

# SUMMARY

# THE SECRET BARRISTER

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# **Summary of “The Secret Barrister” by The Secret Barrister**

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Stories of the Law and How it's Broken

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# Introduction

Most people in society learn about the criminal justice system either from pop culture or from first-hand experience. Regardless of how you've learned about the justice system, we all share a common perception. This perception has been culturally embedded in us, so when we think of the justice system we all visualize the following: a courtroom, judge, jury, the accused, lawyers, witnesses, questions, and various speeches. And of course, plenty of wigs. For many people, however, that is where their knowledge ends. Few people take the time to think critically about the ins and outs of the justice system and even fewer consider how and why we have this particular way of doing justice. Most don't understand the impact it has upon the hundreds of thousands of people who pass through the system every year, and not just the defendants but the witnesses and victims as well.

While society likes to believe that the criminal justice system always gets it right, the reality is that it is inherently flawed. We've seen what happens when a pedophile gets a "soft sentence," when the police fail to investigate serious allegations of sexual abuse or, worst of all, when the wrong person is convicted. If you pay any attention to pop culture, then you probably know about podcasts like *Serial* and documentaries like *Making a Murderer*, both of which argue cases where the convicted has been wrongly accused. These cases only show a small part of what is wrong with the criminal justice system, and the Secret Barrister aims to reveal the everyday realities and problems within the system in England and Wales. While you may think that you'll never enter a courtroom, it's important to remember that the criminal justice system doesn't discriminate. "Anyone can be reeled in. And if you are, whether you're giving evidence against a man who hurt your child, or swearing blind to a jury that that pedestrian stepped out in front of your car without looking, you want the system to work."

# The Rules and Traditions of the Criminal Justice System

When it comes to the criminal justice system in England and Wales, there are many bizarre traditions, like wearing big purple gowns and wigs made of horsehair. Traditions like these go back hundreds of years, but they aren't the only ones. In fact, there are many traditions within the criminal justice system, but before looking at how and why the system might be broken, we must first understand how it *should* be working.

Like many justice systems, an English and Welsh courtroom will be filled with the accused, a judge, and a jury of twelve people yanked off the street who must try and make sense of the case and come up with a verdict. In addition to these key players in the courtroom, we also have barristers and solicitors. The barrister is the courtroom-based lawyer who presents the case to the court and the solicitor is the lawyer who works closely with the witnesses and advises both the barrister and the client. The relationship between a barrister and a solicitor is similar to that between a general practitioner and a consultant surgeon. When the GP diagnoses a problem, he tells the surgeon exactly what needs doing and sits in silence as the surgeon boasts about how his surgical skills saved the day.

Unfortunately, there can be both good and bad solicitors. Good ones will advocate for their clients, sit in prison cells, and advise clients of their rights. They'll sit dutifully alongside clients during their police interview and call out officers for their sneaky questions. On the other hand, some solicitors can be exploitative and will fail to put their client's needs first. These solicitors give lawyers a bad reputation, which we will discuss in a later chapter. Of course, you can't talk about the criminal justice system without understanding the Crown Prosecution Service, or CPS. Established in 1985 with the Prosecution of Offences Act, the CPS was created to provide consistency among court cases.



Prior to the creation of the CPS, there was no public prosecutor. In other words, a victim of a criminal offense who wanted to prosecute their aggressor would need to either pay their own lawyers or present the prosecution case themselves. Furthermore, the state took control of prosecutions, and nearly all decisions were made by the local investigating police force. This led to inconsistency, so today each case goes through the CPS system and is prepared before being turned over to the barrister.

Barristers, like the Secret Barrister, are self-employed. They are hired to take the first case that comes calling, regardless of its merit or their personal feelings about the parties or principles involved. This means that when it comes to criminal cases, most barristers both prosecute and defend, although not in the same case. The author believes that doing both is “good for the soul.” It allows you to become objective in many cases and helps you to know your enemy.

# The Ins and Outs of the Magistrates' Court and the Problems Within It

Like many countries, the criminal justice system in England and Wales handles different types of crimes in many different courts. And the lowest court on the criminal rungs is the magistrates' court. This is where all criminal cases start their lives. So if you find that you are charged with a criminal offense, your journey will begin here. The magistrates' court deals with low-level assaults, thefts, and driving offenses, and if your case is more serious, it will move to the more civilized and structured Crown Court to be presented in front of a jury.

Unfortunately, 94% of the 1.46 million individuals brought before the magistrates each year will never see the inside of a Crown Court. Instead, their cases and their sentence will be dealt with at one of approximately 150 magistrates' court around the land, and their fate will be determined by three out of the 17,500 serving magistrates. These serving magistrates are volunteers with no formal legal qualifications, yet they have the power to send fellow citizens to prison for up to a year. You may be thinking, "Wait, unqualified volunteers?" Well, let's dig a little into the history here.

In 1196, Richard I decided to give local communities their own Justices of Peace (JP) to keep the local peace. They weren't expected to be learned in the law and their job was to simply administer various local government duties. Over the years, however, their powers increased. From the fourteenth century, JPs began to preside over a second tier of criminal court, known as Quarter Sessions which tried misdemeanors, or less serious offenses, to alleviate the burden on professional judges. Then around the 1730s, a third tier of criminal courts emerged: the Petty Sessions. During these sessions, JPs formally dealt with those who broke the peace or failed to pay fines.

Of course, these "formal" courts were often held in a magistrates' living room considering these individuals were local volunteers without any



formal training or education. Today, the Magistrates' Courts still exist, and while proceedings are no longer held in living rooms, they are still overseen by untrained volunteers. And the first decision made about your trial will be "whether you spend months awaiting trial in your own bed, or bunking up with a new friend in one of Her Majesty's festering prisons." More likely than not, this decision will be based on the information found in incomplete or inaccurate case files.

For instance, The Secret Barrister recalls a time when he was a junior gopher instructed to prosecute all the cases listed in Court 2 one day. Unable to read through a four-foot stack of files, he knew he would be summoned in fifteen minutes' time into a court before three magistrates expecting him to start the first trial. And yet, he didn't even know what any of the cases were about. Having been denied permission to look over the files, the Secret Barrister was forced to wing it. He says, "Somehow I was going to have to stand up in court and prosecute trial after trial, examining and cross-examining witnesses and making devastatingly persuasive arguments of fact and law, without knowing what the hell I was talking about. I soon learned that I'd fit right in." Magistrates must then make decisions after deliberating for just a few minutes, and base that decision on incomplete or bogus evidence.

## Budget Cuts Lead to Guilty Roaming Free

While the figures on the bench aren't always qualified to be making decisions, it isn't the sole fault of the magistrates for being misinformed and under-qualified. "They are but three of many players on a stage without director, script or functioning sound and light, blindly dancing to an increasingly shrill imperative that must process more cases, more quickly, with far fewer resources." Not only that, but the Ministry of Justice was also required to cut budgets by a third between the years of 2010 and 2016. This reduced the number of magistrates' courts from 330 to 150.

The route they've taken is now "stack cases even higher and sell 'em even cheaper." And since 2009, the CPS budget has been cut by 27 percent, suggesting that the digitization of records and the use of email would require less money and resources. Still, one out of five cases that arrive in the hands of barristers includes incorrect information on which charges were filed by police. Furthermore, one in ten cases fails to recognize key evidence, like when the accused may have been acting in self-defense. And in one in six cases, the file is pushed through despite never having been reviewed by a CPS lawyer at all!

As mentioned in the previous chapter, barristers receive daily case assignments within a matter of hours, or minutes, before the first case is due to be presented in court. As a result, barristers have little time to resolve issues with the file or locate any missing evidence or errors. Oftentimes, this results in favor of the criminals. For example, On Amy Jackson's sixteenth birthday, her much older boyfriend, Rob, first injected her with heroin. Just one day later, her boyfriend pinned her against the sofa and ripped out clumps of her hair - a penalty for refusing to have sex with his drug dealer as payment for her birthday present.

After years of abuse, Amy was just twenty-two-years-old when Rob dragged her out of the house like a ragdoll and tossed her into the front garden. Amy remembers lifting her head enough to make out the blurry figure of Rob

running towards her head, kicking her as if she were a soccer ball. She would later learn that a passing taxi driver had saved her from whatever plans Rob had for her later by chasing Rob away and calling an ambulance. Amy suffered a broken jaw, a fractured wrist, and a fractured eye socket. Rob was charged with inflicting grievous bodily harm with intent, the most serious offense of violence short of attempted murder, and is punishable with life imprisonment.

Despite the severity of the case, vital evidence, including Amy's statement and medical records were missing. The author requested that the police speak to Amy to get her statement and pick up her medical records. In return, the author discovered that the police *had* spoken with Amy and that she was still willing to give a statement and release her medical records. In this case, even the magistrate was confused as to why the police had visited Amy and had not yet taken a statement or picked up the records, so he allowed another seven days for these key pieces of evidence to be collected. If the evidence wasn't collected in the time given, the case would be dismissed. The author tried his best and sent numerous requests and follow-ups, yet he never received anything in return. Rob, Amy's abuser, simply walked free.



# **Solicitors Can Be Corrupt But Good Ones Are Essential For Keeping the Innocent Out of Jail**

The job of a solicitor is incredibly important. For instance, imagine that you sadly separate from your spouse and that you choose to leave the family home to live elsewhere while the legal process begins and takes its course. Then, on the eve of an important business trip, you realize that your passport is in a drawer in the study of your former family home. Unfortunately, your spouse is also away on holiday; therefore, the house is locked and empty. Luckily, you still know how to jimmy the backdoor to let yourself in and grab your passport. Perfect plan, right?

Well, a nosy neighbor, knowing that your ex-spouse is in Spain, spies you fiddling with the back door and calls the police, who arrive just moments later. When the police contact your vengeful spouse, she claims that you were breaking in to help yourself to certain valuable items that were argued over in the divorce proceedings. As a result, you are handcuffed and taken into custody on suspicion of burglary. This is where your solicitor kicks into action. Your solicitor will clamber out of bed and head to the station to join you during your police interview. They will advise you and spend hours, even days, writing letters, liaising with your divorce solicitor, and trying to head off the prosecution.

Your solicitor will put forth all efforts to ensure that you, an innocent, stay out of jail. Unfortunately, not all defense solicitors are good and many have contributed to the negative image of defense counsels. There are those who will do everything in their power to get a not-guilty verdict and will even lie willingly to get it. One such firm was that of Keres & Co. where Mr. Keres would routinely offer his services to those in need, receive a legal aid fee, and then never follow up with the client. For example, the author once worked to defend a young man named Darius who was arrested after a fight

with his father ended with him stealing a five-pound note from his father's wallet.

As a result, his father reported a robbery, and Darius was sent to jail. Darius was represented by Mr. Keres, but never once visited Darius in prison or even tried to secure his vulnerable young client a place at a bail hostel. He hadn't spoken to CPS to persuade them against prosecuting, and the prison hadn't even been informed about Darius' medications. Essentially, Keres had simply left Darius, a young boy, to rot in a prison cell of perpetual silence. Despite the author's efforts to get Keres to take action, his efforts were in vain. Luckily, Keres' business has since gone under, but there are still plenty of people out there who take advantage of the system in this way.



# **The Inquisitorial System Offers Some Positive Benefits Compared to the Traditional Accusatorial System**

When it comes to defending particularly heinous crimes, most defense barristers would agree that cross-examining a witness who is testifying against an abuser seems wrong. For instance, the case against Jay will be one that haunts the author for the rest of his life. At the ages of twenty-four and nineteen, Jay's daughters came forward to the police station to calmly report that their father had raped and sexually abused them from the age of five. In cases like these, the author finds that going through the accusatorial process of trying to discredit witnesses and victims is both imperfect and flawed.

Unfortunately, it is all too common for those that are sexually assaulted or abused to go through a trial in an accusatorial fashion. In the process, the victim is forced to relive their experiences, tell their story, and have the defense pick it apart and uncover any inconsistencies to prove he or she is lying. The process is demeaning. In the case of Jay, he never admitted guilt, nor were there any recent sexual offenses, making for an extremely difficult case. For instance, the daughters could no longer pinpoint exactly what they were doing on the days the incidents occurred, and after retelling the stories of what happened during the abuse, Jay could only respond with, "that never happened."

For the author, Jay's indifference and lack of passion compared to his daughters' passionate claims against him made the author question his innocence. Furthermore, the author found it unnecessary that the psychiatric history of the girls was raked through with a fine-tooth comb to prove their history of false sexual assault and violence complaints. For instance, when it emerged that one of the daughters was admitted to the hospital at age seventeen with a severe psychiatric disorder, every instance of hallucination, confusion, or inconsistency was carefully recorded in a

chronological timeline. All this and more made it easy for the defense to destroy the daughters' credibility during cross-examination. Was all of this necessary in this case?

Well, some might argue that the inquisitorial process used in the courtrooms of Germany and France is a much better and fairer style of justice. In the accusatorial process, as we saw above, the prosecution presents their case and the defense attempts to prove it false or undermine it. On the other hand, the inquisitorial process uses a much different approach where all roles are put in the hands of the state. In this process, the evidence is gathered both for and against the accused in an objective manner, and all the findings are documented in a file or dossier. Then, the prosecutor's duty is to simply search for and uncover the truth. Through this process, complainants don't have to become potentially victimized again, and can instead act as a "subsidiary prosecutor," where they assist the prosecutors in making suggestions for how to interview a witness.

In the end, there is no demeaning cross-examination, no plea-bargaining, and no intentional exclusion of evidence. Rather than obscuring the truth, the inquisitorial process tries to uncover the truth without putting on a show.

# The Flaws And What We Can Learn From an Inquisitorial System

While the inquisitorial process seems much fairer than the accusatorial, there are some flaws that need to be discussed. The first is that this process heavily relies on the evidence presented by the state, which we have seen can be incomplete or biased. For instance, a 2017 joint report led by Chief Inspector Kevin McGinty looked into the quality of cases being prepared by the police and CPS, and the results made for terrifying reading. The police and CPS, either due to poor training or lack of resources, were consistently failing to comply with their obligations in Crown Court cases.

“The Schedules of Unused Material that were supposed to be drawn up by the police were ‘wholly inadequate’ in 22 percent of cases. The CPS was failing to pull the police up on these obvious failures, and 33 percent of CPS files examined by the inspectors were marked ‘poor.’ In over half of cases, CPS lawyers provided no explanation for their decisions as to what should and should not be disclosed to the defence.” Unfortunately, all of these circumstances are due to human error and don’t take into account the number of biased police officers who have falsified evidence to get an arrest. Of course, this doesn’t happen in every case, but it, unfortunately, does happen, which is why we typically benefit from rigorous examination in an accusatorial system.

Despite this major flaw, there are quite a few things that we can learn from the inquisitorial process. The first is that we can learn to stop harassing witnesses in cross-examination and forcing them to recount traumatic incidents months, even years, after the event. Another advantage of the inquisitorial process is the ability to offer a reason for a verdict. In the traditional system, a jury offers a guilty or not-guilty verdict without any explanation for how and why they reached that verdict. This can oftentimes make an unwelcome verdict even more difficult to come to terms with.

In Spain, for example, verdicts are delivered in five parts: a list of facts held to be established; a list of facts held to be not established; a declaration of guilty or not guilty; a succinct statement of reasons for the verdict, indicating the evidence on which it is based and the reasons supporting the decision. Additionally, not every issue would have to be decided; instead, juries would only consider the necessary and relevant issues to reach a verdict. This process would give all concerned - defendants, victims, and public - an insight, and an ability to pinpoint any flaws or errors in the jury's reasoning.



# The Complexities of Sentencing

Of course, once the guilty verdict is reached, there's more to be done. Now it's time for sentencing. This process is more complicated than it seems, and "to try to make sense of sentencing is to roam directionless in the expansive dumping ground of criminal law." That is because the many hundreds of legislative provisions exceed 1,300 pages. Therefore, the burden of the sentencing exercise is huge. There is a range of sentences each with their own qualifying criteria, from discharges and fines to mandatory life sentences, automatic life sentences, discretionary life sentences, extended sentences, and more. The author states, "More times than I can recall have I watched as a client's eyes glaze over as I try to explain, in as clear terms as I can, the possible sentence that he faces."

It should come as no surprise then that sentencing doesn't always go according to plan. In 2012, sentencing expert Robert Banks examined 262 randomly selected Court of Appeal cases and found that 95 unlawful sentences had been passed by the Crown Court. In other words, 36% of sentences should have never been given by the judge. Furthermore, once a person is sentenced to prison, they should be offered rehabilitation and the prison itself should be a deterrent to crime. Unfortunately, neither of these is the case. Statistics reveal that 60% of those sentenced to less than a year in prison will commit another crime. And among released prisoners, 46% commit another crime within a year of being released.

Of course, there are many steps that could be taken to improve the criminal justice system, including ways to get it the money and resources it needs. First, the media and politicians currently fail to present an accurate picture of how the system works. Instead, they often make it seem as if rich barristers benefit from public funding while criminals are sent to rudderless holiday camps where they get free Sky TV paid for by *you* the taxpayer. In other words, many believe the sentencing of criminals is a con. In reality, a barrister only gets paid between £9.28 and £18.95 an hour. The



prison is far from a holiday, and prisoners spend 23 hours a day locked in a violent, rat-infested cell where they eat meals next to an open toilet.

Ultimately, sentencing doesn't appear to achieve what the public are led to believe it should. And it will remain a con as long as we fail to be honest about what sentences mean, what we want from our sentencing policy and how that might best be achieved.

## **Final Summary**

It's no surprise that the criminal justice system of England and Wales needs change. Unfortunately, the budget cuts that many politicians are calling for will only cause the system to be underfunded and understaffed, resulting in criminal case files to appear before barristers with incorrect, or even biased, information. Furthermore, criminals are being let free and innocent people are continually being locked up. And while the inquisitorial system may offer some positive aspects, most criminal systems are still far from perfect. Instead, we should implement a criminal justice system that aligns with our values surrounding justice and impartialness.



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