Oral evidence

Taken before the Justice Committee

on Tuesday 24 November 2009

Members present

Sir Alan Beith, in the Chair

Mr David Heath	Julie Morgan
Mr Douglas Hogg	Mr Andrew Turner
Alun Michael	Mr Andrew Tyrie
Jessica Morden	Dr Alan Whitehead

Witness: **Rt Hon Jack Straw MP**, Secretary of State for Justice and Lord Chancellor of England and Wales, gave evidence.

Q1 Chairman: Welcome, Lord Chancellor, there are quite a few things that we want to cover this afternoon, so I am going to ask you to be as concise as you can. I know how helpful you try to be to the Committee and how extensively you try to assist us.
Mr Straw: I take that as a justified criticism. I will try to avoid being prolix.

Q2 Chairman: Here is a question which admits to a very short answer if you know what it is. How many Libyan prisoners have been transferred since the prisoner transfer agreement was made?
Mr Straw: I do not know the exact number off-hand. I answered a parliamentary question about this. I will let you have the answer.

Q3 Chairman: Is it much in excess of one?
Mr Straw: I speak from recollection: it is something in excess of one, but I do not have the answer in my head.

Q4 Chairman: Obviously lying behind that question is the quite widespread belief that the transfer agreement was heavily motivated by the Al-Megrahi case. Lord Falconer wrote to Alex Salmond in June 2007 that the Government had reminded Libya of its acceptance that anyone convicted of the Lockerbie bombing would serve their sentence in Scotland, and that the Government had made clear on diplomatic channels that, for this reason, any Prisoner Transfer Agreement with Libya could not cover Mr Al-Megrahi. Things moved on from there. You wrote to Kenny MacAskill, the Scottish Justice Minister, in December to make clear that it had not been possible to make the kind of arrangement that was envisaged earlier. You said to him in your letter: "The ultimate decision therefore rests with you, and Al-Megrahi, like any other prisoner in a similar situation, could only be transferred with your explicit approval. This gives the ultimate reassurance to the people of Scotland." Was that not just passing the buck really?
Mr Straw: No, it was not, Chairman, far from it. It was always the case under any PTA, whether or not it had a specific carve-out for an individual prisoner, that it was the decision of the sentencing state as to whether or not to send a particular prisoner, in this case, to Libya. One of the negotiating problems that emerged with Libya was that initially they had been given the standard draft Council of Europe prisoner transfer agreements in standard form, which did not provide a specific carve-out for any individual prisoner, but they knew all along too, because it is in the text, that decisions about individual prisoners would be in the hands of the sentencing state. May I also just add to this that of course in the event the PTA was not used, so exactly what I said was the case happened. An entirely separate decision was made by the Scottish Justice Minister to release Mr Megrahi on compassionate grounds. Of course that had the paradoxical effect of leading directly to his liberty, whereas had there been a decision under a prisoner transfer arrangement, that would have involved his continued imprisonment. Both sets of decisions were ones for the Scottish Executive.

Q5 Chairman: But the Scottish Executive would not have had this decision to make had you achieved, or the Government collectively achieved, the negotiating outcome that Al-Megrahi would not have been included?
Mr Straw: They would not have had the decision to refuse the PTA request, which in the event they did, which gives further corroboration to the fact that my statement in that letter I sent to Kenny MacAskill in December 2007 was accurate. They could, in any event, have released him on compassionate grounds, even had there not been a PTA at all because those powers are quite separate. So what has in fact transpired could, and I imagine would in any event have transpired, even in the absence of any PTA with Libya.

Q6 Chairman: Coming out of the decision that was made to release him on compassionate grounds, did you have any discussion with Scottish ministers, or did your officials have any discussions with the officials of the Scottish Government, about this matter before that decision to make a compassionate release was made?
Mr Straw: There were discussions between myself and Alex Salmond, and I cannot be certain whether they took place between myself and Kenny

MacAskill, but certainly I recall one discussion about the idea of compassionate release of individual prisoners, including Mr Megrahi, but that was, as I recall, quite a long time before they had papers in respect of the proposed release of Megrahi. Did I have any discussions with any Scottish minister in August of this year as they were coming to a decision? No. Indeed I was on holiday and the first I knew about it was when I saw an item on the BBC website.

Q7 Chairman: Were you copied in to any other discussions between other departments, such as the Foreign Office and Scottish ministers, about the possibility of a compassionate release?
Mr Straw: Not in August. As I say, there had been earlier discussions which had taken place. They were not theoretical but they were not either about an imminent decision, but I cannot say whether my Department was copied in. I can say for certain that I was not copied in or, if I was, I certainly never saw that.

Q8 Chairman: Would it be fair to say that at that stage the ground was cleared by making it clear to the Scottish Government that they had the power to make this decision and that the Westminster Government would like them to make this decision?
Mr Straw: They knew they had power anyway. Everybody knew they had the power to make a decision on compassionate grounds, and they have always had that power. It used to reside with the Scottish Secretary of State, now with the Scottish Executive. So that was not an issue. When the Foreign Secretary made a statement to the House on 12 October of this year, a month and a half ago, he referred in that statement, and I am trying to find the exact point in this, to advice that they offered to the Scottish Executive. I can turn that up, but it was a matter for the Foreign Office and obviously not for us. I will in a second no doubt find the relevant extract.

Q9 Chairman: If it is something you have difficulty producing, by all means let us know at a later date.
Mr Straw: I have found it. This is at column 31. This was in the statement Mr Miliband made on 12 October. He said this: "Notwithstanding that any decision on release was for Scottish Ministers and the Scottish judicial system, the UK Government had a responsibility to consider the consequences of any Scottish decision. We assessed that although the decision was not one for the UK Government, British interests, including those of British nationals, British businesses and possibly security co-operation, would be damaged—perhaps badly—if Megrahi were to die in a Scottish prison rather than in Libya. Given the risk of Libyan adverse reaction, we made it clear to them"—and the context makes it clear 'them' is Scottish Ministers—"that as a matter of law and practice it was not a decision for the UK Government and that as a matter of policy we were not seeking Megrahi's death in Scottish custody." That was the position which the Foreign Secretary set out.

Q10 Mr Hogg: Secretary of State, that actually makes it quite plain, does it not, that the Foreign Office was giving in effect guidance to the Scottish Administration that in the opinion of the United Kingdom Government release on compassionate grounds to Libya was what you wanted. That is what the Foreign Office was in fact saying. What is more, your Department would have been copied in on that correspondence, would it not?
Mr Straw: As to the first, Mr Hogg, as I understand it, that is certainly not what the Foreign Secretary said and also it is not the position of the UK Government. What the Foreign Secretary said was that the position of the UK Government was that as a matter of policy we are not seeking Megrahi's death in Scottish custody.

Q11 Mr Hogg: That is the same thing, Secretary of State.
Mr Straw: That is slightly different from saying we wanted him released on compassionate grounds. Whether he was to be released on compassionate grounds was a matter for the Scottish Executive.

Q12 Mr Hogg: You were saying that you had no difficulty with that policy. That is the same thing as saying that is what you wanted, in the circumstances.
Mr Straw: I think it is different, with respect, and the decision of the Scottish Executive was a matter for them and, as I think it was Kenny MacAskill who made clear at the time and subsequently, they said that there was no interference in that decision by Westminster or in Whitehall, and that is true.

Q13 Chairman: You could have gone back to the Libyans and said, "We would like to release Mr Al-Megrahi on compassionate ground but the Scottish authorities will not do it"?
Mr Straw: The Libyans, certainly when I was dealing with this and I am quite certain at the time when this matter became much more imminent this summer, always knew—and they never argued about this—that because of our system of government in this country, the decisions in respect of Scottish prisoners, whether PTA decisions or compassionate release decisions, were ones for the Scottish Executive and that we could not and would not interfere in those. That was the position.

Q14 Mr Tyrie: I would like to take you back to rendition, which we discussed briefly last time you came before us. I would like a clear statement to the question: has the UK been involved in the US programme of kidnap and torture—that is, the US rendition programme?
Mr Straw: Not in my knowledge or experience, no.

Q15 Mr Tyrie: When the judge in the Binja Mohammed case said that the conduct of UK authorities went far beyond that of a bystander or witness to the alleged wrongdoing and when he went on to say that we facilitated the interviews and thereby facilitated the rendition, do you not consider that involvement?

Mr Straw: As far as that is concerned, I stand by what I have just said. I also just point out that it is pretty certain that that judgment is the subject of a pending appeal.

Q16 Mr Tyrie: On fact or law?
Mr Straw: As far as I know, on both but I am not directly party to this. I am as certain as I can be that that is the subject of a current appeal. I think it is better if the British Government can make its case in court rather then here, if I may say, without any notice whatever that this was a likely line of questions you were seeking to pursue.

Q17 Mr Tyrie: So the judge has got it wrong?
Mr Straw: Mr Tyrie, you know exactly what I am saying, that this is the matter of an appeal at the moment, I am pretty certain.

Q18 Mr Tyrie: Would you consider the transfer of people using UK facilities to constitute involvement?
Mr Straw: This was a matter, you may recall, when I was Foreign Secretary. A huge amount of work was undertaken in the autumn of 2005 to check whether there had been any involvement at all by UK personnel or through UK territory. An astonishing amount of work was undertaken and I made that publicly available, as I recall, in early December 2005. Again I speak from recollection. I do not complain, Chairman. I am just saying that I had absolutely no notice that this was going to be a line of questioning,

Q19 Mr Tyrie: I did raise this at the last meeting and you must know, indeed we have had extensive exchanges of correspondence on this in the past, that this is an issue that concerns me, a member of this Committee. It could hardly be, as you have described it, so left field.
Mr Straw: Mr Tyrie, I am well aware of that. I make no complaint about the fact you are raising it. I am just saying that if you want chapter and verse, I am trying to help you.

Q20 Mr Tyrie: My question was: would the use of UK facilities constitute involvement in rendition?
Mr Straw: Yes, the use of UK facilities would constitute involvement. Of course it would. The next question is: were they used? They were certainly never used under any authority of the British Government or my authority as Foreign Secretary. I am quite clear about that. Were they used in other ways? As I say, in the latter part of 2005 a huge search was made to check whether there had been any kind of operations by the United States or other governments making use of UK territory. From recollection, we found two cases which went back to 1998, but again I am very happy to provide you and the Committee, Chairman, with further details of what was said back then. I also recall, and I think it was 5 December 2005, that there was a NATO-EU meeting in Brussels where I gave further information about that to that meeting.

Q21 Mr Tyrie: So, despite all this extensive work, which you have just described as an extraordinary amount of work, you ended up with the wrong answer?
Mr Straw: What subsequently transpired, subsequent to my leaving the Foreign Office, as I recall, was evidence that there had indeed been some movement of US personnel with prisoners who were being rendered through UK territory. That has been put publicly on the record.

Q22 Chairman: You are talking about Diego Garcia now?
Mr Straw: Yes. The difficulty of this is checking through records, and officials did an astonishing amount of work trying to prove a negative. The legal position is very clear and so too was a lack of authority for this very clear, but we were also asked to triple check whether, notwithstanding that, there had been any such transfers and, as I said, very extensive checking has taken place subsequently to the answer I gave in 2005. Further information, after I left the Foreign Office, became available. Again, I think you are familiar with that. I can make it available to the Committee if you wish.

Q23 Mr Tyrie: You are agreeing or conceding, I hope, that the assurance given by the Prime Minister, and I quote "at no time have there been any detainees on Diego Garcia or who have transited through Diego Garcia" was wrong.
Mr Straw: What I am conceding—

Q24 Mr Tyrie: Was it wrong?
Mr Straw: Mr Tyrie, you must allow me to answer, if I may. What I am conceding is what has already been placed on the record by the Foreign Secretary and the Secretary of State—no more and no less.

Q25 Mr Tyrie: Given that I was given robust assurances on Diego Garcia that turned out to be wrong, and I and others were given robust assurances that we were not in any way complicit or involved in rendition, not least by you, and it turns out that a High Court judge has concluded that we facilitated rendition, and given that your own terrorism watchdog Lord Carlile has concluded, having looked at this, that we now need a public inquiry to restore public confidence, why will not the Government concede one?
Mr Straw: I think the first thing we need to do is to await the outcome of the appeal. The matter can then be reassessed in the light of that outcome.

Q26 Mr Hogg: Can I just press you a little more about this, Secretary of State? So far as the appeal is concerned, it is very unlikely to be an appeal against fact because, as you know full well, there are very seldom appeals against fact from a High Court judge. Leaving that aside, so far as the Diego Garcia transmission is concerned, that must have been cleared at some level because people do not land at airports without clearance. The question is: at what

level was clearance given? Presumably it went to the station commander. From where did the station commander get further authority? Was it ultimately from ministers or was it from officials and if from the latter, where did the buck stop? If from the former, where did the buck stop?
Mr Straw: Mr Hogg, as I have already said, it certainly did not come from me as Foreign Secretary.

Q27 Mr Hogg: I do not suggest it did. I merely asked where the buck stopped.
Mr Straw: I will have to find out the answer for you.

Q28 Mr Hogg: Would you be good enough to do so and write in detail about it?
Mr Straw: I will write; how much detail I am able to provide depends what the answer is, but I will certainly write.

Q29 Mr Tyrie: I would like to come back to what I originally asked you last time. You did say and I quote: "Unless we all start to believe in conspiracy theories that officials are lying, that I am lying, that there is some kind of secret state which is in league with dark forces in the United States, there is simply no truth in the claims that the UK has been involved in rendition." That was incorrect, was it not?
Mr Straw: No, I do not accept that. I was making the point, which I have repeated here—

Q30 Mr Tyrie: But we have been involved. You agreed that we were involved in Diego Garcia.
Mr Straw: As I say, from recollection that was one or two incidents of transfers through Diego Garcia, which happened without ministerial authority, and I am as certain as I can be too without the authority of senior officials on behalf of ministers.

Q31 Mr Tyrie: You do not regret saying that?
Mr Straw: No, I do not regret this because I am absolutely clear that far from there being any conspiracy to allow for rendition in a wholly mendacious and deceitful way, our policy was the reverse. I do not approve of unlawful rendition and never have done and that was made clear, and neither, as it happens, from a moral point of view, did officials.

Q32 Mr Hogg: May I ask one question about that? If that is so, what has happened to officials, whoever they were, who approved the application, no doubt by the Americans, to land because somebody must have given clearance?
Mr Straw: Again, I will have to include that in the letter I write to you, Mr Hogg.

Q33 Dr Whitehead: Could I change the subject somewhat and address the question of the changes to the programme of Legal Aid reform and the way in which the Legal Services Commission has conducted this, particularly as far as public consultation on those changes is concerned? What assessment have you made of the way in which that consultation is being undertaken?
Mr Straw: I have not made a direct assessment of the way the consultations are being conducted. Sometimes consultations on changes to Legal Aid policy that involve quite big policy are conducted by the Ministry of Justice directly, sometimes by the Legal Services Commission if they are more operational, and it varies. In every case, except very urgent cases, where we are making a change to the Legal Aid regulations, there is a consultation because this is a complicated field. I think everybody, including practitioners, now recognises that although the money is very high in comparative terms internationally, it is fixed and finite. It is important that we try and get the best value for money and do not have inadvertent consequences from the changes we make.

Q34 Dr Whitehead: Bearing in mind that there has been considerable concern expressed about the level of legal expertise that would be available in complex cases, are you satisfied that family Legal Aid continues to be on a sufficiently robust footing?
Mr Straw: Yes, I am. Obviously I understand the concerns of practitioners but the truth is that spending on family cases has increased very significantly—by about 25% in the last four or five years—whilst the total caseload has gone down. Practitioners say that the explanation for that is an increase in complexity, but we spend a huge amount of money. We spend more on family Legal Aid in this country than most of the countries with which we are compared spend on any Legal Aid at all. It is on every comparison a very generous system. We are now spending £2 billion a year on Legal Aid.

Q35 Dr Whitehead: Is there any significance in the publication of the most recent consultation paper on Legal Aid funding reforms, published on 18 September, being issued by the Ministry of Justice rather than the Legal Services Commission? Is there anything in that for China watchers or is it just a happy coincidence?
Mr Straw: No, it is not. It really goes back to the answer I gave earlier, which is that because it is a much heavier policy, it seemed appropriate for the Ministry of Justice to do it. I may say too, and this is a criticism that has been made of the LSC by the NAO, that there is a certain amount of duplication of policy work on Legal Aid in the Ministry of Justice and in the Legal Services Commission; there are about 60 people on policy of some kind or another in the LSC. To make the system more efficient and cut costs, the numbers involved in policy in the LSC are being considerably reduced.

Q36 Dr Whitehead: In that specific report you quoted the evidence indeed to this Committee by the Criminal Bar Association to support what you have suggested is perhaps implied by cost constraints of reducing funds to defence lawyers by I think 23%. The evidence to this Committee by the Criminal Bar Association was quite the opposite, that they wished to increase the funding for prosecutions so there would be an uplift in prosecution funding to equate to that of defence funding. You appear to have used

the consultation to suggest to us precisely the opposite. Is that a good way of going about the consultation?

Mr Straw: It has been well known that fees paid to prosecution advocates were significantly less than those paid to defence advocates. The CPS and other prosecutors tell us they have no difficulty in finding advocates for their work. I think therefore it is reasonable for us to look at the evidence which the Criminal Bar Association provided and to come to our own conclusions. This is a market and those who are advocates at the Bar and are court advocates among solicitors are private practitioners in a market. To repeat the point, the Legal Aid system in England and Wales is by every comparison very generous, and it also leads to much higher earnings at the top end than practitioners can get in any other system, including in Scotland. The difference is very stark. An example given by the Criminal Bar Association is that in a rape case the prosecution advocate to receive £3,086, defence advocate £5,730, and that is a relatively small gap compared to some of the others they highlight, so I think it was reasonable for us to draw that conclusion. I may just say on that on the 23% there has been further work done by LSC statisticians with the Criminal Bar Association's statisticians and all statisticians now accept that the disparity is in practice 18% rather then 23%. That does not affect the consultation.

Q37 Dr Whitehead: In terms of responses to the consultation, if I were the Criminal Bar Association, I think I might be rather miffed at the fact that their evidence, particularly to this Select Committee, had actually been used for the opposite purpose from that for which it had been submitted in the consultation itself. Perhaps here is an opportunity today to emphasise that that was not the intention of the consultation in any way and that the Criminal Bar Association's evidence might perhaps be looked at again therefore?

Mr Straw: I obviously understand the Criminal Bar Association representing their members wishes to see the highest level of remuneration for all their members in every case, so I understood why they put it forward.

Q38 Chairman: I must that is a distortion of the evidence that they gave to us in which they distinguished that in cases there were quite different levels of remuneration.

Mr Straw: I have their evidence here and the cases which they gave were cases where they appear to be claiming the defence and the prosecution were working on a broadly equal basis in terms of workload. I may say, Chairman and Dr Whitehead, that the information which the Criminal Bar Association gave we could have obtained in any event. It just happened that they produced it and since they had produced it, we were happy to rely on it. After all, these are lawyers; they must realise that if they offer evidence people may draw inferences from the evidence which are not necessarily the inferences which those offering them wish to make, but that is a risk you take.

Q39 Dr Whitehead: I think one can accept a 20% divergence from evidence but an 180 degrees about turn in evidence perhaps might be seen as a little excessive.

Mr Straw: We are not challenging their evidence, which is very factual. Their conclusion is that we should have uplifted prosecution fees. There is no way that can be done.

Q40 Dr Whitehead: I think the general issue that I am trying to explore is the whole question of where we stand on consultations—the content of consultations and the response to them. For example, in the Public Law Family Fees consultation the response came out as a fairly stark conclusion; indeed, the Department said it was "clear that the majority of respondents were against full cost fees for public law child care proceedings". The Ministry's conclusion was: well, we are going to proceed anyway with the proposed changes, with no material in support of that particular conclusion. If you were a respondent to a consultation, at that point, would you not feel that the consultation was rather a waste of time?

Mr Straw: This is not a Legal Aid decision. You are talking about the decision that was made in early 2008 to increase the fee paid by local authorities up to around £4,000 on full cost recovery. Local authorities, by the way, also received a transfer of £40 million from Ministry of Justice funds to them to cover that. That, however, was a subject later of an adverse recommendation from Lord Laming and there has since been a review by Francis Plowden of the impact of these fees. Whether these fees should stand is subject to very active consideration right now.

Q41 Dr Whitehead: Finally, you have now invited Sir Ian Magee as the Department to assess the delivery and the Government's arrangements for the Legal Aid system. You have done that as the Ministry of Justice. Does that perhaps not imply a loss of confidence in the Legal Services Commission in its capacity to deliver reform, and does it indeed not also put at least a question mark as far as the policy direction following Lord Carter's Legal Aid reforms?

Mr Straw: I emphasise that I do not think it raises a question about the direction of Lord Carter's reforms because they were designed to get a control on what had been ever rising expenditure on Legal Aid. I say again that what I have had to wrestle with is this extraordinary increase in Legal Aid, which has been 236% in real terms since 1984–85. It happens to have flattened out in recent years, not least because of the Carter reforms, but it is still £2 billion and around three times as much as comparable common law jurisdictions are spending, like Australia, New Zealand and Canada, and also more than that which is being spent in Scotland. On the Ian Magee review, I think they have now been made public but we became aware of likely very adverse reports from the NAO, Attorney and Auditor General and others about certain operations of the Legal Services Commission. Those were not reports one could

simply ignore and they did point to some difficulties in the administration of the system. All right, the NAO report is not out yet but on Friday. I am sorry about that. You have to respond. Myself, I have been worried about the fact that there appeared to be a duplication of policy effort by my own Department and by the LSC and policy needs to be dealt with by ministers because we are accountable for it. I have been concerned about that and then prompted by an adverse recommendation from one of these bodies, whether made public or not, I thought first we ought to act on that but also have a review. The other point I would make briefly, Chairman, is that in the Access to Justice Act 1999, section 2 anticipates that there might be a change in the structure of the LSC because it allows the Lord Chancellor by order, subject to affirmative resolution, to change the structure to move from that kind of body to a different body, maybe to have two bodies, or for example to have one body but with two clear separate funds: one for criminal aid and one for civil. Those are the sorts of things that Sir Ian Magee is looking at.

Q42 Mr Heath: Lord Chancellor, I would like to move to the subject of out-of-court disposals. I notice you made a speech in Birmingham Town Hall recently to the magistrates or you featured on that. Do I take it from what you said there that you believe that it is never appropriate for a caution to be used as a disposal for a case of rape or grievous bodily harm?
Mr Straw: I said there that I was astonished by that. I am not a prosecutor and I think they have a difficult job but it seems to me that either there is good evidence in respect of a rape or an allegation of grievous bodily harm, in which case it is the subject of charge and prosecution, or there is insufficient evidence, in which case it is not continued.

Q43 Mr Heath: So a caution is completely inappropriate, given that it then places it on the record without it ever being proven yea or nay?
Mr Straw: For a caution there has to be an admission of guilt but, even so, it is very unsatisfactory, above all to the victim. That is my view. It came as a surprise and a shock to me as it did to other people.

Q44 Mr Heath: I think it also raises the question then of who decides what crimes, either individual crimes or categories of crimes, are appropriate for a non-court, out-of-court, disposal. Is this purely in the hands of the individual police officer or should we not be giving clearer guidance?
Mr Straw: My understanding is that for indictable only offences the decision is made by the Crown Prosecution Service. That has to be, and so for rape and for grievous bodily harm it is a matter for the Crown Prosecution Service. A point I made in my speech at Birmingham Town Hall on the 14th of this month is that out-of-court disposals of one kind or another are as old as our police service; they have always been and they will continue. No system in the world is mechanical and says where there is evidence of a crime then automatically there is bound to be a prosecution. No system works like that. The question is how formal you make it and ensuring that it is proportionate and it is properly administered. For example, one of the things that I did when I became Home Secretary with Mr Michael was to stop the repeated cautions particularly for young people, so they were just going through a revolving door, and so a very clear hierarchy was established with very clear guidelines; on the whole, I think that has worked quite well. Interestingly enough, the criticism about out-of court disposals has in general not been directed to the youth justice system because there is a much clearer set of rules. On fixed penalty notices, in the main they were designed to deal with disorder and to upgrade the punishment in a situation where too many of them were being made informally or without any kind of police process at all, but I accept, certainly in respect to shop theft, that the guidance had not been properly followed and also the guidance needed altering, and so I have done that.

Q45 Mr Heath: But this is a criticism that was made right at the time that the fixed penalty notice was introduced for shop theft that there was no follow-up—exactly the criticisms that you indicated of cautions with youth crime. In terms of shop theft, you could have a repeat offender without any sort of effective record being kept of fixed penalty notices; no pattern of criminality developed; no court having oversight of that. Was it not entirely predictable that we had that sort of situation? It was predictable because I predicted it, so I know.
Mr Straw: The gap that was attempted to be filled by an extension of the penalty notices for disorder to cover shop theft was from the fact that there had been evidence—this happened after I was Home Secretary so I speak second-hand—that a lot of police officers were simply letting offenders go for one reason or another—if, for example, the stolen goods were returned—and so that led to an extension of PNDs to cover shop theft. I have made it clear in the House not least that I think that their use for shop theft has gone too far. That is why I have very significantly restricted their use. We will also find, as virtual courts get going and the powers in the Coroners and Justice Act are brought into force which remove the requirement for consent for virtual courts, that for example in a number of police divisions in London they are going to be moving out of PNDs for this kind of offence altogether and having a court process, and I agree it is better.

Q46 Mr Heath: Is there not a problem also with consistency? We have fixed penalty notices for all sorts of things but the penalty for shop theft is often less than a relatively trivial civil offence—parking next to a dropped kerb or something like that? Given that we have that inconsistency, your review appears to be only dealing with Home Office and your departmental cases, CPS cases, but is it not worth

extending it to all out-of-court disposals so that we actually have a degree of consistency and common sense about the whole area?
Mr Straw: The public concern, if I may say so, rather than parking tickets or speeding tickets is about what the public regard as offences involving a degree of criminality, which are disorder principally, but of course criminal damage and shop theft, and that is the only offence of direct dishonesty that I can think of. I think it is sensible, frankly, that we confine the review to that rather than getting into the penalties for parking tickets.

Q47 Mr Heath: Why, they still have to be paid?
Mr Straw: What the reviewers will do is take account of the penalties for parking and for speeding. I take your point there, but there is no great evidence that people wish us to go back on that system. Of course I understand the point. Part of the difficulty of course is that with a lot of offenders who, say, commit shop theft, but not all of them by any means, or other offences covered by PNDs, on the whole the courts have problems getting the money out of them in a way that they do not necessarily in respect of parking tickets.

Q48 Julie Morgan: If the review results in many more cases going to court, how will the court system cope with the possible influx of many more cases, especially in view of the fact that the same week that the review is announced there were cuts in the Courts Service also announced?
Mr Straw: I think they will be able to cope. The workload of magistrates has gone down now. We do not think it has gone down because of PND notices; indeed, PND notices are slightly down as well. It is partly because the magistrates' courts have become much more efficient, following the introduction of CJSSS. It is also because more cases are being selected for trial and being sent to the Crown court, and that was another key point of my speech to the Magistrates' Association. We are not anticipating problems of capacity in the magistrates' court. I was inviting the magistrates to consider sending fewer "either way" cases to the Crown Court because they are better dealt with in the magistrates' court.

Q49 Julie Morgan: If this review resulted in thousands more cases going to court, you still think the courts will cope?
Mr Straw: I do not think it will with changes like the virtual courts and other improvements, say in case management. The amount of money which is spent by the system in duplicating case files remains a major problem and there is a big effort going on to get integrated case management between for example the police and the CPS and the courts. In some areas they are doing it. I saw this operating successfully in Hackney. It is a beneficial consequence of the pressures on costs now impacting on both the police and the other agencies.

Q50 Jessica Morden: Moving on to children and young people in custody, the Youth Justice Board has said that since 2000 there has been an increase in under 18 year olds with 41% being remanded in custody. Do you agree with that figure and what do you think about it?
Mr Straw: What year are you quoting?

Q51 Julie Morgan: Since 2000?
Mr Straw: I think that figure is correct. I am trying to turn up the figures. The number now in custody has fallen in the last 18 months and it has fallen by 13%. I can make this table available to the Committee if they wish, Chairman. In October 2008, there were 2,934 children and young people in custody, either remanded or sentenced, and in October of this year there were 2,556.

Q52 Jessica Morden: To what do you attribute the fall?
Mr Straw: It is partly because of the relative success of our youth justice measures, one of the architects of which is sitting next to you, because they are working. What is very significant is that the number of young people coming into the youth justice system as offenders has gone down, and also the result of other work is that for those who do go into the system, reoffending rates have improved. It may also be a result of courts looking for other measures to deal with young offenders rather than putting them into custody, although I may say, notwithstanding what the pressure groups say, I have never met a youth justice magistrate or a Crown court judge who handles these cases who wants to send young people into custody. The vast bulk of them are 17 year olds; it is getting on for half in each case.

Q53 Jessica Morden: On that issue, Lord Bach has admitted previously that the treatment of 17 year olds remanded as adults is an anomaly and had being looked at by the Standing Committee on Youth Justice. Is there any further action on that?
Mr Straw: There is not immediate progress on this. It is an anomaly because under PACE they are treated as adults and for the rest of the system they are treated as juveniles. The system works round it at the moment. Bear in mind that 17 year olds often, as far as their victims are concerned, are very adult, and they are a completely different category from, happily, the tiny handful of offenders in custody who are aged 12 or 13.

Q54 Jessica Morden: Finally, a recent inquest jury found that systematic failures contributed to the death of a 15 year old in a young offenders' institution, who was, I believe, the 30th child to die in custody since 1990. I believe there is a Prisons and Probation Ombudsman report as a result of that with 30 recommendations. Will you be publishing that and what action will you be taking as a result of it?
Mr Straw: As far as publication is concerned I will be following the normal arrangements. This was a very difficult case. It happened at Lancaster Farms Youth Offenders' Institution in north Lancashire, and also a coroner's jury made some comments about what they said were systemic failings in the

care and support of this young man that led to his death. The coroner also commended members of staff at Lancaster Farms. There were failings here and we always try to learn lessons from them. That said, it has to be recognised that the youngsters who end up in custody are amongst the most difficult of all young people to deal with and the young people who do go into custody are in general much more volatile than adults in custody. They are very difficult to deal with.

Q55 Chairman: When you said "the normal arrangements" in your reply, did you mean that publication would follow in due course?
Mr Straw: I was trying to remember the answer!

Q56 Chairman: Does anybody want to prompt the Secretary of State with the answer, which we all hope would be publication, unless there are any particular matters?
Mr Straw: As I say, obviously the recommendations and conclusions of the jury at the inquest have already been made public. That was on 13 November.

Q57 Chairman: You may have to write to us about this as well to tell us?
Mr Straw: I may.

Q58 Chairman: We would like to know what is going to happen to this report.
Mr Straw: We will find out.

Q59 Dr Whitehead: Can I address a couple of thoughts to the responsibilities that the Department of Justice has as far as Crown Dependencies are concerned? When you spoke to this Committee in October 2008 and you were specifically addressing the governance of Sark, you said in that context, "There is this wider responsibility for good governance." What is the legal basis for that belief?
Mr Straw: The legal basis is what was said in the 1973 Kilbrandon report on other constitution and the fact that it follows from our wider responsibilities for Crown possessions. We are responsible for international relations for Crown Dependencies and for their defence. What is the legal basis? Among others, it is our obligations under the European Convention of Human Rights. Where for example somebody feels aggrieved that their rights under the Convention have not been acceded to in respect of activities or lack of activities by the governments of the Crown Dependencies, the respondent to those actions in the European Court of Human Rights is the United Kingdom Government, and that was the position in one of the Sark cases. It follows from that that we have a responsibility for good governance. The other legal basis is that all Acts of their legislatures require Royal Assent and that Royal Assent comes through a Committee of Privy Counsellors, which usually operates on paper but which I chair. In the case of one proposal from Guernsey and Sark to change the governance arrangements for Sark, I turned that back. I was not satisfied that it met modern requirements for good governance.

Q60 Dr Whitehead: Is the definition of good governance that you are looking at there addressed in terms essential of human rights or in terms of what might be regarded as the norms of good governance of the United Kingdom?
Mr Straw: Both: in terms of active intervention rather than, say, just turning back a proposal; if there had to be active intervention, taking something like a breakdown of civil order or something very serious.

Q61 Chairman: Can I be clear that during your time in this office, and presumably also when you were at the Home Office you had responsibilities as well, you did not have occasion to make plans for any kind of direct intervention in any of the Crown Dependencies?
Mr Straw: No, not as we did in Antigua in 1966 for example. It would be a very severe step to take. I think it is known that there are fairly frequent representations to me in respect of one of the Channel Islands to intervene and so far I have declined to do so. I have not seen any evidence to support the case.

Q62 Dr Whitehead: As far as the Isle of Man is concerned, it recently had its payment from the UK Treasury reduced by £50 million from April 2010 and a further £50 million from April 2011. The Isle of Man's Chief Minister said that this had resulted from intensive negotiations, which I would imagine the Department of Justice would have been intensively involved in. Would that be right?
Mr Straw: Yes, we were involved in them and we were trying to ensure that there was fairness on both sides and I think we achieved it.

Q63 Dr Whitehead: The Chief Minister also said, as a result of the two grounds of £50 million reduction: " . . . it is very likely that some public services will have to be reduced to enable us to ensure we can continue to fund the most important areas." How might that impact on good governance in the Isle of Man?
Mr Straw: I have had no representations that it will. The background to this is that these reductions arise out of a VAT sharing agreement. The Isle of Man must speak for themselves but all the evidence has been that the Isle of Man have done very generously from this arrangement in the past and there has now been an adjustment in respect of VAT sharing, which we think matches the reality or, as you say, Dr Whitehead, it led to this £50 million reduction in 2010–11 and £100 million in the following financial years. So it has an impact on a pretty small population but one which we think is manageable.

Q64 Chairman: The British Government is responsible for the external relations of the Crown Dependencies. If I can take the example of the Icelandic banking crisis, which tested many of these

relationships quite severely, how could the British Government simultaneously to the Icelandic authorities represent the interests of the UK Treasury and those of the Isle of Man Government, and it was the Treasury that was doing the negotiation, bearing in mind the Treasury had taken the decision to freeze the assets of the Isle of Man banks in the interests of UK-based depositors, but that was to the detriment of depositors in the Isle of Man, whether Isle of Man based or based elsewhere. How could it be that one government department, the Treasury, could simultaneously represent both these cases?

Mr Straw: The Treasury had to make some extremely difficult and very urgent decisions to protect the British national interests from this, and I think they did pretty well on that. I had a constituency case about this. I speak from recollection here, but the Isle of Man did have a depositor protection arrangement in place.

Q65 Chairman: I am trying to focus very specifically on the fact that the responsibility for negotiating with the Isle of Man on behalf of the UK and on behalf of the Isle of Man with its different interests sits together either with you or with the Treasury in this case because they carried the burden of negotiations. Are you not really being an advocate for two different clients in this situation?

Mr Straw: I do not think so is the answer. The Isle of Man, along with the Channel Islands, has been very keen to maintain the wide level of autonomy that they have had over the banking system. I think they would say they have benefited very much from this as being areas where the British had generous tax arrangements. They put in place regulatory arrangements. They had to accept the consequences of that; they were allowing the financial institutions based in their territories to take deposits and to be at risk for astonishing sums of money relative to the total GDP of those territories.

Q66 Chairman: I am not trying to address the substance of the issue because there are many aspects we could raise about that. It is simply the role which your Department plays. Perhaps I could put the question this way? Ought not your Department to sit in on any negotiations that any other department is having on behalf of the Isle of Man Government, particularly when the possibility of divergent interests exists?

Mr Straw: We were involved to a degree, but what the Treasury sought to do was not only to represent the interests of the Isle of Man and the Channel Islands, but also, in the case of the Icelandic Bank problem, to facilitate the Isle of Man and the Channel Islands speaking direct to the Icelandic authorities, but in the end it was actually ultimately in the interests of the Crown Dependencies as well as the UK mainland that the UK authorities made those decisions they did about the Icelandic banks because of their very serious exposure.

Q67 Alun Michael: Could I turn to the issue of complaints when things go wrong in the criminal justice system. There seem to be a lot of inconsistencies. The Independent Police Complaints Commission is probably the gold standard and its methodology has improved massively over the years, but often, when there is a complaint, it is not clear to the complainant whether it is something the police have done wrong or where the Crown Prosecution Service has gone wrong and/or the courts' administration has gone wrong. Now, obviously in respect of judicial decisions, there is the appeal system, but that does not deal with administrative issues. Would you agree that there is a need for a levelling up of the way in which complaints are dealt with and a system which means that the victim or the complainant is not put in the position of having to decide somehow how to play ballgames with three or more different administrations?

Mr Straw: Mr Michael, I think you raise a very important point and I do not pretend that the current arrangements are wholly satisfactory. I think that you have acknowledged that the IPPC has vastly improved the handling of police complaints and police confidence and is light years away from the system that was there 12 years ago, to take a date at random. The complaints processes for the CPS and for the courts' administration have also improved, but, looking ahead, personally I would, as I think you would, like to see us introducing over time an integrated complaints system so that it is, as it were, the Complaints Commission which has to determine which part of the criminal justice system it goes to for an answer rather than the complainant. That will take many years, but I certainly think we should, as it were, set that as a clear aspiration.

Q68 Alun Michael: Well, thank you for that and I look forward to discussing that more in the future. On another issue in relation to the criminal justice system, several inquiries that we have undertaken have thrown up questions about, on the one hand, the overall purpose of the criminal justice system and, on the other hand, the need for each agency and department to contribute particularly to cutting offending and re-offending. I would argue that that is a victims' issue given that what we have been told is that what victims want, apart from wishing they had not become victims in the first place, is not to become a victim again. Now, other departments and other ministers are involved, but would you agree that each part of the criminal justice system ought to be made to focus on cutting crime as a clear part of its remit, and how can we improve the way the system makes individual parts of the overall system focus in that way?

Mr Straw: I would say that a major, overriding purpose of the criminal justice system and the other partners involved is to make for a safe society and for a safe environment in which individuals are to live, and one of the methods of doing that is by cutting crime and there are other ways of doing it as

well. Partnership working has greatly improved in recent years, but we have got to do a lot more there. For example, the Department of Health has got an important role to play in this respect, as we know from the work which you and I have talked about separately of Professor Jonathan Shepherd at Cardiff University where his work in identifying, not why people have been injured, that is through street violence, but how they have been injured and how they have been at risk has led to, as he has been telling me, a very significant drop in the number of people presenting themselves at accident and emergency departments, and not just in Cardiff because his work across the country shows that there is a very significant reduction by trying to deal with the situation which people find themselves in. It is very simple, straightforward stuff, like how bars are designed, what sort of lighting is available, whether the glasses can be turned into weapons or just shatter when they are broken. There are all sorts of other methods which reduce the opportunity for violence as well as much better public education and treatment of alcohol abuse because there is not the least doubt that alcohol abuse lies behind a lot of violence, particularly mindless violence.

Q69 Alun Michael: I think that probably reads through to a simple yes to my next question, which is essentially: should the methodology, the stringency of approach of analysing a problem and looking for solutions, which was brought by Jon Shepherd and his team, not be applied across crime more generally in the future and across the way in which it is approached by all the partners?
Mr Straw: I think it is much better now than it was—

Q70 Alun Michael: Sure.
Mr Straw: —and partnership is working at a local level where you have got the police and local authorities and, these days, health authorities because, for example, in my area the health authority is paying for a lot of gym sessions and 'keep fit' classes for youngsters as well as older people which, as well as keeping people healthy, raises people's self-esteem and also keeps them off the streets.

Q71 Chairman: Have you felt able to defend that in the face of the media criticism which, I know, it has been subjected to in some areas?
Mr Straw: Certainly there has been no media criticism in my area or from the other political parties, and the local authority is now run by a coalition of Conservatives, Liberal Democrats and Darwin First, which is down to the south of Blackburn.

Q72 Mr Heath: I thought you were going to say anti-Creationists!
Mr Straw: No, they are Darwin First. They were breakaways from the Liberal Democrats, Mr Heath! People have been enthusiastic about it and it has made a big difference and it is contributing to a reduction in crime.

Q73 Alun Michael: The last time you were before us, we discussed the issue of promoting the knowledge and understanding of judges and magistrates of non-custodial disposals and increasing confidence in them. Can you tell us anything about the progress on that?
Mr Straw: Yes, a lot of progress is being made and it is improving. One of the, I think, big changes which has been made is the approach of the judiciary, both of the salaried, full-time judiciary, the district judges, circuit judges and High Court judges, and the magistracy, to being involved much more hands-on in sentencing. In some cases, they can make use of the section 178 powers where they supervise the sentencing in the mental health courts and so on. Just to give one example, last Friday I went to Derby to look at the operation of one of our important pilots on intensive alternatives to custody, and this is trying to take high-end offenders, people who have been in and out of prison often for persistent offences rather than single, serious offences, these were alcohol-related offences, drug-related offences and driving offences, and all but one of the offenders I spoke to, and I spoke to nine, had been in prison before on a number of occasions and they are now, as a last chance, given intensive alternatives to custody which involve daily attendances at the beginning of the sentence with their probation officer, intensive unpaid work and also confidential mentoring about their family circumstances. One of the things the probation officers were saying to me was that they had been really pleased that both the lead circuit judge in Derby and the lead magistrates and DJs had been enthusiastic about this and had really got involved, and I think that indicates a way forward.

Q74 Alun Michael: Are you going to do anything to make sure that the Sentencing Council focuses on the issue of what works and perhaps spreading the awareness amongst the judiciary of the sort of examples that you have just referred to in your last two replies?
Mr Straw: Yes. I have to say, there is no impediment to persuading the judiciary that this is a way forward, they want to do this, and the Judicial Studies Board again is enthusiastic about this. The Sentencing Council, which has now passed into law, will greatly assist, not least through data-collection and analysis, looking at levels of sentence for different offences and then comparing those with comparable areas because some quite stark differences emerge, and then finding out whether they affect crime levels.

Q75 Alun Michael: On the issue of prisons, I do not want to take too much time on these issues, so on the detail you might want to perhaps respond in writing, but there are a number of issues that come out of our recent inquiry in relation to staff:prisoner ratios and the fact that those ratios have a crucial impact on the building of positive relations in prison and, therefore, the potential for reducing re-offending.

You told the House that staffing in prisons has increased commensurately with the increase in prison numbers, but the evidence that we were given during our inquiry was rather different, and I wonder if you could clarify the position on those ratios. Also, what do you anticipate to be the likely change in prisoner:staff ratios following (a) the implementation of workforce modernisation and (b) the introduction, if they proceed, of the 1,500-place prisons? Finally, what is the difference between the total prisoner:staff ratio on a system-wide basis and the average ratio of prisoners to rostered or on-duty staff and how does that vary across the prison categories? I assume that data is collected. As I say, there is quite a bit of detail there on which you might write, but I wonder whether you could respond in general to me.
Mr Straw: I have got some data. The ratio between all officer grades, uniform grades, and prisoners was 2.46 in March 1997 and it is now 2.92. The ratio of all officers and operational support grades, because we have brought in a lot of operational support grades, was 2.10 in March 1997 and in October 2009 it was 2.23, so the overall change has been a slight one, a slight tightening on the ratio, but I would be happy to send these figures.
Chairman: We will confirm to you the details that we are seeking on that.

Q76 Alun Michael: And you are aware that there is worry about education and other services that promote rehabilitation being squeezed with the increase in prisoner numbers?
Mr Straw: I am. I read your latest Report, which I have here as well, and I am grateful for it. I am aware of that. Again, we are in a situation where money is tight and our Prison Service, when compared with comparable ones, is not under-resourced at all. It is a very large service, and I think the public would be interested in these figures because we have 84,500 prisoners and, to cope with those 84,500 prisoners, we have 33,800 staff, which is a lot of people, a very significant number of people, and the big challenge for all prison managers is how they are used.

Q77 Julie Morgan: I have just a quick question about what is going to happen about the probation trusts because obviously there was a timetable set and I believe that there have been no successful applications from Wales, in particular. What is going to happen?
Mr Straw: Well, 26 probation trusts have now been approved and the remaining ones have applications which are under active consideration. If a probation service's application is turned down, regarded as unsatisfactory, then it may be proposed that they merge with another adjoining, successful trust, or it may be that they will be kept going for a period until they can then apply. We are not just going to leave them stranded, but they will need to sort out the problems that have emerged. It has been quite a good exercise.

Q78 Julie Morgan: Certainly the four trusts in Wales have all been unsuccessful in their first applications.
Mr Straw: Yes, I know, but they have not been alone, if I may say so, Ms Morgan.

Q79 Julie Morgan: No, but it would be difficult for one of those to be taken over by a neighbouring—
Mr Straw: There has been quite a lot of consideration in Wales, as you know, about how many trusts there are, but we are anxious to complete the process. My guess is that the overall result will be in by March/April of next year. All but probably around five probation areas, will have received trust status by then and then we will obviously have to make decisions about what to do with those five whose applications have not been approved, but I would rather the number were zero and we were working to that, but I think in the real world it may be five; we will have to see. We are not going to leave them stranded.

Q80 Julie Morgan: So I can be hopeful about Wales?
Mr Straw: Of course I will try and be helpful about Wales.

Q81 Julie Morgan: As just a quick question on the Land Registry and the failure of the Chain Matrix IT system, I do not know if you could tell us how much it actually cost and what are the financial problems which have resulted?
Mr Straw: Well, it cost about £4.6 million, from recollection, of which £2.8 million was the cost of gathering expert advice to develop the technology and the remaining £1.7 million was staff costs. I think you know that the Land Registry is no longer actively pursuing this, although it is offering to support developers and commercial enterprises who wish to market their own commercial Chain Matrix products, so it is £4.6 million which was not brilliantly spent.

Q82 Julie Morgan: In terms of the proposed changes in the Land Registry, the privatisation and the job losses that are proposed, I understand that the latest staff survey to 1 November showed that only 10% of staff have confidence in the boards leading through the changes. I do not know if you have got any comments on that.
Mr Straw: Well, the cuts in staffing have been caused by the significant downturn in the property market, so that is the key driver of that and I very much regret that staff, who have had a relatively secure environment and job for many years, because of the economic downturn, now face a situation where they are facing redundancy. It is very sad and they are decent, good people, but the drop in house prices understates the decline of activity in the housing market by some margin and that is the problem we faced in this period.

Q83 Chairman: Where does that leave the privatisation process?
Mr Straw: That is some way away. Again I can send you a note about it, but it is some way away.

Q84 Julie Morgan: Perhaps you would send us a note about it.
Mr Straw: I will send you a note about it, yes.

Q85 Mr Turner: Could you tell us what is the order of batting, as it were, in your title—Secretary of State for Justice or Lord Chancellor?
Mr Straw: Well, I make no point about it particularly, but it tends to be the way it is written is 'Lord Chancellor and Secretary of State for Justice', but it is not something I stand on. I am just intrigued by the point of your question, Mr Turner.

Q86 Mr Turner: I just thought I would ask.
Mr Straw: The reason I have two titles is because it is two functions and some decisions which I make I make as Secretary of State and others I have to make as Lord Chancellor because that is what the law says.

Q87 Chairman: It must be very difficult getting up in the morning, having to decide which you are!
Mr Straw: I think it is the least of my problems!

Q88 Mr Tyrie: Weighed down by the chains of office!
Mr Straw: It is the least of my problems in the morning, I am afraid!
Chairman: Thank you for your evidence.

Wednesday 10 March 2010

Members present

Sir Alan Beith, in the Chair

Mr David Heath
Mr Douglas Hogg
Alun Michael
Mr Andrew Turner
Mr Andrew Tyrie

Witness: **Rt Hon Jack Straw MP**, Secretary of State for Justice and Lord Chancellor, gave evidence.

Q89 Chair: Good morning, Lord Chancellor. We are sorry to hear that Bridget Prentice is not well.
Mr Straw: Yes, I am very sorry, but she is really rather poorly. She has been off for three days.

Q90 Chair: She has our very good wishes. We are working to a very tight timescale on our report on the Civil Law Reform Bill. Since we have a few technical questions outstanding, we intend to have those dealt with by our Committee staff and your officials outside the meeting, but I would just like to ask you why these 1999 proposals have taken until the last days of this current Government to bring into legislation—and then only draft legislation, so that they still carry over into the next Parliament?
Mr Straw: I cannot give you a complete answer to that—

Q91 Mr Hogg: I do not think you should try.
Mr Straw: If I may say this, Mr Hogg—just now. I will certainly write to the Committee. Obviously eight years of this period predate my position in the Ministry of Justice, but I will find out. It has been in process since I have been there. One of the difficulties—and those who have served in governments here will recognise this—is that this is an important measure but there have always been other—

Q92 Mr Hogg: More important matters.
Mr Straw: —demands on the legislative programme in the past which have meant that it has been squeezed out, because it is worthy—I actually think very important in terms of what it is doing—but it has not been seen as such a high priority. That is the honest truth about it, but I will send you further and better particulars. There has also been an extensive period of consultation. The original proposals, for example, in respect of damages following fatal accidents, which were in the Law Commission proposals, have themselves been refined since then. But if you are saying: "Does that take 11 years?" the answer to that is no.

Q93 Chair: That is what I thought you would say, and it reflects a general concern that the Law Commission, which is a very high powered and impressive body, does a great deal of work, and the time taken to bring that work into effect (because it is always in conflict with the Government's urgent desire to produce another Criminal Justice Bill or something like that) starts to make the effort put into producing the work disproportionate if it is not going to be achieved.
Mr Straw: I am aware of that. With my full encouragement and support, Michael Wills has done a great deal of work over the last three years to improve the flow of legislation, which follows from Lord Chancellor's proposals. We had changes—which were in the 2009 Act last year, from recollection—which ensure, for example, that the Law Commission make an annual report about progress—which is a way of getting progress on their reports on the agenda of this place and therefore on ministers' agendas—and, also, that we make better use of the fast-track procedures for legislation in both Houses. That is what we are aiming to do. It has not been a satisfactory position. The Law Commission have done a terrific job, and I am well aware of the fact that it is demoralising for them and their staff if they produce very good proposals which are then left on the shelf. We are trying to break through that.

Q94 Chair: Thank you very much. I am going to turn to a number of wider issues. I am going to start with a Freedom of Information issue. There have only been two occasions when the Information Commissioner has recommended the disclosure of Cabinet minutes. One was Iraq. The other was devolution last December. You told the House that disclosure of the devolution papers was not in the public interest because it undermined collective responsibility and effective government. That sounds to me like an argument that you would use against ever disclosing any Cabinet minutes. Were you using the power that you had to veto the disclosure of specific Cabinet minutes to take up a position, which the legislation does not have, that no Cabinet minutes shall ever be disclosed by the Information Commissioner's requirement?
Mr Straw: No, most certainly I was not. That would be contrary to the structure of the Act and an abuse of the discretion that is given (in this case to me) under section 53 of the Act. In each case you have to judge the merits or demerits of a section 53 decision strictly on the basis of the information which it is proposed by the Commissioner or the tribunal to release at that time, so this is not remotely a way of bypassing the legislation. I have set out in both cases very detailed explanations about why I reached those decisions, and we followed strictly the non-statutory procedure, with consultation with Cabinet colleagues and so on in advance. There has been a

high level of consideration given to this, including by meetings of the Cabinet, with the full papers available to members of the Cabinet, and on the basis of that consultation I formed those judgments. I would just make this wider point: section 53 is there, as I have said in the House on a number of occasions; it is a fundamental part of the architecture of the Freedom of Information Act. The Act would not have come in without section 53 being there because it is there as a balancing measure for what are otherwise the most stringent and powerful Freedom of Information provisions of almost any jurisdiction in the world. I do resist very strongly those who are now seeking to cherry-pick the Freedom of Information Act and say that requesters are entitled to use, say, sections 35 and 36, and the Commissioner and the tribunal are entitled to come to their decisions, but ministers should go into a self-denying ordinance about ever using section 53. That is not how the Act is established. I can say this without any challenge: the Government would not have recommended the Act to the House, following a series of changes greatly to strengthen its provisions, if section 53 had not been there.

Q95 Chair: Can you give the Committee a sense of what it is about devolution discussions which would have caused you to take what you now insist was exceptional action to use section 53, rather than an attempt to establish that Cabinet minutes are never disclosed?
Mr Straw: That is not the policy.

Q96 Chair: Accepting for the moment that that is your position.
Mr Straw: But it is also the law. If the law had proposed that there should be an absolute exemption for Cabinet minutes, that is what the law would have said. It does not say that. Let us be clear about that. If I can repeat what I said in the statement of reasons that I gave—

Q97 Chair: I thought when I asked the question it might come fresh to your mind, as a new form of words might.
Mr Straw: Plenty of things come fresh to my mind, but I set out in detail, in that explanation which I gave, as to why I had come to that decision. There were a number of areas where, you will recall, I took issue with some of the facts of the Commissioner's judgment, including the extent to which those who were round the table at the Devolution to Scotland, Wales and the English Regions (DSWR) Cabinet Committee in 1997 and 1998 were still active, because I think the Commissioner had suggested only one was still active when in fact many more are still active in Parliament and in Government. The overall reason why I came to that judgment was because I judged that the release of these minutes would be prejudicial to good government. Everybody I know accepts the importance of ministers being able to come to collective decisions in confidence.

Q98 Chair: That seems to be sliding back to the general argument.
Mr Straw: I am sorry, there is obviously a general principle which is set out in the Act as well, but it is the application of the general principle. It is impossible to make judgments in respect of a veto or anything else without having general principles which are then applied in particular cases.

Q99 Chair: Let me turn it round and say to you: can you think of a Cabinet discussion that you have taken part in in recent years which, if the Information Commissioner required you to disclose it, you would not veto?
Mr Straw: If I may say so, I am not going to get into the realm of speculation. It is the case, by the way, that one document relating to a Cabinet sub-committee, which was actually the agenda (agendas can be quite revealing), has been released. There have been relatively few requests, as we have said, which have gone to the Commissioner. The other side of this is that a good deal of inter-ministerial correspondence has been released.

Q100 Chair: I cannot escape the conclusion that there are no Cabinet minutes whose disclosure you would not veto.
Mr Straw: That is a wrong conclusion. The conclusion, obviously, Chairman, you decide to come to is a matter for you, but I am just telling you, as the person who has had to exercise this discretion on two occasions, that is wrong. It is not what the law says and it is not what I have said in very detailed explanation. I also just repeat the point, and you may take a different view about this (I hope you do not), that section 53 is an inherent and integral part of the whole architecture of the Act. Even with section 53, this is still amongst the strongest and most incisive freedom of information legislation in the world, contrary, I may say, to those who continued to claim, including people from your benches, that all we were doing was putting into statutory form the previous freedom of information code.

Q101 Mr Tyrie: We were both supporters and remain supporters of FOI. I have had expressed to me quite a number of concerns by officials, informally, that FOI gets in the way of enabling them to offer free and independent advice to ministers; it inhibits them from writing down things from time to time. Is that a problem that has ever been brought to your notice? Do you think there is something we should do about it?
Mr Straw: It is certainly a comment that has been made to me. I do not, myself, feel, in my Department, that officials have been reluctant to say what they think about issues—

Q102 Mr Tyrie: On paper.
Mr Straw: On paper. It has certainly not made me reluctant to say what I think about issues on paper, because my view is that if you are confident about

the reasons that you are offering (in this case a minister is offering) about why they are either going to accept or modify or reject advice which is put forward, then you should be ready to justify that. That is not, by the way, a green light for saying this should be made available on the intranet or internet that day, or even in anything less than what will now be 20 years. Mr Tyrie, it is quite often said that it is an inhibition. Bear in mind that there is a difference in terms of the kind of sensitivity of most of the work in my Department compared to some other key departments.

Q103 Mr Tyrie: I am asking the question in the round, with your constitutional hat on.
Mr Straw: Indeed. I just wanted, as it were, to make your point. When I was at the Foreign Office (I was only there for 18 months after the FOI Act came into force) there was, I think, that sense around, and I have heard that said in respect of other departments handling more sensitive material—for example, in the Treasury. I am anxious here to not either dismiss these opinions, which you have also received, nor to say they are fact. I think, therefore, now that you have raised it, what we need to look at is whether there would be a way of having an independent scrutiny by people who were neither *parti pris* to ministers or prospective ministers, nor to the Information Commissioner and the Freedom of Information campaigners, who could both look at a series of submissions and compare them with equivalent submissions made before the Freedom of Information Act became law, because it came into force in 2005. So to look back, before it was, as it were, even a gleam in the eye—

Q104 Mr Tyrie: So get someone in to take a look at this?
Mr Straw: To take a look at this, and also to talk to officials and to try to come to a judgment about that. I will try and get that going.

Q105 Mr Tyrie: Thank you very much. With your permission, Chairman, I have got another set of questions I would like to ask. I am sorry I will have to go later on because the Wright Committee is meeting at eleven, of which I am also a Member. Last night you made a vigorous case against creating constituencies with the same number of voters. Why?
Mr Straw: I made a vigorous case against the specific proposals of the Conservative Party, both in terms of the method that is being used and the particular system that is proposed. Why? I say "why" because the amendments that the Conservative Party put down to the Constitutional Reform and Governance Bill, for the first time, I believe, in our history, established one overriding arithmetical rule, which was to trump all other considerations. So they were proposing we should set an electoral average which would come out at about 75,000 (because the number of Members would be reduced by 10%) and then the overriding rule was going to be there should be a deviation allowed either side of that of no more than 3.5%—so it would be 72,000 and 77,500 would be the maximum. That would override all other considerations of community, of island communities, of mountains, of county boundaries, and so on. That would be it. It would mean, for example, that in Scotland, the island constituencies which are separate and discrete, at the moment (and they are small but no one, I do not think, has ever argued about this), would get amalgamated with large chunks of the mainland; it would mean that the Isle of Wight, which is one of the largest constituencies in the country, and as I understand it there has been a demand from the Isle of Wight to be a single constituency, because I think it is about 110,000 electors—what would happen there would be that a chunk of it would become amalgamated with the mainland. The Isle of Wight, obviously, just to take that as an example, is growing and it is getting to the point where under the normal rules it would be a candidate for two consistencies. Let me just say, it is hardly a secret the Labour Party has no great equity in the Isle of Wight.

Q106 Chair: Or in Orkney, Shetland or the Western Isles.
Mr Straw: There are other points. I would recommend, Mr Tyrie—I am sure you have seen this—

Q107 Mr Tyrie: I only asked one preliminary question and I have had quite a long reply. The question was, if you recall: do you feel, in principle, (I am rephrasing it slightly) that there is something wrong with having constituencies of equal size? You have said you oppose the specific proposals made by the Conservatives. Do you support the principle, nonetheless, that we should try and have the same number of voters per constituency? The principle.
Mr Straw: Yes, the principle, but I support the way that the principle these days is, and has traditionally been, balanced by other considerations.

Q108 Mr Tyrie: So you support no change to the Boundary Commission?
Mr Straw: No, just hear me out, Mr Tyrie, because you ask the questions and I will give you the answers—I think that is the way it works.

Q109 Mr Tyrie: I am just trying to speed things along.
Mr Straw: One of the major difficulties which the Electoral Commission have brought up, just recently, is that there are three million eligible voters who are not registered. They happen to be, mainly, in urban areas—

Q110 Mr Tyrie: That is a very interesting question, but what I am trying to do is address one very straightforward point that you made at length in a speech last night. You described these proposals—that is the proposal to have constituencies with the same number of voters—as "gerrymandering". How can it be gerrymandering to create constituencies with the same number of voters?

Mr Straw: Look at America, is my answer to that, where they have an iron rule of equal-sized constituencies but ended up with the worst gerrymandering in the world.

Q111 Mr Tyrie: As you well know, that it is because of Supreme Court rulings, enabling that to perpetuate, whereas we have an independent Boundary Commission for the whole country which would prevent that gerrymandering. You know that very well and you know that point was completely bogus when you made it, do you not?
Mr Straw: It is far from bogus.
Mr Tyrie: You are a lawyer and you should know how the gerrymandering process—

Q112 Chair: If you ask the Secretary of State a question, he has to be allowed to answer it, even though he might be better if—
Mr Straw: First of all, what changes would we make? This is a concern, or ought to be, to all those who have other than a wholly partisan interest in this. We have got to ensure that the eligible voters are factored into these calculations. Otherwise it becomes highly partisan, because, as the Electoral Commission (not I) have pointed out, most of these voters are in urban areas, which happen to be constituencies of Labour or Liberals and not the Conservative Party. I recommend an article in the latest magazine of the Royal Statistical Society, which is very critical of the crude nature of the Conservative proposals, and the man who wrote this has nothing whatever to do with the Labour Party, let me say; he is a statistician. The other point that is raised is the suggestion that, somehow or other, the current operation of the electoral system is biased in the Labour Party's favour because "it takes fewer votes to elect a Labour MP than it does a Conservative MP". As the author of this article points out, Nick Moon, that has not always been the case, by any means; there have been plenty of decades—

Q113 Mr Tyrie: We will get the chance to read these proposals.
Mr Straw: My final point on this is this: every single constitutional change of any significance, which has been introduced by this Government, has been initiated by the Government but has been subject to the most detailed cross-party discussion and either we have reached cross-party agreement or we have proposed that it should go to a referendum. This is an attempt, and it proves the partisan motivation of the Conservative Party, where there is no effort whatsoever to seek any kind of cross-party discussion, on such a fundamental issue as constituency boundaries.

Q114 Mr Tyrie: Do you think it has helped this debate—that is the debate about whether we should have constituencies of broadly equal size—to have as your opening salvo, to suggest "Conservatives aim to 'butcher' scores of constituencies for sordid political ends"? Do you think that was the sort of language of consensus you have just asked us to try and get to?
Mr Straw: First of all, I think it is a consequence of what is proposed. I think the fact that there has not been a single effort made by the Conservative Party, at any level, to seek any kind of discussion with the other parties indicates that the judgment which I have made and the criticism is entirely justified.

Q115 Mr Tyrie: These proposals have been on the table for five years.
Mr Straw: All the more reason rather than less why there could have been discussions with us.

Q116 Mr Heath: Changing the subject completely and going to legal aid and Sir Ian Magee's report, I think many of us were slightly alarmed by what he said. Just to quote one particular reference: " . . . the level and breadth of concern is now substantial and there is an urgent need for action, particular in respect of financial controls on expenditure of significant sums of public money." That is in respect of the Legal Services Commission. It does sound, from that report, as though the Department has fallen down on the job of oversight of the Legal Services Commission. Would you accept that?
Mr Straw: The criticism is well made, in my opinion. We have acted within the Department very swiftly on a series of adverse reports about the financial controls, or inadequacy of the financial controls, of the Legal Services Commission, and other failings, I am afraid. The difficulty that the Department—

Q117 Mr Heath: I am sorry; I am not trying to interrupt you. Could you just expand on exactly what the concerns are and how they have been evidenced?
Mr Straw: Quite a number of these concerns have been brought out in NAO reports and other reports, which are now public. For example, I think it was last year, the NAO drew attention to the fact that about £20 million had been overpaid to suppliers—to lawyers—without proper checking, and there are other examples of inadequate, as I say, financial controls, which are serious—and I make no bones about that. You asked me about whether this suggested there had been a lack of oversight by my Department. The answer to that is I do not believe so. The difficulty is about the structure of the legislation, which goes back to the 1999 Access to Justice Act, when an arm's-length non-departmental public body was established. I have to say (it was done under the Government of which I am a member), I have never been a fan of arm's-length quangos because you end up with the responsibility but not the proper power or control over what is an important aspect of public administration. There are separate arguments where they are operating on a *quasi* judicial basis, but this is not the case here. The legal and statutory responsibility for the good administration of the legal aid system is, fairly and squarely, on the shoulders of the Commissioners and

then, through the Commissioners, on the Chief Executive. I think, Mr Heath, you may have noticed that Carolyn Regan, who was the Chief Executive, has now left, and she has been replaced, certainly for the next year, by an extremely good Director General from the Ministry of Justice, Carolyn Downs, who has already gone in there. I think we can anticipate some changes.

Q118 Mr Heath: Hang on a minute. If this is going to happen now and it is going to make such a difference and it is going to prevent this colossal loss of public money—and that is in advance of any change to the status of the Legal Services Commission to an executive agency—why could not the Department have done that years ago?
Mr Straw: The difficulty is about the way the legislation was established and the fact that you have an arm's-length body, and also the history. Originally, the deal that was made in the 1940s was that the legal aid system was run by the lawyers—by the Law Society—very much separated from what was then the Lord Chancellor's Department. We then had the Legal Aid Board, which was basically the Law Society—it was dominated by lawyers—and there was a lot of resistance, when Lord Irvine was proposing major changes in the arrangements, to the Department having direct control. That has also led to a culture in the Legal Services Commission, which is reflected in their public statements, that they are somehow independent of government. For example, there were, until recently, 60 officials working on policy. Well, that is not their job. The issue of policy in relation to legal aid is a matter for the Government, but it made any changes really hard to negotiate because it was not entirely clear to whom they were making recommendations on policy, but, frankly, it was not to me. So it was not a satisfactory system at all. No-one argues that at the point where a decision is being made about whether X or Y should qualify for legal aid, that decision, obviously, has to be made independently of ministers, because quite a lot of legal aid is granted, for example, judicially to review decisions of ministers. That is no different from the fact that in the Department for Work and Pensions decisions about benefits are made separate from Ministers. You can set up a system like that, which preserves the autonomy of decision-makers at the point where they are faced with an individual application, whilst at the same time (as the Department for Work and Pensions has shown), having much more effective controls in place. That is what we are seeking to do.

Q119 Mr Heath: I still find it difficult to reconcile this impotence of ministers, apparently, with the Carter Review and everything that went with that, and the fact that when I used to be doing the job of shadowing your Department, appearing on platforms with ministers, who told us what the Legal Services Commission was going to do—this, that and the other—and this apparently very poor supervision of what they were actually doing. Can you tell me, Lord Chancellor, what difference is it going to make making it an executive agency? How is that going to change things? How are you going to get that through Parliament in the next two weeks?
Mr Straw: I am not going to get it through Parliament in the next two weeks. Let us be clear about that; it will require a change in primary legislation. There is a provision in section 2 of the Administration of Justice Act 1999 which provides for the one body of the Legal Services Commission to be turned into two. I looked at whether I could make use of that but the truth is you cannot, so it will require legislation. What will be the benefit? If it is an executive agency it will be part of my Department—an integral part, just as, say, the National Offender Management Service is an integral part of my Department—with, therefore, very clear lines of responsibility and accountability. I think we can anticipate substantial improvements in financial systems, which are essential.

Q120 Chair: Is that happening now, since you have sent in one of your own director generals in?
Mr Straw: Yes, but, as I say, there is a still a Commission there. Although part of the problem of competing policy units has been resolved by the LSC slimming them down, the group administering legal aid has no business in terms of having policy advice; it has to be something that is done separately. If you take the vexed negotiations with the Bar on very high-cost cases, which is still going on, which I got involved in when I first took this job on three years ago, it made things immensely complicated just trying to get to a clear position on a set of proposals; you had one set of policy coming from the LSC and another from officials in my Department. It was not satisfactory.

Q121 Mr Heath: What is happening to the Carter Review now? You are not going to ask Lord Carter to do any more reviews?
Mr Straw: I have not asked him to do any more reviews. The Carter Review (let me just say this, in defence of the LSC) has already produced significant benefits for the public purse and for the administration of legal aid, because the curve was on an upward path and was anticipated to be reaching £2.6 billion by this year, whereas in fact it is hovering between 2 and 2.1, and that is as a result of changes which Carter has introduced. However, there have to be other very significant changes. One of my frustrations is getting at precisely what is going on with this arm's-length body which has been pushing ministers in my Department away. That would have been okay if the Commission had themselves got a proper grip of what was going on and had run an efficient ship, but I am afraid to say they have not.

Q122 Alun Michael: Listening to your evidence and accepting entirely that problems arose as a result of leaving legal aid to lawyers alone—
Mr Straw: A quango.

Q123 Alun Michael: I am going earlier than that—leaving it to lawyers alone as part of the history you described, I cannot resist suggesting to you that it would be rather a good idea to review the decision to more or less leave the Sentencing Council to lawyers. Is that something that you might look at in the future?

Mr Straw: I do not anticipate looking at that for a very long time. So far as the Sentencing Council is concerned, what has been agreed by Parliament is that the Sentencing Council shall have a bare majority of the judiciary, essentially, on it (I think it is 8:7 or, including the Lord Chief, 9:7). The reason why the judiciary, as it were, has the trump card is because of the interaction between the Sentencing Council and the Court of Appeal Criminal Division. We looked at arrangements elsewhere, including those which had been identified by Lord Carter, where some of the equivalents of sentencing councils did not have a judicial majority, but I felt (and I, obviously, talked to the senior judiciary about this) that it would be inherently unsatisfactory to have a situation where the Sentencing Council by majority could be going in one direction and the Court of Appeal Criminal Division (who after all make the final decisions about sentencing policy within the framework set by Parliament) were going in a different direction.

Q124 Alun Michael: I will leave that line of questioning but with a question mark hanging over it. You made a statement at the beginning of this week about the case of Jon Venables. I do not want to pursue that case particularly—not least because of the danger that difficult cases lead to bad law, and while there is a genuine public interest you dealt with that in your statement and the responses you gave on Monday—but there is a general issue, is there not, about the change in the way that cases are discussed in the public domain long before they come to court? In the age of 24/7 news and a great deal of blogging, there is a lot of comment. In the days when I reported on courts as a young journalist, the limits were very, very clear and absolute on what discussion there could be in the media. I remember a senior journalist saying just recently that he had been urged by his news editor to write a report purely on a comment that was in one blog, with no substantial reinforcement. So there is, if you like, an unhealthy link between what is going on in blogging and social networking sites, and so on, with newspapers. Is there not a need in that context to review the protections that are there, and which you spoke about earlier this week, in order to make sure that the processes of justice are protected?

Mr Straw: Mr Michael, there is first the problem of the internet and the fact that this is inherently less susceptible to regulation than any other system of communication. That goes well beyond the criminal justice system. The main ISP providers and operators like Facebook are, I think, becoming sensitised to their wider social responsibilities, as well they might. I saw Facebook and Ofcom representatives with victims' representatives very recently, following the disclosure that some prisoners (either directly or, more usually, by using agents outside prisons) were setting up Facebook sites, and these were open sites, which were deeply offensive to the victims. We have now got in place a much better protocol with Facebook, and with encouragement from Ofcom, than was there before, but it is a constant problem. There has been another case in the news this week about a sex offender. On the issue of reporting, the reporting restrictions once a charge has been laid have probably got stronger than they were when you were a cub reporter. The truth about the British media is that they will test the boundaries of restrictions but where they know what the boundaries are they, on the whole, do not go beyond them. If we think about the great growth, quite rightly, in decisions by judges to impose restrictions on the identity of witnesses being disclosed (in some cases having total reporting restrictions), they are more extensive—there were 28,000 orders for witness protection given in the Crown Courts last year—and, on the whole, they work. The principal difficulty that arises is in the period preceding any charge, which is much less the subject of regulation. Ultimately, it has to be a matter for the courts to make judgments there, and I think it is a matter of public record that last Friday the Director of Public Prosecutions sought an injunction against the media to prevent further extensive reporting of the Venables case, but in the event the learned judge decided not to grant that injunction.

Q125 Mr Turner: How many people are kept anonymous or have a change in name imposed by the courts?

Mr Straw: From recollection, Mr Turner, it is four.

Q126 Mr Turner: How much is it found to be the best for, first of all, the individual and, secondly, the population as a whole?

Mr Straw: On the first question, I will ask one of my officials to go out and check this because it is quite an important number, but I am pretty certain, when we were discussing the Venables case earlier, that there have only been, including Venables and Thompson, four cases where complete anonymity for life had been granted to prisoners, with a change of identity. You will understand that is, obviously, different from the fact that witnesses in cases, and defendants until the point of conviction, are granted anonymity. I think your second question was, as it were, how far has this turned out to be in the public interest.

Q127 Mr Turner: Yes.

Mr Straw: I do not believe any study has been done on that and there may be a case for doing a study. Obviously, there are a lot of questions about the period that Jon Venables has already spent in the community since he left prison, and I made clear to the House when I answered the urgent question on Monday that if a charge were to follow then a serious further offence review would be established, as is mandatory, and that will obviously look at aspects of this. Chairman, now that Mr Turner has raised this,

I will obtain what further information I can about these cases and I can write to you, if that would be helpful.
Chair: That will be very helpful.

Q128 Mr Turner: What has happened is the same as happened with the support for Sarah's Law. We have changed from a position where the Sarah's Law proposals, as it were, were not acceptable to the point where they are acceptable. What is your feeling on this; that the individual and the population would be better if they found out about these hidden people?
Mr Straw: As I have said repeatedly during the course of the last ten days, my overriding instinct, always, is to provide the maximum public information because, first of all, the public have a right to know, in principle, and, secondly, if you do not it fuels all kinds of suspicions by the public and, of course, it is not then possible to explain there has not been a gratuitous cover-up but there are good reasons for what you are doing. That said, I think we have to anticipate that there can be circumstances—very, very rare indeed—where it will be judged that the physical safety, maybe the life, of someone who is being released from prison can only be preserved if they are given a fresh identity. We do not have capital punishment in this country, and we have never had rule by lynch mob, even when we did have capital punishment, so you cannot have a circumstance where there is a high risk that when someone is released from prison, having served their time for however grave an offence, if and when they are released, that they face a serious prospect of being maimed or killed. That would be unconscionable. That is the balance here.

Q129 Chair: In the particular circumstances where somebody is returned to the criminal justice system and, maybe, faces a charge, given that the risk of identification, and all the circumstances my colleagues have described, with the internet and the extent to which journalists in court will be looking out for someone who might fit the description, is not the risk now so high that we probably have to deal with the consequences of possible identification rather than relying on being able to preserve anonymity, and that actually what we need to do is to ensure that robust trials can take place even when knowledge of this kind might come to the attention of the judge and the jury, because if we cannot do that then we may be at risk from being unable to prevent identification?
Mr Straw: It is fair to say that, notwithstanding the extensive coverage of the Venables case, the injunction has held. So his current identification has not been compromised.

Q130 Chair: However, looking more generally at the system.
Mr Straw: The inherent issue, Chairman, as you are aware, and as I spelt out in the House on Monday here, is how do you protect the integrity of the criminal justice process and how do you minimise the risk that by advance official disclosure of material there could be a successful application for any criminal justice process to be aborted on the grounds that the publicity amounted to an abuse of process? As long as we have a jury system, and long may we have a jury system, there is a greater need for care about what information is put in the public domain than in other systems where trials are run on a judge-only basis.

Q131 Chair: Perhaps we have to have more faith in juries as well.
Mr Straw: That may be so. That is a matter which, I think, requires both research and reflection by the judiciary about whether juries can be, as it were, "trusted" to put out of their mind information which they picked up in any case. However, that said—and I have not served on a jury and there may be colleagues here who have—if you were on a jury and you had found out that the particular person in the dock, number one, was not who he said he was, and, number two, he had a string of serious previous offences, it is hard to see how you could wholly remove that from your decision-making process about whether or not that particular person was guilty or innocent of the crime charged, bearing in mind that there is now provision for character, for previous convictions, to be brought in where the trial judge is of the view that the interests of justice would be served by it (I paraphrase the legislation). I think we have to be very careful here, but I certainly think we should be open to both more research and more consideration.

Q132 Chair: There is probably a number on that piece of paper.
Mr Straw: Yes, it is four offenders who have been given new identities, as I said.

Q133 Mr Hogg: Before I come to the question, Mr Straw, might I just reinforce your caution about disclosing identities of people with serious offences? I have in mind, actually, Sarah's Law. I did a case three or four years ago where my client was charged with the murder of an alleged paedophile. That person was living near Hull and he was burnt out of his house and, in fact, murdered because he was an alleged paedophile. As it happens, he was not a paedophile, they got the wrong person, but it does just make the point of how careful one should be about disclosing the names of individuals. That is actually not the point I wanted to make, but I just wanted to reinforce your caution because I feel very strongly about it, having dealt with that specific case and being well aware of somebody who died because they thought he was a criminal of the kind I have mentioned. Leaving that aside, I am very concerned about sentencing. You will have heard the report from the Public Accounts Committee last night about short sentences. By 2014 the Ministry of Justice is planning, I think, 96,000 prison places. When I was Prisons Minister at the end of the 1980s it was 40,000. This is a huge, huge increase. Might I suggest to you that, in part, the Government is

responsible for that? I am leaving aside now indeterminate sentences (of which I disapprove but that is by the way). We have just finished the Crime and Security Bill, for which you had partial responsibility. If we look at, for example, wheel-clamping as an offence, there the Bill provided for, on summary conviction, 12 months and, on conviction on indictment, a maximum of five years. It seems to me that the problem that government is reinforcing is by provision of a sentence of imprisonment attached to almost every offence. This sends a completely wrong message to the courts, because they look at the legislation and they find across the whole waterfront sentences of imprisonment being prescribed as possibilities in respect of almost every offence you can contemplate. This is nonsense. Surely we have got, as a statutory exercise, both to cut away hugely the offences which attract prison sentences and, also, reducing the maximum wherever possible?
Mr Straw: Mr Hogg, I am sorry to disagree with you but I do. You are a man of expertise and, also, singular opinions, but I do not anticipate that your opinions on this would be widely shared by colleagues, indeed, on either side of the House—not least in your own party.

Q134 Mr Hogg: On which bit of it are you suggesting that I would not have general support?
Mr Straw: The burden of what you were saying.

Q135 Chair: This entire Committee has pointed out that we are going to have to rethink prison policy.
Mr Straw: It is the duty of anybody in my position to provide the prison places which the courts require, and that is what is happening. At the same time, and at the risk of being accused of flattery, I think the work that, Chairman, you and your colleagues did on the Committee on justice reinvestment is very important. Although I do not agree there should be a cap on the prison population what your Committee has been saying and what we have been trying to do is along the same lines. I have no interest in seeing people unnecessarily incarcerated. We have got these seven really important pilots on intensive alternatives to custody, and they are being evaluated at the moment, and it looks as though they are being more successful at turning these persistent offenders away from crime than is a series of short-term prison sentences. However, you have to have public confidence here. I do not what the precise connection is between the increase in the prison population and the fact that from 1995 crime has come down pretty dramatically, but I am damned sure there is a connection, and I am clear the public think there is a connection too, and so do sentencers. On the issue of should wheel-clamping be an imprisonable offence—

Q136 Mr Hogg: It is just an illustration. I do not want to argue too much about wheel-clamping.
Mr Straw: The truth is, for all this nonsense about this Government has created X-thousand offences, we have created X-thousand offences, where this has happened, in response to public demand. When I write to Liberal spokesmen to say: "Which of these offences, give me ten that you would now abandon" they find it very hard to give further and better particulars. The other key truth is if you look at the NAO report, which I have here, the overwhelming majority of these offenders and of all offenders in prison are there for standard offences of theft, burglary, robbery and various offences of violence, and the numbers who ever get jailed for the specific statutory offences is tiny. So you could undertake the exercise you suggest but I am not sure it would be worth the time, to be honest. In fact, talking about time I am going to have to go in a short while.

Q137 Alun Michael: The key findings of our report on Justice Reinvestment—indeed our report on the role of the prison officer—brought, to my mind, down to the fact that the provision of prison places is, in one sense, a detail, so is the work of the courts and so is the work of the police; the overall purpose is the reduction of re-offending, in which context the NAO report is particularly interesting. Is there not a need to clarify the purpose of the criminal justice system as a whole and, therefore, the individual parts of it in terms of contributing to that purpose? In that context, does not the NAO report and our two reports that I have just referred to, give a real opportunity and some direction to the need to reassess the purpose of the whole system?
Mr Straw: I think, Mr Michael, the overall conceptual purpose is pretty clear, and it is also spelt out—

Q138 Alun Michael: Is it?
Mr Straw: I think so. It is spelt out in the Criminal Justice Act 2003 as well—there are five purposes of sentencing spelt out there. Why do you have a criminal justice system? At the risk of repetition, you have it there to mete out justice; it is a fundamental element in the structure of a civilised society that people do not resort to violence themselves when they are faced with wrong-doing; that there is a proper system of justice.

Q139 Alun Michael: Indeed, and all those things are part of the considerations and the balance that has to be there. Can I suggest to you that the way, for instance—and you were responsible for the decision at the time—the youth justice system was established and the youth offending teams were established, with the very clear purpose of reducing re-offending, actually led to a reduction in re-offending, which is in the interests of victims and everybody else?
Mr Straw: And it is working. We have now got fewer first-time entrants going into the criminal justice system. We have a better record on re-offending, and that is now reflected in the fact that there are some hundreds of spare places in young offenders' institutions. Not as a result of government policy, I may say, because places are there, but as a consequence of an overall government strategy, backed by the public, to reduce re-offending, and we are now able to use—

Q140 Alun Michael: I am suggesting to you, Mr Straw, that that lesson should be applied to the criminal justice system more generally and, particularly, to the Prison Service.

Mr Straw: Of course I agree with that. Can I also just say, both to you, Mr Michael, and you were more responsible for the youth justice reforms than I was, just as a matter of record, and to Mr Hogg, that since I have an interest in seeing a reduction in the number of short-term offenders going into prison, that is actually what has happened, as Figure 1 in the NAO report shows. It was 64,000 when I was Home Secretary; it rose to 70,000 and it is now back to only just above 60,000. That is the total number of short-term prisoners going in and out of the system in any one year. The reason the prison population has increased, principally, is because more serious offenders are being locked up and they are being locked up for longer, including through the very good IPP sentence.

Q141 Chair: We did promise to release you from incarceration at around 11.15. I think this Committee's views, strongly expressed in several reports, is that the purpose of the criminal justice system, and all the money that is spent on it, is to stop people having to suffer from crime. If that were kept clearly in view we would all benefit.

Mr Straw: For the sake of completeness, I said there were four offenders who had been given new identities, and I can, because I have checked, give the names of those four. They are: Maxine Carr, Mary Bell, Jon Venables and Robert Thompson.

Chair: All the cases that we know about, yes. Thank you very much, Lord Chancellor.

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