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10 DOWNING STREET

*From the Private Secretary*

31 December 1985

*Dear Private Secretary,*

ROSKILL REPORT

The Prime Minister today discussed with Lord Roskill and Lord Benson the Report of the Fraud Trials Committee. The Home Secretary, Lord Chancellor, Secretary of State for Trade and Industry, Attorney General, Solicitor General, Mr. Unwin (Cabinet Office), Mr. David Hobson (No. 10 Policy Unit) and Mr. Michael Farmer (Secretary to the Committee) were also present.

The Prime Minister opened the meeting by thanking Lord Roskill warmly for a Report which had been prepared with rare thoroughness. The Government intended to welcome it and to say that they would be legislating in the light of it in the 1986/87 Session. The Prime Minister emphasised that the Government took the problem of fraud fully as seriously as the Committee had done. The Government were dismayed at the time taken to bring cases to trial and at the difficulty of securing successful prosecutions. The Prime Minister hoped that Lord Roskill and other members of the Committee would continue forcefully to put the case for the proposals which they had made in their Report. It would be important not to allow a free hand to those who would no doubt oppose its more radical recommendations.

Lord Roskill said the Committee had concluded that the authorities were fighting fraud with a machine which was seriously inadequate. The services for investigation and prosecution of fraud were far too fragmented. The Committee had seen privately a working paper which had led to the formation of the Fraud Investigation Group, and had been horrified by it. It seemed that the FIG had been the result of an inter-departmental compromise which was not in the event proving to be a fully satisfactory solution. The Committee's terms of reference had not permitted the Committee to investigate this in great depth. But there was a clear need for a new central organisation with the authority to make those concerned push forward with the job, eliminating rivalry between Departments and prosecution services.



Continuing, Lord Roskill said the Committee believed that the skills and professional support available within the Fraud Investigation Group were woefully inadequate. Funds were short and this led to excessive economies. The Government legal service itself was underpaid and failing to attract people of the right calibre. Counsel were not being consulted early enough and there was a failure to bring in young counsel in a way which would enable them to gain the right training and experience. Generally, people at the Bar were now concentrating on private sector work because the rewards for public sector work were too low.

The following points were made in discussion.

- (i) The pay of professionals in the public sector involved in the pursuit of fraud, including both lawyers and accountants, needed to be reviewed, together with other ways of attracting the more able people. It was noted that in the United States a period in the public service was often seen as a way towards achieving higher rewards later in the private sector.
- (ii) The recommendations of the Committee would, if accepted, probably mean a need to increase the statutory limit on the number of High Court judges. It was recognised that there was a shortage at the Bar itself of people able to handle complex fraud cases.
- (iii) It was recognised that the new unified organisation would need to play a central part and to have authority over other investigation and prosecution services in Whitehall.
- (iv) The proposed case controllers would need to be administrators, but with a firm grounding of specialist knowledge and experience in accountancy or law. They would have, initially at least, to be part of the FIG, reporting to the DPP.
- (v) Pre-trial reviews were not being taken seriously and complaints about them were widespread. They were intended as a means of ironing out difficulties and sharpening issues. However, pupils tended to be sent to the pre-trial reviews. This was in part a matter of the scale of payment for the reviews.
- (vi) The Report's recommendations could in some ways be divided into three: the long term strategy involving extra resources, the more controversial recommendations including for example abolition of jury trial for some kinds of case and, thirdly, changes to the rules of evidence and pre-trial procedures. The third group, which might cause the least difficulty, were in some ways the most important in the shorter term. (Lord Roskill, however, did not accept this classification, emphasising the interlocking nature of the Report's



recommendations).

- (vii) It would not be easy to confine some of the recommendations to fraud trials, and this would increase the suspicion about some of the more controversial proposals, for example, the withdrawal of the right to trial by jury as proposed for some complex fraud trials. It could, however, be argued that complex fraud cases, in which highly educated and well advised people were involved, could be distinguished from those involving less well-educated people enjoying poorer advice. The removal of the right to peremptory challenge of jurors was already a proposal in the public domain, and for long trials the composition of juries was anyway not random: many people could not afford to sit on juries for long periods. The changes proposed for fraud trials were justified on their merits.
- (viii) Lord Roskill hazarded that the number of cases to be tried without juries might be 10-15 per year. Their effectiveness would be a substantial deterrent to major fraud. Lord Benson believed the number of cases tried without juries would be rather larger.
- (ix) The Committee had received evidence, which they had been unable to publish, that one clearing bank alone estimated that it suffered some 20,000 fraud cases a year. Most offenders were not prosecuted.
- (x) Paragraph 8.37 argued that fraud was posing a threat to London as a financial centre. This risked being misunderstood. Lord Benson explained that it was intended to mean that unless the growth of fraud were checked, it would come to pose a threat to London's position. This would need careful presentation.

The meeting then discussed the major recommendations in turn.

Recommendations 1 and 2:

Lord Benson believed that a Fraud Commission would be unnecessary if there were a strong unified organisation. Lord Roskill disagreed. It was noted that the Commission's criticisms of the handling of particular cases or the courts generally would need to be handled very tactfully, and often privately.

Recommendations 4 and 5:

The Secretary of State for Trade and Industry had reservations about the proposal to confer on the police powers of investigation comparable to those available under Section 447 of the Companies Act. But these were not reservations of principle. The number of investigations under Sections 431 and 432 had already been substantially reduced.



Recommendation 15:

It was argued that some judicial involvement might be needed in the procedure for dispensing with full committal proceedings. Lord Roskill was, however, concerned about the risk of setting up a new procedure which would lead to further delays, and it was noted that one option could be to give power to the Attorney General to dispense with full committal proceedings. It was also noted that Recommendation 20 risked opening up another new lengthy procedure. But this recommendation balanced recommendation 15.

Recommendation 22:

This recommendation was also likely to be controversial, though more with lawyers than with the man in the street. (Lord Roskill believed that this was in fact probably the most important recommendation in the Report). The phrase "without formal proof" risked being misunderstood.

Recommendation 58:

This was also likely to cause major controversy, but was right. The defence already in many cases outlined in writing the nature of the case at the preparatory stage.

Recommendation 82:

The Secretary of State for Trade and Industry believed that this was the only recommendation which was likely to prove very controversial with non-lawyers. The Home Secretary and Solicitor General believed it would be argued that if the Report's other recommendations for speeding up procedures, improving the laws of evidence, and requiring jurors to be competent in English, were adopted, there would be no reason to withdraw trial by jury for complex fraud cases. Lord Roskill defended the recommendation on the grounds that it was necessary to understand the transactions in order to be able to say whether there had been dishonesty, and he also noted that standards of honesty had fallen in a way which allowed too many juries to conclude "There but for the grace of God go I". It was, however, noted that an argument of this latter kind, if deployed, would lead to suspicions that juries would be withdrawn from other kinds of case.

After a brief discussion of the timing of publication of the Report, it was agreed that publication should take place on Friday 10 January, and Lord Roskill would hold a press conference on it in the morning. CFRs could be circulated to journalists the previous day. (I should be grateful if the Lord Chancellor's Department could establish that this is the appropriate timing for circulation of CFRs and inform the Committee). The Home Secretary and Lord Chancellor should put out a press statement at the time of publication, to be followed by oral statements in Parliament.



Lord Roskill drew attention to the convention in the House of Lords that the Chairman and members of a Committee could not speak on its report in the House. It was agreed that the convention seemed on the face of it to be outdated, and the point should be discussed with Lord Whitelaw. I should be grateful if Joan MacNaughton could arrange for this point to be considered.

Bringing the meeting to a close, the Prime Minister noted that Ministers would be holding a further meeting to discuss fraud on Thursday, 9 January. A paper should be prepared by the relevant departments as the basis for that meeting which should discuss, among other things: ways of structuring the new unified organisation as proposed by the Roskill Committee, including the position of the proposed case controllers; the present position on recruitment and pay of lawyers and accountants involved in the investigation and prosecution of fraud; a timetable for further discussion of the Report; a draft of the statement to be published by the Home Secretary and Lord Chancellor on publication of the Report.

I am sending copies of this letter to Joan MacNaughton (Lord President's Office), Richard Stoate (Lord Chancellor's Office), John Mogg (Department of Trade and Industry), Rachel Lomax (HM Treasury), Andrew Lansley (Chancellor of the Duchy of Lancaster's Office), Michael Saunders (Law Officers Department) and Michael Stark (Cabinet Office).

Yours sincerely  
Martin Samuel (Duty Clerk)

pp. David Norgrove

William Fittall, Esq.,  
Home Office.