IN SUPPORT OF FRAUD TRIALS WITHOUT A JURY

by

Sally Ramage

In the Annex to the Fraud Trials Committee Report (The Roskill Report- after Lord Roskill) of 1986, the guidelines on page 153 state: "*A complex fraud case is not necessarily one in which enormous sums of money are involved, or one in which the documentation is copious, or the list of witnesses long, although it would be normal if some- if not all – of these ingredients were present.*

A complex fraud is one in which the dishonesty is buried in a series of inter-related transactions, most frequently in a market offering highly specialised services, or in areas of high finance involving (for example) manipulation of the ownership of companies.

The complexity lies in the fact that the markets, or areas of business, operate according to concepts, which bear no obvious similarity to anything in the general experience of most members of the public, and is governed by rules and conducted in a language, learned only from prolonged study by those involved. A factor which often adds much complication and difficulty is the use of a network of companies and bank accounts overseas, which conduct business in currencies other than sterling.

Complex frauds are usually committed by people who are acknowledged experts in their field, and it is often their very expertise, which enables them to identify and exploit a flaw in the system, and to add further complications so as to avoid detection or hinder investigation. The concept of the market must be understood before the fundamental dishonesty of the fraudulent transaction can be recognised. To explain of or understand such market concepts in "classroom" conditions represent a very considerable intellectual challenge, to which only the exceptional could rise.

The sub-group of crimes is most likely to be found in frauds upon or involving the London Stock Exchange, Lloyd's of London, and the commodities and financial futures markets. Geographically, such institutions are located within the boundaries of the City of London, but because of the convenience of modern communications, it can, and does, happen that frauds in which these institutions are used take place in

venues throughout the country and overseas. Some frauds on the Revenue and Customs and Excise may also include some of the features described above."

Literature Review on the subject of fraud trials without a jury

The twelve-chapter Criminal Courts Review Report was published following Auld L J's review of the English criminal courts. A study was also made by the General Council of the Bar1. In 1993, The Royal Commission on Criminal Justice also published a Report2. An article was published in the Criminal Law Review Journal in 1998, following the Maxwell fraud.[3] It discussed the complexity of fraud trials' information. There was the Davie Report that was published in 1998 which dealt with value for money and costs. A very good paper was published on complex commercial fraud by the Australian Institute of Criminology after its conference on 20th August 1991. This paper discussed the trends that were evident in serious complex fraud trials to obscure the act of fraud by introducing irrelevant materials material during prosecution.

The United Kingdom government published an interim report in March 2006 of its fraud Review to consider the prevention, detection, investigation, prosecution, and punishment of fraud. Some of the recommendations made in this interim report are the consideration of specific measures to improve the effectiveness of fraud trials by way of speedier and more cost effective justice for victims.[4]

The Attorney General said of the Fraud Review:

"The Review makes challenging recommendations. The Fraud Review began work in October 2005 and was carried out by a multi-disciplinary team of officials including representatives of the Fraud Advisory Panel and Financial Services Authority....The Review concludes that fraud is massively under-reported and the full scale of the problem is still unknown...The Review also comments that in view of the sheer scale of some fraud investigations and trials, more alternatives to full scale criminals trials should be available...."

---

[1] See J.Roberts, Report of a Working Party on Long Fraud Trials", (HMSO, London 1992).

[2] M.Levi, "Royal Commission Research Study No 14", International Banking and Financial Law, Vol 12, pgs 14-15, 1993.

[3] T.Honess, M.Levi and E.Charman, "Juror competence in processing complex information from a simulation of the Maxwell trial", 1998, Criminal Law Review.

[4] See website http://www.lslo.gov.uk/fraud_review.htm

There is a new Protocol for the control and management of heavy fraud and complex criminal cases, handed down by Lord Woolf in March 2005.[5] This Protocol was handed down at the termination/collapse of the Jubilee Line Fraud Case, ie *R v Rayment & others [2005] unreported.* This serious fraud case concerned allegations of fraud in connection with the construction of London's Jubilee Line extension project. The time scale of the case had been that, it was no longer a fair trial. As a consequence, Lord Goldsmith, the Attorney General, made a written statement. He said, "The Prosecution arose from allegations that the defendants conspired to defraud London Underground by gaining access to confidential insider information, which was used against London Underground Limited's interests during the course of its dealings with tenderers and contractors on the Jubilee Line extension project. The information was relevant to the award of contracts worth tens of millions of pounds and two substantial claims for additional monies under contracts awarded in connection with the Jubilee Line extension project. The allegations also concerned corrupting public officials entrusted with safeguarding London Underground Limited's interests. Experienced lawyers considered the evidence in detail and a decision to prosecute was taken. Charges were brought in February 2000.

Lord Williams, when he was Attorney General, granted consent in February 2000 to prosecute the corruption case on the basis that there was sufficient evidence for a realistic prospect of conviction and it was in the public interest to prosecute. The CPS was ready for trial in 2001 but the case was split into two trials. The first trial started with a jury on 28 June 2003. The case has been affected by delays and breaks. Time has been lost due to illness, scheduled holidays, periods of paternity leave, an operation, and sickness of defendants. Legal argument has also involved substantial periods where the jury were not required to hear evidence.

For example, in the last seven months, the jury has heard evidence on only 12 days of the 140 available. The judge's ruling followed submissions by all parties in response to a request from the judge.

Prosecuting counsel has advised that it is their clear view that there have been such delays and interruptions in this case that a fair trial is now impossible. Counsel formed a judgement that the case ought to be stopped. The Director of Public Prosecutions

[5] See Protocol for the control and management of heavy fraud and complex criminal cases at http://www.judiciary.gov.uk/docs/control_and_management_of_heavy_fraud_and_other_complex)_criminal_cases_1803.pdf

and I agree with that view and, therefore, approved prosecution counsel's statement to the trial judge informing her of this view." On the Jubilee case collapse, Her Majesty's Chief Inspector of the Crown Prosecution Services made a Report which was published on 27 June 2006, to which Lord Goldsmith replied in the House of Lords, thus:. In addition, and after discussion with me, the current Director of Public Prosecutions has established a system of greater review by senior management of prosecuting decisions. In particular, he has established a system of case management of prosecuting decisions. These are held on a monthly basis and enable a panel of senior lawyers to act as a 'critical friend' to the lawyers handling a case. The panels, which have been in operation since September 2005, have already proved their worth in strengthening the presentation of cases, identifying any potential weaknesses and, in some cases, shortening the predicted trial lengths. This is especially important given the report's criticism that the Jubilee Line case was allowed to run without such senior management control. The Crown Prosecution Service is also developing a new case management and case quality assurance system, particularly for serious and complex cases".

Types of Complex Fraud

There are many types of complex serious fraud and some are listed here:

1. **Advance fee frauds**. The fraudsters pose as finance brokers, and purport to negotiate a large loan for a foreign company or government. The deception may b elaborate, for example, involving forged documentation and meetings in hotels. In return for the loan, a percentage fee is payable in advance; and if the loan is large, the fee will itself be substantial. Once the fee has been paid, the fraudsters disappear. Sometimes the fraudster may succeed in obtaining collateral security for the loan, in which case they can liquidate this as additional profit in the fraud.

2. **Wrongful trading**. Here a dishonest business may be started, or an honest one put to dishonest use. In either case the fraudsters continue to trade although they have no prospect of paying their debts, obtaining money and goods from others. The victim may be one of the Revenue Departments, as where a company goes into liquidation owing large amounts of VAT, but the business is quickly reconstituted under another name- the "phoenix syndrome".

3. **Commodity frauds**. The term "commodity" embraces so-called "soft" commodities, such as sugar and cocoa, as well as metals. The markets deal in

"futures", that is, contracts to buy or sell at a future date, and also in options to do so. Swings in prices may be sizable and rapid, and the operation of the market is complex.

4. **Computer fraud**. Typically, the fraudster gains access to a computer, which controls the movement of money, and gives an instruction for money to be transferred to his credit at an account, which may be out of the country.

5. **Long firm frauds**. The fraudsters set up business as wholesalers. They place initial orders with suppliers, and pay promptly to establish their credit-worthiness. Then large orders are placed. When the goods are received, they are quickly sold for what they will fetch and the fraudsters disappear. The history of long firm frauds predates the first case law on the matter in *Rex v Hevey (1782) 1 Leach 229*. Long firm frauds undermine the trust between those who transact business on credit on which the modern economic system depends and they pose huge threat to the interest of commerce.

6. **Marine frauds**. It is a well-established fraud to scuttle a ship and to make an inflated insurance claim for the ship and the cargo. The fraudster may also swindle banks[6] by the presentation of forged bills of lading, and in acting as a fraudulent shipping agent, appropriating the goods entrusted to him for forwarding and also the money paid to him.

7. **Stock Exchange frauds**. Fraudsters operation in this area may pursue one of several different kinds of fraud. They may induce investors to buy securities; they may manipulate the market, to influence the price of shares to their advantage; or they may indulge in "insider dealing", that is, buying or selling upon the basis of inside knowledge not available to others, about matters likely to influence the price of securities, although insider dealing is itself an offence under the Company Securities (Insider Dealing) Act 1985. Fraud occurs in the hedge fund industry, one of the fastest growing sectors in the economy. The value of assets under management of hedge funds has grown from $50 billion in 1990 to nearly $100 trillion today. The low correlation between hedge fund returns and market returns observed in some hedge

[6] Banks, which are so involved, can suffer huge reputation damage as a result because it often reveals that such a bank lacked proper oversight by management and the Board of Directors. A good compliance program will uncover how much damage poor seemingly harmless decisions made when the ramifications are made clear some 20 years later as at Riggs Bank which uncovered serious fraud involving a Riggs banker and the Chilean dictator Augusto Pinochet., a Politically Exposed Person. See http://hsgac.senate.gov/files/PINOCHETREPORTFINAL.wcharts.pdf

finds recently is a characteristic of hedge funds. The term "hedge fund" was coined with reference to the goal of the first such funds, which was to invest in under-valued securities using the proceeds from short sales of related securities, thereby creating a "market neutral" strategy.[7] "Market neutral" hedge funds manage about 20% of the trillion-dollar market currently under the management of hedge funds and very few people understand hedge funds or hedge fund frauds.

8. **Fraud for terrorist financing**. Fraud is sometimes perpetrated solely for terrorist financing. One police officer working for the Metropolitan Police said, "The financial element within terrorist investigations as a whole has gone from something that sits on the outside to being right in the middle of everything else." Software used by police can pinpoint terrorist money transfers in irregularity in a corporation's customers, anomalies in financial transactions that pass through the apparently innocuous systems. Terrorists who are commercial criminals move money across borders by disguising the destinations selected for the funds. Suspicious charities appear on blacklists provided by international financial agencies such as the UK Treasury, the US Treasury, and the US Federal Reserve. Movements of such monies between terrorists are characterised by their low values. Terrorist groups have commonly been associated with drug trafficking and fraud. Al Qaeda's financial network in Europe, dominated by Algerians, is largely reliant on credit-card fraud[8].

9. **Complex overseas fraud**. Consider also complex overseas financial frauds to do with export credit guarantees.

The United Kingdom's Export Credit Guarantee Department was set up in 1919 to act as an export credit insurance operation. It offered a range of services from comprehensive cover to one exporter for a range of goods and contracts to individual policies tailored to single trade contracts. It helped foreign investors to borrow cash for their purchases from UK banks and repay this in stages, by providing the bank with guarantees. Thus, the British exporter was able to negotiate a cash contract with the buyer. The banks would pay over the cash, supported by the ECGD guarantee, and the buyer would repay the bank loan in agreed stages.

---

[7] See Caldwell, 1999; Brown et al, 1999; Fung and Hsieh, 2001; and Agarwal and Naik, 2002.

[8] See article by Rohan Guanaratna, "Inside al-Qaeda: Global networks of terror", as quoted by T.Makarenko, "The Crime-Terror Continuum: Tracing the interplay between transnational organised crime and terrorism", Global Crime, Vol.6, No.1, February 2004, pp 129-145.

The ECGD provided bank guarantees for exporters also. These were usually on contracts where goods were exported on credit terms of two years or more. During the 1980's there were millions of pounds of losses because traders were using ECGD guarantees for questionable contracts. The ECGD was defrauded of millions of pounds each year, and many of these export contracts were with Nigerian importers.

Many of the ECGD guarantees were called upon for receiverships, defaulting payments, and changes in import restrictions. In the 1980's each ECGD policy allowed exporters leeway to trade in consumer goods with any buyer and many traders has many policies. The ECGD gave insurance cover for up to 90% of the value of the goods or services against the risk that the country of the buyer would encounter some problem or introduce some measure that will scupper the transaction. In 1984-1985, the ECGD paid out £784 million in claims out of the £17 billion worth of exports for which it had provided cover. The exporter is supposed to make efforts to recoup this money for the ECGD.

During this period, a simple fraud took place many times over. This is the essence of such a fraud. An overseas importer orders goods and deliberately defaults on the payments- sometimes even going into receivership to avoid the payments. The British exporter is left without his goods or his payment but if he were covered by an ECGD policy, the exporter would then claim 90% of the debt from the ECGD, who must pay up. In the case of large import-export, businesses trading globally, the fraud multiplied with the use of forged documents9. Instead of being paid to a non-existent UK supplier, monies passed by the confirming finance house to the importer, facilitating the finance house to make a claim to the ECGD for the value of the contract. This was purely a paper chase where no actual goods were exported. If bank loans were linked to an ECGD insurance policy as opposed to an ECGD guarantee, the cover for a defaulting purchaser was made void and the bank would suffer the loss. In the 1980's the British Bank Johnson Matthey Bankers lost £130 million though bad debts linked to ECGD insurance policies.

[9] A forged Bill of Lading, for example, was often used when a carrier transfers goods in exchange for a forged bill of lading as in *Motis Exports Ltd v Dampskibsselskabet AF 1912, A/S [1999] 1 Lloyd's Rep 837*. In this case the carrier had acted innocently, delivering goods in exchange for forged bills of lading, unaware that they were forged. Also backdated bills would entitle the innocent party to treat the contract as repudiated and then property and risk would revest in the seller as in *Kewi Tek Chao v British Traders and Shippers Ltd [1954] 2 QB 459.*

The fraud could also be also perpetrated using an overseas arm of an international trading house, which would order goods through its subsidiary operation in the UK. With no intention of taking delivery, an order would be placed with a UK manufacturer. The contract with this UK manufacturer would provide the documentary evidence with which the UK subsidiary company would then obtain ECGD Cover or Guarantees, raise finance from a bank with this ECGD backing and then vanish with the bank's money.
When, in due course, the manufacturer fulfilled the order, he was left with the goods at the docks. He would have to either store the goods until he found another buyer, or sell at reduced prices.

ECGD guarantees covered far greater sums than did ECGD insurance policies. ECGD's income was derived from premiums it charged on policies and the income it had earned from its consolidated funds and interest from debts. By 1985, the amounts of money in ECGD trade deals at risk was £33 billion and 60% of this £33 billion was on deals with developing countries, including Nigeria, Poland and Brazil.

The 1984 Matthews Report coincided with the ECGD Consolidated Fund being in deficit by £42.3 million. The Matthews Report recommended that the ECGD become a government-owned corporation that provided insurance and financial services in support of exports and to do so at a profit. It also recommended that EDGD guarantees be fully backed by Her Majesty's Government.

There was the Chapman Report in 1985, which recommended a new board structure for the ECGD but did not approve the previous Matthews recommendation of a separate corporation. During this year news of ECGD, bribery and corruption surfaced.

Alleged ECGD fraud

Later still were reports of EDCG guarantees to BAE Systems for £1 Billion for a BAE-Saudi Government transaction[10], when it was disclosed that BAE was the ECGD's biggest risk. At the time, The Serious Fraud Office was investigating BAE

[10] D.Leigh and R.Evans, "Secret £1 Billion deal to insure Saudi arms contract", Guardian Newspaper,14.12.04.

over a £60 million bribe. This was not the first British transaction with Saudi Arabia as Geoffrey Edwards was the beneficiary in the 1960's of the then largest military export sale in British history and for £120 million, the British Aircraft Corporation contracted to provide forty Lightning Jets, twenty-five Provost Trainers and an undisclosed number of air-to-air missiles. As part of that same package, Associated Electrical Industries provided the Saudis with a new advanced radar system. Edward's coup earned him £2 Million in commission[11].

BAE was one of the first to complain to the ECGD about the 2004 measures and the matter rumbled on until 2005, even though the World Bank, the International Monetary Fund, and the EBRD had formally acknowledged that revenue transparency should be a fiduciary duty for all loans, investments, underwriting and technical assistance programmes to resource-rich countries. The ECGD held a second inquiry in November 2004 and amended the May 2004 procedures and this was published in April 2005.

10. **Secret trusts for fraudulent purposes**. With British tax havens in Jersey and the Cayman Islands, it is difficult enough to fathom out which company is a subsidiary of which, who owns what, which company is a Special Purpose Vehicle or a secret Trust. A very important study of 25 years of monies illegally flowing out of countries showed that 65% of that money came from the developed countries[12]. This money consists of illegal, disguised, and hidden financial flows.

There is legal subterfuge in offshore trusts and shell companies. in addition, there is a vast amount of companies that use financial derivatives, foreign exchange, interest rate and commodity derivatives to manage risk.[13]

11. **Complex letter of credit fraud- example**

Milton Kounnou (DOB 1/4/48), and his son, Stelios Kounnou, (DOB 16/8/77) purported to be metals suppliers. Their London-based companies were Simetal Ltd

[11] D.Boulton, *The LOCKHEED Papers,* (Jonathan Cape, London 1978)
[12] J.K.Boyce and L. Ndikumana, "Africa's Debt: Who owes whom?" in G.A.Epstein, *Capital flight and capital controls in Developing Countries,* (Cheltenham, UK, 2005).
[13] A. A. El-Masry, "A survey of derivatives use by UK nonfinancial companies", Manchester Business School, 2003.

and Fimetco Ltd. These companies produced falsified shipping documents for presentation to banks in the Middle East against letters of credit opened on instructions of companies in Sharjah, United Arab Emirates, controlled by a Madhav Patel. His companies were Solo Industries and Zeeba Metals.

Documentation (i.e bills of lading, invoices, certificates of origin and packing lists) was created throughout the period of September 1998 to March 1999. relating to cargoes of tin ingots, bismuth scrap, indium tin alloy, nickel scrap, and lead silver alloy totalling to about 450 metric tonnes. The stated shipping ports were in northern Europe (Helsingborg, Gothenburg, Thamesport and Hamburg). The declared destination was Dubai. But the consignments were either phantom shipments, or where there were shipments, they were low value metals such as scrap aluminium or lead ingots, disguised by the documentation as higher value cargoes.

Patel's companies regularly opened letters of credit with Middle East banks; their frequent turnover generating sufficient funds to recycle back to his companies to settle the original debt. This achieved for Patel a positive reputation with the banks as being a businessman who settled debts punctually. Consequently banks became willing to extend more and more credit to him. The fraud snowballed. When the scheme collapsed in April 1999, the banks were owed around $200 million. Twenty banks in the Middle East were affected, principally the Arab Banking Corporation, Arab-African International Bank, Emirates Bank International, Gulf International Bank, Credit Agricole Indosuez and the Albarka Islamic Investment Bank.

The Kounnou-owned firms in London were the beneficiaries to the letters of credit. When they received payment, they would retain some of the money and transfer the remainder to companies controlled by Patel.

The SFO opened its investigation in June 1999 in conjunction with the City of London Police Economic Crime Department after a complaint was received from Citibank in London.

Milton Kounnou and Stelios Kounnou were charged in January 2002 with three counts of conspiracy (with Mahdav Patel) to defraud banks of funds. The Kounnous were also charged with fifteen counts of false accounting (i.e. producing falsified

documents for accounting purposes).Madhav Patel's whereabouts are unknown. There is a warrant for his arrest issued by City of London Magistrates. Milton Kounnou pleaded guilty ahead of trial, to fifteen counts of false accounting and was sentenced to two years' imprisonment on each count; the sentence is to run concurrently. One count of conspiracy was withdrawn and two counts of conspiracy are to remain on the file. The SFO has decided to offer no evidence against Stelios Kounnou.

A study of USA Bench Trials

In a rigorous study of judges' behaviour in bench trials, in Iowa in 1993, the first of its kind, Professor Peter David blank explored judges' behaviour and the "appearance of justice" in actual trials. and examined various legal and extralegal influences on trial decision-making processes. The relationships among legal factors (e.g., evidence) and extralegal factors (e.g., preconceived biases and behaviour related to the appearance of justice) was explored through further empirical testing of a theoretical model of courtroom dynamics conducted in the Iowa courts.

Judges, like all human beings, develop certain beliefs about the defendant's guilt or innocence. Courts, legal scholars, practitioners, and social scientists recognize that extra-legal influences may have important effects on trial processes and outcomes. acknowledge that juries, witnesses, or other trial participants accord great weight and deference to even the most subtle behaviours of the judge. Little information, however, is available about the extent to which trial judges themselves are sensitive to, or even conscious of their extra-legal behaviour and whether it might have effect on fact finding, trial outcomes, or their sentencing patterns.

The few studies conducted, indicate strong judicial interest in exploring the connection between courtroom behaviour and trial outcomes. Most trial judges receive little feedback about their courtroom communication, and what little they do receive is mostly anecdotal. This may be in part because there are few standardised methods through which such feedback may be provided, judges are reluctant to receive such feedback, or judges lack effective techniques for monitoring the impact of their courtroom behaviour.

Legal practitioners are interested in the impact of judges' behaviour on courtroom fairness. The American Bar Association's amendments to the Model Code of Judicial Conduct include a canon that emphasises the need for the appearance of fairness and justice in the courtroom Some empirical studies by social scientists help reveal the complexity of the study of judges' behaviour in jury and bench trials and replace unsubstantiated myths about courtroom behaviour with empirically validated conclusions.

Prior studies suggest that trial outcomes are not always the product of rational legal analysis. In a criminal trial, a trial judge's beliefs or expectations for a defendant's guilt may be manifested either verbally or non-verbally (by facial gestures, body movements, or tone of voice) and can be reflected in a judge's comments on evidence, responses to witness testimony, reactions to counsels' actions, or in rulings on objections. Improper beliefs or expectations, if manifested in a judge's behaviour, could warrant reversal and judicial disqualification. Courtroom behaviour typically do not include a measure of the strength or quality of the evidence because this information is often costly to compile
The variable sentence imposed, assesses the magnitude of the sentence for a particular charge. Judges retain discretion in the sentencing process, often considering individual and community perceptions of the crime, the background of the criminal, and the circumstances of the case. Professor Blank's model assessed the impact of defendants' background, behaviour, and culpability factors on the sentencing process. Analyses of these relationships allowed for assessment of the degree to which judges' sentencing decisions were independent of legal or extra-legal factors. The model explored how the perceived competence or influence of different trial participants (e.g., judge or counsel) relates to other variables in the model, such as trial outcome or sentencing patterns. The study also explored the micro nonverbal behaviours of trial judges. Examples of judges' micro behaviours include amount of eye contact with trial participants and frequency of smiles, hand movements, or head nods. The micro behaviours assessed had been previously employed in studies of psychotherapy as well as in other studies of courtroom processes.

The Iowa Study explored: the legal and extralegal factors that influence decision making in bench trials; the import to the model of the strength of the evidence

variable; judges' behaviour over the course of entire bench trials, rated at several points and involving interactions with different trial participants. The Iowa Study showed that extra-legal forces independently influence trial outcomes in significant ways. For instance, the micro behaviours alone account for approximately 6% and the global styles alone for approximately 4% of the explained variance. The Iowa Study revealed that the strength of the evidence independently accounts for some16% to 21% of the explained variance in predicting trial outcomes. Likewise, the competence ratings of the judge and prosecution counsel add to the predictive power of the model, together contributing approximately 7% to 8% of the explained variance in predicting trial outcomes.

Examination of partial correlations further supported the substantial relation between trial outcomes and extra-legal variables. These findings illustrate that, when controlling for the strength of the evidence, extralegal forces independently predict trial outcomes and sentencing. Thus, this influence may be particularly apparent in close cases.

Had the Iowa Study not been performed, little information would exist about the relative impact in bench trials of evidentiary and extralegal factors on trial outcomes and sentencing The Iowa Study also shows that combinations of variables in the model do not significantly predict judges' sentencing patterns. Though not insubstantial in magnitude, in contrast to the results for trial outcomes, the total explained variance for sentencing ranges from 30% to 33%. Most striking is the finding that the strength of the evidence variable independently accounts for only 1% of the variance in the prediction of sentence magnitude. The explained variance of the independent effect of the micro behaviours and global styles ranges from 14% to 19% in predicting the magnitude of sentences. Taking into account the evidence of the cases, however, sentencing decisions still were not related substantially to extralegal variables in the model.

Legal scholars and practitioners typically have exaggerated the impact of extralegal variables on trial outcomes and underestimated the extent to which judge or juror decision making is affected by the strength and quality of the evidence. Quite to the contrary, the Iowa findings showed that the strength of the evidence is generally a better predictor of trial outcomes than are extralegal factors. But without further

replication, the Iowa Study must continue to be interpreted with caution, despite the predicted pattern of findings.

The fundamental premise in the idea of impartial judges and rules of law is that certain kinds of decision-making, for example, by judges, can by institutional arrangements and role discipline be made to show less variance and less correlation to personal factors than other kinds of decision-making The findings support the view that many forces, independently and in combination, contribute to decision making and sentencing.

The Cost of Fraud and the Cost of Fraud Trials

On Saturday 9 September 2006, The Times Newspaper's article titled "Cost of fraud spirals to £40 BILLION", by Nicola Woolcock, stated, "The Government has revised dramatically the cost of fraud to the British economy to £40 billion a year, more than double the figure it gave two months ago. However, the Attorney General's deputy admitted that the true amount was probably higher, and one leading law firm claims it could be as much as £72 billion... Mike O'Brien, the Solicitor-General, said that £40 billion was a conservative figure and that fraud had reached "unparalleled levels of sophistication". He said the industry and the Government had little grasp of the real extent of the problem but that terrorist attempts to raise funds, through people smuggling and drug-trafficking was a major driving force....". At a Conference entitled "The New Fraud Trial Model, at Kingsway Hotel, London on 9 November 2006, at which I was present, and The Honourable Mr. Justice Fulford said that fraud cases consume 16% of the £93 million Legal Aid Budget.

Best reason for Fraud Trials without a jury- Right to a Fair Trial

Fraud cases that take years damage businesses and destroy family life for the defendants. The Ernest Saunders/Guinness case lasted from 1986 to 2002 if one considers the following:-

1986- DTI Investigation re Saunders

1987- *Guinness v Saunders and another [1987] BCC 271*

1988- *R v Director of Serious Fraud Office, parte Saunders [1988] Crim LR 837*

1989- Serious Fraud Office opens its investigation. Pre-trial review

1991- *R v Seelig and another [1991] 4 All ER 429*

1998- *Saunders v United Kingdom [1998] 1 BCLC 362*

1999- *IJL and others v United Kingdom (Application Nos. 29522/95,30056/96,30574/96)*

2002- *R v Lyons, Parnes, Ronson, Saunders (House of Lords) 14./11/02.*

I analysed five years of the cases of the Serious Fraud Office's Annual Reports from 1999 to 2003 shows that one case took ten years from investigation to sentencing, that case being *R v Myles, Crowe, Jeffries, Wilkinson and Smith, 5th June 2001 , unreported.*[14] There were five cases, which lasted for seven years from investigation to sentencing, five other cases took six years from investigation to sentencing, and eleven other cases took five years from investigation to sentencing.

No of Cases	Duration of case (years)	Percent (%)of the 49 cases
1	10	2
5	7	10
5	6	10
11	5	22
10	4	20
9	3	18
8	2	18

49 SFO cases between 1999 and 2003 –Source SFO Annual Reports

The Strasbourg Court of Human Rights does not lay down minimum periods for what constitutes a reasonable time, but it has laid down factors to be taken into account.
(a) **In** *Eckle v Federal Republic of Germany*[15]**, the court held that the word "time" covers the whole of the proceedings in issue, including appeal proceedings**. So in the Saunders case, the time of the case lasted from 1986 to 2002, a period of fifteen years.

[14] that case being *R v Myles, Crowe, Jeffries, Wilkinson and Smith, 5th June 2001 , unreported.* This was a case of conspiracy to defraud by creating a false market during 1989 and 1990 and the case concerned a £21 million Offer for Sale of Shares in Richmond Oil and Gas.

[15] [1982] 5 EHRR 1

(b)In *St gm Iler v Austria*[16], the court said that the aim of article 6(1) was to protect parties against excessive procedural delays. In this case, the applicant had been arrested on fraud charges and detained for two years and seven weeks and the court found the period of detention excessive. In finding so, the Commission considered the inter-relationship between the reasonable time requirement and the reasonable time detention provision. The Commission stated that there is no confusion between the stipulation in Article 5(3) ECHR and Article 6(1)17 applies to all parties to court proceedings and its aim is to protect them against excessive procedural delays. In criminal matters it is designed to avoid a person charged remaining too long in a state of uncertainty about his fate. Article 5(3) refers to persons charged and detained. It implies special diligence of the prosecution of the cases concerning such persons.

(c)In the case *Lffler v Austria*[18], the court said that it was for the contracting states to organize their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision within a reasonable time, thereby rendering justice without delays which might jeopardize its effectiveness and credibility. The length of the delay, the reasons given by the prosecution to justify the delay, the responsibility of the accused for asserting his rights and prejudice to the accused , must all be taken into account.

(d)In the case *Privy Council [2002] UKPC D1*, Lord Bingham said, "In the determination of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

(e)In *K nig v Federal Republic of Germany*[19], proceedings took ten years in total, including appeals. The Commission said that when enquiring into the reasonableness of the duration of criminal proceedings, the court looks at the complexity of the case, the applicant's conduct and the way in which the administrative and judicial authorities dealt with the case. The longer the delay, the less likely it is that the accused can still be afforded a fair trial. The state is responsible for delays attributable

[16] [1969] 1 EHRR 155

[17] Article 6(1) ECHR provides that, "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

[18] Application No. 30546/96, 3 October 2000.

[19] [1978] 2 EHRR 170; [1978] ECHR 6232/73

to the prosecution as in the case of *Orchin v United Kingdom*[20] when there was a period of three years of delay during which charges were outstanding.

Efficiency Measures in line with this Act

The Criminal Procedure Rules 2005 (S.I. 2005 No.384) are measures to advance efficiency and part of these measures is the Disclosure Protocol. and the Control and Management of Heavy Fraud and Other Complex Criminal Case Protocol, or "Heavy Fraud Protocol". The Heavy Fraud Protocol states, "In fraud cases, the volume of documentation obtained by the Prosecution is liable to be immense." The whole disclosure system is predicated upon the proper cataloguing and retention of all relevant material obtained in the course of an investigation. Investigators and prosecutors must be in a position to satisfy the court and the Defence that the schedules are accurate, complete and reliable. Judges should not allow the prosecution to abdicate their statutory responsibility for reviewing any unused material. [21]The Heavy Fraud Protocol comments, "If the bona fides of the investigation is called into question, a judge will be concerned to see that there has been independent and effective appraisal of the documents contained in the disclosure schedule. And that its contents are adequate. In appropriate cases where the issue has arisen, and there are grounds which show that there is a real issue, consideration should be given to receiving evidence on oath from the senior investigating officer at an early case management meeting". The Disclosure Protocol , paragraph 35, is the latest attempt to encourage the questioning of Defence Statement adequacy. The expectation is that judges will now receive a clear and detailed exposition of the issues of fact and law in the case. The Disclosure Protocol states that a judge should examine the Defence Statement, and if he finds it not fit for purpose, he should make a full investigation of the reasons for this failure to comply with the mandatory obligations of the accused, states paragraph 38.[22]

In conclusion, paragraph 68, states, "The public rightly expects that the delays and failures which have been present in some cases in the past where there has been scant

---

[20] [1984] 6 EHRR 391

[21] Guidance on case management issues was given by Rose LJ in *R v CPS (Interlocutory Application under section 35/36 CPIA [2005] EWCA Crim 2342.*

[22] In the past, the prosecution have often been faced with a defence case statement that is little more than an assertion that the Defendant is not guilty. See *R v Patrick Bryant [2005] EWCA Crim 2079.*

adherence to sound disclosure principles will be eradicated by observation of this Protocol. The new regime under the Criminal Justice Act 2003 and the Criminal Procedure Rules gives judges the power to change the culture in which such cases are tried. It is now the duty of every judge actively to manage disclosure issues in every case. The judge must seize the initiative and drive the case along towards an efficient effective and timely resolution, having regard to the overriding objective of the Criminal Procedure Rules (Part 1). In this way, the interests of justice will be better served and public confidence in the criminal justice system will be increased."
Control and Management of Heavy Fraud and other Complex Criminal Cases- Protocol issued by the Lord Chief Justice of England and Wales on 22 March 2005
Section 2 of this Protocol states" DESIGNATION OF THE TRIAL JUDGE
(i)The assignment of a judge
(a)In any complex case, which is expected to last more than 4 weeks, the trial judge will be assigned under the direction of the Presiding Judges at the earliest possible moment.
(b)Thereafter the assigned judge should manage that case "from cradle to grave"; it is essential that the same judge manages the case from the time of his assignment and that arrangements are made for him to be able to do so. It is recognized that in certain court centres with a large turnover of heavy cases (eg Southwark) this objective is more difficult to achieve. But in those court centres there are teams of specialist judges, who are more readily able to handle cases which the assigned judge cannot continue with because of unexpected events; even at such courts there must be no exception to the principle that one judge must handle all the pre-trial hearings until the case is assigned to another judge."

European Court of Human Rights – example of why the Fraud Trials without a Jury Act is vital t- The Eckle case

In the Eckle case, The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber The Eckle case was referred to the Court by the European Commission of Human Rights ("the Commission"). In 1952 Mr. Hans Eckle, founded the building firm of "Hans Eckle, timber, steel and building materials" at Püttlingen

The firm's business consisted in supplying materials and, later, building sites on credit for people who wanted to build but had few financial resources. Such a system, which the applicant himself called the "Eckle system", had not hitherto been used in the

building materials trade. He covered his financial needs - from 1962 at least - by loans from individuals, who were offered mortgages as security (Grundschulden). In 1965, however, he began to encounter difficulties in this regard and towards the middle of the following year he ceased payment to his creditors of the sums due to them. The overall total of money he owed amounted at the time to about ten million Marks. The trade practices of the applicants from 1959 to 1967 were the subject of three separate sets of prosecutions in Trier, Saarbrücken and Cologne. The first and last of these are in issue in the instant case : the applicants complain that their duration exceeded the "reasonable time" referred to in Article 6 par. 1 (art. 6-1) of the Convention.

In a case of this kind, it is necessary to set out in detail each stage of the impugned proceedings.

. The Trier proceedings

. From the opening of a preliminary investigation to the final preferment of the "bill of indictment" (November 1959 - 15 March 1968)

. Acting on a complaint lodged on 28 October 1959 by a bank at Wittlich, the public prosecutor's office began, in November 1959, a preliminary investigation (Ermittlungsverfahren) in respect of Mr. Eckle. On 22 February 1960, after it had obtained information from the Trier Bezirksregierung as to the existence of maximum prices in the building materials trade and without having questioned either the applicants or any witnesses, the prosecutor's office stopped the investigation. Examination of the complaint was resumed with a fresh preliminary investigation prompted by the receipt in mid-August of a letter from the Trier Chamber of Industry and Commerce advising the public prosecutor that Mr. Eckle was promising to supply his clients with building materials "at average market prices" (handelsübliche Preise) whereas his prices were in fact 25 per cent higher. In September, the investigation was suspected pending the outcome of a civil action brought against Mr. Eckle by one of his customers, in which the concept of "average market prices" used by Mr. Eckle in

his contracts would have to be clarified. These civil proceedings were concluded on 30 October 1962 with a judgment of the Koblenz Court of Appeal (Oberlandesgericht) holding that the applicant had charged prices higher than the average market prices, contrary to the commitments he had entered into with his customers. Forty witnesses were interviewed between 1960 and 1962, and thirty-six witnesses in 1963. In 1964, the competent authorities held hearings of 133 witnesses,15 of them outside the Land of Rhineland-Palatinate. The same year the applicant's business premises were searched and business records (Geschäftsunterlagen) seized. These searches took place firstly on 4 March on an application from the Saarbrücken public prosecutor's office but in the presence of two officials from Trier, and subsequently on 7 October on an application from the Trier public prosecutor's office which, on 8 and 9 October, questioned Mrs. Eckle for the first time.

In 1965, 325 witnesses were heard, 106 of them outside the Land. One of the twelve public prosecutors (Staatasanwalt) at Trier, who was in charge of the investigation, was relieved of his other duties in January 1965 in order to allow him to devote himself entirely to the Eckle case. At the instance of the Minister of Justice of the Land, a special commission of five officers from the criminal police began assisting the public prosecutor from this date onwards so that the investigation could be intensified. Previously, as from April 1963, a member of the criminal police had been dealing specifically with the case. . On 9 September 1965, the public prosecutor's office ordered the closure of the investigation, during which according to undisputed information provided by the Government - 540 witnesses had testified and nearly 3,000 documents - extracts from land registers (Grundbücher), contracts, bills, drafts, etc. - had been examined. The prosecutor's office had made up 37 main files (Hauptakten) and 300 subsidiary files (Nebenakten), to which had been added 120 files relating to civil suits. On 9 September likewise, the public prosecutor's office informed the applicants and two former female employees of the Eckle firm that it intended to "indict" them. They were requested to give notice within two weeks if they wished to have, before their committal for trial, a "final hearing" by the public prosecutor's office (Schlussgehör) under Article 169 b of the Code of Criminal Procedure (in force until 31 December 1974). On 20 September, two counsel for Mr. Eckle asked to be allowed to inspect the file before replying.After a conference with

them on 12 October, the public prosecutor's office notified them on 3 November that the file would be available to them at the secretariat until 20 November. The legal advisers acting for Mrs. Eckle and for the two employees did not respond. Accordingly, counsel were assigned to them officially but were replaced in December 1965 and January 1966 by counsel instructed by the parties themselves.

In mid-December 1965, the public prosecutor's office sent Mr. Eckle's legal representatives a copy of the main sections of the file, as had been agreed a month earlier, and gave them until 2 February 1966 to decide whether or not they wanted a "final hearing". A further counsel appeared for Mr. Eckle on 1 February 1966, and then a fourth. They too asked for an opportunity to consult the file and for copies of certain documents in the file; in mid-March, they were given a deadline for stating whether they were requesting a "final hearing". Between 13 and 15 March, the seven counsel applied for a "final hearing" and for the original file to be made available to each of them beforehand for a period of six months. However, they withdrew their requests on 19 April and 9 May, respectively. Once proceedings relating to the "final hearing" had thus been concluded, the public prosecutor's office drew up the "bill of indictment" (Anklageschrift). Drafting of this was completed on 3 August 1965and the typescript was sent to the First Criminal Chamber The "bill of indictment", which filled four volumes and comprised 793 pages in all, was directed against the applicants and the two former female employees of the Eckle firm. It alleged total of474 offences of fraud and extortion, listed almost 500 witnesses and mentioned more than 250 documents produced in evidence. Proceedings had been dropped by the public prosecutor's office in respect of 68 cases, in 61 of them pursuant to Article 154 of the Code of Criminal Procedure. In the version in force until the end of 1978, this provision empowered the court (paragraph 2) and, until a "bill of indictment" had been preferred, the public prosecutor (paragraph 1) to take such a measure at any stage of the proceedings if, in particular, the sentence liable to be passed at the end of the proceedings was negligible in comparison with one already finally (rechtskräftig) imposed on the accused - or which the accused had to expect - for another offence. On 23 December 1966, the public prosecutor in charge of the case conferred with the President of the Criminal Chamber about the duplications arising from criminal proceedings pending in Saarbrücken, where the trial hearing was due to begin on 17 March 1967 (see paragraph 58 below).. On 16 January 1967, the public prosecutor's

office withdrew the "bill of indictment" because it had learned of other possible offences and felt that further inquiries were necessary. On 22 August, the Cologne public prosecutor's office, which had opened a preliminary investigation in respect of Mr. Eckle on 21 March, stated its willingness to deal with the new cases which the Trier public prosecutor's office had begun to inquire into. As a result, the Trier public prosecutor's office transferred these cases to Cologne on 15 March 1968 and on the same day preferred the "bill of indictment" - unchanged in any way - for a second time.

Between 16 January 1967 and 8 February 1968, 234 fresh cases, of which 217 concerned the Saarbrücken and Trier public prosecutor's offices, had been examined. From the final preferment of the "bill of indictment" to the beginning of the trial (Hauptverfahren) (15 March 1968 - 28 January 1969) Between 26 March and 25 May 1968, the President of the First Criminal Chamber of the Regional Court took several steps to ensure that the accused were represented; on the last-mentioned of these dates, the Regional Court assigned to them four officially appointed defence counsel. On 30 May, the President drew the attention of the public prosecutor's office to the fact that it had not yet offered the accused a "final hearing" in respect of the new cases. The prosecutor's office replied on 11 June, pointing out that these cases had been transferred to Cologne (see paragraph 18 above).On 2 July, the Regional Court asked to be sent the "bill of indictment" drawn up by the Saarbrücken public prosecutor's office: the Court was examining whether the numerous offences alleged against the applicants amounted to continuous conduct which had to be regarded as a single offence, in which event the prior conviction at Saarbrücken would preclude any further conviction. Three days later the Saaurbrücken public prosecutor's office transmitted to the Regional Court a copy of the judgment of 17 October 1967 (see paragraph 58 below) and informed it that the files had been forwarded to the federal public prosecutor's office (Bundesanwaltschaft) for the purposes of the proceedings for review on a point of law (Revisionsverfahren).

In response to a request from one of the defence counsel for the applicants that he should be given copies of the file, the Regional Court, declared, inter alia, on 23 July 1968 that it remained to be decided whether the above-mentioned preferment of the "bill of indictment" could validly stand. On 19 August, the Regional Court sought

information from the Saarbrücken public prosecutor's office about the state of the proceedings; it stressed that it needed the "bill of indictment" it had asked for on 2 July. This was finally sent on 4 October by the Trier public prosecutor's office, which urged at the same time that a decision be taken on the "bill of indictment" it had itself preferred.

On 28 January 1969, the Regional Court admitted the latter "bill of indictment" (Zulassung der Anklage) and ordered that the trial open (Eröffnung des Hauptverfahrens). Proceedings before the Trier Regional Court (28 January 1969 12 February 1973) Counsel for Mrs. Eckle having asked on 14 February 1969 for the file to be made available to him, the Regional Court replied on 18 February that copies would be forwarded to him. On the same day counsel for Mr. Eckle called on the Regional Court to quash the preferment of the "bill of indictment". On 16 April, counsel for Mrs. Eckle urgently requested the Regional Court not to take any action in the case before receiving the text of the judgment delivered on 14 March 1969 by the Federal Court of Justice (Bundesgerichtshof) in the matter of the Saarbrücken proceedings (see paragraph 58 below). The judgment was transmitted to the Regional Court on 29 April by the Saarbruüken public prosecutor's office. On the previous day the Regional Court had refused to issue a warrant for the arrest of Mr. Eckle on the grounds that he was still subject to such a warrant in the Saarbrücken proceedings. On 28 May, it informed counsel for Mrs. Eckle, who on 16 April had complained that eight files were missing, that these related to proceedings which had been dropped. On 2 April, one of the officially assigned defence lawyers had asked the Court to revoke his appointment. In order to enable him to continue to act, the Regional Court suggested to the public prosecutor's office on 30 September that it should ask for proceedings to be terminated in the case in which the lawyer in question had previously appeared in another capacity. On 14 October, the public prosecutor's office made a request to this effect, which the Regional Court granted on 17 November. On 14 October 1969, the public prosecutor's office applied for a warrant for the arrest of Mr. Eckle who had been released from detention in relation to the Saarbrücken proceedings, but the Regional Court refused the application on 17 November. On appeal by the public prosecutor's office, the Koblenz Court of Appeal quashed this decision on 28 January 1970 and issued a warrant for the arrest on the applicant.

At the request of the public prosecutor's office (6 February) the Cologne District Court (Amtsgericht) on 12 March served the warrant on Mr. Eckle who was in detention in Cologne in respect of the proceedings there (see paragraph 43 below). Mr. Eckle immediately appealed against the issuing of the warrant, but the Koblenz Court of Appeal dismissed the appeal on 2 April. On 20 April 1970, the President of the First Criminal Chamber of the Trier Regional Court advised the relevant authority that the magnitude of the Eckle case was preventing him from handling other cases. On 1 June, he reached an agreement with his colleague at the Saarbrücken Regional Court as to the dates of the hearings to be held by their respective courts (see paragraph 58 below). On 2 July, he fixed the date of 11 November for the opening of the trial hearing and notified defence counsel accordingly. On 19 October, counsel for Mrs. Eckle withdrew a statement whereby, on 19 April 1968, he had waived his claim to certain costs and expenses, and requested the Regional Court to appoint him as defence counsel unconditionally. Four days later, counsel for Mr. Eckle applied for a postponement of the hearings, asserting that he did not have enough time to prepare the defence. The Regional Court rejected both applications on 27 October.

On 31 October, Mr. Eckle himself asked for the hearings to be postponed, pleading, inter alia, Article 6 par. 3 (b) (art. 6-3-b) of the Convention, but the Regional Court refused the request on 4 November. The trial opened on 11 November. Mr. Eckle immediately sought an adjournment, and Mrs. Eckle suspension of the proceedings; the third defendant challenged two of the judges.

The Regional Court dismissed the challenge on 17 November. On the same day, it excluded Mr. Eckle from the courtroom on grounds of his behaviour before the Court and, in answer to an objection raised by one of the co-defendants, affirmed its jurisdiction in the case. Two days later, it declined to grant a further application for an adjournment which Mr. Eckle had made on 17 November. On the same day, Mr. Eckle requested his release from detention; he and his wife went so far as to refuse to give their particulars, and counsel for the defence asked the Court for the author of the "bill of indictment" to be called as a witness so that certain points in it could be clarified. The public prosecutor who had drawn up the "bill of indictment" was heard on 26 November, after which all the defendants applied for the proceedings to be terminated. Mr. Eckle declared himself unfit to stand trial and sought a formal

decision from the Regional Court on this matter. The "bill of indictment" and the prior order to commence the trial hearing were read out in court on 3 December. Prior to that, the Regional Court had ordered that prosecution in some of the cases should be dropped. It also refused the defendant's applications for the discontinuance or suspension of the proceedings. On the same day, Mr. Eckle challenged three of the judges and asked the Regional Court to postpone the hearing in order to give him time to obtain the documents needed to support his challenge.

On 10 December, Mr. Eckle was once more removed from the courtroom and sentenced to one day's imprisonment for his behaviour before the Court: he had insulted the President and thrown paper at him. In evidence to the Regional Court, a doctor who had examined the applicant considered him fit to stand trial, although stating that it would be necessary to keep the applicant under observation before being able to give a final opinion. The Regional Court thereupon decided that Mr. Eckle should provisionally be placed in a psychiatric hospital with a view to a medical report being made on him; the hearing was adjourned sine die on 17 December. The psychiatric examination was completed on 23 January 1971 and the medical report filed on 20 February. According to the doctor, the applicant's behaviour during the hearings was not the result of any illness.

Between 24 February and 26 March, hearings took place in the Saarbrücken proceedings, which ended on the latter date with the conviction of Mr. Eckle (see paragraph 58 below). On 16 June, hearings resumed before the First Criminal Chamber of the Trier Regional Court, the President of which had been replaced in December 1970; the hearings continued until 17 March 1972. During the 28 days of hearings, the Regional Court heard approximately 110 witnesses, including an expert witness, and more than 500 documents were read out. According to the undisputed account of the proceedings furnished by the Government, Mr. Eckle challenged judges on twenty occasions - sometimes twice on the same days - and his wife did so some ten times. Furthermore, he objected to the composition of the Regional Court, challenged two experts, introduced ten motions to take evidence (Beweisanträge), requested his release from detention ten times and suspension of the trial four times. Five times he claimed to be unfit to stand trial and requested a medical examination; on five occasions the Regional Court took evidence from a doctor who, on one of

these occasions, judged the applicant to be incapable of attending court for the rest of the day. On seven occasions Mr. Eckle was sentenced to two or three day's imprisonment on account of his behaviour and he was eight times removed from the courtroom for several days, notably in the period from 18 October 1971 to 19 January 1972. According to the same account, Mrs. Eckle for her part submitted motions to take evidence on three occasions; she applied three times to the Regional Court for the instructions given to the counsel officially assigned to defend her to be withdrawn, twice for the trial to be suspended, twice again for it to be discontinued and on three occasions for the appointment of a second lawyer. On 23 November 1971, the Regional Court terminated the proceedings, pursuant to Article 154 of the Code of Criminal Procedure, in respect of more than 400 of the counts in the "bill of indictment". On 17 March 1972, Mr. Eckle was sentenced to imprisonment for four years and six months, his wife to a term of eighteen months and the two co-defendants to ten and six months respectively. At the same time, the Regional Court discharged the warrant for the arrest of the applicant. The Regional Court's judgment found Mr. Eckle guilty of fraud committed jointly with other persons to the detriment of customers in forty-two cases and to the detriment of creditors in sixteen cases, and of attempted fraud in one case concerning a creditor. On two charges relating to a customer and a creditor respectively he was acquitted. The Court terminated proceedings in three cases because they were time-barred. Mrs. Eckle was convicted of fraud committed jointly with other persons in thirty-nine cases to the detriment of customers and in sixteen cases to the detriment of creditors, and of attempted fraud in one case involving a creditor. The Court acquitted her on the same two counts as her husband and terminated proceedings in six cases, including the three cases that also concerned her husband. According to the findings in the judgment, the conclusion of the illegal contracts dated back to 1959-1960 in respect of the customers and 1962-1964 in respect of the creditors. When deciding the sentences the Regional Court took into account, inter alia, "to the advantage of all the defendants", "the inordinate length of time during which they had been exposed to the drawbacks and unpleasantness of the investigation and trial proceedings, something which was not wholly their own fault".

The judgment - which ran to 236 pages - was served on the applicants on 12 February 1973 that is a little less than eleven months after its delivery. Whilst the trial hearing

was continuing, an auxiliary chamber (Hilfskammer) specially set up to relieve the First Criminal Chamber dealt with all the other cases allocated to the latter.Proceedings for review on a point of law (Revisionsverfahren) (February 1973 - 11 February 1976). The four persons convicted petitioned for review on a point of law (Revision). In this connection, between 27 February and 8 March 1973 Mr. and Mrs. Eckle submitted several memorials to the Federal Court of Justice, alleging various errors in law as well as procedural irregularities. After the counter-memorial by the Trier public prosecutor's office had been drafted on 31 October, the file was sent to the federal public prosecutor's office on 28 November. On 4 February 1974, the federal public prosecutor's office noticed that it was not clear from the file how eight of the cases heard by the Regional Court had been disposed of. When consulted on this, the Trier public prosecutor's office pointed out that most of the obscurities arose from inaccuracies in the minutes of the hearings, while in two cases the failure to cease prosecution was due to inadvertence. The matter was referred to the Trier Regional Court, which decided on 22 February and 4 March to rectify the minutes and terminate the proceedings relating to the two cases in question. On 6 March, the Trier public prosecutor's office returned the file, together with a supplementary report, to the federal public prosecutor's office and at the latter's request also forwarded the "bill of indictment" of 19 March. . On 1 August 1974, the federal public prosecutor's office requested the Trier public prosecutor's office to reply in writing to the applicant's objections to the composition of the Regional Court and, in particular, to produce the official statements of the judges concerned and the charts showing the allocation of business in 1971. After taking - between September and December 1974 - statements from eleven judges (some of whom were no longer in Trier), the public prosecutor's office sent them to the federal public prosecutor's office on 29 January 1975 together with comments. On 21 February, it transmitted some further documents which the federal public prosecutor's office had asked for on 4 February. On 7 April 1975, the applicant's new lawyer applied for the proceedings to be dropped as being time-barred. On 24 April, the member of the federal public prosecutor's office dealing with the case requested the President of the Second Division (Senat) of the Federal Court of Justice to set down a date for the opening of the hearing: in his submission, the proceedings were not time-barred. On 2 December, the President directed that the hearing should be held on 11 February 1976. Mrs. Eckle's new defence counsel submitted supplementary written pleadings on 26 February 1976; and on 4 February,

one of the two co-defendants withdrew her petition for review on a point of law. Following the hearing on 11 February, the Federal Court of Justice dismissed the petitions on 19 February. At the end of the judgment, the Federal Court recalled that cumulative sentences (Gesamtstrafe) combining those passed in Trier and in Saarbrücken (see paragraph 58 below) remained to be determined. In this connection, it stated, inter alia: "Excessive length of criminal proceedings may - and the Regional Court did not overlook this - constitute a special mitigating circumstance (Entscheidungen des Bundesgerichtshofes in Strafsachen, vol. 24, p. 239). When a cumulative sentence has to be determined retrospectively, this consideration must likewise apply to the period which has already elapsed between the hearing before the trial court and the moment when the principle of res judicata took effect in respect of the judgment, and which will continue to elapse until the final decision. Attention must also be drawn in this case to the special burden imposed on the defendants by the dividing up of groups of cases consisting in the repeated commission of similar offences into two sets of criminal proceedings. The Court is not required to rule on the merits of this allocation. It considers, however, that the spirit of the law would be lost sight of ... if, when determining sentence, this circumstance were not clearly (deutlich) taken into account." Proceedings relating to the constitutional complaints (24 May 1976 - 30 June 1977) on 24 and 28 May 1976, Mr. and Mrs. Eckle applied to the Federal Constitutional Court (Bundesverfassungsgericht). Challenging the judgments of both the Federal Court of Justice and the Trier Regional Court, they alleged a violation of sections 1, 2, 3, 19 par. 4 and 103 of the Basic Law (Grundgezetz), mainly on account of the excessive length of the trial and of the existence of three distinct sets of proceedings. On 30 June 1977, a bench of three members of the Constitutional Court decided not to hear the applications; it judged that they did not offer sufficient prospects of success. Determining cumulative sentences (Gesamtstrafen) (24 November 1977) On 24 November 1977, the Trier Regional Court fixed cumulative sentences combining those it had pronounced itself and those imposed by the Saarbrücken Regional Court. The new sentences fixed were: imprisonment for seven years in the case of Mr. Eckle and for two years and eight months in the case of his wife. Acting on submissions dated 19 October from the

Trier public prosecutor's office, the Court suspended for five years that part of Mr. Eckle's sentence which was in excess of five years and eleven days, and suspended for

two years that part of Mrs. Eckle's sentence which was in excess of one year and four months. In the grounds given for its decision in respect of Mr. Eckle, the Trier Regional Court repeated the above-quoted reasoning of the Federal Court of Justice (see paragraph 33 above). It appeared to the Court that the long duration of the criminal proceedings should be taken into account in Mrs. Eckle's favour too. . On 23 January 1978, the Koblenz Court of Appeal dismissed an "immediate appeal" (sofortige Beschwerde) entered by each of the applicants, on 1 and 2 December respectively, against the Regional Court's decision. The Court of Appeal held, inter alia:"... the Criminal Chamber rightly regarded the excessive length of the criminal proceedings and the separation of groups of comparable cases into several acts of proceedings as a special mitigating circumstance and it took account of this when determining sentence (Echtscheidungen des Bundesgerichtshofes in Strafsachen, vol. 24, p. 239). Its dicta on this point are comprehensive, sensible and in accordance with the principles laid down by the Federal Court of Justice in its judgment of 19 February 1976 in the instant case ... [The Court of Appeal] too is of the opinion that these reasons justify a cumulative sentence of [seven years for Mr. Eckle and two years and eight months for Mrs. Eckle]. Even having regard to Article 6 (art. 6) of the Convention ..., this sentence does not appear to be unduly severe (ibid, vol. 24, p. 239). Considering also the culpability (unter Abwägung auch der Schuld) of the defendants, a reduction of sentence does not seem appropriate ..." According to the Government, Mr. and Mrs. Eckle thereupon applied to the Federal Constitutional Court which rejected their applications. . The Cologne proceedings From the opening of a preliminary investigation to the preferment of the "bill of indictment" (21 march 1967 - 25 September 1973) On 21 March 1967, the Cologne public prosecutor's office began a preliminary investigation of Mr. Eckle, who was suspected of having committed, inter alia, various frauds. From 29 March onwards the investigation - which had been commenced ex officio following the appearance of a number of articles in the press - was extended to cover several complaints lodged in February and March by purchasers of building materials and persons who had made loans to the Eckle firm. The Cologne proceedings comprised five groups of charges in all (see paragraph 80 of the Commission's report): (a) they covered first of all a complex of frauds against customers of the Eckle firm who had allegedly suffered losses after the latter had gone bankrupt. The persons concerned in this part of the proceedings were the applicants, the two close collaborators who were later convicted at Trier (see

paragraph 27 above), a tax consultant, two architects and a building expert. (b) The second group concerned the "Hobby-Bau GmbH" company in Frankfurt. The object of this company, which was founded in 1965 by two former employees of the applicants, was to carry on the Eckle firm's business activities in the Frankfurt area. Mr. Eckle was supposedly in control of this company; his wife had been given power of disposal over its assets. The company had ceased payments at the end of 1966, and in December 1967 bankruptcy proceedings were commenced. (c) The third group of charges was connected with Mr. Eckle's relations with a Mr. Neubeck of Cologne and the companies he controlled, and in particular their financial and trading operations, with alleged transfers of property to Liechtenstein and Switzerland, and with the bankruptcy of the Neubeck companies; proceedings in respect of the latter were, however, severed from the rest. (d) The fourth group dealt with the business relations of the Eckle firm or the Hobby-Bau GmbH company and its manager with an accountant and two companies both called Westropa-Bauservice, whose head offices were in Zug (Switzerland) and Munich. (e) The fifth group related mainly to the Eckle company; the applicants, those of their employees accused with them and other persons were suspected of having committed either as principals, co-principals or accessories offences of fraudulent bankruptcy and tax evasion. During 1967 and 1968, the investigation was widened to cover thirteen persons other than the applicants. . At the request of the public prosecutor's office, the Cologne District Court (Amtsgericht) issued a search and seizure warrant in respect of the applicants on 25 April 1967. The police thereupon searched the business premises of the Eckle company on 11 and 12 May. They seized four metric tons of documents which the public prosecutor's office made available to an accountant (Wirtschaftsprüfer) whom it had appointed as a consultant the previous month. Also in May a special commission was set up composed of a public prosecutor and three police officers who were specialists in investigating economic crime; this commission worked exclusively on the Eckle case and continued in existence until May 1972.

According to the account of events provided by the Government, between 1967 and 1972 the relevant authorities applied for, authorised and, with a few exceptions, performed numerous searches of the offices and private dwellings of the applicants and some of their co-accused, the offices of other companies and the offices of more than thirty-five banks; in addition, they seized a mass of documents. In 1967: such

measures were carried out on 23 May, at Völklingen; on 20 and 21 July, in Cologne; on 25 July, at Püttlingen; and on 24 and 25 August and 14 October, in Frankfurt; on 30 January, at Steinau; on 6 and 7 February, in Cologne; on 16 February, in Frankfurt; in 1968: on 29 January, in Frankfurt; on 18 and 22 February, at Miesbach and in Munich; on 8 March, in Frankfurt; on 15 March, in Düsseldorf and Essen; on 15 and 16 March, in Frankfurt; from 1 to 4 April, at Völklingen and in Saarbrücken; on 2 April in Munich; on 10 April, in Augsburg; on 18 and 19 April, in Frankfurt; on 6 and 7 May, in Saarbrücken and at Wittlich; on 15 May, in Trier; on 24 June, at Seligenstadt; on 23 July, in Munich; on 19 September, in Kassel; from 1 to 5 October, in Munich; on 11 November, in Frankfurt; on 3 and 4 December, in Hamburg; and on 12 December, in Cologne; in 1969: on 30 January in Frankfurt and Darmstadt; on 8 April, at Völklingen; on 11 and 24 April, in Saarbrücken; on 14 June, in Cologne; on 24 and 26 November, at Ottweiler; on 25, 26 and 27 November, at Saarlouis and Bous; on 1 December at Bous; and on 11 December, in Saarbrücken and at Saarlouis; in 1970: on 6 August, in Saarbrücken and at Gersweiler; and on 30 November, in Frankfurt; in 1971: on 19 April, in Saarbrücken; and on 20 April, at Saarlouis; and in 1972: on 14 April, in Munich.The appeals which the parties concerned lodged from time to time (for example, on 31 July and 13 and 29 September 1967 and on 26 September and 14 October 1969) were dismissed, except for the second one, which was partly allowed on 4 October 1967 by the Cologne Regional Court. The prosecutor in charge of the investigation conferred on 9 and 16 May 1967 with the criminal investigation police about coordination of action and, on 16 May, with the consultant whom he instructed to carry out certain tasks (Teilgutachten).

On 10 August, he requested the criminal investigation police to question four witnesses about certain specified points, and, on 16 August, he sent further documents to the consultant. On 22 August, he assumed responsibility for a number of cases and agreed to the transfer of those which the Trier public prosecutor's office had begun to inquire into (see paragraph 18 above). Seven days later, he requested the public prosecutor's offices in Frankfurt and Offenburg to forward to him various file of which he had copies made on 18 September .During the months that followed, the prosecutor took over a number of preliminary investigations which had begun elsewhere: three of them on 10 October, 207 on 10 November, five on 11 December, two on 11 January 1968 and three on 8 February 1968. On 15 February 1968, he

asked the federal office of the criminal investigation police (Bundeskriminalamt) to make inquiries into a company in Switzerland and four others in Liechtenstein which he suspected were being run by Mr. Eckle and his fellow accused Neubeck. On 11 and 20 June, he asked for certain inquiries to be made by the criminal investigation police in Dudenhofen, Kassel and other places, and circulated a letter written in May and containing a list of questions to numerous foreign companies and individuals residing abroad who had allegedly suffered loss. On 20 June too, he summoned a witness in order to have him questioned by the criminal investigation police; other witnesses made statements on 24, 25 and 27 July. At the request and in the presence of the public prosecutor's office, one of the co-accused was questioned on 18 September by a judge from the Seligenstadt District Court; another co-accused was similarly questioned on 4 October. . On 29 November 1968, the public prosecutor's office instructed the consultant it had appointed in 1967 (see paragraph 38 above) to produce an expert opinion on seven listed points, including the history of the Hobby-Bau GmbH company and its relations with the Westropa company. On 23 July 1969, it sent him other documents for the purpose.

On 10 January and 23 July 1969, four preliminary investigations in respect of Mr. Eckle which had been begun notably in Saarbrücken, Frankfurt and Trier were transferred to the Cologne public prosecutor's office, which on 20 February made inquiries of the local authorities of six municipalities concerning the purchase of land by the Hobby-Bau GmbH company and at the same time asked for the production of the land registers of the relevant district courts.

On 31 March and 8 July prosecutor's office heard the applicant informally for information purposes. On 16 April and 19 June, it summoned witnesses in Saarbrücken and Saarlouis for questioning; on 18, 21 and 22 April, it advised the public prosecutor's office in Saarbrücken and Koblenz of the purpose of the investigation and of a number of inquiries made and still to be made. On 14 May, the Trier public prosecutor's office sent to Cologne nine volumes of the file on the proceedings in Trier; these were returned by the Cologne office on 6 June. On 9 June, the latter asked the presiding judges of the District Courts of Cologne and Völklingen to provide it with a list of the seizures which had been made in respect of the Eckle firm and the applicants. In July, August and September, the public prosecutor's office

instructed the criminal investigation police in Mannheim, Saarbrücken, Berlin and Hamburg to make inquiries into life-insurance policies which Mr. Eckle had taken out with a number of companies; sought information from an insurer in Saarbrücken; obtained the opinion of the Federal Banking Supervisory Office (Bundesaufsichtsamt für Kreditwesen); and applied for the files concerning the land register at Völklingen. According to the report of the Commission, from March 1967 to August 1968 statements were taken from about 832 creditors, from the majority of some 3,500 purchasers of building materials from the Eckle company and from a large number of other witnesses or employees; and the Eckle company's accounts with some twenty-five credit institutions were examined. Until October 1969 the investigation was focused on the alleged frauds committed by the accused to the detriment of 832 creditors and 3,590 purchasers of building materials. As requested by the public prosecutor's office on 13 November 1969, the Cologne District Court issued, five days later, a warrant for the arrest of two co-accused and Mr. Eckle. The latter was remanded in custody on 25 November and he remained in custody on that basis until 5 September 1970; from the next day onwards in accordance with a decision taken by the District Court on 1 September, he was detained on the basis of the warrant for his arrest which the Koblenz Court of Appeal had issued on 28 January 1970 in the proceedings at Trier (see paragraph 21 above). The applicant several times appealed unsuccessfully to the Cologne District Court, Regional Court and Court of Appeal against the issue of the arrest warrant on 18 November. During the latter period, that is between December 1969 and September 1970, the Cologne public prosecutor's office heard Mrs. Eckle (12 December); discussed the progress of the proceedings with the public prosecutor's office in Saarbrücken (26 January 1970) which, by mutual agreement, transferred to Cologne an investigation in respect of one of the other persons accused (5 March); had four witnesses summoned in Saarbrücken (20 May); and set dates for the hearing of a number of people, notably in Saarbrücken, Frankfurt, Ahrweiler and Hamburg (21, 22, 28 and 30 July, 26 August). On 30 July 1970, the consultant's terms of reference were widened, and the consultant informed the public prosecutor's office 11 August that an expert opinion could not be produced before mid-1971.

On 1 September, the Cologne District Court refused to make available to Mr. Eckle the legal codes, books and periodicals and the 2,000 files which he had asked for. On

9 September, Mr. Eckle challenged a judge on the District Court, which rejected the challenge on 21 September as no grounds for it had been adduced. An appeal was dismissed on 4 December by the Cologne Court of appeal - two of whose judges Mr. Eckle had previously challenged - because he had not put forward any supporting reasons, although the Court had twice given him extra time to do so.

Continuing its investigation, the public prosecutor's office proceeded to set dates for hearing a number of people itself, mainly elsewhere than in Cologne, or alternatively to request the appropriate criminal investigation police or courts to question them (24 and 26 November 1970, 18 and 19 January, 3 February, 30 March, 6, 7, 28 and 29 April 1971); business records of the Eckle company were examined, seized and sent to the consultant by the prosecutor's office (12 to 14 May 1971); requests for the production of files were made to other courts, including the Federal Constitutional Court (24 May, 18 June, 19 July, 23 August, 29 September); information was sought from the Cologne Court of Appeal (24 May); and the Cologne Social Security Office was asked to make certain inquiries (18 August).

On 13 August 1971, the consultant submitted an interim report on the Eckle company's indebtedness, insolvency and suspension of payments. On 21 October, a doctor transmitted to the public prosecutor's office an expert opinion, which it had requested on 4 October, on

Mr. Eckle's fitness to stand trial. On 21 November, Mr. Eckle applied, amongst other things, for the warrant for his arrest to be revoked. The Cologne District Court refused the application on 30 November. On appeal, the Cologne Regional Court on 13 December 1971 and then the Cologne Court of Appeal on 17 January 1972 upheld that decision. Between January and April 1972, the public prosecutor's office summoned, or caused to be summoned, a number of witnesses, Mrs. Eckle and other accused persons so that they could make statements (notably on 6 January 1972, 1, 17 and 28 February and 3 and 8 March) and on 22 March requested another doctor to give his opinion on

Mr. Eckle's fitness to stand trial. From 17 March 1972, the day he was convicted in the Trier proceedings (see paragraph 27 above); the applicant was detained on remand under a warrant issued, and subsequently confirmed on 8 May, by the relevant

Cologne court. On 2 June, the same court decided to suspend Mr. Eckle's remand in custody to enable him to serve the sentence passed on him on 26 March 1971 by the Saarbrücken Regional Court (see paragraph 58 below). The Cologne Regional Court dismissed appeals by Mr. Eckle on 22 June and 20 November. The public prosecutor's office completed the investigation on 10 May 1972 and on the same date dropped the prosecutions against some of the co-accused.

It asked the Cologne Regional Court on 14 June to assign two official defence counsel, in particular for Mr. Eckle. On 20 June, the Court appointed one of them - Mr. Muhr to whom the public prosecutor's office sent a copy of the files and other documents on 14 August and 2 October - but refused Mr. Eckle's request that it should nominate Mr. Becker, who had defended him in the trial at Trier. An appeal by Mr. Eckle against this latter decision was dismissed on 20 November. On the same day, the Regional Court discharged Mr. Muhr from his duties and replaced him as official defence counsel by the applicant's lawyer, Mr. Preyer, to whom it had already sent the main files, among other things, on 13 November. On 20 June, the consultant had filed his final report on the Eckle firm; four months later he submitted one on the Hobby-Bau GmbH company. On 17 July, the public prosecutor's office had called on the applicant and his fellow accused to state by 30 August whether they wanted a "final hearing". This time-limit was extended on 31 August, and Mr. Eckle subsequently replied affirmatively on 18 September.

On 11 and 17 July 1972, Mr. Eckle had challenged two judges on the Regional Court. After giving him an ultimate deadline until 15 September to state his grounds, the Regional Court rejected his challenges on 2 November; a subsequent appeal, for which he was granted extra time to put forward his reasons, was likewise dismissed on 6 April 1973. On 14 November 1972, the Cologne District Court decided to confirm the authorisation to serve the sentence passed on Mr. Eckle by the Saarbrücken Regional Court (see paragraphs 47 above and 58 below).

An appeal lodged by Mr. Eckle on 30 November, for which he had asked to be given until 31 January 1973 to state his reasons, seems to have been unsuccessful. On 12 December, the public prosecutor's office sent copies of files to counsel for the defence for inspection. Between November 1972 and March 1973, Mr. Eckle lodged several other applications and appeals whose purpose is not apparent from the same time he

asked the competent authorities to grant him extensions of time in order to formulate the grounds for his applications. On 1 March 1973, the public prosecutor's office set the date of 13 March for the "final hearing" of Mrs. Eckle and, pursuant to Article 154 of the Code of Criminal Procedure , dropped the charges of fraud in a number of cases. The hearing of Mrs. Eckle took place on the appointed day. On the next day, Mr. Eckle, acting through his defence counsel, waived his right to a "final hearing", but on 28 March his lawyer applied for one, explaining that the waiver had been due to a misunderstanding. As on the same day the prison doctor expressed the opinion that the state of the applicant's health made him unfit to appear, the hearing was adjourned. On 29 March 1973, Mr. Eckle sought an extension of time to submit reasons in support of a number of his appeals; lodged two fresh appeals against decisions of the Regional Court; and challenged the presiding judge of the Ninth Criminal Chamber. The time-limit originally allotted to him for stating his grounds for the challenge was to have expired on 30 April, but the Regional Court agreed to put the deadline back to 31 May, then to 30 June, to 31 July and, finally, to 31 August. On 6 April 1973, Mr. Eckle applied to the District Court for Mr. Preyer's instructions to be withdrawn and for Mr. Becker to be assigned as official defence counsel, and asked also for three day's leave of absence (Urlaub); these applications were refused on 6 June. On 9 July, his defence counsel asked the District Court to discharge the warrant for his client's arrest; the District Court refused this request on 23 July.

On 3 September, Mr. Eckle stated that he would not agree to attend the "final hearing" so long as Mr. Preyer remained responsible for his defence. Mr. Preyer, however, said on 19 September that his client still wished to have such a hearing, but wanted first of all to confer with other defence counsel. He accordingly requested that the hearing should be postponed for three weeks. On 19 September too, the prosecutor concerned set down 24 September as the date for the hearing. On that date he went to the prison where Mr. Eckle was being detained. Mr. Eckle, however, declared that he was unfit to undergo the hearing and unwilling to give an account of himself, whilst at the same time refusing to be examined by a medical expert. On 25 September, the public prosecutor's office preferred the "bill of indictment" before the Cologne Regional Court after deciding not to proceed with the charges in a large number of individual cases. Four people, including the applicants, were "indicted". The applicants were charged with fraudulent bankruptcy, tax evasion and fraud; Mr. Eckle, alone or with

others, was charged with the latter offence in 55 cases, and Mrs. Eckle, alone or together with others, in 27 cases. The "indictment", which ran to 432 pages, mentioned 3 experts and 143 witnesses. On 15 and 16 October, the public prosecutor's office filed with the Regional Court 14 volumes of appendices, various subsidiary files (Beiakten) and experts' reports. From the preferment of the "bill of indictment" to the opening of the trial (Hauptverfahren) (25 September 1973 - 16 September 1976)

The presiding judge of the Sixth Criminal Chamber of the Regional Court notified the parties concerned and their defence counsel of the "bill of indictment" on 16 October 1973 and set a time-limit for the submission of any comments by them. Extensions of time were granted on several occasions, notably on 7 March 1974; a final request for extension was, however, refused by the Regional Court on 21 June 1974. Having once more been in detention on remand since 21 November 1973 under an arrest warrant issued by the appropriate Cologne court, Mr. Eckle applied on 7 December for his release from custody; he was released on 10 January 1974. On 28 January 1974, the Regional Court transmitted the whole of the file to the Federal Constitutional Court, which had requested it on 16 January; the file was returned by the Constitutional Court on26 February. Four days previously, Mr. Becker - of the Trier Bar - had requested the Regional Court to appoint him officially as the applicant's defence counsel; the Regional Court rejected this request on 7 March. On 19 March, 3 April and 24 and 30 May, counsel for one of the co-accused requested, inter alia, to have parts of the file and other documents made available to him for a short period. He also asked for variation of a 1970 decision granting his client conditional release, for further inquiries and for a preliminary judicial examination (Voruntersuchung). The Court allowed at least the penultimate application (29 May and 1 July). On 11 August, the same lawyer submitted written pleadings, on which the consultant commented on 12 December.

On 9 January 1975, the counsel who had made the applications of 19 March, 3 April and 30 May 1974 discussed them with the responsible prosecutor, after which he withdrew the application of 30 May. The file on the case, which was at the public prosecutor's office, was returned to the Regional Court. In a note entered in the file on 22 May, the presiding judge of the Tenth Criminal Chamber of the Regional Court commented that the trial would probably last for about a year. On 21 January 1976,

one of the applicant's co-accused, whose case had been severed from theirs, applied for the return of certain documents, but the Regional Court refused this on 10 March; between 13 March and 26 September he filed various other applications. On 16 September, the Regional Court opened the trial proceedings (Hauptverfahren) in respect of the applicants and the two other persons who had been "indicted" with them, and notified them accordingly.

. From the opening of the trial (Hauptverfahren) to the end of the proceedings (16 September 1976 - 21 September 1977) On 19 October 1976, Mr. Eckle requested the Regional Court to discharge the warrants for his arrest which had been issued by the Cologne District Court and Regional Court ; these requests were refused on 3 February 1977. Earlier, on 3 January 1977, the public prosecutor's office had informed the Regional Court that cumulative sentences remained to be determined combining those passed by the Regional Courts of Saarbrücken and Trier, but that no decision could be taken for the time being as the file was with the Federal Constitutional Court for the purposes of an application lodged by Mr. Eckle.

On 31 August, the Regional Court inquired of the public prosecutor's offices in Saarbrücken and Trier whether, amongst other things, cumulative sentences had been determined in the meantime. At the request of the public prosecutor's office (14 September 1977), the Regional Court on 21 September made an order, pursuant to Article 154 of the Code of Criminal Procedure, discontinuing the proceedings against the applicants; the latter had consented thereto. At the same time, the Regional Court revoked the arrest warrants mentioned above (at paragraph 54) and directed that the applicants should themselves meet their own expenses, while the court costs would be borne by the State. In accordance with the public prosecutor's submissions, the Regional Court did not award the applicants any compensation; on 27 December 1979, it refused a subsequent request by Mr. Eckle and this decision was upheld by the Cologne Court of Appeal on 6 February 1980. Following an order for separate trials, the prosecutions against eleven of the thirteen co-accused were discontinued during the course of proceedings either in pursuance of Article 154 of the Code of Criminal Procedure (see paragraph 16 above) or for lack of adequate evidence or because of the intervening death of those concerned. The two remaining co-accused

were, for their part, sentenced by the relevant courts to various penalties between 1970 and 1980; in their cases also, separate trial had been ordered.

The Saarbrücken proceedings (late 1963 - 20 April 1972)

The criminal prosecutions brought against Mr. and Mrs. Eckle in Saarbrücken are not in issue, but they need to be mentioned because of their bearing on the proceedings in Trier and Cologne. Towards the end of 1963, the public prosecutor's office in Saarbrücken began a preliminary investigation in respect of the applicants. They were suspected of having defrauded clients in the Saar in transactions of the kind that were later the subject of prosecutions in Trier and, in part, in Cologne. After being "indicted" with others in March 1965, they were convicted by the Saarbrücken Regional Court on 17 October 1967 on 99 counts of fraud: Mr. Eckle was sentenced to six years' imprisonment and his wife to a term of three years and six months. On petitions for review on a point of law, the Federal Court of Justice quashed the convictions on 14 March 1969 and remitted the case to another chamber of the Regional Court. On 19 February 1970, after eight days of hearings, the latter chamber sentenced Mrs. Eckle to two years' imprisonment on 74 counts of fraud. Mr. Eckle, whose trial had had to be severed from his wife's, was convicted on 26 March 1971 after hearings that had commenced on 24 February; the Regional Court found him guilty on 68 counts of fraud and sentenced him to four years' imprisonment. A fresh petition for review on a point of law by the parties concerned was dismissed by the Federal Court of Justice on 20 April 1972.The sentences passed by the Saarbrücken Regional Court were combined on 24 November 1977 with those imposed on 17 March 1972 by the Trier Regional Court (see paragraphs 27 and 35 above).

Mr. Eckle's detention on remand

In the course of the proceedings against him Mr. Eckle spent approximately five years in detention on remand. The various courts placed reliance on a risk of his absconding and tampering with evidence.

Proceedings before the commission

In their application of 27 December 1977 to the Commission (no. 8130/78), Mr. and Mrs. Eckle claimed that the length of the proceedings brought in Trier, Saarbrücken and Cologne gave rise to a breach of Article 6 par. 1 (art. 6-1) of the Convention. Mr. Eckle, relying on Article 5 par. 3 (art. 5-3), complained in addition of his detention on remand. Subsequent to the registration of their application, Mr. and Mrs. Eckle also alleged violation of Article 6 par. 2 (art. 6-2) on account of the refusal to reimburse their expenses in the Cologne proceedings. On 10 May 1979, the Commission declared the application admissible as far as the alleged failure to observe the "reasonable time" in the Trier and Cologne cases was concerned; it declared the other complaints inadmissible either as being out of time or for non-exhaustion of domestic remedies (Articles 26 and 27 par. 3), (art. 26, art. 27-3) depending upon the circumstances. In its report of 11 December 1980 (Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been breach of Article 6 par. 1 (art. 6-1).

Final submissions made to the court by the Government

In their memorial and at the close of the hearings held on 22 March 1982, the Government sought from the Court "a declaration to the effect that, owing to the lack of grievance, the Court cannot decide on the merits of the case".**The applicants complained of the length of the criminal proceedings brought against them in Trier and Cologne**; they claimed that it had exceeded the "reasonable time" stipulated under Article 6 par. 1 (art. 6-1).

In their memorial and subsequently in their oral pleadings, the Government formally requested the Court to hold that, because of the lack of an existing grievance, the Court was unable to take cognisance of the merits of the case. In the Government's submissions, the applicants could no longer be regarded as victims within the meaning of Article 25 par. 1 (art. 25-1) of the Convention which reads:

"The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in (the) Convention ..."

The German courts, so it was argued, have in effect acknowledged the excessive length of the proceedings and have afforded redress: the Trier Regional Court took the matter into account when determining sentence and the Cologne Regional Court did likewise when ordering the discontinuance of the prosecutions. The applicants contested this line of reasoning. Neither did it find favour with the Commission. In the view of the Commission, the courts had not made any finding of a violation of Article 6 (art. 6); the reduction of sentence that the Trier Regional Court had declared itself to be granting was not measurable; finally, it was not clearly established that the Cologne Regional Court had paid regard to the excessive length of the proceedings when discontinuing the prosecutions. The Court has jurisdiction to rule on preliminary pleas of this kind in so far as the respondent State may have first raised them before the Commission to the extent that their character and the circumstances permitted (see the Artico judgment of 13 May 1980, Series A no. 37, p. 12, par. 24). These conditions being satisfied in the present case, there is no estoppel. The word "victim", in the context of Article 25 (art. 25), denotes the person directly affected by the act or omission which is in issue, the existence of a violation conceivable even in the absence of prejudice; prejudice is relevant only in the context of Article 50 (art. 50) (see, inter alia, the Adolf judgment of 26 March 1982, Series A no. 49, p. 17, par. 37). Consequently, mitigation of sentence and discontinuance of prosecution granted on account of the excessive length of proceedings do not in principle deprive the individual concerned of his status as a victim within the meaning of Article 25 (art. 25); they are to be taken into consideration solely for the purpose of assessing the extent of the damage he has allegedly suffered (see, mutatis mutandis, the Ringeisen judgment of 22 June 1972, Series A no. 15, p. 8, par. 20-21, the Neumeister judgment of 7 May 1974, Series A no. 17, pp. 18-19, par. 40, and also the Commission's opinion in the Wemhoff case, Series B no. 5, pp. 89 and 273-274). The Court does not exclude that this general rule might be subject to an exception when the national authorities have acknowledged either expressly or in substance, and then afforded redress for, the breach of the Convention (see the Commission's decision of 16 October 1980 on the admissibility of application no. 8182/80, *Schloffer v. the Federal Republic of Germany*). In such circumstances, to duplicate the domestic process with proceedings before the Commission and the Court would appear hardly compatible with the subsidiary character of the machinery of protection established by the Convention. The Convention leaves to each Contracting State, in the first place, the

task of securing the enjoyment of the rights and freedoms it enshrines (see especially the judgment of 23 July 1968 on the merits of the "Belgian Linguistic" case, Series A no. 6, p. 35, par. 10 in fine, and the *Handyside judgment of 7 December 1976*, Series A no. 24, p. 22, par. 48). This subsidiary character is all the more pronounced in the case of States which have incorporated the Convention into their domestic legal order and which treat the rules of the Convention as directly applicable (see the *Van Droogenbroeck judgment of 24 June 1982,* Series A no. 50, par. 55). As the Convention forms an integral part of the law of the Federal Republic of Germany, there was nothing to prevent the courts of the country from holding, if appropriate, that the Convention and, in particular, Article 6 par. 1 (art. 6-1) had been breached. The national courts also had available to them a means of affording reparation which, in the Court's opinion, is capable of proving suitable: according to well-established case-law of the Federal Court of Justice, when determining sentence the judge must take proper account of any over-stepping of the "reasonable time" within the meaning of Article 6 par. 1 (art. 6-1) (see the judgment *of 10 November 1971, Entscheidungen des Bundesgerichtshofes in Strafsachen,* vol. 24, pp. 239-243).

Accordingly, it has to be ascertained whether, as the Government submitted, the German courts held that Article 6 par. 1 (art. 6-1) had been breached and, if so, whether they granted redress. In the words of the Trier Regional Court, the proceedings before it had lasted for an "inordinate length of time" (judgment of 17 March 1972, paragraph 27 above); they had been of "long" and "excessive" duration (decision of 24 November 1977, paragraph 35 above). This latter description is also to be found in the judgment of 19 February 1976 by the Federal Court of Justice and in the judgment of 23 January 1978 by the Koblenz Court of Appeal (see paragraphs 33 and 36 above). All these decisions, save the judgment by the Trier Regional Court, make reference to the case-law cited at

paragraph 67. The Koblenz Court of Appeal alone alludes to Article 6 par. 1 (art. 6-1) when stating that, even having regard to this Article, the sentence pronounced at Trier was not unduly severe. The Cologne Regional Court's decision of 21 September 1977 discontinuing the criminal proceedings against Mr. and Mrs. Eckle simply takes note of the consent of the accused and refers to the formal submissions presented by the public prosecutor's office. The latter had cited the reasoning enunciated by the Federal

Court in relation to the cumulative sentences to be fixed by the Trier Regional Court (see paragraph 33 above). The prosecutor's office had further submitted that this reasoning would apply a fortiori in the event of fresh cumulative sentences being imposed subsequent to a possible conviction in Cologne. It is apparent from the foregoing that none of the relevant courts expressly acknowledged the existence of a breach of Article 6 par. 1 (art. 6-1). Nonetheless, the language employed by the Trier Regional Court (decision of 24 November 1977), the Federal Court of Justice and the Koblenz Court of Appeal, taken together with the references to the Federal Court's judgment of 10 November 1971, could be taken as amounting to a finding to that effect. Less certain in this respect is the import of the decision by the Cologne Regional Court. Even assuming that this decision should, as the Government contended, be read in the light of the formal submissions presented by the public prosecutor's office, it hardly warrants the conclusion that the Regional Court held the length of the proceedings to be in breach of Article 6 par. 1 (art. 6-1). Even if it were accepted that the relevant decisions do acknowledge in a sufficiently clear manner the failure to observe the "reasonable time" requirement, it would still be necessary that redress should have been given. The issue that arises is thus whether the mitigation of sentence granted, according to the terms of its decision, by the Trier Regional Court and the discontinuance of proceedings ordered by the Cologne Regional Court remedied the matters complained of. The Court notes, however, that this part of the Government's case is intimately connected with another aspect of the complaint, namely the extent of the alleged breach. Consequently, the Court considers that it should join to the merits the preliminary plea relied on by the Government (see, mutatis mutandis, the *Airey judgment of 9 October 1979*, Series A no. 32, p. 11, par. 19).

The alleged breach of Human Rights article 6 par. 1 (art. 6-1)

The Commission expressed the opinion that there had been breach of Article 6 par. 1 (art. 6-1) which provides: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..." The Government conceded that the proceedings had, at certain stages, been unreasonably long.

The length of the Eckle proceedings

In the applicants' submission, the Trier proceedings were set in motion in November 1959 and came to a close on 24 November 1977 when the Regional Court fixed the cumulative sentences. At the hearings, the Government argued that the proceedings lasted from 7 October 1964 (searches of the applicants' premises) until 19 February 1976 (judgment by the Federal Court of Justice). The Commission concurred with this line of thinking as to the second date, but not as to the first: in the Commission's view, the opening date must be traced back to at least 1 January 1961. For the applicants and the Commission, the Cologne proceedings commenced with the issue on 25 April 1967 of a search and seizure warrant against Mr. and Mrs. Eckle. Before the Court, the Government appeared to put forward the date on which this warrant was served and executed, namely 11 May 1967, and no longer, as they had done before the Commission, the date on which Mr. Eckle was remanded in custody (25 November 1969). As far as the end of the period is concerned, the applicants, the Government and the Commission were all agreed in proposing 21 September 1977, the day on which the proceedings were discontinued. Commencement of the periods to be taken into account **In criminal matters, the "reasonable time" referred to in article 6 par. 1 (art. 6-1) begins to run as soon as a person is "charged"; this may occur on a date prior to the case coming before the trial court** (see, for example, *the Deweer judgment of 27 February 1980,* Series A no. 35, p. 22, par. 42), such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened (see the *Wemhoff judgment of 27 June 1968*, Series A no. 7, pp. 26-27, par. 19, the *Neumeister judgment of the27/6/68,* Series A no. 8, p. 41, par. 18, and the *Ringeisen judgment of 16 July 1971*, Series A no. 13, p. 45, par. 110). "Charge", for the purposes of Article 6 par. 1 (art. 6-1), may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected" (see the above-mentioned Deweer judgment, p. 24, par. 46).

Applying these principles to the facts of the case, the Court considers that the date put forward by the applicants in respect of the Trier proceedings cannot be the relevant

one because documents produced by the Government show that the complaint lodged on 28 October 1959 did not lead to any formal measures of inquiry being ordered. The public prosecutor's office closed the file on the matter after obtaining information from the competent administrative authorities as to the existence of maximum prices in the building materials trade; neither the prosecutor's office nor the police questioned witnesses or the applicants. A true preliminary investigation was begun only in August 1960 when numerous witnesses were interviewed in connection with the allegations made against Mr. Eckle (see paragraphs 11-12 above). As the Delegate of the Commission pointed out, the object of these interviews was not to determine whether a preliminary investigation should be opened; the interviews themselves formed part of the preliminary investigation. Nevertheless, having been unable to ascertain as from what moment the applicants officially learnt of the investigation or began to be affected by it, the Court concurs with the opinion of the Commission and takes as the starting point for the "time" the date of 1 January 1961. In this connection, the Court does not deem it necessary, as the Government at one point seemed to have in mind, to draw any distinction between the two applicants, for although the investigation does not appear to have been directed against Mrs. Eckle from the outset, she must have felt the repercussions to the same extent as her husband. The appropriate date for the commencement of the Cologne proceedings is, on the case-law cited above, the date of service of the warrant issued on 25 April 1967, that is 11 May 1967 (seeparagraph 72 above).

End of the periods to be taken into account

As regards the end of the "time", in criminal matters the period governed by Article 6 par. 1 (art. 6-1) covers the whole of the proceedings in issue, including appeal proceedings (see the *König judgment of 28 June 1978,* Series A no. 27, p. 33, par. 98).

In the Trier proceedings, it still remained necessary, after the judgment of 19 February 1976 by the Federal Court of Justice, to fix cumulative sentences combining those previously imposed on 19 February 1970 and 26 March 1971 by the Saarbrücken Regional Court and then on 17 March 1972 by the Trier Regional Court . The Federal Court had itself drawn the Regional Court's attention to the duty of the courts under German law (Articles 53 and 55 of the Penal Code) to render, if need be of their own motion, a decision to this effect. Furthermore, the determination of cumulative

sentences did not represent for the Trier judges a mere matter of mathematical calculation, for under Article 54 of the Penal Code they were bound to make their own overall assessment of all the offences for which the applicants had been convicted at Saarbrücken and Trier as well as their own assessment of the character of the offenders; this, in fact, they did in their decision of 24 November 1977. In addition, the Regional Court had to take into account by way of mitigating circumstance, amongst other matters, the time that had elapsed from the Federal Court's judgment "until the final decision". It follows that after the judgment by the Federal Court of Justice the applicants were not in a position to calculate the size of the sentences that were to be fixed. They simply knew that those sentences had to be less than the total of the sentences that the two Regional Courts had, each within its respective domain, imposed on them in respect of the various offences found (Article 54 par. 2 of the Penal Code). In the event of conviction, there is no "determination ... of any criminal charge", within the meaning of Article 6 par. 1 (art. 6-1), as long as the sentence is not definitively fixed. Thus, in the *Ringeisen judgment of 16 July 1971* the Court took as the close of the proceedings the date on which the trial court had decided, following appeal proceedings, that the entire period spent by the applicant in detention on remand should be reckoned as part of the sentence (Series A no. 13, pp. 20 and 45, par. 48 and 110). Consequently, the period to be taken into account ended on 23 January 1978 when the Koblenz Court of Appeal delivered its judgments upholding the cumulative sentences pronounced by the Regional Court on 24 November 1977. The Cologne proceedings, for their part, came to a close on 21 September 1977 when the Regional Court ordered discontinuance of prosecution.

The length of time to be examined under Article 6 par. 1 (art. 6-1) thus amounted to seventeen years and three weeks (1 January 1961 - 23 January 1978) as regards the Trier proceedings and ten years, four months and ten days as regards the Cologne proceedings (11 May 1967 - 21 September 1977). Drawing attention to the fact that the applicants had continued their illegal activities during the course of the investigation of the case at Trier, the Government requested the Court to deduct from the total length of those proceedings the periods during which the fresh offences were being committed. The Court views this factor as simply one of the elements that are of importance for reviewing the "reasonableness" of the "time".

The reasonableness of the length of the proceedings

The reasonableness of the length of the proceedings must be assessed in each instance according to the particular circumstances. In this exercise, the Court has regard to, among other things, the **complexity** of the case, the conduct of the applicants and the conduct of the judicial authorities (see the above-mentioned *König judgment*, Series A no. 27, p. 34, par. 99). The present case concerns sets of proceedings that endured **seventeen years** and ten years respectively. Such a delay is undoubtedly inordinate and is, as a general rule, to be regarded as, exceeding the "reasonable time" referred to in Article 6 par. 1 (art. 6-1) (see the above-mentioned *Neumeister judgment* of 27 June 1968, Series A no. 8, p. 41, par. 20; see also the above-mentioned *König judgment*, p. 34, par. 102). In such circumstances, it falls to the respondent State to come forward with explanations.

The Trier proceedings

Although the legal issues it involved appear relatively simple, the case that was investigated and tried at Trier did undisputedly pose serious problems especially in view of the sheer volume of the applicants' activities and the ingenious way in which they presented their methods of financing contracts of sale. Moreover, **further complexity** was added during the course of the inquiries since, as is stated in the judgment of the Trier Regional Court, a number of fraudulent loan contracts were still being concluded at the end of 1963 and in 1964. Far from helping to expedite the proceedings, Mr. and Mrs. Eckle increasingly resorted to actions - including the systematic recourse to challenge of judges - likely to delay matters; some of these actions could even be interpreted as illustrating a policy of deliberate obstruction (see paragraphs 15, 20, 22, 23, 24, 25 and 32 above). However, as the Commission rightly pointed out, Article 6 (art. 6) did not require the applicants actively to co-operate with the judicial authorities. Neither can any reproach be levelled against them for having made full use of the remedies available under the domestic law. Nonetheless, their conduct referred to above constitutes an objective fact, not capable of being attributed to the respondent State, which is to be taken into account when determining whether or not the proceedings lasted longer than the reasonable time referred to in Article 6 par. 1 (art. 6-1) (see, mutatis mutandis, the above-mentioned *König judgment*, pp. 35-36, 37, 38 and 40, par. 103, 105, 108 and 111, and the

Buchholz judgment of 6 May 1981, Series A no. 42, pp. 18 and 22, par. 56 and 63). In the applicant's submission, the length of the proceedings stemmed from the way in which the judicial authorities handled the case. Their principal ground of criticism was that the judicial authorities undertook three distinct sets of investigation and trial proceedings instead of joining them and carried out inquiries into too many individual cases.

The Commission likewise considered that the length of the proceedings was primarily referable to the conduct of the judicial authorities. In the Commission's view, the preliminary investigations, the withdrawal of the "bill of indictment", the drafting of the Regional Court's judgment and the hearing of the petitions for review on a point of law occasioned unreasonable delays. The Government expressed disagreement with this opinion. The Court, like the Commission, has come to the conclusion that the competent authorities did not act with the necessary diligence and expedition. Thus, the enormous number of cases subjected to inquiry was not without effect in prolonging the preliminary investigation (see paragraph 16 above). In the Government's submission, the principle of "legality of prosecution" (the principle of obligatory prosecution of all criminal offences), as laid down under the law, compelled the authorities to proceed in the manner they did. The Court, however, is not convinced by this argument. Although Article 154 of the Code of Criminal Procedure, which provides for the possibility of discontinuing prosecution, was amended only in 1979, the Government themselves conceded that this reform embodied a practice that had been current under the previous legislation. In any event, the Government may not, in relation to the fulfilment of the engagements undertaken by them by virtue of Article 6 (art. 6), seek refuge behind the possible failings of their own domestic law. Moreover, the text in force at the relevant time proved no obstacle to the public prosecutor's office and the Regional Court discontinuing prosecution on certain counts. In addition, it is not easy to understand why in 1967, thus six years after the opening of the investigation, the Trier public prosecutor's office, when confronted with the further offences it believed to have discovered, should have judged there to be only one suitable course of action, namely the withdrawal of the "bill of indictment". It should also be noted that approximately one more year elapsed before transfer of the fresh cases to the Cologne public prosecutor's office (ibid). Neither is there any proper explanation as to why the judgment of 17 March 1972 was

not served on the applicants until 12 February 1973. Undoubtedly, as was stressed by the Government, the drafting of the judgment required analysing an enormous mass of documents, but that alone cannot justify a period of almost eleven months after delivery of the judgment. Finally, the proceedings for review on a point of law lasted almost three years Before the Court, the Government drew attention to the fact that the Eckle case had been one of the first big cases of economic crime, especially for the Land Rhineland-Palatinate. At the relevant time the authorities, so the Government explained, lacked the necessary experience and means to combat rapidly and effectively this type of offence. In the meantime, a series of legislative and administrative measures was said to have been taken to this end. The Court realises that initially the specific forms of economic crime caused the judicial authorities a variety of problems, notably in relation to the speedy and smooth conduct of criminal proceedings. It also recognises the efforts made by the Federal Republic of Germany in the legislative and administrative sphere in order to deal with this mischief with the requisite expedition. Nevertheless, the Court cannot attach a decisive weight to these factors for its ruling on the instant case, for the state of affairs confronting the competent authorities was not at all exceptional (see, mutatis mutandis, the above-mentioned Buchholz judgment, pp. 16, 20-21 and 22, par. 51, 61 and 63).

In the light of all these various factors, the Court reaches the conclusion that the difficulties of investigation and the behaviour of the applicants do not on their own account for the length of the proceedings: one of the principal causes therefore is to be found in the manner in which the judicial authorities conducted the case. Having regard to the length of the delays attributable to the respondent State, the reduction of sentence that the Regional Court stated it was granting to the applicants was not capable of divesting the latter of their entitlement to claim to be victims, within the meaning of Article 25 (art. 25): the Regional Court's decision did not contain sufficient indications to allow an assessment of the extent to which the length of the proceedings was being taken into account for the purposes of the Convention. Accordingly, the Court rejects the Government's preliminary plea as regards this part of the case and concludes that the Trier proceedings exceeded a reasonable time in breach of Article 6 par. 1(art. 6-1) of the Convention.

The Cologne proceedings

The case investigated and tried at Cologne concerned fifteen persons initially and had ramifications outside the country; it dealt with charges not only of fraud but also of fraudulent bankruptcy and tax evasion. Like the Commission, the Court considers that it was particularly **difficult and complex**. As at Trier, Mr. and Mrs. Eckle slowed down the progress of the proceedings by making numerous applications and appeals, often accompanied by requests for an extension of the time-limit for the filing of written pleadings (see especially paragraphs 43, 45, 47, 48, 49, 51, 53 and 54 above; compare with paragraph 82 above). The applicants held the judicial authorities solely responsible for the delays. In addition to the grounds already set out they placed reliance on the fact that the judicial authorities had not severed the fraud charges from the charges in respect of the other offences.

The Commission attributed the length of the proceedings principally to the manner in which the judicial authorities had handled the case. It pointed to the excessive duration of the inquiries and, by way of example, to the belated completion of the expert's report; it also considered that the opening of the trial had been delayed without good reason and that the Regional Court could well have discontinued the prosecutions at an earlier stage. The Government expressed disagreement with this opinion. The Court, like the Commission, has come to the conclusion that the competent authorities did not act with the necessary diligence and expedition. It notes in particular that nearly three years elapsed between preferment of the "bill of indictment" (25 September 1973,) and opening of the trial (16 September 1976). In this latter connection, the Government pleaded the heavy work-load which was at the time confronting the chambers of the Regional Court specialised in dealing with economic crime; the Government listed various measures taken to remedy the situation. The Court recognises that the authorities endeavoured to reduce the backlog of pending business before the Regional Court by increasing the number of specialised chambers from two (in 1973) to six (in 1977). The Court nonetheless considers that, having regard to the great length of time that had elapsed, the Regional Court's volume of work, which was nothing exceptional in itself, cannot be relied on by the Government (compare with the above-mentioned Buchholz judgment, Series A

no. 42, pp. 16, 20-21 and 22, par. 51, 61 and 63). For the same reason, and just as in relation to the case investigated and tried at Trier , the Court does not feel able

to attach a decisive weight to the efforts, albeit meritorious, made in the Federal Republic of Germany to combat economic crime with greater speed and efficacy. On the basis of all the various factors taken into account, the Court reaches the conclusion that the difficulties of investigation and the behaviour of the applicants do not on their own account for the length of the proceedings: one of the main causes therefore is to be found in the manner in which the judicial authorities conducted the case.

The discontinuance of the prosecutions, ordered by the Regional Court on 21 September 1977 with the consent of the applicants, was in principle capable of affecting their entitlement to claim to be "victims", within the meaning of Article 25 (art. 25), but the length of the delays attributable to the authorities was such that the applicants in no way forfeited their status as "victims"; moreover, the discontinuance decision, whether or not read in the light of the formal submissions presented by the public prosecutor's office, discloses no indication whatsoever that it had been taken having regard to the above-mentioned delays (see paragraphs 68 and 70 above). Accordingly, the Court rejects the Government's preliminary plea as regards this part of the case and concludes that the Cologne proceedings exceeded a reasonable time in breach of Article 6 par. 1 (art. 6-1) of the Convention.

The application of article 50 (art. 50)

Counsel for the applicants stated that, should the Court find a violation of the Convention, his clients would be submitting a claim under Article 50 (art. 50) for just satisfaction for the prejudice suffered as a result of the unreasonable length of the proceedings and possibly for legal costs; he did not, however, quantify their claim. The Government, for their part, did not take a stand on the issue. Accordingly, although it was raised under Rule 47 bis of the Rules of Court, the question is not yet ready for decision. The Court is therefore obliged to reserve the matter and to fix the further procedure, taking due account of the possibility of an agreement between the respondent State and the applicants.

For these reasons, the court unanimously joined to the merits the preliminary plea raised by the Government, but rejects it after an examination on the merits;

Chronology of the Eckle case

Eckle v Republic of Germany - Chronological summary

Date	Document/Event	Parties	Comments
1926	Birth	Hans Eckle	
1952	Founding	HE	Business H~ E~ timber, steel and building materials. Eckle system to provide materials and sites on credit
1958	Branch	HE	Branch at Schweich later transferred to Wittlich
28 Oct 1959	Wittlich proceedings	HE	Complaint lodged by a bank.
Nov 1959	Wittlich proceedings	HE	Start of preliminary investigation.
Nov 1959	Trier proceedings	HE	Opening of preliminary investigation
22 Feby 1960	Wittlich proceedings	HE	Investigation stopped.

mid Aug 1960	Wittlich proceeding	HE	Receipt of letter from Trier Chamber of Comm that HE promising materials at average market prices but were actually 25% higher.
1960 to 1962	interviews		40 witnesses.
1961	Office	HE	In Cologne
1961	Employment	HE	About 120 people
1962, from	Finance	HE	By loans from individuals secured by mortgages
30 Oct 1962	Wittlich proceedings	HE and Koblenz CA	Judgement that HE had charged above average prices contrary to commitment to customers.
1963	interviews		36 witnesses
April 1963	police		A member of the police dealing with case.
End 1963	Investigation	Saarbrücken prosecution	Preliminary investigation of

			applicants
1964	investigations		133 witness hearings, business premises searched and documents seized.
4 March 1964	interview	Saarbrücken prosecutor	Questioned Mrs Eckle in presence of Trier officials.
March 1965	Indicted	The applicants and others	Saarbrücken
7 to 9 Oct 1964	interview	Trier prosecutor	Questioned Mrs Eckle.
Jany 1965	change duties	Trier prosecutor	Relieved from other duties to concentrate on the Eckle case. Special commission of criminal police appointed by minister of justice for Land to intensify investigation.
1965	interviews		325 witnesses
1965	establishment	two former employees of HE	Hobby-Bau GmbH intended to carry on the Eckle

			business in Frankfurt area. Mr E in control and Mrs E had power to dispose of its assets.
1965	Default	HE and creditors	Ceased payment to creditors. DM 10 mill owing.
9 Sept 1965	closure	public prosecutor	Ordered closure of investigation: 540 witnesses testified, nearly 3,000 documents examined, 37 main files, 300 subsidiary files and 120 files relating to civil suits.
9 Sept 1965	notice of indictments	HE et al, public prosecutor.	Mr & Mrs E and two former employees notified of intended indictments. Two weeks to notify wish for final hearing my prosecutor.
20 Sept 1965	application	counsel for HE	Request to examine files

			before replying.
12 Oct 1965	conference	prosecutors and counsel for HE	
3 Nov 1965	notice	prosecutors to counsel for HE	Files available for inspection until 20 Nov 1965.
mid Dec 1965	notice	prosecutors to HE's legal advisers	Supplied copy of main section of file and give to 2 Feby to decide for final hearing or not.
Dec 1965 & Jany 1996	appointments and removals	counsel for HE	HE's counsel did not respond, so counsel assigned t them officially. Replaced by counsel appointed by parties.
1 Feby 1996	Application	Counsel for HE	Further counsel applied to inspect files, then a 4th.
mid March 1966	notice	prosecutor to counsel for HE	Given deadline to say whether wanted final hearing.
13 to 15 March 1966	application	7 counsel for HE to prosecutors	For final hearing and for original file to be available

			for six months.
19 Apl & 9 May 1996	withdrawal	7 counsel for HE to prosecutors	of applications
3 Aug 1966	indictment	prosecutor	Draft indictment completed.
26 Oct 1966	indictment	prosecutors	Sent and sent to court. Filled 4 volumes, 793 pages, alleged 474 offences, listed 500 witnesses and 250 documents in evidence.
?	indictment	prosecutors	Dropped 68 cases
23 Dec 1966	conference	prosecutors and court	Duplication with proceeding pending in Saarbrücken where trial to begin on 17 March 1997.
end 1966	cessation of payments	Hobby-Bay GmbH	
16 Jany 1967	withdrawal	prosecutors	of indictment because learned of other offences and wanted further

			inquiries.
16 Jany 1967 to 8 Feby 1968	examination	prosecutors	234 fresh causes of action.
21 March 1967	start	Cologne prosecutor	Investigation.
25 April 1967	Court	Cologne	Issue of warrant
11 May 1967	Court	Cologne	Service of warrant – commencement of Cologne proceedings/
22 Aug 1967	notice	Cologne to Trier prosecutor	Cologne willing to deal with new cases.
17 Oct 1967	judgment	Saarbrücken court and Eckle	Mr E convicted on 99 counts and sentenced to 6 years imprisonment. Mrs E to 3 years and 6 months.
Dec 1967	bankruptcy	Hobby-Bay GmbH	
1967 & 1968	investigations	prosecutors	13 other persons.

15 March 1968	transfer	Trier to Cologne prosecutors	files of new investigation
15 March 1968	proceedings	Trier prosecution	Preferment of indictment (unchanged) for 2nd time.
26 March to 25 May 1968	appointments	the court	Several attempts to ensure that the accused were represented and assigned four defence counsel.
March 1967 to Aug 1968	investigation	Cologne commission	statement from 832 creditors, from majority of some 3,500 purchasers, other witne4sses and employees, accounts examined
19 April 1968	statement	counsel for Mrs E	Waived claims to certain costs and expenses.
25 April 1967	warrant	Cologne district court	Search and seizure warrant in respect to the applicants.
11 & 12 May 1967	search	police and Eckle company	Seized 4 tonnes of documents

May 1967 to May 1972	establishment and searches	Special commission at Cologne	Prosecutor and three police officers to work on the Eckle case. Searched offices and homes of applicants, co-accused, other businesses, banks etc. See separate list of dates and places.
9 & 16 May 1967	conference	Cologne prosecutor and police	About ordination of action.
10 Aug 1967	request	Cologne prosecutor to police	to question 4 witnesses
16 Aug 1967	dispatch	Cologne prosecutor to consultant	documents.
22 Aug 1967	transfer	Cologne prosecutor	assumed responsibility for cases including transfers from Trier. See separate list of dates and actions taken.
20 May 1968	notice	court to prosecutors	Not yet offered final hearing in

			respect of new cases.
11 June 1968	reply	prosecutors to court	New cases passed to Cologne.
2 July 1968	request	by regional court	for indictment to consider whether continuous conduct offences were single offence – effect of prior Saarbrücken conviction
5 July 1968	transmission	Saarbrücken prosecutor to regional court	Copy of 17 Oct 1997 judgments.
23 July 1968	declaration	regional court to defence counsel	(In response to request for copies of the file) remained to be decided wither preferment of indictment could stand.
19 Aug 1968	request	regional court to Saarbrücken prosecutor	Information about state of proceedings.
18 Sept 1968	interview	district court & a co-accused	Questioned by judge at request of Cologne prosecutor.

4 Oct 1968	interview	district court & a co-accused	Questioned by judge at request of Cologne prosecutor.
4 Oct 1968	transmission	Trier prosecutor to regional court	Copy bill of indictment,
29 Nov 1968	instructions	Cologne prosecutor to consultant	to produce report. including history of Hobby-Bay GmbH
10 Jany & 23 July 1969	transfers	to Cologne consultant	Transfer from various authorities to Cologne.
28 Jany 1969	notice	by regional court	Admitted indictment and order opening of trial.
28 Jany to 12 Feby 1969	proceeding	Trier	start of trial.
14 Feby 1969	application	Counsel for Mrs E to regional court	That file be made available.
18 Feby 1969	reply	regional court	Files to be forwarded.
18 Feby 1969	application	Mr E to regional court	to quash preferment of

			indictment.
20 Feby 1969	enquiries	Cologne prosecutor to local authorities	about land registers.
14 March 1969	judgement	federal court of justice	Quashed the Saarbrücken convictions 17 Oct 1967 and remitted to regional court
31 March 1969	informal hearing	Cologne prosecutor and applicant	for information.
2 April 1969	application	by one defence lawyer	for revocation of appointment,
16 April 1969	application	counsel for Mrs E to regional court	Not to take action before receiving copy judgement of federal court 14 March 1969. Complained that 8 files missing.
16 April & 19 June 1969	summons	Cologne prosecutor	Witnesses for questioning.
18, 21 & 22 April 1969	information	Cologne prosecutor to prosecutors at	of purpose of investigation and inquiries still to be

		Saarbrücken and Saarlouis	made.
28 April 1969	refusal	regional court	to issue warrant for arrest of Mr E because subject to such a warrant from Saarbrücken.
29 April 1969	transmission	Saarbrücken prosecutor to regional court	copy judgement 14 March 1969.
14 May 1969	transmission	Tier to Cologne prosecutors	9 volumes of files on Trier prosecution
28 May 1969	notice	regional court to counsel for Mrs E	Missing files related to proceedings which had been dropped.
6 June 1969	transmission	Cologne to Trier prosecutors	Return 9 volumes.
9 June 1969	request	Cologne prosecutor to district courts Cologne and Vöklingen	for list of seizures
19 June 1969	informal hearing	Cologne prosecutor and applicant	for information.
23 July 1969	transmission	Cologne prosecutor to	Papers for consultant's

		consultant.	advice.
July, Aug Sept 1969	instruction	Cologne prosecutor to police	Mannheim, Saarbrücken, Berlin and Hamburg to make inquiries into life-insurance policies
30 Sept 1969	request	regional court to prosecutor	to terminate proceedings in which the lawyer had appeared in another capacity.
14 Oct 1969	application	prosecutor	for arrest of Mr E who had been released re Saarbrücken proceedings.
14 Oct 1969	request	prosecutor to regional court	to terminate proceedings
until Oct 1969	investigations	Cologne commission	focused on the alleged frauds to the detriment of 832 creditors and 3,590 purchasers of building material
13 Nov 1969	request	Cologne prosecutor to district court	for arrest of Mr E and 2 co-accused

17 Nov 1969	order	regional court	proceedings terminated.
17 Nov 1969	order	regional court	refused to issue aren't warrant.
18 Nov 1969	order	Cologne district court to Cologne prosecutor	(five days later) issued warrants as requested
25 Nov 1969	order	Cologne district court	Mr E remanded in custody where he remained until 5 Sept 1970.
12 Dec 1969	interview	Cologne prosecutor and Mrs E	
26 Jany 1970	discuss	Cologne and Saarbrücken prosecutors	progress of proceedings
28 Jany 1970	order	Koblenz appeal court	quashed decision and issued warrant for arrest of Mr E.
6 Feby 1970	request	prosecutor to Cologne district court	for arrest warrant
19 Feby 1970	Order	Regional court Saarbrücken	(after 8 days hearings) Mrs E convicted on 74 counts of fraud and sentenced to 2 years

			imprisonment
12 March 1970	service	district court	Warrant for arrest of Mr E.
2 April 1970	order	court of appeal	refused Mr E's appeal against arrest warrant.
20 April 1970	notice	president of regional court	Because f the magnitude of the Eckle case, could not handle other cases.
20 May 1970	summons	Saarbrücken request of Cologne prosecutor	4 witnesses
1 June 1970	agreement	regional court	daters of hearings.
2 July 1970	order	regional court	fixed 11 Nov for opening of trial.
21 July to 26 Auf 1970	hearings	Cologne prosecutor at various places	hearing of a number of people, notably in Saarbrücken, Frankfurt, Ahrweiler and Hamburg

30 July 1970	Instructions	Cologne prosecutor to consultant	Widen terms of reference
11 Aug 1970	report	consultant to Cologne prosecutor	Expert opinion not before mid-1971.
1 Sept 1970	Order	Cologne district court	Refused to provide documents etc requested by Mr E
9 Sept 1970	Court	Cologne district court	Mr E challenged a judge.
21 Sept 1970	Order	Cologne district court	Challenged refused
19 Oct 1970	withdrawal	counsel for Mrs E	of statement 19 April 1968 (waiving costs) and request appointment as defence counsel.
23 Oct 1970	application	counsel for Mr E	for postponement of hearing.
27 Oct 1970	order	regional court	Rejected both applications,
31 Oct 1970	request	Mr E	for postponement
4 Nov 1970	order	regional court	refusing Mr E's request

11 Nov 1970	proceedings	regional court	trial opened Mr E sought adjournment Mrs E sought suspension 3rd defendant challenged two of the judges.
17 Nov 1970	order	regional court	dismissed challenges and excluded Mr E from the courtroom.
17 Nov 1970	application	Mr E	for adjournment,
19 Nov 1970	order	regional court	refused application for adjournment.
19 Nov 1970	application	Mr E	for release from detention.
19 Nov 1970	application	counsel for defence	that author of indictment be called as witness.
24 Nov 1970 to 29 April 1971	Investigation	Cologne persecutor	People elsewhere than in Cologne.
26 Nov 1970	hearing	regional court	evidence of prosecutor who drew indictment.

			All defendants applied to proceedings to be terminated. Mr E declared himself unfit to stand trial.
3 Dec 1970	hearing	regional court	Indictment read out. Some cases previously dropped. Application for discontinuance refused. Mr E challenged three judges.
4 Dec 1970	Order	Cologne court of appeal	Refused appeal from 21 Dec 1970
10 Dec 1970	hearing	regional court	Mr E removed form court and imprisoned for behaviour. Medical report that fit for trial but needed supervision. Order provisionally placing him in psychiatric hospital.
17 Dec 1970	hearing	regional court	Adjourned sine die.

Dec 1970	court	Trier regional court	president replaced
23 Jany 1971	psychiatric examination		completed
20 Jany 1971	report	to regional court	Mr E's behaviour not result of illness.
24 Feby to 26 March 1971	hearing	regional court Saarbrücken	Conviction of Mr E.
26 March 1971	Order	Saarbrücken regional court	Mr E convicted on 68 counts of fraud and sentenced to 4 years imprisonment
12 to 14 May 1971	Documents	Cologne prosecutor	Eckle business records seized and sent to consultant.
24 May to 29 Sept 1971	court	Cologne prosecutor	Request to courts for files.
16 June 1971 to 17 March 1972	hearing	regional court Trier	Resumed. 28 days hearings, 110 witnesses, 500 documents. Mr E challenged judges 20 times, Mrs E 10 times, etc

13 Aug 1971	Interim report	Consultant to Cologne persecutor	On Eckle company's insolvency
4 Oct 1971	Request	Cologne prosecutor	Request for medical report of fitness to stand trial.
21 Oct 1971	Medical report	To Cologne prosecutor	supplied
21 Nov 1971	Application	Mr E	For warrant for arrest to be revoked.
23 Nov 1971	hearing	regional court Trier	Terminated proceedings on over 400 counts.
30 Nov 1971	Order	Cologne District Court	Refused application 21 Nov 1971.
17 Jany 1972	Order	Cologne court of appeal	Upheld decision 13 Dec 1971
Jany to April 1972	Investigation	Cologne prosecutor	Summonsed witnesses and Mrs E to make statements
17 March 1972	judgement	regional court Trier	Mr E sentences to imprisonment 4 years 6 months, Mrs E 18 months and the two co-defendants 10 and

			6 months.
17 March 1972	Detention	Mr E	detained under warrant confirmed on 8 may
22 March 1972	Request	Cologne prosecutor	Another doctor to give opinion
20 April 1972	Order	Federal court of justice	Dismissed appeals from Saarbrücken regional court (Presumably 19 Feby 1970 and 26 March 1971)
10 May 1972	Investigation	Cologne prosecutor	Completed investigation and dropped prosecutions against some co-accused.
2 June 1972	Suspension	Cologne court	Suspended Mr E's remand in custody to enable him to serve sentence passed on 26 March 1971 by Saarbrücken
14 June 1972	Application	Cologne prosecutor to regional court	To assign two defence counsel

20 June 1972	Order	Cologne regional court	Appointed one counsel
20 June 1972	Report	Consultant to Cologne	Final report.
22 June 1972	order	Cologne regional court	Dismissed Mr E's appeal.
11 & 17 July 1972	Challenge	Mr Eckle	Two judges in regional court
17 July 1972	Demand	Prosecutor	To applicant and co-accused whether want "final hearing"
14 Aug and 2 Oct 1972	Transmission	Defence counsel	Copy files supplied
18 Sept 1972	Request	Mr E	For "final hearing"
20 Oct 1972	Report	Consultant to Cologne	Report on Hobby-Bau GmbH (4 months from main report)
2 Nov 1972	Order	Regional court	Refused challenge to judges
14 Nov 1972	Order	Cologne district court	Confirmed authority to serve sentence
20 Nov 1972	order	Cologne regional court	Dismissed Mr E's appeal. Also changed official

			defence counsel.
30 Nov 1992	Appeal	Mr E	Against 14 Nov 1972
Nov 1972 to March 1973	Applications	Mr E	Various applications and appeals and applications for extension
12 Dec 1992	Transmission	Persecutor	Sent copy files to defence counsel
12 Feby 1973	judgements	regional court Trier	Written judgement (236 pages) served on applicants.
February 1973 to 11 Feby 1976	review	[federal court]	All defendants petitioned for review on point of law. Several memorials
27 Feby to 8 March 1973	memorials	Mr & Mrs E to supreme court	alleging errors in law and procedural irregularities.
1 March 1973	Date	Prosecutor	Set date of final hearing
13 March 1973	Hearing	Prosecutor	"final hearing" and dropped fraud from some cases.
14 March	Hearing	Mr E	Waived right to final hearing

1973			
28 March 1973	Application	Mr E	Applied for final hearing.
28 March 1973	Medical	Prison doctor	Opinion that not fit to appear – hearing adjourned.
29 March 1973	Application	Mr E	For extension of time, appeals
6 April 1973	Order	Regional court	Refused challenge to judges
6 April 1973	Application	Mr E to district court	For change of official counsel and three days' leave of absence.
6 June 1973	Order	Distinct court	Refused
9 June 1973	Application	Mr E	To discharge arrest warrant
23 July 1973	Order	District court	Refused to discharge warrant
3 Sept 1973	Statement	Mr E	Not attend final hearing if counsel remained
19 Sept 1973	Statement	Counsel	Said that he still wanted hearing.

19 Sept 1973	Notice	Prosecutor	Set 24 Sept 1973 for hearing
24 Sept 1973	Hearing	Prosecutor and Mr E	Mr E declared himself unfit
25 Sept 1973	Preferred	Prosecutor Cologne regional court	Preferred the bill of indictment
16 Oct 1973	Notification	Regional court	Parties concerned and their defence counsel of indictment and set time limits for comments.
31 Oct 1973	counter-memorial	Trier prosecutor	drafted.
21 Nov 1973 to 10 January 1974	Detention	Mr E	On remand under Cologne court arrest warrant.
28 Nov 1973	counter-memorial	Trier prosecutor to federal prosecutor	sent.
7 Dec 1973	Application	Mr E to court	For release from custody
10 Jany 1974	Release	Mr E	From custody
16 Jany 1974	Request	Federal constitution	File.

		court to regional court	
28 Jany 1974	Transmission	Regional court to federal constitutional	Whole of file.
4 Feby 1974	observations	federal prosecutor	Not clear how eight cases disposed of. Trier prosecutor said mostly inaccuracy in minutes and in two cases not prosecuted through inadvertence.
22 Feby and 4 March 1974	rectification	Trier regional court	Corrected minutes and terminated the two cases in question.
22 Feby 1974	Request	Defence counsel to regional court	Mr B applies to be appointed as defence counsel.
26 Feby 1974	Return	Federal constitution court to regional court	File.
6 March 1974	report	Trier to federal prosecutors	Returned file with supplementary report and the indictment.

7 March 1974	Order	Regional court	Rejected request 22 Feby 1974 by Mr B.
7 March 1974	Order	Regional court.	Extension granted (see 16 Oct 1973).
19 March to 30 May 1974	Request	Counsel for one co-defendant	For parts of file to be made available and for variation of 1970 decision granting conditional release and further enquires
29 May & 1 July 1974	Orders	Court	Allowed part of request for examination.
21 June 1974	Order	Regional court	Final request for extension reused (see 16 Oct 1973).
1 Aug 1974	request	Federal to Trier prosecutors	for written reply to applicants' objections to composition of court.
11 Aug 1974	submission	Counsel for one co-defendant	pleadings
Sept to Dec 1974	statements	Trier prosecutor	from 11 judges.

12 Dec 1974	Comment	consultant	
9 Jany 1975	Discussion	Counsel and prosecutor	Counsel withdrew application of 30 May 1974. File returned to regional court.
29 Jany 1975	transmission	Trier to federal prosecutors	Judges' statements and comments.
4 Feby 1975	request	Federal to Trier prosecutors	more information.
21 Feby 1975	transmission	Trier to federal prosecutors	more information.
7 April 1975	application	Applicant's new lawyer	for proceedings to be dropped as time-barred.
22 May 1975	Note	Regional court judge	Trail probably last one year.
21 Jany 1976	Application	One co-accused	(whose case had been severed) for return of certain documents
10 March 1976	Order	Regional court	Refused 21 Jany 1976 application.

13 March to 26 Sept 1976	Applications	Co-accused	various
no date given	application	Federal prosecutor to supreme court	for case to be set down and submission that not time-barred.
16 Sept 1976	Trial	court	
16 Sept 1976	Trial	court	
19 Oct 1976	Request	Mr E to regional court	To discharge warrant for arrest
2 Dec 1976	order	Supreme court	Hearing to be on 11 Feby 1976.
3 Jany 1976	Information	Persecutor to regional court	That cumulative sentences to be determined (courts of Saarbrücken and Trier) but no decision could be taken because file with federal constitutional court
3 Feby 1977	Order	Regional court	Refused 19 Oct 1976 application.
4 Feby 1976	withdrawal	one of two co-defendants	Withdrew petition for review.

11 Feby 1976	hearing	Supreme court	
19 Feby 1976	order	Supreme court	dismissed the petitions.
26 Feby 1976	submission	counsel for Mrs E	Supplementary pleadings.
24 & 28 May 1976	application	Mr & Mrs E to constitutional court	Allege violation of basic law mainly because of excessive length of trial and three sets of proceedings.
30 June 1977	decision	constitutional court	Not to hear the application. Insufficient prospects of success.
31 Aug 1977	Enquiry	Regional court to persecutors Saarbrücken and Trier	Whether cumulative sentences determined.
14 Sept 1977	Request	Public prosecutor to regional court	To discontinue the proceedings
21 Sept 1977	Order	Regional court	Discontinuing the proceedings. Revoked arrest warrants. Appellants paid

			own costs. State pays its. Did not award any compensation. Close of Cologne proceedings.
24 Nov 1977	order	Trier regional court	Cumulative sentences combining its and those imposed by Saarbrücken regional court. Imprisonment Mr E 7 years, Mrs E two years 18 months both partially suspended.
1 & 2 Dec 1977	appeal	the applicants	against decision of regional court.
27 Dec 1979	Order	Regional court	refused subsequent request by Mr E
27 Dec 1977	Application	Mr & Mrs E to commission	Length of proceedings breached article 6 etc
23 Jany 1978	order	Koblenz court of appeal	dismissed immediate appeals by applicants.

6 Feby 1978	Order	Cologne court of appeal	Upheld decision 27 Dec 1976.
10 May 1979	Declaration	Commission	Application admissible
11 Dec 1980	Report	Commission	Unanimous opinion breach of article 6
22 March 1982	Memorial	Government	Sought declaration that court cannot decide on merits
No date	Orders	Courts	Prosecutions of 11 of 13 co-accused discontinued.
1970 to 1980	Orders	Courts	Remaining two sentenced.
18 May 1981	Registration	Commission	Request to ECHR
30 May 1981	Lots	ECHR	To select other five members of court
15 June 1981	Direction	ECHR	To agent of government to file memorial – commission to reply within two months.
2 Dec 1981	Filing	Government and ECK	Governments memorial.
3 Feby	Notification	Commission	That Commissions delegate to present

1982		to ECHR	own observations at hearing.
9 Feby [1982?]	Direction	ECHR	Hearing to open on 22 March.
15/19 March 1982	Request	ECHR to parties	Request for documents.
22 March 1982	Hearing	ECHR	

More support for fraud trials without a jury

Recent jury studies, especially, have dashed prior beliefs. It has been shown that in US civil practice the plaintiffs' trial win rates before jury and before judge differ significantly but in surprising directions. In such categories as product liability and medical malpractice cases, plaintiffs prevail at a much lower rate before juries than they do before

judges. Lengthy analysis established that this difference is owing, not to differences between jury and judge as adjudicator, but instead to the attorneys' misperceptions about juries. The attorneys expect the jury to be pro-plaintiff and therefore submit a set of cases to the jury with a weaker chance of the plaintiff's winning, producing losing cases disproportionately. So what happens on appeal? As usual, opinions abound, although here they are somewhat less consistent than those at the trial level. The prevailing "expert" opinion is that jury verdicts are largely immune to appellate revision. We have then a new database with which to work. It enables us to see that contrary to the pronounced expertise, civil jury trials as a group are not so special on appeal. But it also shows

that defendants succeed surprisingly more than plaintiffs on appeal from civil trials, and

especially from jury trials. Defendants appealing their losses after trial by jury obtain reversals at a 31% rate, while losing plaintiffs succeed in only 13% of their appeals from jury trials. As to the jury or judge distinction on appeal, none of the prior opinion on jury sacrosanctity proves correct. The fact is that jury trials on appeal, overall, are not that special. Considering judgments for plaintiff or defendant after a completed trial jury and judge trials both experience an appeal rate of about 21% and a reversal rate
also of about 21%. Nothing striking distinguishes jury trials from judge trials, from the overall vantage. This result is more than superficially surprising. If litigants think that jury trial results are hard to overturn on appeal, one would expect them to appeal only their strongest cases. One would thus expect for jury trials a lower appeal rate and maybe a higher reversal rate. But one sees neither. This absence of jury/judge differences gives an inkling that selection of cases for appeal does not work as usually theorized.

It is axiomatic that most criminal cases are resolved through guilty pleas, and the recent corporate fraud prosecutions are no exception. And, like Fastow and Causey, most corporate executives who have pled guilty have also become cooperating witnesses, agreeing to help the government build criminal cases against their former colleagues and friends. Although the number of cases is relatively small, the data set provides the most comprehensive picture of executives on trial available to date in the US. these cases were overwhelmingly resolved through guilty pleas guilty pleas are strategically significant. Virtually all of the defendants who pled guilty during that two-year period became cooperating witnesses who assisted the government in developing cases against their
peers. In this 2006 study of US corporate fraud trials, while guilty pleas were less prevalent in the twenty-three cases that went to trial, one or more co-defendants entered
guilty pleas in nearly a third of those cases. With only a few exceptions, the defendants who pled guilty became cooperating witnesses. Given the prevalence of guilty pleas and their pivotal role in these investigations, the question then becomes who actually goes to trial?
Prosecutors have been chided for not aiming high enough and being content

to charge mid-level managers whose guilt is easier to prove. But is it true that those in the middle are relegated to the role of scapegoat while the higher-ups enjoy a free pass? If the trial data are a reliable indicator, quite the opposite is true. Most of the defendants on trial have been high-level executives who held positions of responsibility and authority within their respective organizations. Of the forty-six defendants who have gone to trial, twelve held the title of Chief Executive Officer, Chief Operating Officer, President, Chairman of
the Board or, in the case of a partnership, Senior Partner. Defendants on trial also included five Chief Financial Officers and an assortment of other financial and accounting executives. There were also seven Executive or Senior Vice presidents, five Investment Advisors, a Chief Legal Officer, and a Vice President for Legal Affairs. Only one entity, Arthur Andersen, has gone to trial to date.Those in this group were high level executives at Adelphia, Cendant, Enron Broadband Services, HealthSouth, Impath, Martha Stewart Living Omnimedia, Ogilvy & Mather , Tyco, Westar, and WorldCom.
Among the accounting and financial executives were three vice presidents, a controller
and an assistant controller, and officers who held the titles of Director of Internal Reporting, Accountant and Senior Division Director, and Senior Director of Transactional Accounting.
The trials in this study had mixed results. Juries have convicted eighteen defendants, acquitted eleven, and deadlocked on charges against fifteen others. Do juries tend to accept or reject the government's case in its entirety when defendants are jointly tried? That is, do they tend to convict or acquit all of the defendants on trial? If so, that signals that the prosecution's case, in toto, was relatively strong or weak. Or, in the alternative, do juries tend to hand down split verdicts (i.e., some combination of guilty, not guilty) when multiple defendants are on trial. As is true in other contexts, **issues of complexity**, witness credibility, juror sophistication, and myriad unquantifiable factors, including luck,can influence the outcome of a trial
While guilty pleas and cooperation agreements are strategically significant in developing these cases, the number of CEOs, CFOs, and other senior managers who have been charged and tried belies critics' assertions that mid-level managers who plead guilty become scapegoats, while their superiors go scot free.

Economics of trials

Economists, using a model of a collection of algebraic examples , have shown that systematic bias can be imparted in several ways. First, systematic bias can arise due to differences in the cost of sampling evidence. For instance, when the damages stage involves a uniform distribution from which evidence is drawn, the party with the lower sampling costs will sample (on average) more often and the award will be systematically biased in this party's favour. Second, asymmetry in the sampling distribution (given equal sampling costs) can result in systematic bias. When the damages stage involves an exponential distribution from which the evidence is drawn, if sampling costs are identical and proportional to true harm, then the award will exhibit a constant proportional bias which may be either positive or negative, with the direction of the bias a function of the sampling cost parameter. A high value of the cost parameter favours the defendant, since few draws will be taken and the chance of the plaintiff obtaining a draw in the upper tail is low; a low value of the cost parameter favours the plaintiff, since many draws will be taken

UK adversarial trial system needs to be more like the European trial system

The Austrian philosopher Ludwig Wittgenstein, describing a certain philosophical problem, wrote that "[a] *picture* held us captive. And we could not get outside it, for it lay in our language." It is the picture of a trial as a two-sided contest between the state and the individual, to borrow this metaphor.

The picture of criminal trials as two-sided has a powerful hold on us. As a way of representing the fact that we have moved away from a system of private prosecution—like other western countries—to one in which prosecutorial power is vested in a public official. We caption our criminal cases, "R v. Jones," for instance, and this seems to suggest a two-sided contest. However, when this generalization about criminal cases is put forward as if it were the metaphysical structure of criminal cases in this country, it becomes inaccurate, artificial, and confining.

More importantly, when there are two defendants, our system recognizes that the interests of the defendants will almost always differ. The potential for conflict of interest in representing multiple defendants is so grave; ordinarily a lawyer should decline to represent more than one defendant in the same criminal case. Because the

potential conflict is so serious, some defence lawyers have a policy of never representing more than a single defendant in multiple defendant cases. However, it is somehow easier to see divergent interests on the defence side of a criminal case than on the prosecution side. Perhaps it is because those supposedly on the prosecution side are masked with a sweeping label, "the State. But what does it mean to say that "the State" is opposed to the defendant? The police who investigate the case may be employees of the same governmental unit, but quite often they may be employees of a different geographical unit, or even employees of the government. The prosecutor does not represent the police and sometimes the police and the prosecution would handle a criminal matter differently before trial and even at trial. It is certainly true that in a serious criminal case the police and the prosecution will want to see the person who committed the criminal act convicted and sentenced appropriately. That will often be true of the trial judge as well, and perhaps even of the defence lawyer where the crime is particularly horrendous. Yet, each has a distinct professional role to play in the system, and they need to perform that role whatever their personal feelings about the crime and the desirable outcome of the criminal case. Nonetheless, our system tends to see the police and the prosecutor as working together "on the same side" against the defendant. But if the police are part of the prosecution team, who is supposed to seek out evidence at the crime scene that may be important for the defence? In those cases in which the perpetrator may not be apprehended for several weeks after the crime, the police must see themselves as duty-bound to do a complete and thorough investigation that considers possible exculpatory evidence as well as incriminating evidence. When a criminal justice system fails to emphasize the need for thorough and objective investigators, the results of an investigation can more easily become slanted and biased against the defendant.

Our system should encourage the police to see themselves as having responsibilities independent of the prosecution. The relationship between the victim and the prosecutor is similar to that between the police and the prosecutor. The prosecutor does not represent the victim and cannot give the victim the same advice that a private attorney might give. A victim may, for example, want advice from the prosecutor as to whether to meet with the defence investigator

who is trying to interview trial witnesses. A victim's attorney, who knows what a good defence attorney can do at trial with even minor inconsistencies in prior statements, would often advise the victim not to meet with the investigator. However

tempting it may be to a prosecutor to give the same advice, it would be unethical for a prosecutor to do so. While the interests of the victim and the prosecutor will converge in many cases, there will sometimes be cases in which the interests of the victim and the prosecutor sharply diverge. This will often reflect the fact that the victim's focus is on the particular criminal case while a prosecutor often has to see the same case in broader terms that may be influenced by limited resources, prosecutorial priorities, and even political considerations. An obvious example of diverging interests would be a relatively serious case where the prosecutor believes the chances of conviction are not sufficiently high to merit prosecution while the victim feels that the crime should be prosecuted even if conviction is unlikely.

No one is right or wrong in this situation; rather, both the victim and the prosecutor are looking at the case from different perspectives. A prosecutor, these days, usually has no choice but to make difficult decisions about how limited prosecutorial resources are to be invested. Crime victims have often expressed frustration with our trial system because they are, to a considerable extent, invisible in the system. They have a legitimate interest in the way a criminal case is handled, but it has been a battle to get prosecutors, judges, and defence lawyers to respect

that interest. This is not to say that the interests of the victim should be paramount to those of the prosecutor, but the victim's interest should be understood and considered before an important decision affecting the victim is reached.

One circumstance ripe for application of this principle is the plea bargain. There will be cases in which the victim is completely supportive of the proposed plea agreement and may desire to tell this to the court. Nonetheless, there will be cases in which the victim is strongly opposed to the plea agreement, perhaps because the victim believes that the charge to which the defendant wishes to plead guilty or the sentence to be imposed does not adequately reflect the seriousness of the crime. We have a criminal justice system in which lawyers and judges spend a great deal of their time talking to each other. Nevertheless, the system does a very poor job of *listening* to citizens, and that includes not only victims but defendants as well.

. In Belgium[23], France[24], and Italy[25],victims have long had a right to

---

[23] Christine Van Den Wyngaert, *Belgium*, *in* CRIMINAL PROCEDURE SYSTEMS IN THE EUROPEAN COMMUNITY 17–18 (Christine Van Den Wyngaert ed., 1993)

[24] 15*See* R.L. Jones, *Victims of Crime in France*, 158 JUST. PEACE & LOC. GOV'T L. 795–96 (1994).

participate in the criminal trial on a rather equal basis with the state's attorney and the defence attorney. One of the reasons why victims often choose to participate at the criminal trial is that the victim may be awarded civil damages at the criminal trial. It is cheaper for the victim to join in the criminal case and seek damages, rather than later having to bear the expense of a separate civil case.

Illustrating cases in these countries simply to point out that permitting some form of victim participation in a criminal trial may seem radical, but it is not at all radical among western countries. Another country with a somewhat different model of victim participation at trial is Germany[26]. Damages are not a possibility at a German criminal trial so victim participation at trial is not generally permitted, except for a small category of serious crimes[27]. Germany tend to see the trial as "their trial" and want to participate in the trial through counsel. Perhaps the distinction between the adversarial and inquisitorial systems lies in the fact that the trial takes place before "an impartial and relatively passive arbiter." The first part of this element, that the judge be "impartial",draws no meaningful distinction among trial systems, as every western trial system wants its fact finders, be they professional judges, lay judges, jurors, or some combination thereof, to

be impartial to the important task before them. Article 14[28] of the International Covenant of Civil and Political Rights, which has been ratified by all western countries, states that anyone charged with a crime is entitled to a trial before "a competent, independent and impartial tribunal." All western countries hope that their judges and fact finders are impartial.

---

[25] 16*See* William T. Pizzi & Luca Marafioti, *The New Italian Code of Criminal Procedure: The Difficulties of Building an Adversarial Trial System on a Civil Law Foundation*, 17 YALE J. INT'L L. 1, 14 (1992) (stating that in Italy injured persons are entitled to participate as parties to criminal case from pre-trial to appeal).

[26] *See generally* William T. Pizzi & Walter Perron, *Crime Victims in German Courtrooms: A Comparative Perspective on American Problems*, 32 STAN. J. INT'L L. 37 *passim* (1996) (comparing Germany's treatment of crime victims with that of United States).

[27] *See id.* at 54–55 (stating that participation is allowed only in crimes that have very personal impact on victim or victim's family).

[28] International Covenant on Civil and Political Rights, art. XIV, § 1, G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16 at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

The second part of this element, that the arbiter be "relatively passive", does draw a distinction among western trial systems, but the distinction is not as clear as some might think. Certainly judges on the continent often take the primary responsibility for calling and questioning witnesses at trial, and they can be very active in controlling the conduct of the trial to the point that the lawyers play a greatly reduced role at trial. But there are other continental countries where the parties call the witnesses and do the bulk of the questioning of witnesses. In Norway[29] and Italy[30],for example, the public prosecutor and the defence attorney call their own witnesses and do the initial questioning, like the American model. In fact, Italy considers its trial system to be an adversarial trial system and yet victims have broad rights of participation at trial, including questioning witnesses and making legal arguments. Is Italy an adversary system because the

judges are relatively passive compared to judges in other continental countries?
At bench trials some judges ask many questions. European trials are not conceptualized just to win. Trials in Europe are supposed to aim at the truth and to that end, judges (and also the prosecutor) have a responsibility to pursue relevant issues even if not raised by the parties, or to call witnesses if that becomes necessary. In short, European judges feel responsible for the outcome of the trial and the justice of the result. Some strong European trial systems permit victim participation in some criminal cases, while other strong European trial systems, such as those in the Netherlands[31]47 or Denmark,48 do not permit victim participation at trial. However, those countries would not define their trial systems as being aimed at deciding "who wins what." The case for victim participation at trial is much stronger in a system like ours that places a low priority on truth and a high priority on winning. If you are not a winner in such a system, you will be a loser, and that is exactly the way that victims are often portrayed after an acquittal. Has anyone ever heard a defense attorney on the courthouse steps following an acquittal say anything other than that the verdict shows that the jury believed the defendant and obviously did not believe the prosecution?

---

[29] *See* Johannes Andenaes, *Norwegian Criminal Law, Criminology, and Criminal Procedure*, 2 J. INT'L L. & PRAC. 431, 464 (Thomas M. Lockney trans., 1993).

[30] *See* Pizzi & Marafioti, *supra* note 17

[31] *See* A.H.J. Swart, *The Netherlands*, *in* CRIMINAL PROCEDURE SYSTEMS, *supra* note 15, at 279, 291–92 (stating that victim is more or less without rights in Dutch criminal system).

Judges , unquestionably care about the justice of the results that take place in their courtrooms. A case that illustrates the difficulties for judges in the US trial system is the Louise Woodward case[32] which received international publicity. As you may recall, Woodward was the English *au pair* charged in Massachusetts with first- and second-degree murder in the death of Matthew Eappen, the infant in her care. While murder was a possible verdict, the case always seemed more appropriate as a manslaughter case. Manslaughter seemed to fit better the facts of the case in which the teenage defendant was supposed to have become frustrated with the infant in her care and caused his death by shaking him roughly. However, at the end of the trial, the defence team, led by three experienced defence lawyers, asked that the lesser included charge of manslaughter not be given to the jury. This was viewed as an audacious gamble because the jury would be left with the difficult choice of either returning a verdict of second-degree murder or a
verdict of acquittal. Making the stakes very high for the defendant was the fact that first-degree murder carried with it a mandatory life sentence, while second-degree carried with it a life sentence, but permitted parole after a minimum of fifteen years in prison. Manslaughter had no minimum. If one wants to understand how extremely adversarial the US trial system can be and how invisible victims are at times in the system, there could hardly be a better example.
The judge went to great lengths to make sure that Woodward approved of the daring gamble that was going to take place. He brought in an additional lawyer to make sure that she was fully informed of the risks of the decision not to instruct on manslaughter. After meeting with the additional lawyer, Woodward told the court that she agreed with the decision only to put murder or an acquittal to the jury. The prosecutor gave a tremendous summation, and the defendant "lost," receiving a life sentence, as she knew she would if she were to be convicted. When a system emphasizes winning and losing so heavily, and openly permits such an audacious gamble, losing is possible. The judge imposed the verdict he felt was correct. He then went on to impose a very lenient sentence

---

[32] 49*See* Commonwealth v. Woodward, No. CRIM. 97-0433, 7 Mass. L. Rptr. 449, 1997 WL 694119 *passim* (Mass. Super. Nov. 10, 1997) (Zobel, A.J.), *aff'd*, 694 N.E.2d 1277 (Mass. 1998).

Defence barristers in England must work at considerable distance from the defendant. The barrister cannot personalize the defendant by putting an arm on the shoulder of or chatting quietly with the defendant. English courtrooms have docks for defendants. Finally we must not forget the Defendants' presumption of innocence. The supposed battle between victims' rights and defendants' rights is largely a chimera, because a trial system that fails to treat victims well will often end up treating most defendants poorly Recent decades of statutes reveal a tremendous increase in habitual offender statutes, statutes with high mandatory punishments and very high sentencing ranges, and other sentencing statutes that put tremendous pressure on defendants to waive their rights and avoid trial., resulting in a system that works to the advantage of wealthy and sophisticated defendants but is not a good system for the vast majority of defendants who are neither wealthy nor sophisticated. A great deal of sentencing power has been shifted from judges to prosecutors, and they use this power to pressure defendants to plead guilty or face some very unattractive alternatives. The system is completely given over to plea bargaining.

Why would any sane prosecutor want to go to trial if a trial is a wildcard? Also, it is pretty tough for a defendant to turn down a one-year offer if trial may result in a five- or

ten-year minimum sentence. Every western system has some mechanism for the expedited disposition of a large percentage of its criminal cases, which offers defendants some discount for avoiding trial or at least avoiding a prolonged trial. There is nothing inconsistent in having a strong and reliable trial system that, at the same time, acknowledges that victims have an interest in the prosecution of a criminal case, including the trial. Victims are very angry at the treatment they receive in our criminal

justice system but anger is not a good basis on which to make important public policy decisions Crime is a serious problem and it may be that our judges in need to earn greater credibility with the public and, the trial system needs to commands greater respect and public confidence.

Japanese trials were bench trials

Even though I have substantial concerns regarding the configuration of the juries in Japan, I have no doubt that group solutions are usually better than individual solutions and larger group solutions are ordinarily better than smaller group solutions. Groups

will tend to remember more than an individual, and individual prejudice can be neutralized in a group setting. . It should be pointed out that there is provision for protecting the suspect from being compelled to incriminate himself. Japanese Constitution Article 38. Article 198(2) of the Japanese Code of Criminal Procedure states "In the case of questioning... the suspect shall, in advance, be notified that he is not required to make a statement against his will."

The trend in Japan has been toward greater oral evidence, and non-oral evidence is only admissible with the consent of the parties. The term "orality" refers to evidence presented to the fact-finder through the testimony of live witnesses. Even with a guilty plea consent is required for the introduction of written statements. Orality during contested trials should go a long way to putting the prosecution and defence on equal footing so that prosecutors unable to rely on written documents will need to work harder by presenting witnesses at trial in order to prove their cases. Another reason for the high conviction rate is the use of confessions. Confessions are allowed in a vast majority of cases and often form the basis for the conviction. Since suspects may be detained for up to 23 days before charging, it is not surprising that

In a family, usually the opinion of the household head is the rule. Any dissenting opinions are regarded as disloyal. Similar status issues also appear in the language. In English, the word "you" is used to describe anyone regardless of status. In Japanese, age, gender, and status affect the form of address. Given the emphasis that in effective group decision-making, everyone must be of equal status, it is somewhat problematic when the language itself calls attention to various status concerns.

The Japanese people prefer trial by "those above the people" rather than by "their fellows," and that this caused the Japanese to distrust juries from the beginning. People trust judges because they have a special sense of responsibility when adjudicating cases and try to keep their moral standards high in order to ensure impartial trials. Therefore, citizen participation in the judicial process is ultimately not suitable for the Japanese people because citizens would simply prefer to have a judge decide their case rather than their fellow citizens. Scholars disagree on exactly how much weight should be given to the cultural aspect of the failure of the earlier jury system in Japan, but most agree culture played some part.

German trials

In Germany jurors are selected to serve four year terms. People who are 20 years or older and eligible to vote and have completed 9 years of compulsory education or can demonstrate equivalent learning are eligible for jury service.

Danish no -jury economic crime trials

Denmark adopted its mixed-jury system in 1937 as a means of expanding public participation in criminal trials. Lay participants are used only in cases where the defendant pleads not guilty. Where the potential punishment is more than four years, involves a political crime, or involves a question about the defendant being placed in an institution, juries of twelve lay participants determine guilt. Only economic crimes are excluded from the jurisdiction of jury trials as they are thought to be too complicated.

The cost of trials

Mark Twain reportedly said that .everybody talks about the weather, but nobody does anything about it.. The .fact that there are fewer trials. may be similar. Given that

the causes for the broad trend in reduction of trials are probably complex and deeply rooted, it seems unlikely that modest policy changes would significantly affect the trend. For those interested in doing something about any problems that are related to this trend, Innovative courts may be especially interested in developing settlement databases, which can not only help litigants and courts

directly address some problems caused by reduced trial rates and but also contribute to greater understanding of the legal system In general, there are other mechanisms for achieving the same goals as trials, and thus, it is appropriate to weigh carefully the benefits and problems associated with the various mechanisms. In some cases, trials are the most appropriate mechanisms and the courts should ensure that litigants have the opportunity to try those cases. Changing litigation and trial patterns do give courts an opportunity to reflect on their roles and missions in the administration of justice. It is argued that some trials are necessary but it is not clear that we now have too few of them:

To be sure, our system of litigation does require some trials. Except in extraordinary situations, at least a few trials are necessary to set the terms of bargaining for the 98 percent to 99.5 percent of cases that settle

Sentencing and judicial discretion

Federal judicial discretion in criminal sentencing has come full circle over the last 200 years. The English practice in colonial times for felony offences consisted of a determined sentence for every crime; Sentencing remains an academic backwater, divorced from criminal law and procedure. Yet it greatly influences the choices prosecutors and defendants make in filing charges, plea bargaining, and going to trial. Sentencing considerations should inform the choice of procedures further upstream.

Academic proposals and new judicial decisions ignore the sentencing implications of rules at their peril. I the criminal procedure literature has ignored this problem. The time is ripe for more literature discussing the structure of mandatory minima and enhancements. Once the state has proved a crime beyond a reasonable doubt, however, the defendant is already stigmatized. The enhancement adds no additional stigma. And while the guilty do have an interest in not being over-punished, the state has
a countervailing interest in not under-punishing them. By definition, the guilty need some punishment; the only question is how much. There is no compelling reason to tilt the scales so strongly in favour of criminals, systematically under-punishing them. simultaneously to be gatekeepers who keep themselves from learning of evidence. True, some might be able to perform the requisite mental gymnastics, and rules of evidence would limit the grounds a judge could
articulate in a ruling, but these effects would be modest at best. Moreover, experienced judges are better able to discount hearsay and the like than are lay jurors.

Historically, judges have relied on hearsay at sentencing to gain the fullest possible picture of the defendant's character and background. Constricting the evidence at sentencing would, to an extent, make judges exercise their discretion in the dark. While the sources of information should not be constricted, defendants should be able to challenge them at sentencing. Defendants already have the right to counsel at sentencing, as well as discovery of evidence that "would tend to . . . reduce the penalty." But they have no constitutional rights to compulsory process, confrontation,

or cross-examination at sentencing. As argued, sentencing judges need leeway to consider hearsay that would be inadmissible at trial. At the very least, however, defendants should be able to use subpoenas to bring hearsay declarants into court and cross-examine them at sentencing. To exercise this right, defendants need to know what evidence is being used against them. Thus, discovery rules should extend to sentencing and to the facts underlying the
pre-sentence report. This discovery should not be too burdensome.
I analysed five years of Serious Fraud Office cases from 1999 to 2003, and found this result with regard to sentencing:-

Case	Sentence (years)
R v Gokal	14
R v Bryne	1-2
R v Leonard	1-2
R v Day	3-4
R v Holroyd	1-2
R v Chauchan	5-7
R v Skingley	1-2
R v Burnett	1-2
R v Palmer	3-4
R v Stone	1-2
R v Mottram	1-2
R v Massingham	1-2
R v Simmons	1-2
R v Falconer	1-2
R v Hutchinson	1-2
R v Ross	3-4
R v Bennett	3-4
R v Foster	3-4
R v Leonard	3-4
R v Orme	1-2
R v Pritchard	5-7
R v Wittingham	1-2
Rv Hartrshom	1-2

R v O'Brian	1-2
R v Wattiez	8-10
R v Gellatly	1-2
Rv Myles	1-2
Rv Maude	5-7
R v Dean	1-2
Rv Rosser	1-2
R v Blea	3-4
R v Burton	3-4
R v Andre	5-7
R v Cook	5-7
R v Hammond	8-10
R v Thoroughgood	1-2
R v Green	3-4
R v Chambers	3-4
R v Shand	1-2
R v Kounnou	1-2
R v Eden	3-4
R v Brailey	3-4
Rv Clark	5-7
R v Small	5-7
R v Mudhar	5-7
R v Freeman	1-2
R v Hodgekinson	1-2
R v Alexander	1-2
R v Andrews	5-7
R v Steen	5-7
R v Nicolaides	3-4
R v Atkins	3-4
R v Burns	3-4
R v Ashley	3-4

Conclusion

Trial without jury is practiced in several countries and will be an advantageous procedure in the United Kingdom in respect of fraud.

Bibliography

D Abrams, "Knowing What to Think by Knowing Who You Are", 29 BRIT. J. SOC. PSYCHOL. 97, 112 (1990).

S.Asch, *Social Psychology* (Oxford University Press, 1987).

M. L. Berman, "Six-Member Juries: Does Size Really Matter?" 67 TENN. L. REV. 743 (2000) Symposium.

K F. Brickey, "In Enron's Wake-corporate executives on trial", Cornell Law School, 2006

O Campanella, "The Italian Legal Profession." 19 J. Legal Prof. 59, 78 (1994).

W.Carson, (1980) 'The Institutionalization of Ambiguity: Early British Factory Acts', in G. Geis and E. Stotland (eds) White Collar Theory and Research. Beverly Hills, CA: Sage.

N.Christie, (1993) Crime Control as Industry. New York: Routledge.

R.C.Christopher , *The Japanese Mind* (Linden Press: Simon & Schuster 1983).

M.Clarke, (1990) Business Crime. Cambridge: Polity Press.

M.B.Clinard and P. Yeager (1980) Corporate Crime. New York: Free Press.

S. Cohen, (1996) 'Crime and Politics: Spot the Difference', British Journal of Sociology 47(1): 1–21.

J.W.Coleman, (1989) The Criminal Elite: The Sociology of White Collar Crime. New York: St Martin's Press.

M.Condon. (1992) 'Following Up on Interests: The Private Agreement Exemption in Ontario Securities Law', Journal of Human Justice 3(2): 76–92.

R.Cooke, (1991) Experts in Uncertainty: Opinion and Subjective Probability in Science. New York: Oxford University Press.

S.Daughety & C William. . "An Integrated Model of Evidence Production," Working Paper, Department of Economics, Columbia University, 1997

M.D. Dubber, "The German Metaphysical Volk: From Romantic Idealism to Nazi Ideology", 43 AM. J. COMP. L. 227, 257 (1995

T.Eisenberg, "Use It or Pretenders Will Abuse It:-The Importance of Archival Legal Information", Cornell Law School, 1999.

R. Ericson, and K. Haggerty (1997) Policing the Risk Society. Toronto: University of Toronto Press.

T.Fishman, (1998) 'Up in Smoke', Harper's (December): 37–46.

S Freccero, "An Introduction to the New Italian Criminal Procedure", 21 Am. J. Crim. L. 345, 351, n. 25 (1994)

S I. Friedland, "The Competency and Responsibility of Jurors in Deciding Cases", 5 NW. U. L. REV. 190, 194 (1990).

M.Friedman, (1962) Capitalism and Freedom. Chicago, IL: University of Chicago Press.

G.Gallon, (1996) 'Ontario Government Backsliding on Environment', Canadian Environmental Business Letter: The Gallon Report 11(46) 20 November.

A.Giddens, (1990) The Consequences of Modernity. Cambridge: Polity.

A.Giddens, (1991) Modernity and Self-Identity: Self and Society in the Late Modern Age. Stanford, CA: Stanford University Press.

H.Glasbeek, (1995) 'Preliminary Observations on Strains of, and Strains in Corporate Law Scholarship', in F. Pearce and L. Snider (Eds) Corporate Crime: Contemporary Debates, pp. 111–31. Toronto: University of Toronto Press.

P.Grabosky and J. Braithwaite (1986) Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies. Melbourne: Oxford University Press.

G.Green, (1994) Occupational Crime. Chicago, IL: Nelson-Hall.

John Haly, "Judicial Independence in Japan Revisited", 25 LAW IN JAPAN 1, 16-18. (1995

J.Hatchard, B Huber, & R Vogler, *Comparative Criminal Procedure*, (B.I.I.C.L.ondon 1996)

R.Hollinger and J. Clark (1983) Theft by Employees. Toronto: Lexington Books.

HMSO, Roskill Report, London 1986

HMSO, Heavy Fraud Protocol, London, 2005

HMSO, Criminal Procedure Rules SI 2005. No. 384, London, 2005

N.Kamuchi, *Culture and cushions of Japan* (Greenwood Press, 1999)

John H. Langbein, Mixed Court and Jury Court: Could the Continental Alternative fill the American Need? 1981 AM. B. FOUND. RES. J. 195, 206 (1981)

M.Levi, (1984) 'Giving Creditors the Business: The Criminal Law in Inaction', International Journal of the Sociology of Law 12: 321–33.

M.Levi, (1993) The Investigation, Prosecution, and Trial of Serious Fraud. London: Royal Commission on Criminal Justice, Research Study No. 14.

M.Levi, (1995) 'Serious Fraud in Britain: Criminal Justice versus Regulation', in F. Pearce and L. Snider (eds) Corporate Crime: Contemporary Debates, pp. 181–98. Toronto: University of Toronto Press.

D.Nelken, . (1994) White-Collar Crime. Aldershot: Dartmouth.

N.Passas and D. Nelken (1993) 'The Thin Line between Legitimate and Criminal Enterprise: Subsidy Frauds in the European Community', Crime, Law and Social Change 19: 223–43.

P. Larrson, "Walking the tightrope: Harmful acts and the construction of crime in the Norwegian Securities markets", Vol 5 No 2 2004, Journal of Scandinavian Studies in Criminology and Crime Prevention", Taylor & Francis.

R.Lempert, "Jury for Japan?" 40 AM. J. OF COMP. L. 37(1992).

A.Mowbray, "Institutional developments and recent Strasbourgcases", V 5 No 1, Human Rights Law Review, Oxford Journals, 2005

F.Pearce, (1993) 'Corporate Rationality as Corporate Crime', Studies in Political Economy 40 (spring): 135–62.

F.Pearce and L. Snider (1995) 'Regulating Capitalism', in F. Pearce and L. Snider (eds) Corporate Crime: Contemporary Debates, pp. 19–48. Toronto: University of Toronto Press.

F.Pearce and S. Tombs (1998) Toxic Capitalism: Corporate Crime and the Chemical Industry. Aldershot: Ashgate/Dartmouth.

William T. Pizzi & Luca Marafioti, "The New Italian Code of Criminal Procedure: The Difficulties of Building an Adversarial Trial System on a Civil Law Foundation", 17 YALE J. INT'L L. 1 (1992).

C.R.Plott, "Legal Fees: A Comparison of the American and English Rules," 3 Journal of Law, Economics and Organization 185-92., 1987.

A.M.Polinsky and Y.K. Che. . "Decoupling Liability: Optimal incentives for Care and Litigation," 22 Rand Journal of Economics 562-70, 1991.

R.A.Posner, *Economic Analysis of Law*, 4th Ed. (Boston: Little, Brown and Company, 1992.)

R.Posner, (1977) Economic Analysis of Law. New York: Little, Brown.

M.Punch, (1996) Dirty Business: Exploring Corporate Misconduct. London: Sage.

J.F.Reinganum, . "Strategic Search Theory," 23 International Economic Review 1-17., 1982

D.L.Rubinfeld and D E.G. Sappington. "Efficient Awards and Standards of Proof in Judicial Proceedings," 18 Rand Journal of Economics 308-15., 1987.

S.Shapiro, 1990) 'Collaring the Crime, Not the Criminal: Considering the Concept of White-Collar Crime', American Sociological Review 55 (June): 346–65.

G.B.Shepherd, "An Empirical Study of the Economics of Pretrial Discovery," 19 International Review of Law and Economics 245-64. 1999

H.S.Shin, "The Burden of Proof in a Game of Persuasion," 64 Journal of Economic Theory 253-64., 1994

S.Skaperdas, "Contest Success Functions," 7 Economic Theory 283-90.1996

D. G. Smith, "Structural and Functional Aspects of the Jury: Comparative Analysis and Proposals for Reform", 48 ALA L. REV. 441, 448-449 (1997

L.Snider, (1993) Bad Business: Corporate Crime in Canada. Scarborough, Ontario: Nelson.

J.Sobel, "Disclosure of Evidence and Resolution of Disputes: Who Should Bear the Burden of Proof?" in A. Roth, ed., Game-Theoretic Models of Bargaining. Cambridge, 1987.Cambridge University Press.

W. W. Steele Jr. & E G. Thornburg, "Jury Instructions: A Persistent Failure to Communicate" 67 N.C. L. REV. 77 (1988)

.E.Sutherland, (1940) 'White-Collar Criminality', American Sociological Review 5 (February): 1–12.

S C. Thaman, "Symposium on Prosecuting Transnational Crimes: Cross-Cultural Insights for the Former Soviet Union", 27 SYRACUSE J. INT'L L. & COM. 1, 59-65 (2002)

S.Tombs, (1996) 'Injury, Death and the Deregulation Fetish: The Politics of Occupational Safety Regulation in United Kingdom Manufacturing Industries', International Journal of Health Services 26(2): 309–29.

V.Walters, W. Lewchuk, J. Richardson, L. Moran, T. Haines and D. Verma (1995) 'Judgments of Legitimacy Regarding Occupational Health and Safety', in F. Pearce and L. Snider (eds) Corporate Crime: Contemporary Debates, pp. 284–304. Toronto: University of Toronto Press.

D.Weisburd, E.F. Chayet and E.J. Waring (1990) 'White Collar Crime and Criminal Careers: Some Preliminary Findings', Crime and Delinquency 36(3): 342–55.

T Weigend, "Symposium: Comparative Criminal Justice Issues in the United States, West Germany, England, and France", 42 MD. L. REV. 37, 62 (1983).

Gabriel Weimann, *The influentials: People who influence People* (State University of New York Press, Albany, 1994

C.Wells, (1993) Corporations and Criminal Responsibility. Oxford: Oxford University Press.

L. Wilde. "Settlement, Litigation, and the Allocation of Litigation Costs," 17 Rand Journal of Economics 557-566, 1986

Statutes, etc, referred to in Introductory Chapter

Company Securities (Insider Dealing) Act 1985 (UK)

Criminal Justice Act 2003 (UK)

European Convention on Human Rights 1950

Fraud Act 2006 (UK)

Cases referred to in Introductory Chapter

Airey v UK 9 October 1979

Deweer v UK 27 February 1980

Eckle v Germany [1982] 5 EHRR

Guinness v Saunders [1983] BCL 271

Handyside v UK 7 December 1976

ILJ and others v UK 29522/95; 30056/96; 30574/96

Kewi Tek Chao v British Traders & Shippers Ltd [1954] 2 QB 459

König v Germany 28 June 1978

Motis Exports Ltd v Dampskibsselskabet AF 1912 A/S [1999] 1 Lloyd's Rep 837

Orchin v UK [1984] 6 EHRR 391

Privy Council [2002] UKPC.D1

R v CPS (Interlocutory Application under s 35/36 CPIA) [2005] EWCA Crim 2342

Rex v Hevey (1782) 1 Leach 229

R v Lyons, Parnes, Ronson, Saunders, House of Lords 14 November 2002

R v Milton & Stelios Kounnou [2002] unreported

R v Myles, Crowe, Jeffries, Wilkinson, Smith 5 June 2001 unreported

R v Patrick Bryant [2005] EWCA Crim 2079

R v Rayment and others [2005] unreported

R v Saunders [1983] unreported

R v Seelig and another [1991] 4 All ER 429

Saunders v UK [1998] 1 BCLC 362

Schoffler v Germany 8182/80

St grn Iler v Austria [1969] 1 EHRR 155

Wemhoff v Germany 27 June 1968

Neumeister v Germany 27 June 1968

Ringsisen v Germany 16 July 1971

