THE DENNING LECTURE 1985

"THE ADMINISTRATION OF JUSTICE IN THE NEXT FIFTY YEARS"

THE RT. HON. LORD JUSTICE PARKER

The Bar Association for Commerce, Finance and Industry

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Almost 50 years ago I went to a large motor cycle garage in Redhill to buy my first motor cycle. There was not a single Italian or Japanese model for sale either new or second hand but a great variety of British machines both new and second hand whose names such a Triumph, Velocette, Sunbeam, Enfield and so on were household words not only in this country but throughout the world, for wherever motor cycle races were held, they were consistently won by British machines. Such machines were of unsurpassed excellence and the industry was thriving. Now there are no British machines.

The same situation prevails in greater or lesser degree in other industries such as textiles and shipbuilding and in our ports.

What you may ask does this have to do with the administration of justice. I believe a great deal. The changes which I have mentioned appear to me to have stemmed from the belief that if you have a highly successful — even pre-eminent — product or service the pre-eminent position can be maintained with no more change than minor improvements from time to time. The result of this belief has been, in industry, a failure on the part of management to realise that changed circumstances require, or at least may require, radical changes in approach and a failure on the part of unions to accept such changes even when dealing with managements which have seen the need for and sought to introduce them.

The result, in industry, has been that customers have turned elsewhere, the industry has declined, and jobs have been lost.

In the field of the administration of justice the vast majority of customers — criminals — cannot go elsewhere and the administration of the law does not in any event depend on fees from those who resort to the courts. The economic spur, which has so signally failed to produce results in industry, does not therefore even exist in this field, save possibly in relation to the Commercial Court. There is however, or should be, an

even greater spur, namely that, if the system for the administration of justice ceases to command respect, so also does respect for the law and when this happens the very structure of society crumbles and, ultimately, chaos ensues.

This spur one would have thought would have been sufficient to ensure that those responsible for the administration of justice took the necessary steps to prevent the decline of the system including where necessary the introduction of properly researched radical changes. I do not think it has been and I propose this evening to compare some features of the present situation with that prevailing in 1939 just before the outbreak of war and then to make some tentative suggestions for the future or at least raise some questions which may provoke thought.

Before embarking on this however, there are two preliminary matters which I must make clear. The first is to explain why I have used the phrase 'properly researched radical changes'. Such changes should not be introduced to alleviate, as a matter of expediency, shortcomings which have arisen as a result of a failure in the past to take appropriate action. In this category I would put the recent extension of the use of two judge courts both in the Court of Appeal and the Q.B. Divisional Court. This does not in my view do anything to improve the product. It does no more than enable more products to be produced. Speaking wholly for myself I do not find the two judge court a satisfactory tribunal.

Possibly also in this category is the current practice of the House of Lords for there to be in very many cases only one speech. That this was a matter of policy is clear. Whether it was founded on the desire to accelerate the production of the decision or in the belief that it would contribute to greater clarity in the law I do not know, but with all respect to their Lordships I believe it to be undesirable except perhaps in criminal cases. I should not, I think, have had the temerity to say so, other than in private, had not Lord Reid as recently as 1972 after some 25 years experience in the House said this:-

"The very full argument which we have had in this case has not caused me to change the view which I held when *Rookes v. Barnard* was decided or to disagree with any of Lord Devlin's main conclusions. But it has convinced me that I and my colleagues made a mistake in simply concurring with Lord Devlin's speech. With the passage of time I have come more and more firmly to the conclusion that it is never wise to have only one speech in this House dealing with an important question of law." [*Broome v. Cassel 1972 A.C. @ 1084*]

I hope that support from such a source will exonerate me from any charge of impertinence in venturing to criticise those in more exalted spheres than my own.

Equally, reforms should not be introduced without full investigation of

their side effects. Some years ago there was a proposal by the Law Commission that, for the purposes of construing statutes, resort might be had to such materials as Hansard, Royal Commission Reports, White Papers and the like. I attended before the Law Commission to protest strongly about this and was astonished to hear one Law Commissioner observe that he could not understand what I was worried about because, although not permitted to use them, Counsel surely always did examine such materials. I corrected this misapprehension and suggested that reference to such materials would encourage sloppy draftmanship, increase the fees charged for opinions, lengthen trials and possibly end up with a wretched litigant being faced with a decision that, although on the plain meaning of English what he had done was perfectly legal, the Parliamentary intent as gleaned from Hansard, of which of course he would know nothing, was quite different and he must therefore lose his case. This suggestion found no favour and I left the meeting depressed. I was even more depressed a little later to hear that Lord Denning (who had of course always referred privately to Hansard and the like) and the judges of the Court of Appeal supported the proposal. All, I thought, is lost. What can I do against such powerful forces? I must investigate the cost of subscribing to Hansard. However, some time later I was arguing a case of statutory construction before Lord Denning. I had already been going for two days when I saw him at lunch and he asked me how much longer I was likely to be. "Oh", I said, "on the present state of the law about another two hours, but if I was permitted to take you to Hansard it would be at least another week." He looked a bit thoughtful. What happened thereafter I do not know but fortunately the proposal was dropped.

The second thing I must make clear is that although I consider that sufficient and timely changes have not taken place over the last few years I firmly and unrepentantly believe that our system is still the best in the world. I do not subscribe to such views as that the inquisitorial system is better or cheaper than the adversary system, or that oral argument should be severely restricted, or that, properly conducted, the oral examination, cross examination and re-examination of witnesses is not the best means of getting at the truth. Nor do I subscribe to the view that pre-reading of the papers by the Court necessarily saves time. I can well remember, when many years ago pre-reading was introduced in the Court of Appeal by Lord Evershed, taking a full two days removing certain misconceptions from the minds of the Court before I could present my argument which itself occupied no more than half a day.

What, however, I do think, is that in the light of changed circumstances we should at least consider such matters as whether in some classes of case, or perhaps in all, we have not got to settle for something less than

the best in order to avoid the system breaking down and whether we should not develop regional centres much more so as to relieve the load in London.

My grandfather, Lord Parker of Waddington once said that to be regarded by your contemporaries and seniors as a dangerous radical and by your juniors as a stuffy and stupid reactionary was the surest sign that your views were probably sound. This I believe to be wiser than Winston Churchill's exhortation "Beware of all reform, particularly that dictated by logic."

I now turn to a comparison between some aspects of the situation in 1939 and the present day. This to show how woefully we have failed to respond to changed circumstances and how vital it is that we take the matter in hand as one of urgency.

In 1939 the population of England and Wales was about 41m. Excluding the House of Lords the Higher Judiciary comprised the L.C.J., the M.R., the President of the Probate Divorce and Admiralty Division, 8 Lords Justices, 5 Ch.D. Judges, 17 Q.B. Division Judges and 4 Judges of the Probate Divorce and Admiralty Division. The total force of Judges was thus 37. They had available to them in the R.C.J. 25 Courts. Bearing in mind that the 9 judges of the Court of Appeal occupied only 3 courts, and that some of the Q.B. Judges would be on Assize, the available courts were then plainly sufficient. This had been true since 1912 when the West Green Building was erected and thereby added 6 courts to the 19 provided originally in R.C.J. by our far sighted Victorian predecessors. In the previous year (1938), 10,003 persons were tried or pleaded guilty at assizes (including the Central Criminal Court) and quarter sessions. I use the combined figure for assizes and quarter sessions as providing the nearest comparison with present day figures for the Crown Court. On the civil side I mention only the Queen's Bench Division. In that Division in London a total of 1038 cases were tried and a further 1908 cases were disposed of by settlement or abandonment. There were 1660 cases set down and pending at the end of the year.

By the end of last year the population had risen to about 50m. an increase of some 22%, which, in the absence of other factors, might possibly be thought to have required an increase of much the same percentage in the higher judiciary required to deal with the work i.e. an increase from 37 to 45. The increase has however been very much greater. The force numbers now 102. L.J.'s have increased from 8 – 21, Ch.D. from 5 – 12, Q.B. from 17 – 49 and Family from 4 – 16.

This total increase from 37 – 102 has, however, not been matched by an increase in available Courts. Between 1938 and the early 60's there were no new courts provided, although by that time the judicial force had risen to 65 an increase of 28. An additional 6 courts were then provided in the

West Basement followed in 1968 by 12 courts in the Queen's Building and very recently by 3 in the crypt. Thus for an increase in judicial force of 65 only 21 new courts have been provided in the R.C.J. The inadequacy of this provision is demonstrated not merely by the numbers which I would have thought spoke for themselves but by the fact that, notwithstanding that a large part of the Queen's Bench Judges and of the Family Division Judges are always out on circuit, it has been necessary to press into use as so called courts, 15 rooms in the R.C.J. itself, 5 courts designed for use as medical tribunal courts in St. Dunstan's House in Fetter Lane, one and sometimes two courts in the Lands Tribunal in Chancery Lane and one large room in Alexandra House in Kingsway. All are only fit for temporary use for High Court work, some are not fit for such work even temporarily. In one such so called court for example the witness is so close that he can see what the judge is writing (sometimes embarrassing) and one has a choice between opening the windows and being unable to hear for the roar of the traffic in the Strand or keeping them closed and suffering from increasing lack of oxygen, so bad that one sometimes has to use ones last gasp in announcing an adjournment at 3 p.m. or finding that by 4.15 everyone is asleep. This is bad both for the reputation of the system and the substance of its product.

It also effects appellate work. A short time ago for example a transcript of the tape at a trial in this particular court was found to have many gaps where the transcriber had been unable, due to traffic noise, to discover what was being said by the witnesses.

So much for the Judicial work force and its London accommodation. What of the work load. It would be boring and serve no useful purpose to do more than give one or two examples. Compared for instance with the 10,000 criminal cases disposed of at assizes and quarter-sessions in 1938 there were 93,200 persons over 17 committed for trial in the Crown Court in 1983, and 72,574 cases involving 105,988 Defendants were dealt with.

In 1938 there were 580 applications for leave to appeal to the C.C.A. and 123 criminal appeals heard or otherwise disposed of whereas in 1983 there were 7,300 applications for leave to appeal and 6,877 appeals heard or otherwise disposed of. It is therefore hardly surprising that Criminal appeals which used to occupy the C.C.A. for about one day a week now requires the Criminal Division of the Court of Appeal to provide four courts, sitting continuously.

Turning to the civil side I mention only the situation in the Q.B. Division in London. In 1938 as I have already mentioned there were 1038 actions disposed of by trial, 1908 actions entered for trial but otherwise disposed of i.e. by settlement or abandonment and 1660 cases entered for trial but still pending at the end of the year.

In 1984 despite the greatly increased number of Queen's Bench Judges

only 957 cases were disposed of by trial. A further 4,260 cases were however disposed of by settlement or abandonment. The back log at the end of the year was 7,200 odd cases (of which about 4,500 could be regarded as effective or "live") and this figure has been increasing for some years at the rate of about 8% per year.

The surprising thing about the foregoing Q.B. figures is the fact that there were less cases tried than in 1938 when the judges available to deal with the work were many fewer. This is, I believe, due to a combination of causes of which the two principal ones are first, that the work pattern has greatly changed and that short cases which were formerly tried in the High Court are no longer so tried, the High Court being left only with the longer cases, and secondly that trials tend to be much more protracted. This last matter is one about which I shall have more to say shortly.

This completes the comparison between 1939 and the present day so far as is necessary for present purposes. I suggest that it demonstrates that over the period there has been an enormous change in the circumstances. The increase in crime, the introduction of legal aid, the increasing complexity and volume of legislation, the impact of the photocopier and so on have placed an ever increasing burden on the judicial machine which I believe could and should have been foreseen but which presumably was not or we should not be faced with the woeful shortage of accommodation in London which presently exists. It seems to me that what happened is that little has been done here save to provide a few extra courts when the situation has been allowed to deteriorate so far that some form of remedial action was unavoidable and that what was then done was never enough. In my view what should have been done many years ago and what should now be done is to make a realistic plan for the long term future so that, as the burden goes on increasing, as it will surely do, the resources to deal with it are at hand. In addition we must consider very carefully whether we can or should retain our existing pattern of work as between R.C.J. and elsewhere and all our existing procedures. If we do not take these steps then as the burden goes on increasing the system will break down or at least deteriorate seriously and this would be a disaster.

What then should we be looking at as possibilities. There appear to be the following:-

(a) more courts and more judges.
(b) an increase in the use of existing courts.
(c) a reduction in the total work-load.
(d) re-allocation of work.
(e) an increase in throughput.

I shall take them in turn: first, more courts and more judges.

The increasing back logs make it clear that both are necessary but there is an obvious danger in relying too much on this for, over-done, it tends to

reduce the quality of the judiciary and the maintenance of both the quality and independence of the judiciary is of paramount importance. Nevertheless, I think we will have to have more courts and judges in both the R.C.J. and elsewhere.

A recent survey by the P.S.A. concluded, not surprisingly that there was an *urgent* need now to provide up to 20 additional court rooms in the R.C.J. If by the waving of a wand they could be instantly provided this would enable the make-shift court rooms in St. Dunstan's House and in the converted rooms in the building to be closed. But of course one cannot wave a wand. There has to be a long process of feasibility studies, planning applications, detailed drawings, bills of quantities, tendering and finally building before new courts are there to be used. That process has begun with regard to a proposed building next to the Thomas More building which would provide an additional 12 courts, but even if things go smoothly — which is hoping for too much — such courts will not be ready for use until 1989 and there will only be a *net* gain if more than 8 unsuitable rooms are *still* used. In 4 years time we may therefore have 12 of the 20 new courts for which there is *presently* an urgent need and during that period the work load will no doubt continue to increase. A further possibility under consideration is the provision of a further 18 court rooms in the East Wing but, if the long haul from feasibility study to contract does not begin very soon, I would expect that, even if the proposal ultimately goes ahead, we shall at the end still be driven to use much the same number of unsuitable temporary courts as we are to-day.

This is not good enough. The extent and urgency of the problem is fully realised in the L.C.'s department but not, apparently, elsewhere. I sometimes wish that someone would libel the entire cabinet and the senior ranks of the treasury, that they would sue and that their actions could be expedited and tried in the unsuitable rooms which are now in use. They would I am sure be horrified and be driven to do something. Of course the situation might be alleviated after a time if the proposal to create a Family Court and abolish the Family Division which was made two or three years ago but not then proceeded with were revived and put into effect and the Family Court was located elsewhere. This would release for other use 6 full size courts presently used exclusively by the Family Division. It might also be alleviated in other ways. However, I have no doubt that it is of the first importance that we have as soon as possible, not only the 20 Courts for which there is an urgent need now, but many more. If the East Wing proposal *and* Thomas More project both reach fruition the possibilities within the curtilage which remain are, principally, new buildings in West Green and the Quadrangle. Both would rightly meet with stiff opposition from planning, Historic buildings and the like but ultimately we are going to be faced with deciding which is more important, preventing the collapse

or deterioration of the system or preserving the view in West Green and the Quadrangle.

As a long time supporter of the National Trust and Historic Buildings I would greatly regret it but I have no doubt that such preservation must come second.

It can of course be said that there is no need to confine the provision of new accommodation for the C.A. & High Court in London to the R.C.J. boundaries. I agree, provided that any new accommodation outside those boundaries is very closely connected — New Court Lincoln's Inn could for example be used, not for courts, for which it is unsuitable, but for the office space which will be required if and when the East Wing Project begins, or perhaps before then.

One thing is however certain. When the workload and back-logs are increasing as they are and the pace of increase can at best only be slowed by using unsuitable accommodation, urgent action is necessary.

Next on my list was the increased use of existing courts. This I mention only to show that I have not forgotten it. That something could be done in this regard is clear but it seems to me to be so peripheral as not to be worth pursuing, at any rate to-night. Moreover it would have, in so far as it was used as a stop-gap palliative, a counter productive effect, for it would enable those who do not wish to adopt the radical steps which are necessary, to let things slide a little longer. If for example by such use the increase in back logs could be slowed for a time it would be said that the need to take other action was not urgent.

I turn therefore to the possibility of a reduction in work-load which must be considered separately with regard to crime and civil work.

As to crime, clearly the best means, is to prevent crime, which in effect means convincing criminals that the game is not worth the candle. This involves two things a) increasing the rate of detection and arrest and b) ensuring that the results of conviction are sufficiently unpleasant to deter the convicted from repetition and others from transgressing at all. The first is a matter for the Police, the second is a matter for the Courts and Parliament. Neither has been notably successful nor in my view will they be until the public rebels against lawlessness. I do not believe for example that there is much good done by caging more and more sections of the public as at football matches or failing to discipline those responsible for vandalism in schools. The process results only in increasing loss of control and this will go on until the public finally says enough is enough. This will I believe happen during the course of the next 50 years but the sad thing is that when it does the sentences needed to regain control will probably be much more severe than the sentences needed to preserve control in the first place. In the result those many well meaning people who put reformation and rehabilitation of the criminal before the need for the law

abiding public to enjoy freedom from molestation of their person and property will probably end by ensuring that criminals are more severely treated than when the erosion of safety began.

One is sometimes asked whether there has really been such an increase in lawlessness.

The answer is plain. There has. At the age of 14 I used often to bicycle 3 miles in the dark to the cinema in our local town with my girl friend of similar age. We would leave our bicycles outside unchained, see the film and ride back again. It never occurred to anyone that either our persons or our bicycles might be molested and they were not. In those days cars were hardly ever locked, nor were house doors or windows. Except in specific areas the public was secure. It is very different now. It was also very different a comparatively few years ago, when my son and his friends used regularly to go to football matches and I had every confidence in their safety. Now it is not so.

So far as the work load of the Criminal Division of the Court of Appeal is concerned there is however an obvious remedy, namely the restoration of the power of the Court to increase sentences. Before that power was abolished the number of appeals was never more than 3,000 but within four years of abolition it had risen to 9,700. This was not because the power to increase was greatly used. It was not. In the ten years from 1956-1965 only 30 sentences were increased. This was about 1 in 500 cases of appeals against sentence. The existence of the power did however ensure that meritorious appeals were not delayed by the existence of hundreds and hundreds of entirely worthless applications. At present an appellant has nothing to lose, save for a little loss of time, and this too may soon be removed. I believe that the power will have to be and will be re-instated. To do so will no doubt provoke adverse criticism but I believe this must be faced and it should not be forgotton that the Crown Court has, on appeal from the Magistrates Court, just such a power, albeit is rarely exercised. The recently suggested power to refer a sentence when there is no appeal and without affecting the convicted person is nothing but a failure to face up to what is really needed.

Of course it would not be justifiable to reintroduce this power merely to deter appeals. Its need, which is urgent, is for the purpose of ensuring that appeals with merits are not delayed by the worthless.

As to the civil work, I do not see any ready means of reducing the workload but it seems to me likely that if the system cannot be improved the load will reduce itself for the customers will go elsewhere, be it to the courts of other countries or to arbitration. This process, so far as arbitration is concerned, has I believe already begun. It is I think inevitable that it will increase. That it should do so to some extent does not appear to me to be undesirable but, if allowed to go too far, it would

in my view be a disaster. It therefore behoves us to put our house in order. What an efficient system will do is well illustrated by the Commercial Court. Over a short period of years it has progressed from a work-load which could be handled by one judge part-time to a work-load which occupies five judges full-time. This was because it offered a fast and efficient service and commanded the respect of its customers who, incidentally, come for the most part from overseas. However, this efficiency and popularity has been such that it too is now overloaded and it is faced with increasing delay times.

It is therefore essential that steps are taken to increase the efficiency of the system. This brings me to the next of my headings. Reallocation of work.

Reallocation or Redistribution of Work

The sort of questions which require examination here are: Should we severely limit the categories of High Court Cases to be tried in London? Should we establish the Court of Appeal in a separate building specifically designed for three judge courts? Should Royal Court complexes be developed in our big cities with all the facilities presently only to be found in London so that, for example, in a shipping case or insurance or chancery case arising in Bristol the parties would know that a commercial judge or chancery judge would be available in Bristol not only to try the case but to deal speedily with interlocutory applications? Should county court jurisdiction be greatly increased and made sufficiently attractive to draw work up to the level of its jurisdiction into its orbit?

I do not pretend to know the answers. I suggest only that we must investigate these matters *now* so that the answers may be found and steps taken to put them into effect *before* deterioration of the system has developed and so as to prevent it. Nor do I say that nothing is being done, for it plainly is. New Court buildings — some of them horrid — have been created in various places and the creation of county court trial centres where cases may be tried de die in diem by selected judges is in the process of consideration. This, I mention in passing, is essential. At present any costs penalty involved in proceedings in the High Court in a case within C.C. jurisdiction is likely to be far outweighed by the inconvenience of interrupted trials and the uncertainty about the quality of judge who will try a case. A responsible solicitor will therefore advise his client that the costs penalty is worth shouldering.

The burden on the High Court will only be reduced when the quality of County Court trials is improved.

For myself I believe that at some time within the next 50 years all these things will happen to a greater or lesser extent because they will be found desirable and in any event there will be no option. But let us have them on a forward planned basis, timeously, rather than as desperate ad hoc

measures to cope with a worsening situation. To do so will involve, and this is very important, the co-operation and perhaps the actual leadership of the Law Society and the Bar, for it will need the encouragement of both if Regional Centres are to be developed.

Finally I come to increase in Throughput.

This in effect means shortening of trials which presently grow ever longer. The Lord Chancellor's review will I hope produce some effective answers but in the meantime there is I think much that can be and must be done within existing procedures perhaps most of all in relation to documents.

Again and again bundles of documents are put before the court, to only a small fraction of which does either side refer. Again and again the bundles contain illegible documents, and documents from which the top side or bottom is missing. The expense which results is enormous, but I think not commonly recognised.

The L.C.J.'s practice direction of July 21st 1983 S.C.P. pp.622-4 is again and again broken. What happens I think is this. Inspection of documents after discovery very often does not take place. The solicitors for each side find it cheaper to demand photocopies of everything than to inspect and demand only what they really want. This would not matter if the selection process then took place but all too often it does not. The solicitors do not themselves select nor do they get Counsel to do so. Everything, no matter how irrelevant, is included in the bundles for trial and sent with Counsels' Briefs. It is only when Counsel are preparing for trial that any real effort is made to select, but at that stage the bundles are already paged, so all is left where it is. In the result much time is taken at the trial moving from one bundle to another and back again. Furthermore the bundles are frequently not checked for legibility or paging. Again and again time is spent dictating to the judge what is said in the illegible bits or the missing bits. Again and again Counsel will refer to a page number and the judge will say "unfortunately my page numbers have not been reproduced between page 437 and 465", and Counsel will say page 452 is X pages on from the letter I was last reading. So the judge laboriously counts on the number of pages writes 452 at the bottom and says, "does the letter begin "With regard to the late shipment". Counsel says "No". Whereupon Counsel on the other side says "The letter my learned friend wants is three pages further on, but in my bundle it is not marked 452 but 448". Then there is much to-ing and fro-ing ending up with Counsel saying "If your Lordship would leave the bundle over the adjournment we will have it put right".

All this takes time and very expensive time. In one very long case I kept note with a stop watch of the time taken up in such fruitless activities and by the end of the 7th day one complete day was attributable to such

matters. There were four parties each with two counsel, solicitors' partners and expert witnesses in attendance. The cost was astronomical. matters. There were four parties each with two counsel, solicitors partners and expert witnesses in attendance. The cost was astronomical.

I believe that draconian measures are necessary to ensure that this sort of thing does not happen, for practice directions alone will not. We should I think consider whether typed copies only will be acceptable. This would clearly, by reason of expense, ensure that only documents really required were included in the Court bundles. Another possibility is that the Court should adjourn a case at the expense of the solicitors until the documents are in order. Naturally a judge will, with everyone present, be reluctant to do this, but it would probably only have to be done in a very few cases before the message got home and the proper preparation of documents became the almost invariable rule which it certainly is not now.

A further matter very difficult to deal with is cross-examination. A vast amount of time is wasted in useless cross-examination, e.g. in going laboriously through the correspondence and asking questions which do not matter at all. It is said often "Why do the judges allow it". This is in some cases a legitimate comment but often it is not. The relevance or irrelevance of a line of cross-examination will not in many cases be apparent at the time. It is only at the end that it can be seen how irrelevant much of it has been. What is, I think principally needed is a greater realisation of how to cross-examine. Pupils should regularly be sent to listen to the best cross-examiners in action. It is I believe the only way to learn. Not only pupils should indulge in this form of education. Practising members of the Bar including some silks would I am sure benefit by it.

I digress for a few moments to express alarm concerning the possible effects of Lexis and Eurolex. As research instruments I have no doubt they are admirable but they must not be allowed to become an excuse for the proliferation of the citation of authorities. That they have such a tendency is already clear. They have also another danger. The ability to obtain print outs of what appears to be the relevant part of a case without reading the whole case can be both misleading and time wasting. In a recent appeal Counsel produced just such a print-out. It appeared to support his argument but the Court put a number of questions as a result of which both Counsel and the Court examined the whole case. The next morning Counsel stated that having read the whole case he must accept that it did not support him and no more was heard of it.

There used to be two questions frequently asked by such fast movers as Lord Goddard. They were "What is your best case?" and "What is the worst case against you?" I would suggest that through-put would be much increased if both at first instance and on appeal these questions become the norm. Other questions too would be of value, e.g. immediately after

the case reference has been given "What proposition do you get from this case?" Followed by "Where in the judgments do you get it?" I apologise for mentioning the obvious but experience has shown that all too often the answers to such questions are not ready to hand and that much time is wasted reading the head-note and long extracts from judgments which are quite unnecessary.

What more can we look for. All sorts of things have been and are being canvassed such as exchange of proofs, with examination-in-chief limited to affirmation of proof and comment on the proofs of the other side; more use of affidavit evidence; limitation of time for oral argument; judicial control of actions; abolition of the adversary system; the power to opt for trial on documents alone and so on. Time does not permit me to discuss all of them. At present I would be against the abolition of the adversary system and I hope and believe it will remain. I would also be against judicial control in the sense that it is used by its advocates, i.e. that the progress of each case should be continuously monitored by the judges with a view to accelerating trial dates and curtailing the length of trial. I do not believe that it would do either and it would, if it was to operate at all, require a large and expensive administration substructure. What is far more important is that greater use should be made of interlocutory procedures. Before the notion crept in that interlocutory applications were time wasting manoeuvres almost any competent practitioner could assert that he had won more actions in the bear garden than he had ever won in court. Interogatories were frequently and successfully used to kill an action or a defence and applications for particulars to compel the abandonment of senseless allegations and expose what were the real issues. Then we went through a period where all this fell into disrepute and now it is often suggested that the judge should identify the issues at some pre-trial meeting. This I regard as both fanciful and a demonstration that particulars have not been properly used.

If in the next 50 years we can regain the brevity of trial — and judgments — which used to prevail, a great deal would be gained. To do so is I am sure possible but again it will require the joint efforts of the Law Society and Bar to which, in this connection, one must add Judges and Lords Justices.

There is also the question of codification. The Law Commission are presently considering codification of the criminal law but take the view that codification of the law of contract and tort is undesirable. I agree but limited codification will I think be required. In Banking Law for example I believe it to be necessary now. The law was developed when the whole process of Banking was very different and can no longer apply.

I have almost done. I conclude with three observations with regard to the next 50 years:

1. We *must* do better than we have done in the last 50 years.
2. We shall see in the course of the next 50 years increasing attempts to erode the independence of the judiciary which must be resisted at all costs.
3. By the end of 50 years I shall not be accountable for any forecasts or suggestions made to-night for by that time I shall long since have been dead. Moreover I doubt if it would matter. If we were for example to build too many courts — if for example crime stopped — surplus courts could be put to other use. It is to build too few which matters.

Finally and for the purposes of entertainment only, or nearly so — I will read you two passages from Mr Brougham's speech on the Present State of the Law delivered to The House of Commons on the 7th February 1828. The whole speech occupies no less than 120 printed pages, and took 6 hours to deliver.

The first quotation is this.

> "I highly approve of paying those learned persons by salaries, and not by fees as a general principle; but, so long as it is the practice not to promote the Judges, which I deem essential to the independence of the bench, and so long as the door is thus closed to all ambition, so long must we find a tendency in them, as in all men arrived at their resting place, to become less strenuous in their exertions than they would be if some little stimulus were applied to them. They have an irksome and an arduous duty to perform; and, if no motive be held out to them, the natural consequence must be, as long as men are men, that they will have a disposition growing with their years to do as little as possible. I, therefore, would hold out an inducement to them to labour vigorously, by allowing them a certain moderate amount of fees.

Conscious as I am of my own increasing slothfulness I am bound to point out that Mr Brougham's observations on the nature of mankind cannot surely be applied to such as Lord Reid or Lord Denning whose disposition appears to have been to become even more vigorous and industrious with advancing years.

The second quotation is this.

> "After a long interval of various fortune, and filled with vast events, but marked from age to age by a steady course of improvements, we are again called to the grand labour of surveying and amending our Laws. For this task, it well becomes us to begird ourselves, as the honest representatives of the people. Dispatch and vigour are imperiously demanded; but that deliberation, too, must not be lost sight of, which so mighty an enterprise requires. When we shall have done the work, we may fairly challenge the utmost approval of

our constituents, for in none other have they so deep a stake.

Before ending the quotation I pause to observe that this as as true today as it was in 1828. Mr Brougham continued in a passage which I read only for the interesting contrast between the language of his time and that used in the H of C today. He said:

> "In pursuing the course which I now invite you to enter upon, I avow that I look for the co-operation at the King's Government: and on what are my hopes founded? Men gather not grapes from thorns, nor figs from thistles. But that the vine should no longer yield its wonted fruit — that the fig tree should refuse its natural increase required a miracle to strike it with barrenness. There are those in the present Ministry, whose known liberal opinions have lately been proclaimed anew to the world, and pledges have been avouched for their influence upon the policy of the State. With them, others may not, upon all subjects, agree; upon this, I would fain hope that there will be found little difference. But, be that as it may, whether I have the support of the Ministers or no — to the House I look with confident expectation, that it will control them, and assist me; if I go too far, checking my progress — if too fast, abating my speed — but heartily and honestly helping me in the best and greatest work, which the hands of the lawgiver can undertake. The course is clear before us; the race is glorious to run. You have the power of sending your name down through all times, illustrated by deeds of higher fame, and more useful import, than ever were done within these walls. You saw the greatest warrior of the age — conqueror of Italy — humbler of Germany — terror of the North — saw him account all his matchless victories poor, compared with the triumph you are now in a condition to win — saw him contemn the fickleness of Fortune, while, in despite of her, he could pronounce his memorable boast, "I shall go down to posterity with the Code to my hand!" You have vanquished him in the field; strive now to rival him in the sacred arts of peace!"

They must have listened spellbound, for his motion was unanimously carried. Or perhaps this was because everyone was much too exhausted to say No.

The Oxford Dictionary gives as one meaning of the word lecture "A prolonged reprimand." If what I have said has appeared to be such I make no apology for it. I believe it to be richly deserved.