligence—covering issues such as bank arrestments and debt arrangement

schemes—is also making good progress at official level and I hope to issue a consultation paper around the turn of the year.

We will introduce a bill to modernise the law relating to civil marriages, which will take over from Euan Robson's bill.

There will be a substantial bill on land reform that will provide a right of responsible access to land and inland water, a community right to buy and a crofting community right to buy. The freedom of information bill will shortly be introduced, based on the draft that has been published for consultation.

Other bills are in preparation. We will introduce those in draft form when parliamentary time permits. They include bills on title conditions and family law. We hope to publish a family law bill in draft form in the present session.

Legislation is not the whole story—our aim is to create a safer and fairer Scotland. We have delivered on our pledge to resource a record number of police officers—indeed, police funding in Scotland is now one third higher in real terms than it was 10 years ago. The Scottish Drugs Enforcement Agency is up and running and has seized £17.5 million-worth of drugs and arrested 130 people allegedly involved in organised crime.

In 1999, we published our plan on the Macpherson report. I continue to chair the steering group to take forward the Executive's response. Police forces and other partners are working closely together to improve the safety of everyone in our communities.

We accept that more must be done. We want to improve access to justice and are working on proposals for legal services in the community. We are having detailed discussions with the legal profession and the Scottish Legal Aid Board about fees in the present system. The Justice 1 Committee has looked at that matter in detail.

The first sitting of the pilot drug court will take place in Glasgow sheriff court in November. We are analysing our consultation on whether a human rights commissioner for Scotland is needed. We have set out our proposals on police complaints and we have important plans for improving the common police services, which support all our forces.

The committees know that we have made clear our plans for greater transparency in judicial appointments, and through public advertisement we will soon seek members for a new judicial appointments board. Two judges, one sheriff principal and seven sheriffs have already been appointed under an interim procedure involving advertisements and interviews.

There have been substantial improvements in

community penalties for offenders. Drug treatment and testing orders are being rolled out in several parts of the country and will be available in a further seven courts next year. Those new orders are a good example of tackling difficult problems in an imaginative and community-based way. Restriction of liberty orders—tagging—will be available throughout the country next spring. The ministerial working group on women offenders will report later this year.

We said that we would focus on victims. Our victim strategy and the justice department's victim plan was published in January. Seventeen witness service schemes are already in operation and the witness service should be available in all Scottish sheriff courts by next summer.

More will come before us. Before a final decision is made, I want to put out to consultation and public debate the options for the prisons estate. We have also set up a committee to review licensing law under Sheriff Principal Nicolson.

Finally, we want to promote a criminal justice system that is prompt and efficient in its operation. As part of that, I can announce today that we are setting up a committee under Sheriff Principal John McInnes to examine the operation of the summary justice system and the district courts. The great majority of criminal cases are dealt with in the summary courts and it is vital that they work well. I hope to announce the full membership of the committee shortly.

I have tried to go as quickly as I can through a long and inevitably incomplete list. The justice committees will appreciate that we have a full agenda and I look forward to working with the committees on it.

I am happy to try to respond to questions.

The Convener: I thank the minister for going through his presentation so speedily.

The Justice 1 Committee and the Justice 2 Committee are conscious of the 24 acts that have been passed. The clerks have told me that the number of bills with which both committees have dealt is nearly in double figures and the committees are conscious of their role in that.

Stewart Stevenson: Good morning, minister.

I am sure that there will be widespread support for your objectives in your announcement about the physical chastisement of children. How do you intend to measure outcomes? The objective is not simply to change the legal system, but to deliver a better environment for children in which fewer are chastised. How do you expect to measure the reduction in chastisement of children as opposed to the legal delivery of people who are responsible for it?

10:30

Mr Wallace: I am not sure that an arithmetical target can be set for the reduction in the chastisement of children, but I will make two points. First, it is important to recognise that unreasonable chastisement is currently contrary to the law. One objective of our proposed legislation is to clarify for the courts and parents what the boundaries ought to be. As Stewart Stevenson has indicated, there is a legal dimension in doing so.

Secondly, I hope that we can help to create an environment and a culture in which people are far more clear about where boundaries are set. The proposals were not plucked out of the ether—they were the subject of considerable consultation. Parliament will be invited to give its approval to the proposals. I hope that the proposals are an important contribution to a culture in which violence towards children can be reduced.

Stewart Stevenson: Will you consider putting a measurement system in place that will enable us to know the benefits of what you propose?

Mr Wallace: I do not want to dismiss that matter completely out of hand without having given it further thought. My immediate reaction is that it sounds like a good idea, but practical measurement of the baseline is probably fraught with difficulty—that is a completely off-the-cuff response. We have a research unit that may find it worthwhile to consider the issue. The suggestion will be borne in mind.

Mrs Mulligan: I appreciate that you tried to shorten your statement, but I would like you to expand on the district courts review. You said that a committee is about to be set up. Do you have a timetable for that? Is there a timetable for the review itself? Who would be involved?

Mr Wallace: I will wind the clock back a little. When Angus MacKay was still the Deputy Minister for Justice, he indicated that we would review the district courts. The preparatory work for that and trying to draft the consultation paper made it clear that it made sense to look at the district courts in the context of the wider issue of summary justice, including summary cases in the sheriff court. That is why the review has been expanded into a review of summary justice. Sheriff Principal McInnes has only recently accepted the appointment as chair of the committee—he accepted it enthusiastically. Officials and I will work with him at once and over the coming weeks to try to identify people to serve on the committee.

If I may put it this way, there are the usual suspects—those who use the courts regularly. We want to ensure that there are representatives of justices of the peace who are currently involved in the district courts. I do not want the review to

linger, but if the job is to be done thoroughly—and I have every confidence that Sheriff Principal McInnes will tackle it thoroughly—there might be a report in about 18 months' time.

Lord James Douglas-Hamilton: Does the Deputy First Minister accept that early legislation on the confiscation of criminal assets, particularly the proceeds of drug pushing and drug trafficking, could have great deterrent value?

Mr Wallace: The Queen's speech at Westminster announced that a proceeds of crime bill will feature as part of the UK Government's legislative programme for the session. We have indicated that we want to opt into that legislation. Lord James's question provides me with an opportunity to explain some of the thinking behind the bill. There is a perceived need to tighten up the existing rules on the confiscation of criminal assets. There are provisions for confiscation already, but there is agreement that the procedures and the law need strengthening. If the legislation concerned purely drug trafficking and drugs, criminal law in relation to drug misuse would make it a reserved matter. It is obvious to many people, however, that drug money is often only one aspect of a wide-ranging network of criminal activity. It is open to us to bring separate legislation before the Parliament to deal with non-drug serious crime, but when we discussed that with the Home Office and the police, we were concerned that having two separate regimes operating in different parts of the United Kingdom would be a recipe for loopholes and that it could mean that there would be safer havens in one or another part of the UK. Therefore, it made sense to legislate on a UK basis.

That said, the legislation will be tailor-made to the Scottish legal and criminal justice system. Officials in my department have been and will continue to be involved closely in the drafting of that legislation and in assisting the United Kingdom Government as the legislation goes through the Houses of Parliament. In due course, a Sewel motion that relates to reserved matters will be brought before the Scottish Parliament. I accept that this is an area of law that needs strengthening and I hope that the Justice 1 Committee and the Justice 2 Committee agree with our thinking as to why it should be done on a UK basis and that it is the right way forward.

Michael Matheson: I want to raise two issues with the minister: the first concerns prisons. Last week, the Justice 1 Committee took evidence from the chief inspector of prisons on his annual report. Many issues arose, but I will truncate them because of the pressure of time today.

I would like to hear the minister's view on the fact that five of our prisons are significantly overcrowded. The chief inspector of prisons' report

highlighted concern that there is a cultural "them and us" attitude between operational staff and senior management. Does the minister believe that members of senior management in the Scottish Prison Service are doing enough to alleviate that problem? Recently, senior management decided to award bonuses to certain members of staff for coming to work during industrial action and to delay signing the contract to end slopping out in Barlinnie's B hall as a negotiation tool for the new working arrangements with staff. Is that an appropriate way for senior management in the SPS to behave, given that the chief inspector has identified those clear problems?

My second question is linked to the minister's earlier comments. The minister had the pleasure of leading a delegation to China during the summer recess. Will he expand on what relationship the justice department is developing with the Chinese Government? What changes have occurred in the Chinese judicial system as a result of the work that he has done with the Chinese Government?

Mr Wallace: Those are two important and distinct questions and I will endeavour to answer them fully.

One thing that I have learned in the just over two years that I have held this office is that prisoner numbers are impossible to predict. In the years when they were expected to be at a particular level, there were about two years when they were roughly 200 or more below the anticipated level. This year, there has been a significant increase. Although I ask questions, it is not obvious what has changed or what is different in the sentencing practice of judges. If we examine the situation in more detail, the baseload of longer-term prison sentences is beginning to rise. In many respects, that increase reflects some of the success that we have had in tackling some of the bigger players in the misuse of drugs scene, who inevitably attract longer sentences.

Predicting prisoner numbers and providing for them accordingly is not an exact science. I accept fully your point that some prisons are overcrowded at present. That is where the prison estates review comes into play because it is intended that the review will look ahead 10 years to identify needs. It is not a simple question of overall totals. For example, numbers have not reached overcrowding levels in open prisons. Overcrowding changes with categories of prisons and the levels of security in which prisoners are held.

One of the key issues for the prison estates review will be to consider the current estate and prisoner numbers. It will also take into account the fact that slopping out is undesirable, which is the opinion of the Justice 1 Committee, the Justice 2

Committee, the Parliament and ministers. Slopping out is understandably disliked by prisoners and prison staff. We must consider prisoner numbers to provide new units that will lead to the abolition of slopping out. We will consider the likely expected numbers, the numbers that we have currently, what we want to replace and improve and the options to meet those numbers. I hope that we will have a mature and informed debate. We still await the final figures from PricewaterhouseCoopers to allow that debate to take place.

Regarding industrial relations, it was stressed all along that agreement about the staffing structure was needed before a particular redevelopment could go ahead. If we plan to invest a considerable amount of capital in a new development, it makes sense to consider its longer-term running costs. That is why attendance patterns and the staffing structure were key to the development.

Following the unlawful strike action in April, an agreement to go to arbitration over attendance patterns was reached between the trade union side and management. That was a positive development and, if members recall, I encouraged it on the day of the strike. As a result, different attendance patterns are being rolled out across the prison estate.

I am well aware that there have been difficulties with morale in some prisons. I visit prisons and that information is communicated to me. The chief inspector mentions it in his report and when I met him earlier this month he conveyed it to me. Members of staff have delivered across a range of the set key indicators in educational programmes and, above all, in security. That is a tribute to the staff. I accept that the uncertainty about attendance patterns and about the estate have not helped, but I hope that that uncertainty will be dispelled sooner rather than later.

The invitation to visit the People's Republic of China came from the Chinese authorities and was part of a four to six-week British justice programme there. It followed a number of high-level visits to the United Kingdom by the previous Chinese justice minister and officials. During those visits, the Chinese expressed a particular wish to come to Scotland. Their request was to examine a few specific areas of the Scottish justice system: the management of the profession, particularly the solicitor branch; juvenile justice and our system of children's hearings; and rehabilitation work. Those were the key areas that were considered.

It is evident that China's structure of justice is different from ours, but it is alert to the fact that if it is to continue as the country it wishes to be, if it is to become more of a member of the international community of nations and, particularly, if it wishes to develop trade links through membership of the

World Trade Organisation, for example, the necessity of having the rule of law becomes more obvious and important.

There is a clear wish in the Chinese justice community to build up a distinct system of the rule of law and to find places to learn about such a system. When we received the approach, it seemed helpful to respond. Alan Miller from the Scottish Children's Reporter's Administration accompanied me, as did Valerie Macniven from my department, and Lord Gill, who chairs the Scottish Law Commission. Martin McAllister, the president of the Law Society of Scotland, also attended. Useful discussions were held on the system of juvenile justice. There are fundamental differences in culture, traditions and legal systems, but the Chinese told us that young men between the ages of 14 and 25 commit the majority of their crimes. That is interesting, as our research shows that young men of a similar age group commit the majority of our crimes.

10:45

There was a willingness to share ideas: the Chinese want to develop a penal system that leads to rehabilitation rather than one that is used simply for punishment. We were able to discuss our community disposals and some of the work that is done by Safeguarding Communities Reducing Offending and the Apex Trust Scotland to aid rehabilitation. We want to build on what was achieved.

Although nothing formal has been proposed as yet, on a future visit we will let the Chinese officials see some of the work that is done in Scotland, including the airborne initiative at Abington or some SACRO projects. It is important for us to enable exchanges at student and university level so that young lawyers from China can have first-hand experience and knowledge of how a different legal system works.

Changes in China are difficult to pick up on but, if we are being pragmatic, we should try to encourage a country that has indicated that it wants to develop its rule of law. The fact that China has looked at aspects of the Scottish legal system makes it important that we respond positively.

The Convener: It is unfortunate, but we have to stop at this point. We have not been able to cover a number of areas and there are questions that I hoped to ask. However, as we specified our finishing time, in an act of self-discipline I will not ask those questions.

I am sure that Christine Grahame, the convener of the Justice 1 Committee, who is not present, would like to follow up on some of the questions that have been put to the minister today. We hope

to be able to arrange further meetings on a regular basis.

Mr Wallace: Perhaps one of the things that my predecessors and I have failed to do is to have more regular meetings with the conveners of the justice committees. I am willing to try to do that. My diary tells me that I am before you again in less than two weeks' time to discuss the budget. I am sure that some of the issues that we did not have time to discuss today will be relevant to our discussion on the budget.

The Convener: I am sure that the Justice 1 Committee will question you further on the prison estates review. Will you tell us quickly when that review is to be published?

Mr Wallace: Before the end of the year.

The Convener: I thank Mr Wallace, the Minister for Justice, and his team for coming before the committee this morning.

That completes the business of the joint meeting of the two justice committees.

Michael Matheson: I want to raise the issue of timetabling. If members will pardon the pun, it does not do the minister justice if he is asked to come before the committees with only 25 minutes available for questions. I have a series of issues that I would like to raise with the minister. I am sure that he would want to expand on those issues in his replies. In future, we have to take more care with the timetabling of such meetings.

The Convener: I agree. I did not get the chance to ask the minister a number of my burning questions. The two committees should discuss that problem. I repeat my thanks to the minister for his replies to the questions that were put to him.

The Justice 2 Committee will reconvene at 11 o'clock. There is time for tea or coffee before we begin that meeting.

Meeting closed at 10:49.

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