LORD CHIEF JUSTICE
OF ENGLAND AND WALES

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VULNERABLE WITNESSES IN THE ADMINISTRATION OF CRIMINAL JUSTICE

17TH AUSTRALIAN INSTITUTE OF JUDICIAL ADMINSTRATION ORATION IN JUDICIAL ADMINISTRATION

WEDNESDAY 7TH SEPTEMBER 2011

SYDNEY

I was last in Sydney in 2007. My wife, Judith, and I loved the city. We were struck that it was vibrant and modern, but still tempered the hurly burly and bustle of life with good manners and courtesy. On that visit I gave a lecture about the criminal justice system – "Time for Change?" And I addressed a number of different issues which you will be addressing in the course of this seminar. I shall very much look forward to being present, to hearing at least some of the debates, and to leave here better informed than I am on my arrival. I shall certainly learn a great deal.

One of the great advantages of the common law system created in Anglo Saxon England, a tiny island off the coast of Europe, but now a system which works world wide, is that it is a flexible system, capable of steady adaptation to the needs of contemporary society and technological or scientific developments. Each of our societies is, of course, different and developing in different ways and at different speeds. Be all that as it may, the common law does not belong to any one country. It is not owned by England. It belongs to you in Australia as it does to me in England. We can learn a good deal from each other. And there is, I believe, a remarkable level of mutual respect and

admiration among the judges in each of our countries, and the willingness to learn from the experiences of others.

Perhaps we should start by identifying those who are vulnerable witnesses, or at least potentially vulnerable witnesses, not as a matter of statute, but as a matter of reality.

First, children – all children – each and every child.

Second, victims of crime, but particularly victims of sexual crime, and certainly sometimes victims of and witnesses to serious violent crime.

Third, a group which is becoming increasingly apparent, those who for whatever reason lack communication skills.

Fourth, others of course, not least those about whom ignorant myths may still persist.

These are not compartments. After all child witnesses are often victims of sexual crime and lack communication skills. Victims of sexual crime are often victims of ignorant myths.

Those who are included in these lists are very numerous both in total and proportionately to the workings of the criminal justice system.

In what follows I will sometimes speak in terms which elide victims and witnesses, so that as I speak I may appear to be confining vulnerability to victims when I am not. But inevitably it is with victims that the starkest issues of vulnerability will arise.

In the Bible, in Deuteronomy there is a call on “heaven and earth to witness against you this day” if you did evil in the sight God. The call and the warning represented recognition of the principle that without witnesses justice cannot be done. That is true. Justice needs accurate and honest witnesses. Bear in mind that along with the basic requirements of the Commandments which enjoin us not to kill or to steal, we are required not to bear false witness. The need for witnesses remains true today, even when modern technology like

CCTV cameras, scientific advances, like DNA profiling has added to the sources of available evidence.

This lecture, is therefore expressly directed to the live witness, the human being giving evidence in a public court in which not only is justice being sought to be done, but justice itself is on trial. Justice must be done, in a process in which justice is seen to be done. “Fiat justitia, ruat caelum”. But notice in this well known phrase, the focus is “justitia”, not “veritas”. Although lawyers will understand me, in a public lecture, I need to amplify this. In a criminal case, whether before a jury or judge, if the outcome on the evidence is “I do not know”, or even, “I cannot know”, or even “I think on the evidence the defendant is probably guilty”, the defendant is entitled to be acquitted. That is not necessarily the truth at all. He may in truth – “veritas”- be entirely guilty, even as the jury foreman says “not guilty”. Nevertheless because guilt cannot be or has not been proved, the acquittal is the right verdict, the acquittal is the right verdict demanded by justice – “justitia” - to which every defendant is entitled.

Sometimes, indeed many times, in law it is not even established that there has been a crime until the defendant has been convicted. That happens at the conclusion of the trial process when the jury returns a guilty verdict. Again, as I am not addressing an audience composed exclusively of lawyers I should explain that if, for example, the allegation is rape, and the defence is that sexual intercourse took place but that it was with consent, it is not until there is a guilty verdict that as a matter of law there has been a victim at all. But of course, in truth, in “veritas”, there has been a victim from the moment when the rape actually occurred.

All this is because in law, in our systems, the defendant – every defendant – is deemed to be innocent until proved to be guilty. There can be no compromise with that principle. And it is dishonoured when lip-service only is paid to it. And this principle has consequences, some of which are extremely painful for those who have been victims of crime, or have given truthful evidence about the facts of a crime.

In her recent and most illuminating report into how rape complaints are handled by public authorities in England and Wales, Baroness Stern quoted one respondent saying ...

> "One of the most important things for a victim is feeling they have been believed, that they have been treated with care and that people have tried."

The converse which follows is this. Where the verdict is not guilty because on the evidence the jury is not sure of guilt, the victim cannot avoid feeling that he or she has not been believed, that it is possible that someone believes that she consented to sexual intercourse, or may have done, with the toe rag who rapped her. That must be dreadful.

The report leads to the further consideration, which is outside the scope of this lecture, or would have to be the subject of another lengthy lecture, which is the way in which vulnerable witnesses are treated long before they ever come to court to give evidence. Of course, there are different aspects to the process of investigating and ultimately prosecuting a crime. We all recognise that. But from the point of view of the victim or witness, we judges and lawyers must remember that the court process does not stand in isolation. It is the culmination of a series of different processes, and a series of different decisions made by different decision makers. That itself is difficult for the witness or victim. As judges we have no control over the process of police investigation, any more than over the decision of the Crown Prosecution Service (our prosecuting authority) that the available evidence is sufficient, or is not sufficient to justify prosecuting to trial – any more that any of them can interfere with any judicial decisions once the trial process begins. Each of us is responsible for our own part of a process which to many witnesses and victims seems like one overall process. If one part gets it wrong the victim or witness suffers accordingly. If as judges we have no control over the part of the process that has failed the victim, if we do not even know that something went wrong at an early stage, we cannot and should not be blamed. But that does not mean that we can avoid the stark reality that the process has left a wounded or distressed victim or witness, whose perception of the quality of the administration of justice will have been damaged – to his individual disadvantage, and ultimately to the public disadvantage. Perhaps too before I

continue, I should flag up now that the end of the judicial process is not the end of the process for the victim.

And so, for example, many complaints of sexual crime, never come to court. That does mean that they are untrue. It simply reflects a judgement that there is not enough evidence, or that the overall effect of the available evidence, makes a conviction unlikely. If so the decision is right. But it can hardly be much comfort to someone who actually was the victim of a sexual crime. That issue will be for discussion over the next few days.

It is obvious that these are immensely sensitive questions. And that they leave a stark and ultimately unresolvable dilemma in the criminal justice process. If it is axiomatic as a matter of law that the defendant is indeed innocent until his guilt is established beyond reasonable doubt by evidence, or if there is not even enough evidence to prosecute at all, then as I have said, the defendant who is regarded by the jury as probably or likely to be guilty must be acquitted. So that means that someone who is "probably" a victim is left unvindicated. And what is worse has been put through a process which he or she inevitably regards as demeaning, yet all to no purpose, because, from his or her point of view, the objective, or least one major objective, is indeed vindication. And even when there has been a conviction, it can readily be suggested, and will certainly be perceived, that the demeaning process, in which the integrity and creditability of the victim has been challenged must, by definition, have been flawed. The guilty defendant and the advocate advancing his case, have put the victim through all that unpleasantness, and indeed have been allowed by the judge, and the legal system, to put the victim through all the unpleasantness. "How", thinks the intelligent observer, rhetorically "can this be? The question is not entirely rhetorical. It does demand an answer. And even though all of you here will know it, I must, if only out of respect for unvindicated or ill used victims spell it out.

In fact there are two answers, which are connected. The first answer is that sometimes the defendant is truly innocent – not merely innocent in law, but innocent in fact. The evidence against the defendant is untrue, or mistaken. In such cases the defendant on trial is the real victim. He should never be in the dock, never even charged. True miscarriages of justice, as opposed to unsafe convictions, actually happen. At home we had a catastrophic example

recently. A man was convicted of the rape and murder of a young women to which he confessed, not simply to the police, in one of those extraordinary confessions that my clients used to make after their heads had accidentally made contact with the side of a police car or the wall of a prison cell, infusing them for a few minutes with the power of articulation and recall and coherence which they had lost by the time they saw me, but by apparently genuine confessions to religious adviser, probation officer, and so on, with some detail about the circumstances. He served 28 years in prison. DNA evidence then established beyond doubt that someone else was responsible. There is and was no argument about this. He was a truly innocent man. In the Court of Appeal Criminal Division, we have quashed convictions for rape where, although it was not possible to say with the certainty of support of DNA that the defendant was truly innocent, there was in fact no doubt about innocence. The convictions had followed what were later proved to be false complaints. This happens. So the short answer is that sometimes the defendant in the dock is not only innocent in law: he may be truly innocent in fact. For such a defendant to be convicted is a catastrophe. I have read suggestions to the effect that this attitude is wrong. That in effect, the conviction of an innocent man of rape or child molestation is somehow balanced out against the number of guilty men who have not been prosecuted or who, if prosecuted, have not been convicted. I reject that view. You cannot put right a great wrong by perpetrating or accepting another great wrong. In any event there is no equation between the situations. That the innocent should <u>never</u> be convicted is one of the core values of our societies. But that is still not a comfort for the individual victim of the crime. Now to my second answer which arises from the first.

It would be a wonderful world, and indeed we would have no need of a jury system, if every defendant who was actually guilty admitted it. People tend to overlook that a guilty defendant who denies his guilt has no interest in justice being done. On the contrary, his fervent wish is for justice not to be done, for justice to miscarry. So lying, attacking others, taking every possible step to avoid the truth and the reality becomes part of the process for such a defendant. And there is no way through the tissues of lies save for the trial process itself. The guilty defendant who contests his guilt is simply misusing the process designed to protect the innocent from a wrongful conviction, but until his guilt is proved he cannot be deprived of it. Therefore, first, because

some defendants are truly innocent, and second, because in a system governed by the rule of law guilt must be established if it is denied, many of those who are in fact victims of a crime are required to participate in the process which often involves direct, and indeed in some cases distressing and horrible attacks on them, and they do so, without any guarantee of vindication. But without their participation, and the participation of witnesses, in this process, men, and it usually is men, who have perpetrated dreadful crimes will escape justice and will be free to commit a further dreadful crime on yet another unfortunate victim.

It is for this reason that we speak from time to time of the duty of witnesses to come forward and give evidence. The criminal justice process exists for the conviction and punishment of the guilty and the acquittal of the innocent, and broad protection of society as a whole, but without witnesses it simply cannot function. Although we can empathise with witnesses, giving evidence, even if it is stressful and difficult and uncomfortable, if you have evidence to give is one of the duties of citizenship. And like the performance of many duties, it is rarely easy, and usually difficult.

I suspect that an audience of senior judges and lawyers considering these issues even 30 years ago, certainly when I started in practice at the Bar in England, would have wondered what all the fuss was about. There were many reasons, one of which was that the entire trial process was much shorter and simpler than it is now. But they were different times. We are living now, and the legal system has to fit the needs, the understanding, and indeed the expectations of contemporary society. And whether in the northern hemisphere, as we are, or in the southern hemisphere as you are, contemporary society does indeed demand much closer concern for the situation of the witness and victims than it once did. I personally welcome this development. We have to go as far as we can to reduce the pressures and problems of every single witness, but of the vulnerable witness in particular, and in that category, witnesses who are victims of alleged crimes, in particular, all to the irreducible minimum, consistent with the right to a fair trial which is the birthright of every citizen living in our two countries.

Can I just give you a tiny picture in words of what used to happen in the early days of my career? I'll take the Crown Court at Lincoln as typical because it was.

In Lincoln there was a single way into the building. Through it came barristers and solicitors and police officers and the defendants of the witnesses for the prosecution and the complainants and the witnesses for the defendants and jurors and jurors in waiting. The big doors at the front opened for the judge, no one else. When everyone arrived in the hall, and there was only one large hall, there were a lot of benches around the edges and in the middle and everyone assembled. And there they all waited. When the defendant's name was called he went into court unless the case was a very serious one and he was in custody. No-one searched him. No-one searched anyone. There was in truth no real security. The complainant and the witnesses for the prosecution waited there. Then their names were called. They left the Great Hall and went into court into the witness box. And then, evidence finished, back into the vast Hall. This was the pattern up and down the country.

Times were different. There was much greater deference to authority. There was very little inclination for everyone to misbehave. If there was any direct witness intimidation in the court building, there were ample police officers to take action. And there were very many police officers. So there was plenty of scope for control of any attempt at intimidation. But there were no other arrangements. Everyone was herded together. In particular no enquiry was made about any particular strains of any particular witness. No one investigated whether the witness was nervous or relaxed, stressed or pressurised. And that was that. And, as I put it, "that" was for child witnesses, complainants in sexual cases, as well as victims of robbery or burglary or violent offences.

Victim Support was set up in 1974. It is an independent charity. Its focus was to provide a measure of assistance for victims and witnesses of crime. It was an inspired idea, largely if my memory is correct, the product of a former probation officer, a wonderful woman called Helen Reeves. Nowadays it contacts over 5.1 million people annually after a crime has been committed, to offer free and confidential advice. From it came the Witness Service which

began in London in 1989. Witness Care Units were established across England and Wales in 2004 in order to provide victims and prosecution witnesses with a single point of contact for giving support. Witness service is now available in every court in the country, but here you are ahead of us. We have no Witness Service specifically dedicated to the needs of young witnesses. The layout of buildings has been re-organised. Rooms for prosecution and defence witnesses are separately provided. Entry to courts is different. Witness Service is provided by a number professional employees, but many others are acting as volunteers, usually but not invariably men and women of experience in life, or if younger, with an innate sensitivity and natural understanding of people. Often they were once in court as jurors and became interested in the process. The court process has improved further. An opportunity is usually made available before giving evidence for the witness to visit the court and learn about court procedures. If the witness wishes there is someone to talk to, privately and confidentially. Quiet places are provided in court during the course of the trial for the witness or witnesses to wait. They no longer have to sit in general public places. Someone will be available to accompany the witness into court. Witness Service does not take sides. It is there for any potential witness.

During its 20th year, 2009, no less than 285,000 witnesses were assisted in courts up and down the country. Nearly 50,000 pre-trial visits were organised. Over 40,000 witnesses who were regarded as potentially vulnerable to intimidation or in need of special help were directly supported. And I have no doubt that judges up and down the country, and magistrates, are now much or closely informed – in the broad sense of that word than they were when I started at the Bar, informed, trained, and expressly educated in relation to sexual crime involving children and adults, and vulnerable victims and witnesses, and the conduct of such trials. Dealing with it generally, nowadays, for every single witness a considerable effort should have been made to reduce the stresses and pressures of attendance and giving evidence at court, with greater insight and understanding of those pressures, and at the same time, as I emphasised, none at the expense of a reduction in the fairness of the defendant's trial. I am not claiming that all these steps are always taken, but we have made very significant progress.

The latest research, the Witness and Victim Experience Survey supports this. 85% of those surveyed were highly satisfied with their overall contract with the criminal justice system, and 86%, of how they were dealt with prior to court. The Witness Service was rated very highly by 96% of them. This evidences real progress. It is however, unsurprising, but worth noting, first, that the highest level of dissatisfaction came from victims and witnesses where the defendant was acquitted. The second unsurprising feature is that about a quarter of court users dissatisfied with the time it took their case to reach court, the third is that one in six, which is under 20%, were dissatisfied with the time they were required to wait at court for the case in which they were involved to be dealt with.

This research tells us nothing surprising. If these features are correct generally, they will surely apply with greater force to vulnerable witnesses. And where it can, our system must just as surely try to address the problems which have been revealed. What is more we need to be careful with all statistics. 85% and 86% is very good, but the inquiry was of all witnesses and victims. If it were confined to victims alone, or to vulnerable witnesses alone, it might well not – indeed probably would not appear to be so good.

Our discussions will no doubt address any other steps which may be taken with advantage, but the difficulties arising from an acquittal, as with non prosecution, arise from the unresolvable dilemma which I identified earlier in the lecture.

If there were one step which could be taken now to improve the efficiency of the criminal justice system it would be for trials to take place on the day they are first listed for a trial hearing. Too often they are ineffective, when, for example, for one reason or another, the vital witness is not available, or they are what we describe as “cracked”, where the defendant having adamantly pleaded not guilty, suddenly decides on the day of the trial to plead guilty, in many cases to a lesser alternative charge. Some ineffective trials are inevitable. Witnesses are taken ill, or have children who are ill, or suffer a sudden bereavement. But most should be dealt with by greater efficiency. The cracked trial stems from the principle that the plea must be made by the defendant, and it is his exclusive responsibility. What we do at the moment is to offer a substantial discount from the sentence that would otherwise be imposed on the defendant who pleads guilty at the first available opportunity.

In England and Wales there is no additional penalty for the late guilty plea any more than there is for a conviction after a not guilty plea. There is currently much debate about whether yet greater discounts from sentences should be available for guilty pleas tendered at the first available opportunity. I shall follow the discussion here with great interest.

It is however worth emphasising that we are not here concerned with a civil trial. Cost orders for inefficiency are readily made against one or other party. In criminal trials this is largely pointless where the defendant is impecunious, particularly when he is convicted, although the amount of costs to which he would be entitled if acquitted could, I believe, be properly reduced for culpable inefficiency and lack of cooperation. As to costs against the prosecution, who in the broadest sense, are often as culpable in relation to ineffective trials, that would be taking funds from a cash strapped service, and therefore although useful symbolically from time to time, is unlikely to improve the service overall. And as to striking the defence out for want of efficient cooperation: the reality is that we cannot prevent a defendant from offering his defence to a criminal charge.

The further feature which we are addressing through more effective case management by the judges is to reduce the number of witnesses who actually attend court who in the end are not needed to give evidence. This does not merely apply to the ineffective or cracked trials. There are too many witnesses, not least huge numbers of police officers, who attend court for the trial whose evidence is undisputed and could have been summarised or read or dealt with by way of factual admission. Early case management – that is active positive case management, but the judge is crucial to the process, and active positive case management should remain constant to the end of the trial. Judges are increasingly alert to all the new nuances of over cross examination and unfair cross examination. By unfair I am not limiting myself to bullying cross examination, which is readily identified, but extending it to unfair questioning of a witness, who may indeed be the defendant, whose vulnerability may take many different forms, but who for what ever reason, say childhood, is at risk of having an injustice done because the discussion is not at his or her true level of communicative skill or physical endurance. For this purpose we must rid ourselves of any straight jacketed conceptions of the form cross examination must invariably take. The testing of the evidence –

which is legitimate, whether of the defendant or the prosecution witnesses – must be fair in that broadest possible sense.

The further feature of the judge's task is not exactly case management, but is worth a mention now. Judges who try sexual cases should be trained – educated – against allowing cross examination and indeed the conduct of the trial which is based on the perpetration of what modern research has proved to be myths. Let me identity some of them. It is a myth that a man cannot be raped. It is a myth that rape involves a hooded stranger, or is limited to strangers. It is a myth that if there are no marks on the complainant, and no evidence of distress independently offered, that she cannot have been raped. It is a myth that unless the victim complains immediately she must have consented to sexual intercourse. That myth goes back to the hue and cry of Anglo Saxon times, and indeed if my memory is right to Roman Law. It is a myth that if a woman has imbibed a great deal of alcohol with a man, she must have been willing to have sexual intercourse with him.

Judges are expected to discourage and ultimately prevent the presentation of a defence case which seeks to rely on discredited myths. The concern is with the facts of the individual case.

None of this should lead you to believe that I am claiming either that we have now got it right or that where we are now is final. The position in relation to witnesses is never fixed, it is always fluid. And we must beware the risk that, having seen the flaws and faults for which our ancestors were responsible, we, in this generation, have finally achieved perfection. We must go on learning, not championing with the latest fad or fashion, and examining everything which calls itself research to ensure that it is truly to be characterised as research, and that the conclusions drawn from the research are correct.

May I illustrate what I am saying by addressing the problems of child witnesses who were, in the old common law system, required to satisfy a "competency test". I highlight children, because they highlight one of the most sensitive areas of vulnerability. I have quoted these extracts from Professor John Spencer's book "The Evidence of Children" on a previous occasion in Sydney. But even those of you who have heard it might wish to be reminded. This is the examination into the competency of a 13 year old boy. The date is

1684. The judge is the infamous Judge Jeffries, but he was reflecting his own times.

Judge: Suppose you should tell a lie, do you know who is the father of liars?
Boy: Yes
Judge: Who is it?
Boy: The devil
Judge: If you should tell a lie, do you know what will become of you?
Boy: Yes
Judge: What if you should swear to a lie? If you should call God to witness to a lie what would become of you then?
Boy: I should go to hell fire

The witness passed the test. He believed that if he lied his immortal soul would suffer the agony of permanent hell fire. It is worth emphasising that this was a doctrine preached by good Christians. To swear to a lie was to bear false witness, a breach of one of the Ten Commandments. So Judge Jeffries, and the boy, were speaking their own language. There was a true belief in hell fire, and an equal faith in God, all seeing, all knowing, always just. You would not dream of trying that now. You would not dream of talking to a child like that.

By the middle of the 19th century this exchange took place before Mr Justice Maule.

Judge: And if you do always tell the truth, where will you go when you die?
Little girl: Up to heaven sir
Judge: And what will become of you if you tell lies?
Little girl: I shall go down to the naughty place, sir
Judge: Are you quite sure of that?
Little girl: Yes sir
Judge: Let her be sworn, it is quite clear she knows more than I do

In England we no longer have such a competency test. We no longer require a complaint made by a child to be corroborated, in the old artificial sense of corroboration. We no longer have a minimum age below which a child cannot give evidence.

Our current rule, under the Youth Justice and Criminal Evidence Act 1999 is that no one is incompetent to give evidence on the basis of age. An individual is not competent only if it appears to the court that he or she is not someone who can understand the questions put to him as a witness or give answers to them which can be understood. That of course permits the use of interpreters and intermediaries, to which I shall come later. This is a judgement to be made, not a discretion to be exercised, in relation to each individual witness. In relation to children, plainly the younger the child, the less likely that he or she will be able to understand questions put to them and provide answers which can be understood. If the infant can only communicate using baby language with its mother, generally speaking the child will not be competent. But there is no need for the child to believe in God or in hell fire or to take an oath. Indeed an oath cannot be taken before a witness is 14 years old. The evidence of the child is to be judged in the same fair and objective way, in the light of practical experience and common sense of jurors as any other witness who is able to give intelligible testimony.

We must therefore approach these issues on the basis of what we, in contemporary society, guided by whatever lessons practical experience and research may teach us, to adopt the best available practice for dealing with evidence from children. But we should do so with humility, recognising that just as we laugh at Judge Jeffries, and are amused by Mr Justice Maule, may be in 100 years time those attending this conference will be either mildly amused, or perhaps horrified by what we are doing now. Maybe indeed the advances of technology, and knowledge, will produce laughter and astonishment in not much more than 25 years time.

I happen to believe that technology has proved that we can have greater confidence in allowing the evidence of very young children indeed to be given to a jury because our special measures include video recordings of the evidence –in-chief of the child, which, quite apart from the assessment of the jury, which may or may not act on that evidence, may be replayed to the Court of Appeal Criminal Division in the event of an appeal against conviction. And that enables the court, in effect; to satisfy itself that it was safe for the jury to act on the evidence of the child.

There is no time for me to explain all the all the “special measures” which we now have available to assist the vulnerable witness. There are two particular matters which I wish to highlight.

I turn first to the use of intermediaries. Before doing so it perhaps worth underlining that we have become more aware of the difficulties that a number of different people have with communication. Many communication problems are hidden. The individual has found a way to lead a normal life, and having done so perhaps is not even aware of communication difficulties. This is an aspect of the trial process which we need to engage with more closely. But I turn to the intermediary process itself. Intermediaries are not interpreters in the way we normally understand them. They do not, as interpreters do, simply translate exactly whatever it is the witness has said. The function of the intermediaries is to communicate to the witness the questions that are put to the witness and to give the answers made by the witness in response and, this is the important addition, “to explain such questions or answers so far as necessary to enable them to be understood by the witness or the person who has asked the questions”. All this must of course happen in the usual way in the proceedings, and significantly, where the witness requires the assistance of an intermediary, then directions may enable him or her to be provided with “such technical devices as are necessary to enable the questions or answers to be communicated to or by the witness notwithstanding any disability or disorder or other impairment which the witness has or suffers from”.

This is an important new provision. There are witnesses who, whether from birth, or as a result of accident or illness, are no longer able to communicate, but whose minds are perfectly clear and whose intellectual capacity is undiminished. They, too, are sometimes the victims of crime, and sometimes witnesses to it. Sometimes they are abused, and see others being abused. They are no longer to be ignored merely because they cannot articulate in the form of ordinary speech whatever it is they have to say. And as a result, a number of defendants have been prosecuted to conviction for committing very serious offences.

The use of intermediaries has introduced fresh insights into the criminal justice process. There was some opposition. It was said, for example, that

intermediaries would interfere with the process of cross-examination. Others suggested that they were expert witnesses or supporters of the witness. They are not. They are independent and neutral. They are properly registered. Their responsibility is to the court. And they are used at much earlier stages in the process, to flag up potential difficulties in advance of the trial. These can then be addressed during the trial process.

I am not sure that we have arrived at our final destination on the use of intermediaries, and there is no scope for discussion today about their use in family courts. We must ensure that the question whether an intermediary should be used or not is decided finally well before the trial date. But their use is a step which improved the administration of justice and it has done so without a diminution in the entitlement of the defendant to a fair trial. In some cases juries have convicted, and in others there have been acquittals. But the use of intermediaries has meant that a number of those who are among the most vulnerable in the community may now be heard when before they would have been forced to remain silence.

The starting point remains the starting point. Without witnesses the administration of justice would suffer, and it is important to emphasise this, the community at large would also suffer. We should never pretend that we shall be able to reach a stage in the criminal justice process when it will be easy or comfortable or unstressful for a witness, even an entirely honest and truthful witness, to give evidence. That will never happen. We can improve the processes: we can be more efficient with aspects of the process, like delay, or wasted attendance at court, but in the end, if the defendant pleads not guilty, and denies the offence, it must be proved against him by evidence.

But I must end. So, my second highlight I am heading down a different road, one which is sometimes overlooked, indeed which is perhaps too often overlooked. The end of the trial, whether by a guilty plea, or a guilty verdict and sentence, or an acquittal is the end of the judicial process. After that moment there is a clean break between the witness and victim and the process of investigation and trial which brought him or her to court to give evidence. For the court, that is an end of its responsibilities. It must move on to the next case. And there are many cases waiting for disposal.

Nevertheless, even if this is the end for most non victim witnesses, it is not the end for most victim witnesses. Indeed when the evidence in the case was insufficient to justify a conviction, and the victim was unvindicated, it may apply more strongly. At a meeting like this we can surely understand that even when there is nothing left for the court to do, and nothing which the court can possibly do, the end of the court process rarely represents finality for the victim.

In years to come I suspect that it is the way our society as a whole has addressed this problem, whether it addressed it adequately or at all, and how it should have been addressed, will be the subject of this oration. For all sorts of reasons I doubt whether it will be hugely complimentary about us. We still have a long way to go.
