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Prime Minister

ROSKILL REPORT

As a basis for discussion at the further meeting which you are to hold on 9 January, I attach an assessment of the Roskill Report drawn up by officials in the Departments concerned, together with the first draft of a statement for me to make in the House of Commons on 14 January (to be repeated in the Lords). When the Report is published on 10 January, I propose to put out a short press statement, thanking Lord Roskill and the Committee for the work they have done, giving a general welcome to their Report, and underlining the Government's commitment to stern action against fraud.

2. In sending you the assessment I think that there are three particular points to which I should draw your attention: first, the question of how we should handle the Committee's recommendations about a unified organisation and a Fraud Commission; secondly, how we should respond to their proposal for dispensing with jury trial in certain complex cases of fraud; third, how we deal with the question of peremptory challenge.

Unified organisation; Fraud Commission

*-Banking Body*

3. The Committee's recommendations under these heads deserve careful examination. At the meeting on 31 December, Lord Roskill and Lord Benson appeared to attach much more weight to the former, and did not see the Fraud Commission as necessarily a permanent institution. One possibility would be to set up a Fraud Commission on a temporary basis for the purpose of considering whether and, if so, in what form a unified organisation should be established, and making recommendations to Ministers. I am myself doubtful of the wisdom of entrusting this task to anybody outside Government. There will have to be some knocking of heads together but in practice I think this is best done by a Minister with strong Cabinet backing and such independent advice as he may wish to seek.

Dispensing with jury trial

4. You know that among Ministers who took part in the discussion on 31 January there were different views on this proposal. We need to consider how far the other recommendations by the Committee on such matters as the provision of documents, summaries and visual aids to jurors, the preparatory hearings and the curbing of prolixity will lighten the task of a juror. I hope we can agree at any rate not to make up our minds on this proposal until we have been able to gauge the Parliamentary and public reaction. There are obvious attractions in the proposal, but it would be a mistake to make it the centrepiece of our legislation scheme if it generated such controversy as to put the scheme at risk, and if the rest of the reforms, which are radical, would in fact achieve our aims without it.



Peremptory challenge

5. This subject is already simmering, and the Roskill report will bring it to the boil again. I shall shortly be discussing our general policy with the Lord Chancellor and the Law Officers and putting proposals to colleagues in H Committee. But we must note that Lord Roskill's compelling critique goes well beyond fraud, and should in my view encourage us to boldness in tackling the question next session.

Timetable for further consideration

6. We envisage fairly early debates in both Houses - say within a month from now. Meanwhile I hope that our discussion on 9 January will enable the terms of the draft statement to be settled quickly, and provide guidance for the further work to be done so that provisions based on the recommendations which we accept can be included in next Session's Criminal Justice Bill. For this purpose it will be necessary, I suggest, for H Committee to reach detailed conclusions before Easter. I shall keep you fully informed of progress.

7. I am sending copies of this minute to the Lord President, the Lord Chancellor, the Secretary of State for Trade and Industry, the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster and the Attorney General, and to Sir Robert Armstrong and the Governor of the Bank of England.

*Douglas Hurd.*

6 January 1986



FRAUD : ASSESSMENT OF THE ROSKILL REPORT

This assessment has been drawn up by officials in the Home Office in consultation with their colleagues in the Lord Chancellor's Department, the Department of Trade and Industry, the Law Officers' Department, the Department of the Director of Public Prosecutions, and the Treasury. It has the agreement of the other Departments concerned so far as their responsibilities are affected.

Summary

2. The Roskill Committee's recommendations provide a basis for substantial and worthwhile legislation in the Criminal Justice Bill next Session. Subject to the two exceptions mentioned in the next paragraph, we suggest that Ministers could give a broad welcome in principle to the recommendations; but the feasibility of some of the recommendations will require further study, and it would be wise in any early statement to reserve some freedom of manoeuvre on the details, which the Committee probably did not have enough time to consider comprehensively.

It will also be important to establish the scope of the recommendations (the report itself is not always clear on the types of case to which particular recommendations are intended to apply), and their resource implications including their effect on the handling of other types of case regarded as having a high priority.

3. The proposal for a Fraud Commission (Recommendation 2) to oversee the whole process of dealing with fraud cases from the beginning of the investigation to the conclusion of the trial ought in our view, to be considered together with the question of introducing a unified organisation responsible for all the functions of detection, investigation and prosecution, which the Committee says (Recommendation 1) needs to be examined further. Secondly, on juries, the proposal that in "complex" fraud cases it should be possible for the trial to be conducted by a Frauds Trial Tribunal consisting of a judge and two lay members instead of by a judge and jury will be highly controversial, and we do not believe that the report fully establishes



the case for it. Our advice on this issue is that Ministers should defer judgement until they have been able to gauge what the Parliamentary and public reaction is.

We also suggest that the proposal to abolish the right of peremptory challenge should be considered in the wider context of jury challenges generally, which the Home Secretary will be bringing to colleagues in 'H' Committee later this month.

### General Comments

4. The meaning of most of the recommendations is fairly clear. With some, especially those relating to procedure and evidence, the advantages of adopting them are apparent on their face. With others, where there are obviously arguments on both sides, the Committee have not done as much as one might hope to provide a striking and cogent statement of the case for their proposal. They tend to rely more on assertion than argument. That is particularly true in regard to the three recommendations which are most likely to be criticised on civil liberty grounds, namely -

requirement to disclose the defence case (Recommendation 58);

abolition of peremptory challenge of jurors in fraud cases (Recommendation 73);

dispensing with juries in complex cases (Recommendation 82).

These recommendations are all the subject of a fully reasoned dissenting opinion by Mr. Walter Merricks.

5. The recommendations fall into seven main groups: investigation (1-12); law reform (13); procedure for bringing cases to the Crown Court (14-21); evidence (22-30); preparations for trial (31-73); juries (74-99); other matters (100-112) and are considered below in that order.

### Investigation

6. Recommendation 1 is for an immediate examination of the need for a new unified organisation responsible for all the functions of detection, investigation and prosecution of serious fraud cases. We recommend that such an examination should be put in hand at once, with Ministers reserving their position on the outcome.



The present arrangements for inter-agency cooperation were devised to work within the existing distribution of statutory powers and duties. Legislation offers the prospect of being able to break that mould if it were thought right to do so. But there are arguments to be considered against unification: the new Crown Prosecution Service is based on the principle of separating investigation from prosecution; the policy of the Financial Services Bill is to distribute regulatory powers in different sectors among different bodies, and regulation is about much more than detecting fraud; fraud in turn is often just one strand in a wider pattern of criminal activity; the resource implications of setting up a separate organisation to deal with fraud cases need to be studied more thoroughly; and there would be particular constitutional and organisational difficulties in bringing the police, for this purpose, within the ambit of a unified organisation.

7. As to the form of an inquiry for this purpose, we believe that an independent outside committee might well fail to appreciate all the practical considerations; on the other hand, the matter ought not to be left solely to officials in the agencies concerned. We suggest, as one course that might be considered, to inviting a Minister of State with no current responsibility for any of the agencies concerned (though possibly with some relevant past experience) to study the question with the aid of an inter-departmental working party of officials, and to report to the Prime Minister on it. Alternatively, the proposed Fraud Commission (see next paragraph) might be used to carry out the examination; this would call for great care in selecting its members and ensuring that they would be fully seized of the practical considerations.

8. Recommendation 2 is that there should be an independent monitoring body, to be known as the Fraud Commission, to be responsible for studying the efficiency with which fraud cases are conducted. Such a Commission, with no executive functions of its own, could easily turn into a body of armchair critics of everyone from police officers to judges. This could lead to unhealthy conflict rather than to the toning-up which the Committee seem to envisage. Ministers will not wish



to reject the proposal out of hand, but it would be desirable to retain the greatest possible freedom of manoeuvre over the constitution, terms of reference and duration of such a body. The Committee did not propose that the Fraud Commission should be statutory, and we understand that it emerged in discussion at the meeting on 31 December that Lord Roskill and Lord Benson do not see the Commission as necessarily a permanent institution. (If the proposal made above for a study of Recommendation 1 by a Minister were accepted, the recommendation for a Fraud Commission should be remitted also to that Minister for further examination, since both concern the whole process by which fraud cases are dealt with.)

9. Recommendations 3-6 are concerned with the exercise of powers of investigation available under the Companies Act. The DTI already act in accordance with Recommendation 4, and foresee no difficulty over Recommendations 3 and 6.

Recommendation 5 envisages conferring on the police powers of investigation comparable to those available to the DTI under section 447 of the Companies Act. These are drastic powers, and we think that it might be better for the DTI to continue to exercise strengthening the arrangements for co-operation where necessary. Greater thought needs to be given to this. An alternative might be for the powers to be exercisable by police officers only in certain circumstances.

10. Recommendation 7 proposes that a single individual - "a Case Controller" - should be responsible for the control of a serious fraud case from the time of discovery until the verdict. We see this as acceptable in principle, and largely reflecting current practice; but "discovery" is probably too early a stage (there should be a decision that a case is worth pursuing), and further thought needs to be given to protecting the operational independence of the police (which the Government has been concerned to preserve in other fields) and to securing that the Controllers are themselves under control as regards priorities and use of resources.

11. Recommendations 8 and 9 are directed to the role of prosecuting counsel, requiring them to advise as to the direction of the investigation, and to adapt to leading a team of investigators and prosecutors. The recommendations have far

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that they  
disagreed  
about this.



reaching implications for the role of the Bar and, since prosecuting counsel are independent practitioners who are not obliged to take on such work new responsibilities on them without their agreement could not be imposed on them; accordingly we recommend that on these two recommendations there should be consultation with the profession.

12. Recommendation 10 calls for the resources devoted to the pursuit of fraud to be expanded as a matter of priority. The Government's response to this will need to be as specific as possible. It can refer to current plans for strengthening the DTI (now under discussion with the Treasury) and the DPP's Department (nine extra lawyers to be provided, plus support staff.) Police forces have already been invited to put in their extra manpower bids to the Home Office by the end of February, and these will be considered with the needs of the Fraud Squad very much in mind. The Lord Chancellor's Department is continuing to expand the number of judges and court buildings available for the Crown Court, to meet the demands of a generally increasing workload; further resources would be required in these respects to deal with an increase in the number of prosecutions for fraud. But the supply of additional manpower of the right quality, especially in the legal and accountancy professions, is very limited, and efforts will have to be made to draw in more people from the private sector (especially the City) on short service appointments which allow a greater degree of flexibility over pay and other terms and conditions.

Recommendations 11 and 12 refer more specifically to the need for more expert accounting staff in the DPP's Department and in police Fraud Squads, and for the provision of a career structure for officers in the Fraud Squad: these can be accepted in principle.

#### Law Reform

13. Recommendation 13 is for an appropriate law reform agency to examine the issues indicated in the report relating to the substantive law of fraud. The Law Commission has been engaged for some time on a study of the law relating to conspiracy to defraud. The Home Office and the Lord Chancellor's Department



will explore with the Commission what can be done to speed up the conclusion of this review. It would be difficult to incorporate the outcome in the Criminal Justice Bill without expanding the scope of that Bill so that it would be open to amendment and delay on matters relating to the criminal law (as distinct from the criminal trials process) as a whole, and a far reaching review might not in any event be practicable in the time available. But there is one point, concerning the circumstances in which charge of conspiracy to defraud can be brought, which could be within the ordinary scope of a Criminal Justice Bill; the Home Secretary is considering whether to refer this to the Criminal Law Revision Committee for a quick report, but with or without the aid of such a report it should be possible to amend the law on this narrow but significant point in the Criminal Justice Bill.

#### Bringing Cases before the Crown Court

14. Recommendations 14-21 are concerned with enabling fraud cases to be brought to the Crown Court without the defence being able to delay the case by insisting on full committal proceedings. These recommendations seem to us acceptable in principle, but we think it would go too far to allow the prosecution to dispense with committal proceedings in any "fraud" case (a description which is hard to define precisely). We believe that it will be necessary to add other criteria and to look carefully at other details and at the resource implications - in particular, at the effect on resources if decisions on preliminary matters such as applications for legal aid were shifted from magistrates to the Crown Court. Recommendations 22-30 relate to admissibility of documentary and other evidence, and seem to us to be generally sensible; we see no reason why they should be applied in fraud cases only and would recommend accordingly.



15. This group of recommendations - Recommendations 31-73 - envisage a more intensive review of the case at preparatory hearings in the Crown Court, with a view to saving time and money at the trial itself. We believe that this approach has much to recommend it; we recommend that the details and the substantial resource implications should be urgently considered in consultation with the judges, the Bar and others with a view to establishing the feasibility of the proposals before they are embodied in legislation or rules of court. In Parliament, attention is likely to focus on the degree to which the defence will be called upon to disclose its case before the trial. Despite Mr. Merricks' reservation, our view is that the Committee's proposals on this point form part of a package which also makes for much greater openness on the part of the prosecution, and that on merits the package ought to be accepted basically in the form in which it is presented.

### Juries

16. The most controversial recommendation in this group is likely to be Recommendation 82 - that in "complex" fraud cases, falling within certain guidelines, trial by a Fraud Trials Tribunal consisting of a judge and two lay members should replace trial by judge and jury. The Committee's principal argument in favour of the proposal is that in a complex fraud case, perhaps lasting some 20 days, the average juror must be out of his depth and unable to follow the figures and arguments. We do not, however, believe that the report fully establishes the case for this proposal.

The proportion of defendants in fraud cases convicted and acquitted at the Crown Court does not vary much from the proportion for all offences, and there is no evidence of any other general problem affecting all cases of fraud. On the other hand, the complex or technical character of certain cases can cause difficulties for all concerned in the proceedings, including the judge and counsel, who may not themselves have any special knowledge of accountancy matters or the working of the relevant sector of the commercial system. It is true the jurors are less likely as other participants to be familiar with such matters, but it is less certain that their unfamiliarity is of such a different order that their exclusion from the trial of a



highly complex case may be necessary for a just result to be achieved. It would therefore seem advisable at least to await Parliamentary and public reaction to this recommendation before deciding whether it would in any form be regarded as acceptable.

17. The next most controversial recommendation in this group will be Recommendation 78 - that the defendant's right of peremptory challenge of jurors and the prosecution's right to standby potential jurors in any fraud case should be abolished. We see no logical grounds for having a different rule in these matters in relation to fraud cases from that which applies generally. The general question of jury challenge is under review by the Home Secretary, the Lord Chancellor and the Solicitor General, who will be making their views known to colleagues in H Committee shortly. We suggest that the question as it arises from the Roskill Report should be left to be dealt with as part of the wider issue.

18. The other recommendations relating to juries are mostly for no change in the existing law, and on points where the Committee think the law needs re-examination we see no difficulty in taking that course.

#### Other Matters

19. The remaining recommendations - Recommendations 100 - 112 - are on points which will arouse less interest than the proceeding proposals, and are much more matters of detail. We suggest that it would be sufficient to say that these will be carefully considered.

#### Conclusion

20. If the line proposed above on particular recommendations is acceptable, it would be possible for the Government on publication of the report not only to welcome the outcome of the Committee's inquiry but to accept it as a valuable basis for legislation in the next Criminal Justice Bill, reserving its position only on points of detail and in regard to the establishment of a Fraud Commission (which ought to be considered together with the wider organisational questions) and on the proposals for trial on indictment without a jury and (pending discussion in 'H' Committee)



**E.R.**

for the abolition of the right of peremptory challenge. A first draft of a statement on these lines, prepared by the Home Office in the light of this assessment but not yet cleared with other Departments, is attached.



DRAFT STATEMENT

With permission, Mr Speaker, I would like to make a statement about the Report of the Fraud Trials Committee under the chairmanship of Lord Roskill whose Report was published on 10 January.

The Government is most grateful to Lord Roskill and his colleagues for producing with commendable speed such a readable, thorough and radical Report. It deals with a <sup>serious and urgent</sup> ~~problem of growing~~ ~~seriousness and urgency~~. We fully share the Committee's concern that the perpetrators of serious fraud should be brought effectively to book. The report shows that the legal and administrative machinery for this purpose has been creaking badly. We are determined to bring about the changes in law, practice and attitudes which are necessary for that purpose. There are two reasons for this. First, the reputation of our financial institutions, and of the City of London in particular, <sup>needs to be maintained</sup> ~~depends on~~ effective action against fraud. Second, the enforcement of the law in a civilised society must be evenhanded: There must be no escape for offenders simply because their offences are highly complicated or because they can employ large resources to cover them up. Accordingly the Government welcomes the Report as providing a basis for early legislation to achieve substantial reforms of the law in this field, and also for new administrative measures in areas where legislation is not required.

/Responsibility for



Responsibility for the investigation and prosecution of fraud is now shared by the police, the Director of Public Prosecutions, the Department of Trade and Industry and other agencies.

Arrangements for co-operation have been greatly improved in recent

years. <sup>F.I.C.</sup> The Roskill Committee recommend an urgent examination of the need for a new unified organisation, with a Fraud Commission being set up as an independent monitoring body. We accept the recommendation for such an examination, and it <sup>has already been</sup> will be immediately put in hand.

The Committee have called for the resources devoted to the pursuit of fraud to be expanded as a matter of priority. The Government is already taking steps to that end through the strengthening of the DTI (by <sup>200</sup> several hundred staff over the next few years) and the addition to the DPP's Department of nine extra lawyers with support staff. We shall be seeking to draw in more people with the necessary skill and experience from the private sector on short-service appointments.

The Committee draw attention to the need for reform of the substantive law of fraud. My Noble Friend the Lord Chancellor and I are in touch with the Law Commission about the completion of their current work in this field. Meanwhile I shall be bringing forward early legislation to deal with the urgent problem of the limitations on the use of a charge of conspiracy to defraud.

The Committee make a number of recommendations concerning juries, including provision for certain complex fraud cases to be

/tried by a tribunal

Criminal  
Law  
Review



tried by a tribunal comprising a judge and two lay members instead of a judge and jury. On this particular point we shall listen with interest to the views which will be expressed in this House and another place and in general public comment. As hon Members know, we are already examining in a wider context the important question of peremptory challenges.

The Committee's recommendations on preparations for trial, the law of evidence and other <sup>related</sup> ~~matters~~ <sup>would lead to significant</sup> ~~are broadly welcome to the~~ Government. <sup>significantly to the work of the</sup> The feasibility of certain aspects of the Committee's proposals will require further study and we shall need to give more thought to the details, which the Committee had little time to work out comprehensively. Some of the recommendations may well be applicable to other areas of the criminal law besides fraud.

To sum up, we have in this Report a basis for substantial and worthwhile legislation and administrative action. The report will be immensely helpful in shaping the Government's continuing fight against the insidious menace of fraud. For this we are most grateful to Lord Roskill and his colleagues. It is now for us and for Parliament to do our part in carrying forward the work they have begun.