JUSTICE ON TRIAL

Radical Solutions for a System at Breaking Point

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Bloomsbury Publishing Plc
50 Bedford Square, London, WC1B 3DP, UK

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First published in Great Britain 2020

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A catalogue record for this book is available from the British Library

ISBN: HB: 978-1-4729-7788-5; ePub: 978-1-4729-7783-0;
ePDF: 978-1-4729-7784-7

Typeset by Deanta Global Publishing Services, Chennai, India

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To Mum and Dad
Thank you for everything

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FOREWORD

I have been a criminal defence lawyer for over twenty-five years.

I have looked into the eyes of murderers, sat down and drunk coffee with rapists, and listened to the tangled tales woven by fraudsters, money launderers and drug barons. I have tried to communicate with children and young people, dead behind the eyes, barely able to comprehend the magnitude of the crimes they are accused of or the wrongs that they have suffered in their short lives.

I have spent many days of my life behind bars, queuing patiently with the wives, children and friends of those locked up by the courts for days, months or a lifetime, waiting for a visit with a prisoner; handing over identification documents and booking reference numbers, passing slowly through each layer of security, bags scanned, clothing and papers searched, with varying degrees of enthusiasm and intensity.

I have waited patiently as keys slid into locks, heavy metallic doors first swung open and then slammed shut, one after the other, into prison visiting rooms, always too hot or too cold, waiting for a client to be brought to see me for an hour or two of escape from the grey monotony of prison life.

Time after time I have seen pupils dilated, faces unnaturally flushed, speech accelerated and thoughts jumbled by mental illness, the ingestion of substances, natural or manmade, minds and behaviour distorted.

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I have received the most unexpected courtesy and respect from those guilty of the most base and motiveless crimes; rudeness and arrogance from those from whom – on the strength of appearance – I expected something better.

The guilty may protest the loudest or – just as often – succumb quietly to the inevitability of their fate. The innocent may lose all hope, however encouraged by my words, or rage against the injustice of it all, unable to listen to reason, to assurances that justice will – in the end – be done.

But what is justice? A child locked away by the state after being abused by those who should have cared for him, after being lured by the dazzle of opportunity, shining through the tinted glass of luxury cars, gliding through the neighbourhood, taking care of the timeworn business of supplying drugs? A young man, frightened into carrying a knife, faced with a threat – real or imagined – lashing out, killing or maiming someone just like him, out of allegiance to a different gang? A woman, finally losing control after years of abuse at the hands of a man, all reason lost as she hits out, strikes and – in rare instances – takes a life. Or one of the countless addicted – to booze, drugs or gambling – robbing, cheating, just plain stealing to feed a habit, no more a choice as they see it than for the victims they select.

Does justice mean arrest, charge, trial and years in prison to protect the victims? To deter others from doing the same? To satisfy the cries for vengeance and punishment, spread across the newspapers, splashed across websites and exploding in a million Tweets and Facebook posts?

Over the past twenty-five years, I have seen at first-hand how criminal justice works, not just in Britain but around the world. From the violence of Glasgow to the

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humanity of Geneva, to the tragedy of the fifth largest 'city' of the most powerful country on earth – the United States prison system.

This book is about what I have witnessed, in my working life in the law and on my travels, but most of all it is about what I have learned. The lesson for me is a simple one: almost everything we do and think about crime and punishment is wrong. I am going to show you why. And what we can do about it.

Chris Daw QC
May 2020

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AUTHOR'S NOTE

Some of my clients are now dead. Most are still alive. Many became notorious and were front-page news. For others, even their wives and children never found out that they had become embroiled in the criminal justice system. I have acted for an exotic and eclectic mix of human beings – from international footballers, Russian oligarchs and politicians to some of the poorest and most vulnerable people in our society.

They all have one thing in common, dead or alive – they came to me as their lawyer, expecting and deserving complete confidentiality. Since time began, or certainly for the past few centuries, a core tenet of the legal profession, wherever lawyers carry out their work, has been some variety of legal professional privilege. Like the priest in the confessional, the lawyer in his office, in the prison visiting room, in emails and on the telephone must take his clients' secrets to the grave.

I cannot, then, divulge in these pages what my clients have told me or what I have advised them to do. Or not to do. My notes remain locked away, or shredded after the passage of sufficient time, along with case papers, emails and – the lawyer's stock-in-trade – my written opinions on the law and on the evidence.

But that does not mean that I cannot tell you anything of my work in the criminal courts and beyond, over my long legal career. In some cases my involvement is

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a matter of public record and the facts and verdict well known to millions. I will make mention of some of these cases, respecting all the while the secrecy of consultations with my clients. In others, it is not the exact details of the evidence, the names of those involved or the location of the crime that matter – it is the core themes that emerge and the lessons to be taken from them.

I must, of course, avoid clients rightly complaining that I have broken the seal of trust between us, and ensure that there is no possibility of disbarment from a career that I intend to continue for many years to come. Save where in the public domain, the names of the innocent – and the most definitely guilty – have been changed, along with locations and certain other details, to avoid any possibility of jigsaw identification of anyone involved.

This inside tour of criminal justice starts, right from the outset, at the heart of our legal system, with a journey towards the most dramatic moment of all – the verdict of the jury in a criminal trial . . .

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INTRODUCTION

A study in crime

Stuart Ross was a very successful man.

He owned an international money-transfer business that processed and sent client payments all over the world – from a few pounds sent by a husband in Newcastle to his family in Nairobi, to tens or hundreds of thousands of dollars or euros for the purchase of chemicals, fabrics or IT services – anything at all, anywhere in the world.

Such businesses are not unusual. They are on every high street, some as stand-alone offices, others hidden at the back of a newsagent's shop or, of course, behind the counter of a local bank. Websites abound, offering faster and cheaper ways to convert money from one currency to another and then to transfer it, at the click of a mouse, from one place to another.

Stuart's company had been a roaring success from the moment he opened the doors, launched the website and declared UK Money Services International ready for business. The number of transactions grew exponentially, as did the commissions and charges earned by UKMSI. Stuart soon bought a very large house in Essex, a short drive by Bentley from his London HQ. His three children

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went to a private day school, very different from the state comprehensive that he himself left at the age of sixteen. He ate in London's best restaurants and the family holidayed in Dubai, Mauritius and Barbados.

When I met Stuart he was housed in the High-Risk Category A wing of Belmarsh prison in South London; home to terrorists, murderers and the leaders of the most notorious Organised Crime Gangs in Britain. Belmarsh, like all high-security establishments, is a bleak place, almost entirely devoid of human spirit. It is a warehouse, not only for the body but for the soul.

Some of the prison officers are polite, and others – very occasionally – might crack a joke to lift the mood in between security checks, as each metal door is opened and shut. Most simply do their job, which seems reasonable given the misery of the environment in which they spend their working lives.

To reach Stuart required, first, a trip to the Visitors' Centre outside the prison walls, to deposit keys, phone, laptop, credit cards and cash – anything at all that might amount to contraband under the detailed and prescriptive Prison Rules. I then had to produce a letter of introduction from my Senior Clerk, together with my driving licence, and undergo a fingerprint scan, to prove my identity. A short walk to the main gate, a long wait there, another fingerprint check, and then an extreme airport-style search and scan of paperwork (no maps allowed!), shoes, body, and inside each of my pens.

More sitting and waiting for an escort to the Main Visits area, in the company of one of the sorriest groups of people on the planet – the mothers and fathers, the wives

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and girlfriends, the children and infants of the pallid army of the damned that forms our prison population. Eventually an officer arrived and led us all, snaking in an odd semblance of the conga, across gated courtyards and eventually into an anteroom, next to 'Domestic Visits', where most of the visitors would spend the next couple of hours.

I was one of only three people who were told to wait there for yet another escort who would take us, in a small van, from Main Visits to the High-Risk Category A visiting room in the Special Secure Unit (SSU), literally a prison within a prison. Yes; in the incredibly improbable event that someone were to manage to escape from the SSU at Belmarsh, he would find himself in another – only marginally less secure – prison and have to come up with another escape plan to top the first. A Pyrrhic victory indeed.

The other two waiting for the SSU van were a young woman – early twenties – and her baby, no more than a few months old. The mother wore heavy make-up and had big hair; her daughter was awake but very quiet, as if conscious that this was a place where the cries – and certainly the laughter – of a child would be out of place. I flicked through the file of evidence on Stuart's case; time passed, nobody came, the baby grew a little restless and her mother rocked her a little, shushing all the while. In a snatched conversation, just before our driver arrived, I found out that the baby's father had just been sentenced to twenty-eight years for drug trafficking – he was hoping to appeal.

An hour after stepping out of a cab on a grey autumn day, I was shown into a visiting room, deep within the SSU,

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where Stuart already sat, wearing the 'Cat A' uniform of pristine Nike tracksuit and trainers. The table between us and the steel-framed chairs were bolted solid to the concrete floor. In front of Stuart lay a file of papers, similar in size to my own, clearly well-thumbed, pages marked with slips of paper, where Stuart had found a point of importance during the long hours available to him in the SSU, with nothing to do but read and plan his defence.

We shook hands firmly and I sat down. 'Stupid question I know,' I opened, 'but how's it going?' The answer came back – 'Not too bad, better in the SSU than in the main jail apparently.' Stuart had been in prison for just six weeks and here he was already, giving TripAdvisor-style reviews, weighing up the relative merits of one high-security prison over another.

The facts of Stuart's case were unsurprising to me, given the nature of his business and his current circumstances. It turned out that millions of pounds' worth of transactions had been carried out by international drug traffickers using UKMSI. His was not just a service for hard-working immigrants to send money home to their families. One UKMSI client in particular had transferred over £10 million (around US$12 million at the time) in just three months from Britain to Turkey, the British Virgin Islands, Ghana and Venezuela. That client was now also locked up in the SSU at Belmarsh, charged with six counts of Conspiracy to Import Class A and B Drugs on a massive scale.

Stuart's client was looking at thirty years in prison for the drugs crimes alone; Stuart up to fourteen years, for a dozen counts of money laundering, under the Proceeds of Crime Act. He also faced the confiscation of every

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brick of his house, every blade of grass on his acre of lawns, and even of the diamond-encrusted Rolex which had graced his wife's wrist until it was seized during a police raid.

The prosecution file was made up of a complex web of surveillance evidence, mobile phone attribution (who was using which phone), call analysis (who called whom, when and for how long), text messages, social media posts, cell siting (showing where a phone was located at any given point in time), fingerprints, ANPR (Automatic Number Plate Recognition) vehicle location tracking, DNA (on drug packaging, banknotes and in vehicles), banking records, cash seizures, and transactions carried out through UKMSI. Naturally there was CCTV footage of the defendants and their associates during the period that the conspiracy had been carried out, at least based on the prosecution case-summary document.

The investigation of this conspiracy had been going on for well over a year, since the cocaine-importation operation had crossed the radar of the police via an informant. Since then the National Crime Agency (Britain's elite crime force) had patiently and persistently built layer upon layer of evidence, said to implicate a total of seven men and two women. Sure of its case, the time came for a coordinated NCA 'strike' – all the defendants' homes were raided at exactly the same time (5 a.m.), and all arrests were made at once, by multiple teams of specialist search officers.

Stuart was arrested, taken to a police station and eventually interviewed by detectives of the NCA. On the advice of his experienced solicitor, he remained silent as the evidence was paraded before his eyes – phone

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records, stills of meetings captured on CCTV and hidden surveillance cameras, fingerprints here and money transfers there. Stuart said nothing, but he listened very carefully indeed.

Charges followed and, unsurprisingly, the magistrates' court denied Stuart bail at his first appearance, despite his lack of a criminal history. The District Judge decided that there was a real risk that he would 'fail to surrender', 'interfere with witnesses' or even 'commit further offences' if he were to be released before trial. This is how it works in cases of the most serious crime – once the prosecution get you locked up, the system will usually keep you there as long as it can. With a nod to his wife in the public gallery, Stuart was led down the steps of the dock by two security officers and driven away to Belmarsh in a prison van.

A week later, the day before the first preliminary in the Crown Court (where the trial would take place before a jury many months later), there I was, sitting with Stuart, sounding him out – and him me – as we took our first steps on a legal journey together that would end, inevitably, with the verdict of a jury. That verdict would determine whether Stuart would be free to go home or, as with so many, would see him back in the prison van, unable to walk the streets again for a decade or more.

Stuart naturally protested his innocence – they almost all do, at least to start with – and began to bombard me with information. The police were lying about so many pieces of evidence; he could prove that he knew nothing about the activities of his co-accused in the conspiracy – one

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was his nephew – and he knew nothing about drug trafficking at all.

I listened patiently, nodding in the right places, and waiting until he ran out of steam. For some it can take minutes, others an hour, and a few need to talk for session after session before they finally realise that talking alone is not going to get them out of prison. At some point they are going to have to listen. The more serious the case, the more complicated and difficult the evidence, the more clients like Stuart believe that they have all of the answers and can tell me how things need to be done to win the case.

Rather like patients attending the doctor, armed with snippets of medical information from the Internet, defendants locked up in prison believe that they can self-diagnose and self-prescribe their way out of trouble. They have the dubious benefit of a wealth of advice from those locked up on the same wing, jailhouse lawyers to a man, and at first they do not question how all that wisdom has so spectacularly failed to keep any of their advisers out of prison in the first place.

So they read the prosecution evidence, make spidery notes and comments all over it, and come to that first meeting with their defence barrister (me), armed with a mixture of amateur legal cunning, ingenious and improbable explanations of events, and a complete lack of appreciation for reality. And they talk, quickly and confidently, with superficial credibility and even a tone of injustice. I listen, occasionally making a note when a piece of relevant information shines out from the fog of fantasy and unreality floating across the table. Rarely do I fill more

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than a page on that first visit; sometimes I write nothing at all.

Eventually, hopefully with some time left before the prison officer bangs on the window to say 'Time's up', the client stops talking long enough for me to speak.

'We're in court tomorrow and the one thing you need to tell me today is whether you are going to plead guilty or not guilty,' I explain, holding up my hand against Stuart's attempts to protest his innocence. 'Just hear me out,' I insist. 'I have to explain how it works. I have to tick a box to confirm that I have told you this. Once we get through this formality we can talk about what happens next.'

Stuart shuffles in his seat, leafs through his paperwork, then finally looks and listens as I explain the system. 'If you plead guilty tomorrow, you will get a discount of about a third on your sentence. But you will definitely go to prison. You will get a minimum of eight years, possibly a bit more, and you will guarantee that the prosecution will take everything you own and everything you will ever own.' He is about to interrupt, but again I make him listen.

'That's Option One for tomorrow,' I say. 'Option Two – you plead not guilty, and from that moment forward the minimum sentence starts to go up, to ten years, twelve years and, if we get to trial and lose, up to fourteen years, and of course you still lose everything . . . but, if we win, you walk out of court by the front door and they get nothing at all.'

Silence, just for a second or two, and then: 'I'm going not guilty.'

'Are you sure?'

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'One hundred per cent.'

Now a bridge has been crossed, a fork in the road taken, from damage limitation and mitigation, to a winner-takes-all battle with the prosecution. One that might result in Stuart Ross becoming one of the grey men, imprisoned and institutionalised by the state, losing all touch with the real world, physically and mentally a shadow of himself. Or, just maybe, one day soon he might leave court by the main doors, alongside staff, lawyers, witnesses and interested members of the public, back onto the street and home to his own bed.

In many ways Stuart's case, to which we shall return as the trial reaches its conclusion, poses all of the questions asked in this book. This is why this case and all the others are included, to provide first-hand evidence, accumulated over thousands of days in courts and prisons. Like so many prosecutions, Stuart's case only took place at all because of the prohibition of drugs, our obsession with heavy prison sentences and the influence of ancient moral views of good and evil, lying behind our criminal justice system. There are clearly lessons to be learned from Stuart's case, and the many others in the pages ahead, but this book is not just about my own experiences or those of my clients.

This book is about why we have a criminal justice system at all. What is it for? What works and what is broken? And the only way to decide those questions, at least for a lawyer like me, is by weighing the evidence and coming to a conclusion. In the chapters ahead, that is exactly what I will do, not just offering an opinion based on research, but reaching clear verdicts on everything we believe and everything we do in the criminal justice

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system. And I will do that, purely and simply, by putting justice on trial.

First, by way of an opening statement in this trial of justice itself, I present a short history of crime and punishment . . .

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proven largely well founded to the present day, in respect of our much more modest jury of a dozen (successful cases of 'jury nobbling' remain rare).

And so these massive juries presided over a public trial and delivered their verdicts after a secret ballot, with jurors voting by depositing pebbles in boxes – black for guilty and white for not guilty. Many of the crimes adjudicated upon would be familiar to us today – murder, naturally, together with other crimes of violence, but also treason and various offences against the state. The jury had a wide discretion to decide whether any given action was to be condemned, as the law was not clearly defined in written form.

The trials were serious in their subject matter, but they were also a form of entertainment, with speeches written to a high professional standard by lawyers (logographers), to be delivered by the parties entirely from memory (and without public credit to the speechwriter). Law, evidence, opinion and flights of oratory were all mixed together; a form of advocacy I have witnessed myself, with varying degrees of success, throughout my career in the criminal courts.

The length of speeches was strictly controlled, not by the traffic lights of the modern US Supreme Court, but by a water clock – a pot of water gradually emptied through a small hole in the bottom. When it was empty, it was time to shut up and sit down.

By the fifth century, witnesses gave live evidence and could be cross-examined, and a century later saw the introduction of written statements, to which a witness could attest, much as in an English civil trial in the modern day. Other elements of the process would not meet with

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contemporary standards – women could not give evidence at all, and the testimony of a slave was only admissible, in theory at least, if he had first been tortured (to ensure that he did not just say what his master told him to).

One of Athens's most prominent citizens, Socrates, was convicted – at the ripe old age of seventy – of corrupting the youth of Athens with his philosophy, by a small majority of the 500 jurors who tried him. He received the death sentence, to be carried out in a rather civilised fashion (as decided by the jury) – he would take a drink of hemlock (a deadly natural poison). Even with the option of fleeing the city for exile, chosen by most prominent citizens of the day who found themselves in the same predicament, Socrates was true to his principles and his lifelong belief in the Rule of Law – he drank the deadly liquid 'as if it were a draught of wine'.

Others were less fortunate when convicted and many met their deaths shackled to a wooden board, where they were left to die.

The Romans at least took the trouble to write down their laws, rather than leave it to the discretion of a jury in each individual case. Those who were convicted faced a creative array of punishments, from whipping, confiscation and fines – for fraud, theft and financial crimes – to crucifixion, fighting in the gladiatorial games, being pushed off a cliff or having molten lead poured down the throat for the most serious offences, including murder.

Naturally, the wealthy and the nobility of Rome tended to avoid punishment, even for the most serious crimes, by choosing instead to go into exile, hoping one day to return to the city. Slaves were almost always crucified, whatever the crime, and sometimes all the slaves in the household

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were executed at once, based on the unlawful conduct of just one of them.

Deterrence was at the forefront of Roman justice, not only for slaves but for the Roman army, which carried out 'decimation' when a soldier attempted to desert from the legion. The deserter himself was put to death, but one in ten of his comrades met the same fate. On the spectrum of sentencing philosophy, with human decency and rehabilitation at one end, decimation must surely sit close to the opposite end. It was one of the most cruel and unjust punishments ever to be devised by man.

Unlike the Athenian logographers, who hid in the background and scripted speeches and arguments on behalf of their clients, the advocates of Rome were among the greatest entertainers of their time. The modest-sized juries – just seventy-five strong! – were made up entirely from the nobility, and the general public was not only welcome but encouraged to attend the trials. Cicero and the other great legal orators of the day were lauded for their rhetorical displays.

Despite the potential gravity of the consequences for the accused, the entire trial process had a theatrical air. With echoes of the advice I give to my own clients – to dress appropriately, so as to appear both serious and humble – Roman defendants were told to appear in mourning dress, with a haggard look, so as to attract the sympathy of the watching public and the jury alike. Even the families of the accused were brought into the performance, encouraged to engage in ostentatious displays of emotion from the viewing area, such as bursting into tears en masse.

This melodramatic strategy could be surprisingly effective, and at least one defendant was acquitted after

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