



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RT HON THE LORD JUDGE

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When I first joined the JSB, I did not anticipate giving this lecture. There was no JSB Lecture. In truth, there hardly was any JSB at all.

Let me tell you about it.

Harry Skinner led a small team, a very small team called the JSB. It consisted of him as Chairman, a very youthful Tom Legg, on his way up through the system, a delightful magistrate, whose name I have unfortunately forgotten, but who always came to the meetings with her small dog, which amused us all, me, a secretary, and another youngster, David Thomas, who came from time to time, showed a little promise as an expert on Sentencing, lecturing at the University of Cambridge, at a time when the only experts, so far as the judiciary were concerned, were judges. This was his book then, a thin volume. This is one volume of his book now. There are four volumes in total, but I could not lift them all.

The only target of the JSB was sentencing – consistency of sentencing was all we ever dealt with – and that was what Peter Webster and Harry Skinner sought to drive at. Of all the people who came under pressure from the participants at these seminars for not respecting or for interfering with their judicial independence, Harry Skinner, and Peter Webster before him, never seemed to me to pose the slightest threat.

I had sat for 2 years as a Recorder before I received any training at all. The very first case I tried involved allegations that 2 police officers had accepted small bribes from motorists anxious to avoid prosecution for speeding on the motorway. Even the burden of proof was the wrong way round. My very first seminar was in the Lord Chief Justice's Court. The very distinguished LJ, who later went on to the House of Lords told us in unequivocal terms that provided we directed the jury 3 or 4 times that the facts were for them, "we'll support any comment you make about the facts". Happy days indeed.

Those were the days before PACE when the Judges Rules held sway. Police officers were believed to have the kind of memory that would have graced Einstein, able, all of them, two hours later to remember verbatim, the precise questions and answers of a discussion. And my clients had a remarkable intellectual prowess – the ability to dictate a logical, sequential confession, word for word, of their criminal activities, showing an intellectual capacity way beyond anything I could glean from my meetings with them. I couldn't help wondering whether the temporary flowering of such brilliance was coincidental with the propensity of their heads to make unexpected voluntary contact with the doors of police cars, or the doors

and walls of their cells, accidentally of course. Then when the effect of the accidental blow wore off they resumed their former incoherent English.

We have had a smile about this, but what, I wonder, about our present system for the administration of justice would bring laughter from a collection like this audience in 20 years time. I think we could all have a wish list. I can tell you mine. It is that we should better address the consequences to children who have suffered abuse. I am not going to answer the question that I shall pose now. Should we always and immediately set about all the necessary processes to enable them to come to terms with their experiences, so better to ensure a full, rewarding, and so far as humanly possible, an unscarred life?

“Yes” is the absolutely obvious answer, but is it still “yes” if treating that as a priority reduces the chances of a proper conviction of a dangerous man? The answer may still be “yes”, but we do have to remember that if the perpetrator of the crime is not prosecuted and convicted, other children may become his victims. This is an acute dilemma, and even if you have, as we do have, a system by which judges who are experienced both in criminal justice and family justice are asked to make the decisions about which should come first in an individual case, the treatment or the trial, the decision that is made has adverse consequences either way. I note that Baroness Stern in her recent Report had something valuable to say on this subject in the context of rape victims. It is a report which contains a valuable analysis of analogous issues, and repays close attention.

But I think every generation thinks it has sorted out the problem of how to deal with children. Let me give you an account of how Judge Jeffreys dealt with a child in 1684 when addressing the competency question.

Perhaps in 20 years time a different sort of laughter may greet the thought that the ascertainment of the truth could be best served in civil cases by taking as read a statement in chief which, so far as the court knew, had been drafted by solicitors and counsel, and re-drafted and re-drafted again, and polished up, and checked for possible difficult areas, and then re-drafted by them all again. I was once sent instructions to redraft a seventh draft of a witness statement. I suppose such witness statements are more reliable than the confessions to which I referred earlier.

But if I may just go back to those early days in the JSB’s life, they were very different times.

Mobile phones did not exist. Some 50 or 60 judges and recorders were squashed in to the accommodation at Roehampton, with one public telephone box to be shared between them all. And we all needed to use it. And I am told that one of my predecessors is extremely fortunate that his judicial career did not come to an untimely end when he climbed out of Roehampton and made his way to his nearby home in Barnes.

But there are a number of defining moments I have identified from these days, and the developing history. I want to identify a number of specific moments..., beyond the invention of the mobile phone, the email, and the Blackberry.

The meetings of the judges to discuss sentence revealed a significant difference of view which became apparent on the issue of the correct approach to sentencing white collar professions who had committed offences of dishonesty to the disadvantage of their clients. Some judges thought the most serious feature was the breach of trust: for another school it was the fact of the court appearance, public shame, and inevitability of striking off, never to return to practice, as was inevitable in those days, represented sufficient punishment. The views were expressed forthrightly.

Harry Skinner and Donald Farquarson who took over from him took the problem to the Lord Chief Justice, Geoffrey Lane. That difference of view produced the first true guideline case, Barrick in 1985, when, if my memory is right, Donald Farquarson and Dai Tudor Price sat with Geoffrey Lane. That decision had an impact on sentencing, but even more, a high impact on the judges, not merely for the guidance on sentencing. It demonstrated to them that their views and concerns, as expressed at the JSB, got across to the senior judiciary, and that the JSB represented a form of communication between them. That was a very significant moment in establishing the credentials of the JSB with the judiciary.

It also had the long term consequence that eventually culminated in the Sentencing Advisory Panel, the Sentencing Guidelines Council, and the Sentencing Council. Those particular developments, I suspect, were not a consequence that Geoffrey Lane would have anticipated.

The next of these moments was when the JSB was extended to take on civil and family work. Michael Mustill became chairman. At the very first meeting, he asked all of us sitting round the table to express our views, whatever we liked, on the future development of the JSB now it was no longer limited to criminal law. He listened to them all. And then, in what remains to me a vivid memory, he spoke without a note for about 25 minutes about his aims and his ambitions for the JSB. I suspect that no record of it was made. More's the pity. It was a seminal moment, and a stunning vision expressed with brilliant clarity. It would have been a historic paper. He addressed the issue of diversity, and the way in which the JSB had to ensure not only that people from ethnic minorities were treated equally, but that they themselves perceived that they were being treated equally. He also laid out his ambitions that, long term, there should be a Judicial College. It was then 1985. That has been a consistent policy of the JSB for many years now. We are still waiting for a Judicial College, but that has recently been supported by Baroness Neuberger. It will happen. But one day, when it happens, I hope everyone will remember it was Michael Mustill who suggested it.

The third of these moments was when Henry Brooke came to a criminal seminar I was running at the time when the new Ethnic Minority Awareness Committee was formed. I offered Henry, and Trevor Hall the opportunity to speak.

Not all of you know Trevor Hall. He is black. I remember the mixed sense of astonishment and disappointment and anger when he told the meeting that he, aged 37, had been stopped no less than 38 times while driving his car, or it may have been the other way round. It was a chilling moment. No one any more thinks that issues relating to race can merely be addressed on the basis of treating everyone with courtesy. We needed knowledge. We had, for example, to recognise that it was not an infallible indication of truthfulness that a witness stood in the witness box ramrod straight and looked the judge in the eye. I remember a few lying witnesses who did that. Some witnesses would look down, not because they were shifty, but out a sense of respect for the court.

There have been many critical moments in the development of the history of the JSB. I have identified these three from what now are early days, before the JSB got to its teen years, but they were moments which I personally witnessed which led to and affected its development into much more than a body providing information for judges, but a body which has contributed to the modernisation of the attitude of the judiciary.

In all my time the Judicial Studies Board has been the judiciary's great success story. It has had a series of remarkable chairmen, and when the time came, energetic, determined directors of studies. All of you here will have been on this or that committee and know that it was a privilege to do so. So, I believe do all of those who had worked at the JSB. It is thanks to all of them that it is the jewel in the judicial crown.

Continuing education is now integral to the working life of a judge. We all think so. The old days of resentment and complaint about interference with judicial independence have all gone. And under the new arrangements of the judicial training strategy, by which judges choose the training they want from a prospectus published by the JSB, the response to the first prospectus published last September which covers seminars from April this year to March next has been nothing short of magnificent. 2067 judges have booked in to seminars, whatever seemed appropriate to their needs: of the entire judicial family only 16 judges have failed either to book or give an acceptable explanation for their inability to do so. I should not have forecast that in 1979, nor in 1984. No one would.

One crucial reason for this glowing success is that, and it is important to emphasise it, that judges remain responsible for the education and training of judges and the judges in the JSB are as determinedly independent of mind as any judge who has ever attended one of their courses. Of course outside assistance is sought, but the ultimate responsibility for the organisation of the seminars is with the judges themselves. And it has been another constant feature of the JSB that no one is marking those who attend the seminars, in particular, not the most newly appointed recorder. That policy was laid down at a very early stage in Harry Skinner's time. If individuals were chosen for judicial appointment, the role of the JSB was to train them, not to second guess those responsible for the appointment. It makes for healthier seminars, and enables the participants to seek advice where they may otherwise be a little inhibited worrying that they might be revealing inadequacies which might lead to problems in their careers.

I want now to reflect for a little while on some of the issues relating to education and training which may be needed for judges some few years from now.

In 1979 the European dimension had hardly crossed any of our paths: technology extended to the typewriter and the dictating machine: some of us will remember fee notes in chambers operated through a card system. It never crossed anyone's mind that the Lord Chancellor would be so suddenly and discourteously to the judiciary sidelined.

When I reflect on some of these issues about the future it is essential for you to understand that I am not advocating – repeat not advocating – any particular changes. I am merely reflecting on how, looking at it today, things may develop, and doing so confidently and in the certain knowledge that any forecasts are less reliable than any long term weather forecast. That is why these are reflections. And what is more, I can only touch on a number of questions, each of which on its own could form the basis of a lecture. Indeed experts write books about our constitutional changes.

It could be questioned whether after the dramatic constitutional changes of which the Human Rights Act 1998 and the Constitutional Reform Act 2005 were but two, there is room for further change, perhaps more accurately, whether it might be as well to stop and see where we have arrived now before considering further change. If it were in our hands I expect we would.

The changes have been revolutionary. Most of us were brought up on the British constitution identified by Bagehot and Dicey. Professor Bogdanor in his book the New British Constitution observes that the constitution known to Bagehot is dead, and that Dicey's

constitution is dying before our eyes. He suggests that the constitutional reforms over the last 12 years have

“Fundamentally altered the balance between the main institutions of Government – the legislature, and executive and the judiciary”.

But the essential point of his thesis is that the constitutional position is far from resolved. The constitutional arrangements are, in his words, in a state of flux.

Where then may we be going? The separation of powers has been enhanced. The Supreme Court is not the Judicial Committee of the House of Lords. Of itself, my personal view is that there is no change there. As I have said before, the former Law Lords were not lambs who have, by virtue of becoming Supreme Court Justices, suddenly been transmogrified as lions. I suspect that anyone who studied the work of the House of Lords over these last years would agree that they had been lions all along. So there's no change there. But there is a huge symbolism in the physical movement of the court out of the Houses of Parliament.

The 2005 Act according to Professor Bogdanor acknowledges that the judiciary is a “third branch of Government”. The principle of judicial independence is recorded in statute. Ministers are required to uphold the principle of judicial independence. Of course I am pleased about that. But I do not believe for one moment that this statute notwithstanding, the responsibility of the judiciary to maintain and if necessary insist on its independence of the executive has been reduced by one iota.

The creation of the Judicial Office for England and Wales, to support the judiciary when carrying out administrative functions, all previously carried out by the Lord Chancellor's Department, was in truth a revolutionary step but a very quiet revolutionary step. Its creation underlined the new responsibilities of the judiciary. The office is in its infancy. It will grow to maturity just as the JSB has grown to maturity.

The question whether the current Constitutional Reform Act arrangements will turn out to be set in stone, and remain unchanged for the next 25 years, or whether in 5 years time we shall be looking back at the current arrangements, and recognising that they were merely temporary, is open to question. We need to think about this. We do not yet know. But as we are in a state of flux, let us just reflect briefly on some of the possibilities.

One significant question which has to be resolved is whether HMCS should in future become the exclusive responsibility of the judiciary. That would be a mammoth change. What we do know that if there is any move to increase the administrative burdens on the senior judiciary by putting the entire system for which Her Majesty's Court Service is currently responsible into their hands, these arrangements must be implemented so as to ensure that senior judges will continue to sit in court producing judgments. That's what I like doing, but even if I didn't, it is my job. Otherwise would be an indication of failure. So we cannot lead the judiciary by sitting in our offices, overwhelmed with administrative responsibilities: we must sit in court, deciding cases. And so the process and the advantages it may have is not to be contemplated without a very careful examination of the resources available to the judiciary to undertake these responsibilities, and an analysis of how such a change might properly fit into their contemporaneous context, that is, yet further changes in the constitutional arrangements.

Another feature running in synchronisation (and I am not advocating it, but it may) is to recognise, first, that increasing devolution within the United Kingdom almost certainly lies ahead, and that the current arrangements for the administration of justice in Wales may be very different in 10 years time. We are reading in our papers this very week of suggestions

that the House of Lords, as the second constituent of Parliament, will be reformed into extinction. In the meantime, the Supreme Court has responsibility for addressing some of the consequences of the devolution arrangements.

There is a long list of possible changes to our structures. You can think of them for yourselves. But they may all have knock on effects, and following the logic of the creation of the Supreme Court of the United Kingdom, a worrying bell is ringing. I think the time may come when it will be proposed that there should be a more formal mechanism by which the judiciaries of Scotland and Northern Ireland as well as those of England and Wales, and perhaps the Supreme Court of the United Kingdom, should not only co-operate more closely together, that is no problem, but that a formal constitutional body will be created through which the different judiciaries should have formal communication with the legislature and the executive for formal discussion of matters of common interest, in something that I describe as a kind of Conseil d'Etat. That I am not advocating.

Changes of this kind would draw the judiciary too closely into policy making decisions, and therefore political decisions. And if we become increasingly politicised, and a politicised judiciary is anathema to me, and I suspect to each and every one of you, not least because if we allow ourselves to become politicised, our judicial independence will inevitably be threatened. But you can imagine the beguiling blandishments, and we must warn ourselves against them, although there were no blandishments, beguiling or otherwise, about the announcements that the Lord Chancellor would be abolished, or that his department would take over the Prisons, something which caused the judiciary much concern. I do not for one moment imagine that such changes will come in the next 10 years, or even fifteen years, but as they say, a week in politics is a long time, and 20 years is eternity. It will be the young among you here who will have to face up to these sorts of challenges arising from uncertain and unfinalised constitutional changes, and deal with them.

In 20 years time I believe that the judiciary will be different from the judiciary trained today by the JSB. There are within Baroness Neuberger's report a series of suggestions which, could – I am suggesting no more than “could” – produce a career judiciary. The example of some of the continental systems suggests to me that this is not a course to be embraced, because certainly some of those systems are at least beginning to open up the possibility of successful practitioners entering the judiciary. But putting that to one side, there are two significant changes that seem to me inevitable.

First, we must create a system which stops potential applicants for judicial appointment in effect self-selecting themselves out of appointment, because they will not make an application, sadly believing that there is something about them, the wrong background, the wrong skin colour, the wrong gender, whatever it may be, which means that their application, if they make one, is doomed to failure. We must do away with such myths. This is a responsibility of the current judiciary, and in my view, comes within the ambit of the Judicial Studies Board. But not just the Judicial Studies Board. All current members of the judiciary must be involved.

The second change relates to judicial appraisal. We do have to tackle the lack of a system of appraisal. Just take one aspect.

Surely the day should come when no one who is appointed as a full time judge should not have been appraised when sitting as a part-time judge. Of course, every effort is made to ensure that only the best applicants, and those best qualified for appointment, are appointed, and everything is done to gather the evidence to make that decision. But, dealing with it simplistically, what better evidence can there be than the evidence of how the individual in question behaves (and I do not merely mean whether he or she is pleasant and polite, or not) but how the individual behaves in the overall discharge of his or her judicial responsibilities.

Does this man or woman show judicial patience, and humility, and fortitude, and wisdom, and balance, and fire? Is this person fired by an enthusiasm to do justice according to law? That information is available. It is available from the work in court. We are not yet in a position to tap into it. The expense would be considerable. But it would, in my view, enhance the selection process, and improve the perception of the selection process. It is only if you believe, and I do not, that judicial skill is entirely intuitive that you reject training and appraisal. That would raise questions about the true role of the JSB. I quite accept that attendance at seminars should not form part of an appraisal system. But in the context of a Judicial College, appraisal of individuals sitting in court might properly fall within the responsibilities of an expanded JSB, perhaps in a newly created part of it.

All these ambitions require focus on the Judicial College, about which Michael Mustill spoke, some 25 years ago now. But would it serve to widen the pool from which judges are chosen, by attracting some of those who presently would self de-select and enabling others who are uncertain whether to seek judicial appointment to consider whether to apply, or at least to be better informed about it, and ultimately enable the system for appointment of judges to be improved, and ensure that once appointed their education will continue. At a time of financial stringency, it is quite unrealistic to anticipate the early creation of the College, but it should remain, and I fervently hope it will remain, a long term ambition for the JSB and will one day come to fruition.

And the JSB is bound to have to address Europe.

I'm not going to comment on the different views expressed by our political parties on the issues of Europe, and the Strasbourg court, and I am avoiding any inappropriate discussion of the topic, because such political debate is not for a holder of judicial office. But I can discuss some non political matters and perhaps I should begin with the European Court of Justice.

You all know that the decisions of that court bind our domestic courts. That is a consequence of our domestic legislation. As a matter of statute the decisions of the European Court of Human Rights in Strasbourg do not bind our courts. The statutory obligation on our courts is to take account of the decisions of the court in Strasbourg. I have no problem with this. Naturally, the decisions there must command our respect. This is the court with ultimate responsibility for the convention itself. We can follow the reasoning and if possible identify and apply the principle to be found in the decisions, particularly those of the Grand Chamber. But I venture to suggest that that is not because we are bound to do so, even if the decision is that of the Grand Chamber, or because the Supreme Court is a court subordinate to the Strasbourg court, but because, having taken the Strasbourg decision into account and examined it, it will often follow that it is appropriate to do so. But it will not always be appropriate to do so. What I respectfully suggest is that statute ensures that the final word does not rest with Strasbourg, but with our Supreme Court. But however that question is approached, the further development that has to be addressed is that the European Court of Justice is beginning to acquire jurisdiction over matters that would normally be regarded as matters not for Luxembourg but for Strasbourg. Before I come to it I want to express another concern.

Too many decisions from Strasbourg, and too many domestic decisions, are cited in argument, and, I'm sorry to have to say this to my brother and sister judges, in all our judgments. Part of this is a manifestation of the extraordinary way in which the forensic technique has changed, and part at any rate the result of the development of modern technology. All the cases on the point are assembled, and put into the skeleton argument. That skeleton argument is saved. When another case emerges, from whatever source, Europe or England and Wales, from any part of the European system, and unreported cases

in this jurisdiction joining hands with and achieving spurious importance by being linked with an earlier reported case. The process is just too simple.

Professor David Ormerod told me that he worked on the principle that for each case he added, he takes one out. That is salutary. Thus the only cases added are important. Many skeleton arguments would be a lot shorter if the person responsible for them was required to write it out by hand. I also think that our bundles of papers would be radically cut, if the only documents looked at by the court were those which had been copied by hand. With the decisions of the European Court, however, there are occasions of forensic blindness.

Very often, too often, we are asked to consider decisions from Strasbourg – you see them all listed - which have already been considered or must have been considered in the House of Lords or the Supreme Court. That is the decision which binds us. After all, once the Supreme Court has considered decisions of our Court of Appeal, the authority of those decisions evaporates. Who quotes a decision of a Court of Appeal once the Supreme Court has considered the case? No one. Surely we should apply the same rigour to decisions from Europe.

In other words once the Supreme Court has considered the relevant decisions from Strasbourg, we need to employ a powerful self denying ordinance against allowing further citation of decisions on the point which provide no more than an illustration of a principle which has been encapsulated in the decisions of the Supreme Court. Am I alone in thinking that we are being presented with far too many so called authorities, both our own and from Europe, which do not bind us at all domestically.

We are, I believe, tending to forget that the point that matters in any authority that is cited to us is to discover, using the Latin, the *ratio decidendi*. If we cannot discern the ratio, the decision is not authority for anything save for getting a few helpful quotes which advocates should be able to put into a few words of their own anyway. So I'm hoping the JSB will start teaching our judges to refuse to allow counsel to cite what are often no more than unreported decisions, which do not help to identify the principle, but merely illustrate its application. But it is surely up to us to start the process and to insist on it here and now, with immediate effect. If we do not get a grip we shall bury our system under a mass of paperwork.

The primary responsibility for saving the common law system of proceeding by precedent is primarily a matter for us as judges. And while we are about it, perhaps we should reflect on the way in which I detect that our Australian colleagues (and those from other common law countries) seem to be claiming bragging rights as the custodians of the common law. Do they have a point? Are we becoming so focussed on Strasbourg and the Convention that instead of incorporating Convention principles within and developing the common law accordingly as a single coherent unit, we are allowing the Convention to assume an unspoken priority over the common law. Or is it that we are just still on honeymoon with the Convention? We must beware. It would be a sad day if the home of the common law lost its standing as a common Law authority

Can I turn to an additional element of the European dimension which will impinge both on us as judges and on the Judicial Studies Board. The European Union is about to expand not simply its influence but its jurisdiction over criminal matters. The European Arrest Warrant was the first major instrument of community law in the area of criminal law. The impact of the European Union on criminal law is now increasing.

The first significant change which will affect most criminal courts is the implementation of the framework decision on criminal convictions, which will take place on 15 August 2010. It will require domestic courts to take account of previous convictions wherever returned in the community in the same way as they take account of domestic previous convictions. A

certificate of conviction is sufficient for this purpose. No doubt much attention will be paid to the method of verification of the European certificate of conviction, and so on, but the change, although not shattering in itself, provides a foretaste of things to come. The EU has recently signed up to what is called a “roadmap” of five areas of criminal procedure which must be addressed within the next 5 years to protect and guarantee the rights of EU citizens. I thought that was the job of the Convention.

I have no problem at all with the principle that there should be proper translation and interpretation for an EU citizen in another EU country, or with the right to information about his or her rights and the charges brought, or the right to legal advice, with special safeguards for vulnerable persons, or the right to periodical review of the justification for pre-trial detention. This is not news to us. This is part of established domestic law, and it is part of Convention law. In general terms we have always assumed that the fairness of trial processes, and of the trial itself, were the sole preserve of the Strasbourg court rather than the Luxembourg court. The Treaty of Lisbon has brought criminal justice matters to the core of the EU and with it the jurisdiction of the Luxembourg court. Now the UK has a difficult decision to make. I am not commenting on what the right decision would be because it is a political decision, but it must be made. The principle of qualified majority voting has been extended to measures relating to judicial co-operation in criminal matters, and so if the United Kingdom opts out it could find itself outside the majority, and therefore unable to influence the development of EU criminal justice policy. Under the Lisbon Treaty the United Kingdom will have to decide whether to opt into new criminal justice instruments and whether to participate in the existing body of EU criminal justice and with it the jurisdiction of the Luxembourg court.

A number of specific matters arise, if this happens. All these changes will have to be considered in the context of our own adversarial criminal justice system, in which juries try the most serious cases, and the inquisitorial system which is available in most EU member states, where the jury lacks the constitutional primacy we give to it, and where, unlike us, there is a significant over-lap between the career structures for judges and prosecutors. Now, I do not have the time to develop an analysis of the potential consequences but can we consider it?

I simply remind myself that if we opt in, decisions of the Luxembourg court on issues arising out of the Treaty of Lisbon, even to the extent that they involve criminal matters, would become binding on us all. And we may have the spectacle of the Strasbourg court ruling on problems arising out of the consequences of our enforcing binding decisions of the Luxembourg court about which the litigants will have to complain to the Strasbourg court, though distressingly they would not be able to complain in our own courts. And these matters need us to think rather closely and address how to approach the decisions in Strasbourg in the way which our domestic legislation requires.

The other aspect of these potential developments in EU law, and the acknowledgement within the EU of the need to ensure its consistent application, judicial training will be involved.

The Stockholm Programme, sets out the strategy for justice for the next 5 years, and includes the pursuit of what are described as systematic European Training Schemes “to be offered to judges, prosecutors, judicial staff, police, customs officers and border guards. The ambition for the Union and its member states should be that a substantive number of professions by 2015 will have participated in the European training or an exchange with another member state,... for this purpose existing training institutions should in particular be used”.

There are problems around these matters, and indeed there has been much discussion among our political parties about the Convention. So I shall not enter further into turbulent

political waters. It is, however safe to anticipate that unless there are some dramatic changes, new and additional training requirements will be required before too long, and that the development of the European Union, and the extended jurisdiction of the European court in criminal matter, will have a significant impact domestically. Twenty years down the line, where will we be? And so I come to technology.

We obviously welcome modern technology. We must welcome scientific advances. DNA has been a remarkable success. It achieves the conviction of the guilty. It undoubtedly helps to clear the innocent. I recently sat in on a hearing at which a man had his conviction quashed after serving 28 years in prison for a crime he did not commit. The DNA evidence proved that and showed who did commit it. Recorded police interviews have done away with some of the nonsenses with which we had to contend. Video recording of a child's evidence represents a huge step forward, provided that the method questioning of the child is careful, wise and sensitive. I am far from convinced that we have arrived at our ultimate destination here, but the combination of new technology, as it was in 1979, with special measures, does represent a significant step forward.

The impact of technology in the future led Professor Richard Susskind to write a book entitled *The End of Lawyers?*. As he points out himself, the question mark is an important aspect of the title and the thesis in his book. He is not making any assertions, but he is asking a question. Will the technology available to day make it possible for people to dispense with lawyers?

Let me begin at where we stand today. Did we appreciate when I joined the JSB in 1984, the technological changes which would hit us over the next 25 years? I doubt it. Did anyone anticipate that the good old cheque would be under threat? At that time we were going to do away with the threat of cheque fraud by issuing everyone with a card which would make it impossible to defraud one's cheque account.

What I know about the next 25 years is that we cannot begin to forecast where they will take us. But I would suggest two points about technology which will have a dramatic impact on all our lives, and inevitably, on the processes by which justice is administered.

First, a few words about the jury system. At the risk of repeating what I have said elsewhere, the process by which the children of today are educated is very different from my own, or probably yours. We sat in class and listened, or tried to listen. In the listening process we absorbed information. It was, being utterly facile, something of a preparation for jury service. Jurors sit and listen. They may make notes, but the process involves sitting and listening. The learning process for my granddaughters involves very little listening. Largely it is visual, screen based, but also book based. But listening is a much diminished aspect of the process.

Now, one day they are going to be jurors. I suggest that it is inevitable that the process by which we provide them with the tools to enable them to form their decisions will have to change. If they are to perform their public function, they must be provided with the tools most suitable for them to do so, not those which were regarded as appropriate for earlier generations. This will have an inevitable impact on the trial process. And while we are about it, can we determine now, as we stand here today, that such changes will not take the form of bombarding juries with more and more material. The young will concentrate differently. How will we look after them?

There is, however, a second potential for modern technology about which I think we must warn ourselves. Some of you will have heard of the Virtual Court. Very briefly. The defendant is arrested and charged in the normal way. Through an electronic diary system a slot is found for a hearing either that day or the next day. The defendant is either remanded or given conditional police bail, the condition being his appearance at the police station at

the appropriate time for the hearing. The necessary paperwork is dealt with electronically. The court and the CPS and the defence are provided with the necessary materials. The defence solicitor may choose to attend the virtual hearing either with his client at the police station or at court while the defendant appears via a video link from the police station. All very good. The defendant then appears in from of a TV screen in a police interview room with a live link to the court. Proceedings then follow the usual pattern and serious offences are tried in the usual way. The system has worked pretty well in London, but it has yet to be used in large country districts. Much time and resource is saved. The number of out of court disposals is reduced, so matters are brought back into court where they should be heard. On the other hand the process is much less formal.

There are still plenty of teething troubles. I personally strongly favour the use of the virtual court system, especially for magistrates' courts. But, and it is the but that I want to trouble you with, although the virtual court represents a sensible, practical use of modern technology (and is therefore to be welcomed) we must watch and guard against the possibility that it will gradually develop, by small paces, into a system which will mean that we virtually do away with the court altogether. I'm not suggesting that it will happen, but that we must be alert to it. After all if the defendant, and his solicitor, and the CPS, and the magistrates can all be on video systems, as a matter of technology so can everybody else. I do not want to see the day when the judge is sitting in his room and every member of the jury is provided with the necessary technology, and by the judge pressing a few buttons, the court hearing becomes a thing of the past. We would be then dealing with a system which is tantamount to closed justice, not a system any of us would wish to contemplate. That would never be acceptable.

I am sorry that this has taken so long. There is much to reflect on, much to look forward to, and plenty to guard against. That is always the way with the future.

I am indebted, as I think we all are, to the Judicial Studies Board. As I said earlier, it is the success story of the system. And my personal belief is that over the next 30 years that success will become more deeply embedded than ever. But, as always, what's to come is still unsure.

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