APPEAL'S SUBMISSIONS TO LEVESON REVIEW

1. We write with submissions in response to the Ministry of Justice led review announced on 12 December 2024 (submissions due by 31 January 2025).
2. The Review has been called in response to the backlog of cases in the Crown Court which have developed over the last few years. This backlog now sits at '73,105 - nearly double the 38,000 seen before the pandemic'.[1]
3. The Review is prefaced with suggested 'reforms' which appear to prejudge the findings of the review namely:
    - The reclassification of offences from triable-either-way to summary only.
    - Consideration of magistrates' sentencing powers.
    - The introduction of an Intermediate Court.
    - Any other structural changes to the courts or changes to mode of trial that will ensure the most proportionate use of resource.
4. This is not the first time that there has been an attempt to reduce jury rights in recent times. Lord Justice Auld conducted a similar review in 2001. Such proposals were rejected, and the objections at the time remain pertinent:
    - Bar Chairman, David Bean QC, stated, *'People trust juries and ministers must trust the people'*.[2]
    - The British philosopher, AC Grayling, stated, *'A jury is a palladium of liberty against arbitrary authority'*.[3]
    - Paul Mendelle QC, Chairman of the Criminal Bar Association, asserted a similar point ten years later, *"Trial by jury helps the criminal justice system reflect the values and standards of the general public. It's vital for the health of the criminal justice system that citizens participate in it and it is vital for democracy that they do, which might explain why politicians are always seeking to limit that participation"*.[4]

[1] https://www.gov.uk/government/news/courts-reform-to-see-quicker-justice-for-victims-and-keeps-streets-safe.
[2] Claire Dyer, *'Bar chairman rounds on jury trial curbs'*, *The Guardian*, 17 December 2001.
[3] AC Grayling, *'The Last Word on Juries'*, The Guardian, 2 Feb 2002, p.8.
[4] https://www.theguardian.com/commentisfree/2010/feb/21/juries-work-best-research.

5. Without doubt the court system is in crisis. Removing jury trial rights is not the answer to that problem.

Juries - Central Part of Democracy

6. Since the Auld Review, Senior Judiciary have continued to affirm the central importance of the jury system to the criminal justice system.
7. Lord Steyn stated in 2004,

   "The jury is an integral and indispensable part of the criminal justice system. The system of trial by judge and jury is of constitutional significance. The jury is also, through its collective decision-making, an excellent fact finder. Not surprisingly, the public trust juries."[5]

8. Lord Bingham said in 2005,

   "[The public] over many centuries has adhered tenaciously to its historic choice that decisions on the guilt of defendants charged with serious crime should rest with a jury of lay people, randomly selected, and not with professional judges. That the last word should rest with the jury remains, as Sir Patrick Devlin, writing in 1956, said (Hamlyn Lectures, pp 160, 162), 'an insurance that the criminal law will conform to the ordinary man's idea of what is fair and just. If it does not, the jury will not be a party to its enforcement .... The executive knows that in dealing with the liberty of the subject it must not do anything which would seriously disturb the conscience of the average member of Parliament or of the average juryman. I know of no other real checks that exist today upon the power of the executive."[6]

9. The current Prime Minister asserted when Director of Public Prosecutions, in 2010, *"I'm strongly in favour of jury trials, as I think most people are, but I do recognise that in very exceptional cases trials will have to proceed without a jury...*

[5] R. v Mirza (Shabbir Ali), 2004 WL 61975
[6] R v Wang (Cheong), 2005 WL 62329

That has to be on the order of a court, so the general and overriding presumption should be jury trial, with very, very limited exceptions." [7]

10. Former Conservative Lord Chancellor, MP Dominic Grieve said in 2013 trial by jury "*is an essential element of the justice system of England and Wales. It is deeply ingrained in our national DNA*."[8]
11. In the United States, the right to a jury trial in criminal prosecutions is guaranteed by the Sixth Amendment.[9] The Supreme Court has interpreted the right to be absolute for any offence with a sentence potentially exceeding six months imprisonment.[10] For offences punishable by six months or less, the right to a jury trial is not guaranteed by the federal Constitution, though most state constitutions go further in their guarantee of a jury trial, leading to only the lowest-level offenses, including those only punishable by fine, being without a guaranteed right to a jury trial.
12. Whilst miscarriages of justice cases have involved a jury wrongly deciding guilt, often the reason is because a distorted evidential picture has been put before them. Common examples include where there has been inadequate disclosure of material to the defence or where faulty expert evidence was given, such as the infamous Skuse test in the Birmingham Six case.

Judicial Bias

13. In 1976 J A G Griffith wrote his seminal book *The Politics of the Judiciary*. The book has now gone into its fifth edition, his thesis being:

> *"the judiciary cannot act neutrally but must act politically. He shows, by examining specific cases, how the senior judiciary, constrained by their own self-imposed limitations, frequently fail sensibly to interpret the public interest"*.

[7] https://www.thelawyer.com/keir-starmer-a-radical-lawyer-gets-tough/
[8] https://www.gov.uk/government/speeches/in-defence-of-the-jury-trial (11 December 2013)
[9] https://constitution.congress.gov/constitution/amendment-6/
[10] *Baldwin v. New York*, 399 U.S. 66 (1970)

14. Griffith's starting point for that proposition identified the number of judges from Public School backgrounds had increased between 1987 and 1994 – from 70% to 80%, and 80% to 87% respectively were from Oxbridge (1997).
15. Whilst the ratio has changed since, it was reported in in 2014 in *Counsel* magazine that:

> *"The judiciary topped the elite list: 71% of senior judges attended independent schools (compared to 7% of the public as a whole) – and 75% attended Oxford or Cambridge (compared to 1% of the public). Only 4% of 150 senior judges went to comprehensive school – the lowest figure for all groups".*[11]

16. More recently in 2019 the Sutton Trust found:

> *"that 65% of the most senior judges in England and Wales went to an "independent school" — more than any other elite profession it looked at. Only 7% of the general population was privately educated".*[12]

Acquittal rates

17. Unsurprisingly given juries are more representative of society the acquittal rates are higher in the Crown Court than in the Magistrates Court. **For cases prosecuted in 2021 and 2022 which went to trial:**
    i. **71% result in conviction when heard in Magistrates court**
    ii. **56% result in conviction when heard in the Crown Court** [13]
18. Removing the Right to Jury will clearly exacerbate the record number of prisoners we currently have in prison, which has doubled in the last 30 years. The Government have a separate review by David Gauke who has said:

> *"Clearly, our prisons are not working. The prison population is increasing by around 4,500 every year, and nearly 90% of those sentenced to*

[11] CJ McKinney, 'Social mobility fail: two thirds of top judges went to private schools', *Counsel*, June 25 2019.

[12] https://www.legalcheek.com/2019/06/social-mobility-fail-two-thirds-of-top-judges-went-to-private-schools/#:~:text=The%20share%20of%20top%20judges,2014%20and%2075%25%20in%202004.

[13] https://www.adruk.org/news-publications/publications-reports/data-insight-deciding-to-have-a-crown-court-jury-trial-for-a-theft-offence-consequences-and-relationships-with-ethnicity/

custody are reoffenders.

This review will explore what punishment and rehabilitation should look like in the 21st century, and how we can move our justice system out of crisis and towards a long-term, sustainable future." [14]

The Judiciary and Miscarriages of Justice

19. The judiciary's record on renowned miscarriage of justice cases is peppered with injudicious commentary which should provide fair warning against providing them with greater jurisdictional ambit to convict.
20. Lord Denning, who was Master of the Rolls for some 20 years, said of the Birmingham Six in 1990:

> *"We shouldn't have all these campaigns to get them released if they'd been hanged. They'd have been forgotten and the whole community would have been satisfied."*[15]

21. Ten years earlier when Lord Denning rejected their case for assault by the police he said,

> *"Just consider the course of events if their action were to proceed to trial... If the six men failed it would mean that much time and money and worry would have been expended by many people to no good purpose. If they won, it would mean that the police were guilty of perjury; that they were guilty of violence and threats; that the confessions were involuntary and improperly admitted in evidence; and that the convictions were erroneous... That was such an appalling vista that every sensible person would say, 'It cannot be right that these actions should go any further."*[16]

[14] https://www.gov.uk/government/news/landmark-sentencing-review-launched-to-end-prison-crisis.
[15] https://www.legalcheek.com/2017/11/7-of-lord-dennings-most-controversial-comments/
[16] https://www.legalcheek.com/2017/11/7-of-lord-dennings-most-controversial-comments/

22. Denning also sullied the Guildford Four, pronouncing that if they had been hanged, *'They'd probably have hanged the right men. Just not proved against them, that's all.'*[17] (1990) And also said,

    "It is better that some innocent men remain in jail than that the integrity of the English judicial system be impugned."[18]

23. Lord Donaldson, who was trial judge for the Guildford Four said of them in 1975:

    > *"I feel it is my duty to wonder aloud why you were not charged with treason to the Crown, a charge that carries the penalty of death by hanging. A sentence I would have no difficulty passing in this case."*[19]

24. During the summing-up of the Birmingham Six case the trial judge 'attempted to discredit the prison doctor by suggesting that he must have been covering up for his colleagues'.[20] When Lord Lane refused the appeal of the Birmingham Six, he upheld the convictions stating: "The longer this case has gone on, the more convinced this court has become that the verdict of the jury [at Lancaster crown court in 1975] was correct."[21]
25. In the trial of Bridgewater Four the trial judge told the jury 'that they might have no hesitation 'in concluding that the farm was raided that day by a number of men, possibly four, and that they went there in two vehicles..' in fact the state of the evidence was much less conclusive than this'.[22] In 1989 the Second Appeal of the Bridgwater Four was heard, by Lord Justice Russell, Justice Leonard, Justice Potts: "Court of Appeal rejects the appeal and upholds original charges after longest appeal hearing on record."[23] Eight years later their convictions were quashed.

[17] https://www.justinian.com.au/featurettes/i-once-met-lord-denning.html
[18] https://www.justinian.com.au/featurettes/i-once-met-lord-denning.html
[19] Morrell, Jill. No Smoke Without Fire.
[20] John Jackson, Chapter in Miscarriages of Justice edited by Clive Walker and Keir Starmer, p.199.
[21]https://www.theguardian.com/uk/2005/aug/23/ukcrime.alexkumi#:~:text=At%20the%20time%20of%20the,haunt%20him%20throughout%20his%20retirement.
[22] John Jackson, Chapter in Miscarriages of Justice edited by Clive Walker and Keir Starmer, p.199.
[23] https://www.independent.co.uk/news/nineteen-years-of-legal-wrangling-1279713.html

26. Winston Trew, one of the 'Oval Four', appealed his 1972 conviction at the time. The appeal court judge, Lord Justice James, said that he hoped they appreciated the 'gravity' of their offences and would not see the small reduction of their sentences as a 'sign of weakness.' Nearly 50 years later Trew's conviction was finally quashed.[24]
27. In its 2006 upholding of APPEAL client Andrew Malkinson's conviction, the Court of Appeal described the eyewitness identification evidence presented against him at trial as "compelling",[25] even though he did not match the victim's description in striking ways. In 2023, the Court of Appeal quashed Mr Malkinson's conviction after DNA evidence implicated another man,[26] with the then Lord Chancellor stating that he had "suffered an atrocious miscarriage of justice".[27]

Judicial issues on diversity

28. There remain ongoing concerns about prejudice amongst Judges. The Survey on Racism in the Judiciary (2022) found:[28]
    i. "A survey of 373 legal professionals found that 56% stated they had witnessed at least one judge acting in a racially biased way towards a defendant, while 52% had witnessed discrimination in judicial decision-making."
    ii. "Examples ranged from hostility towards black defendants, including the use of the term 'you people,' to the imposition of harsher sentences, as previously highlighted by the Lammy report."[29]

[24] https://www.theguardian.com/world/2019/oct/13/oval-four-could-have-decades-long-convictions-overturned
[25] *R v Malkinson* [2006] EWCA Crim 1891, para. 39.
[26] *R v Malkinson* [2023] EWCA Crim 954.
[27] https://www.gov.uk/government/news/government-orders-independent-inquiry-into-handling-of-andrew-malkinson-case.
[28] https://www.theguardian.com/law/2022/oct/18/judiciary-in-england-and-wales-institutionally-racist-says-report
[29] https://www.theguardian.com/law/2017/sep/08/racial-bias-uk-criminal-justice-david-lammy

29. The Lammy Review found that many Black and Minority Ethnic (BAME) defendants do not "believe they will receive a fair hearing from magistrates".[30] The Review also identified "worrying disparities" in how BAME women are judged in the Magistrates' Courts, with Black women, Asian Women, Mixed ethnic women and Chinese/Other women "all more likely to be convicted than White women."[31]

Police Discrimination

30. This judicial bias coincides with the problem of serious discrimination within the police force, which shows no sign of abating. The Casey Review in 2023 stated things were so bad:

"The Met can now no longer presume that it has the permission of the people of London to police them. The loss of this crucial principle of policing by consent would be catastrophic. We must make sure it is not irreversible." [32]

31. The Mayor Sadiq Khan recognised the seriousness of the situation:

"The evidence is damning. Baroness Casey has found institutional racism, misogyny and homophobia, which I accept."[33]

32. To choose this time to remove the right to jury trial would provide some comfort to the worst elements within the police, who would avoid the anxiety of being answerable to and being held to account by a jury.

Either-Way Offences

33. The suggestion that we remove the right to a jury for either-way offences will have a serious impact on a defendant seeking a fair trial. Either-way offences are

[30] The Lammy Review Final Report, p. 27.
[31] The Lammy Review Final Report, p. 32.
[32] https://www.met.police.uk/SysSiteAssets/media/downloads/met/about-us/baroness-casey-review/update-march-2023/baroness-casey-review-press-notice.pdf
[33] https://www.theguardian.com/uk-news/2023/mar/21/metropolitan-police-institutionally-racist-misogynistic-homophobic-louise-casey-report

serious offences, where loss of liberty is at stake. The offences can carry significant maximum sentences.

34. The subpostmasters were subject to prosecution for either-way offences. Flora Page KC, who represented three postmasters at the Court of Appeal and acted for more in the Post Office inquiry told the 2024 bar council conference that 'some judges had failed by not ordering disclosure of material that would have exposed the bugs and faults in the Horizon software'.[34] Removing the right to jury would not help stop future cases of this nature.
35. Violent Disorder is an either-way offence. It is an extremely serious offence carrying a maximum sentence of 5 years. The sentencing guidelines make clear that in the large majority of cases a custodial sentence is almost inevitable even following a guilty plea.[35] Over a number of years there have been complaints that the police have sought violent disorder charges against protestors, rather than lesser offences. There have been a series of high-profile trials where juries have acquitted protesters where the protestors defence has been of acting in self-defence against the police, including: Rotherham 12[36], Alfie Meadows[37], Gaza Protests – Jake Smith[38], Black Lives Matter[39] and Kill the Bill Protest[40]. It is more than questionable whether judge-only trials would have come to the same conclusion. A significant number of judges are former prosecutors used to working with the police, and are more likely to believe the official version of events.
36. A famous example of the importance of jury trials is that of Clive Ponting.[41] He was a civil servant who stood by his conscious to expose official secrets in the public interest as the government public account about the sinking of the Belgrano in the Falklands war was untrue. Despite being directed by the trial judge to convict, the

[34] Catherine Baksi, *'Judges failed postmasters, says former DPP'*, Law Society Gazette, 10 June 2024.
[35] https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/violent-disorder-2/.
[36] https://www.theguardian.com/uk-news/2016/nov/16/asian-men-far-right-rotherham-cleared-violent-disorder.
[37] https://www.theguardian.com/education/2013/mar/08/student-tuition-fees-cleared-disorder.
[38] https://www.theguardian.com/world/2010/mar/25/israel-embassy-gaza-protest-video.
[39] https://gardencourtchambers.co.uk/black-lives-matter-protester-acquitted-of-violent-disorder-and-assault-of-two-police-officers/.
[40] https://gardencourtchambers.co.uk/bristol-kill-the-bill-protestor-acquitted-of-violent-disorder/.
[41] R v Ponting [1985] Criminal Law Review 318

jury acquitted. Under these suggested proposals of a judge only trial Ponting would undoubtedly have been convicted.[42]

Single Justice Procedure

37. Any suggestion that more serious cases should be dealt with within the magistrates court should take heed of what has happened with the Single Justice Procedure operating in the Magistrates Court. APPEAL has been part of exposing the iniquities of this Procedure which led to a Gender Disparity Review of those being prosecuted for non-payment of a TV licence.[43] Tristian Kirk's Evening Standard Investigation revealed:
    - "Justice chiefs have apologised after more than 1,000 London court cases were conducted in secret, in a controversial process that prosecutors believe they are forced to use. They were prosecuted through the single justice procedure, a court process which allows magistrates to sit away from open court and make convictions based on written evidence alone."[44]
    - "The public and reporters are barred from attending the court sessions, but when MPs approved the process — used for hundreds of thousands of prosecutions each year — they insisted that details of cases are always shared with the media. Sittings between July and September identified four private sessions at Barkingside, where almost £120,000 in fines were handed out to more than 1,000 defendants, had been kept a secret." [45]
    - A litany of shocking criminal cases including elderly pensioners, cancer patients, and people with severe learning difficulties being convicted and fined behind-closed-doors.[46]

[42] It is believed S.2 of the Official Secrets Act 1911 maximum sentence was 2 years and the offence was a triable-either offence.
[43] https://www.theguardian.com/media/2024/feb/29/tv-licence-fee-scandal-1000-people-week-casually-criminalised
[44] https://www.standard.co.uk/news/crime/barkingside-magistrates-court-secret-fines-single-justice-procedure-b1039718.html
[45] https://www.standard.co.uk/news/crime/barkingside-magistrates-court-secret-fines-single-justice-procedure-b1039718.html
[46] https://www.standard.co.uk/news/uk/single-justice-procedure-fast-track-courts-magistrates-justice-system-b1147422.html

- "The Single Justice Procedure—which handles around 40,000 criminal cases every month—needs reform if it is to be seen as fair and transparent, according to the Magistrates' Association, the organisation that represents over 12,000 magistrates in England and Wales."[47]

Characteristics of Today's Crisis

38. This Review encourages respondents to be 'innovative' to help resolve the court backlog. This is a welcome request but for practitioners it seems a little far off the mark given some of the somewhat basic problems that are prevalent and yet to be addressed in the criminal justice system. In 2017, the Institute for Fiscal Studies calculated that in the decade since 2010-11, the Ministry of Justice's budget was to be cut by around 40%. (Spending plans have been revised upwards since then and in 2019-20 the total Ministry of Justice budget was around 25% lower than in 2010-11).[48]
39. As a result practitioners have long since complained about a number of issues which clearly exacerbate trial delays and the crisis. None of the proposed Review changes will address the following features of the criminal justice crisis.

i. Empty Courts.

40. A Daily Telegraph article in October 2024 raised this concern. "Official data show nearly a third of courtrooms – 158 out of 492 – were not sitting amid shortages of judges, lawyers, court staff and a cap on Government funding."[49] "Although Fridays are traditionally quieter days, given courts are reluctant to start trials before the weekend, the official data still show that last week on Thursday 22 per cent, or 110 out of the 498 courts, were not sitting. On Wednesday, it was 19 per

[47] https://www.magistrates-association.org.uk/blog/single-justice-procedure-needs-reform-say-magistrates/
[48] https://commonslibrary.parliament.uk/research-briefings/cdp-2019-0217/
[49] https://www.telegraph.co.uk/news/2024/11/10/courtrooms-sit-empty-despite-record-backlog-of-cases/?ICID=continue_without_subscribing_reg_first

cent, while on Tuesday, it was 18 per cent and 17 per cent on Monday."[50] "The Ministry of Justice has confirmed to the Times that Crown Court sitting days are being capped to 105,000 this year – two per cent lower than the previous year when the number of sitting days was uncapped."[51]

Ii. Judges, Prosecution, Defence barristers not available for hearings.

41. "One in four trials now doesn't go ahead as scheduled. A growing reason is a lack of lawyers. In 2019, only 71 trials were cancelled on the day they were due to begin because a barrister wasn't available for one side. Last year, the figure had risen 20-fold — to 1,436."[52]
42. "Last year, 61 ready-to-start sexual offence trials in the Midlands were adjourned on day one as there was not a single criminal barrister available to prosecute the trial. That did not happen in 2017 or 2019, and happened just once in 2018."[53]

Iii. Inmates not being brought to Court on time or at all.

43. "Overwhelmed prisons are also a major source of court delays: they fail to produce prisoners for hearings. At Snaresbrook, I saw the court wait in vain for a prisoner to appear via video from Manchester. "It's just ringing through. They're not answering," said the court clerk, phone in hand. The judge sighed: "It's a comfort to know that it's not just Pentonville and Thameside that have problems connecting." Eventually the hearing was abandoned. "There's nothing I can do without your client. You can hardly plead guilty on his behalf," the judge told the defence barrister."[54]
44. "Judges regularly fume at Serco, the company that is paid £80mn a year to transport prisoners in southern England to court and accompany them in the

[50] https://www.telegraph.co.uk/news/2024/11/10/courtrooms-sit-empty-despite-record-backlog-of-cases/?ICID=continue_without_subscribing_reg_first
[51] https://www.barcouncil.org.uk/resource/cutting-court-sitting-days-causing-real-concern.html
[52] https://www.ft.com/content/e1118f5d-8333-4261-be24-e8372191953e
[53] https://www.theguardian.com/law/2024/dec/09/court-delays-shortage-barristers-judges-england-wales
[54] https://www.ft.com/content/e1118f5d-8333-4261-be24-e8372191953e

dock, but that often seems unable to do so. Officially prisoner escort companies meet their contractual obligations 99.93 per cent of the time. Serco and the Ministry of Justice both declined to explain how this is calculated. I was told a variety of reasons why prisoners don't turn up, including: Serco lacks enough drivers qualified for 12-seater vans, so has to use small vans that are less efficient; prisoners refuse to come and inexperienced prison officers don't know how to cajole them; prison staff aren't sure where a prisoner is in the jail; and prison overcrowding means prisoners are now scattered in different jails. Serco says it is working "under very challenging conditions", and is trying to recruit more staff".[55]

Iv. Declining court infrastructure leading to courtrooms not being used.

45. "Broken heating, sewage, mould, asbestos and leaking toilets and roofs are among the problems encountered by solicitors in courts in England and Wales, a survey by the Law Society has found. Approximately two-thirds of respondents said they had experienced delays in cases being heard in the last year owing to the physical state of the courts, with their professional body warning that it is contributing to the large backlog. Other problems identified by solicitors included lack of private spaces for client consultations, broken air conditioning, lack of drinking water or other refreshments, poor technology, broken lifts and other accessibility problems, particularly affecting clients and advocates with disabilities."[56]
46. "Almost half said they had experienced cases being adjourned because of the state of the courts, and a quarter had cases that had been transferred to a different venue."[57]

[55] https://www.ft.com/content/e1118f5d-8333-4261-be24-e8372191953e
[56] https://www.theguardian.com/law/2022/dec/19/poor-state-english-welsh-courts-worsening-backlog-law-society#:~:text=Poor%20state%20of%20English%20and%20Welsh%20courts%20worsening%20backlog%2C%20says%20Law%20Society,-This%20article%20is&text=Broken%20heating%2C%20sewage%2C%20mould%2C,the%20Law%20Society%20has%20found.
[57] https://www.theguardian.com/law/2022/dec/19/poor-state-english-welsh-courts-worsening-backlog-law-

V. Court closures.

44. “As violent crime dropped in the 2010s, in Britain, as across many western countries, there seemed to be less need for criminal courts. The government cut barristers’ fees and sold off court buildings: 43 per cent of courts were closed after 2010. (One of these, Blackfriars Crown Court, was later used to film courtroom scenes for Netflix drama Top Boy.)”[58]

“Between 2010 and 2019, over half the courts across England and Wales were closed.”[59]

Some Potential Practical Solutions

47. *Funding:* The crisis cannot be separated from relentless cuts in budget over the last two decades. There is an obvious need for funding to deal with the above critical problems in the justice system.
48. *Ongoing Reviews and allowing adjournments for review*. We suggest alternatives to reduce the court backlog. There are a number of cases that get all the way to trial stage that clearly are very weak and would likely in previous years would have been discontinued much earlier in the system. The removal of committal hearings has not helped this problem. The denial of adjournments has made it much harder to make representations to have cases discontinued at an early stage.
49. *Excessive criminalisation?* The backlog is exacerbated by the volume of cases that arguably should not proceed to trial. Cases maybe proceeding on weak evidential foundations and absence of compelling public interest in prosecution, yet they consume valuable court time and resources. A concern of APPEAL and

society#:~:text=Poor%20state%20of%20English%20and%20Welsh%20courts%20worsening%20backlog%2C%20says%20Law%20Society,-This%20article%20is&text=Broken%20heating%2C%20sewage%2C%20mould%2C,the%20Law%20Society%20has%20found. Also the Economist, 23/2/2023,Why crumbling courts are worsening britain’s trial backlog.

[58] https://www.ft.com/content/e1118f5d-8333-4261-be24-e8372191953e

[59] https://www.lawsociety.org.uk/campaigns/court-reform/whats-changing/court-closures

the campaigning organisation JENGBA,[60] is that the most significant example is the pervasive use of **joint enterprise** (and conspiracy laws), which involve the prosecution of multiple people for one offence. These cases often result in large-scale trials involving multiple defendants and not infrequently result in acquittals for some, or sometimes even most, of the accused. This is due to the absence of clear evidence demonstrating a significant or direct contribution to the offence.

The collective nature of joint enterprise prosecution frequently results in overly broad indictments that lack precision and clarity regarding individual culpability, leading to prolonged and resource intensive trials. Such cases typically span several months and involve lengthy remand periods for multiple defendants, placing considerable strain on prison and court resources, legal aid budgets, and the lives of those involved. As this approach not infrequently results in convictions for only a fraction of the accused, it raises serious questions about its utility and efficiency, and the extent to which it exacerbates current problems. By limiting the use of joint enterprise where evidence of individual responsibility is tenuous, a significant amount of pressure on the courts could be alleviated.

50. *Late Disclosure:* In 2015 the previous Lord Justice Leveson review of efficiency in the CJS commented that '[o]ne of the major issues was the present failure of the police and the CPS to meet deadlines for disclosure.'"[61] "Late disclosure causes all sorts of difficulties within the criminal justice system. It wastes time and resources. It means that cases are delayed and that victims do not see justice. It is a waste of everyone's time, but, as I said, the really serious issues are the miscarriages that may result."[62] "Data provided to us by the CPS shows that between 2013–14 and 2017–18 the number of cases stopped due to disclosure failures increased by 40%.3"[63] It is unclear whether disclosure has improved since but certainly there continue to be trials where very late disclosure to the defence present a very different case. In the case of Liam Allan charged with 12

[60] https://jengba.co.uk/
[61] https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/859/859.pdf
[62] https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/859/859.pdf
[63] https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/859/859.pdf

counts of rape and sexual assault, the late disclosure at trial of exculpatory telephone messages in 2017 led to the case being discontinued avoiding a miscarriage of justice case, after two years of trauma.[64] In the Rotherham 12 case in 2016, 2,000 pages of relevant police material were provided several days after the trial started, which undoubtedly were relevant to the acquittal of all the defendants.[65] If disclosure was addressed fairly and properly it would save an inordinate amount of Court time. In the case of Andrew Malkinson the police succeeded in proceeding to trial when relevant convictions of the identification witnesses which had been requested were not disclosed.[66] A false presentation of their evidence was allowed to be put before the jury. Until there are sanctions for blatant non-disclosure then it will continue, creating cost to the system, and unnecessary trials.

Conclusion: Tried by Peers

51. Ten years ago there were celebrations of the Magna Carta on its the 800th anniversary. The Charter includes Clause 39 stating that no free man could be imprisoned 'except by the lawful judgment of his peers' – social equals – 'or by the law of the land'.
52. The Magna Carta was the first document to put into writing the principle that the king and his government were not above the law. It sought to prevent the king from exploiting his power, and placed limits of royal authority by establishing law as a power in itself. It may be tempting to consider a celebration of the Magna Carta as sentimental but it led to the principle of trial by jury, later confirmed in the Habeas Corpus Act 1679. In the Old Bailey there is a stone to Bushell's case (see image below). Perhaps the most famous case in British history. Bushell was not even on trial, he was a juror, the foreman of the jury. Bushell and his fellow jurors refused to convict two preachers William Penn or William Mead for unlawful assembly in the face of the demand to do so by the Judge. They were all sent to the Tower of

[64] https://www.bbc.co.uk/news/uk-england-42873618
[65] https://www.theguardian.com/uk-news/2016/nov/16/asian-men-far-right-rotherham-cleared-violent-disorder
[66] https://www.mountfordchambers.com/andrew-malkinsons-conviction-unsafe-because-of-police-evidence-disclosure-failures-court-rules/

London but did not buckle. As a result of their bravery they won the right for all future jurors to decide the verdict of those on trial rather than a judge.

53. The right to be tried by your peers remains as relevant to the defendant today. The Penn or Mead of today maybe an anti-racist protester, a subpostmaster, or a black defendant discriminated by the police. Any reduction of jury rights will inevitably in our submission lead to more miscarriages of justice. The integrity of the criminal justice system is therefore at stake.