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Criminal justice – can the system cope?

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1. Professor Sherman, distinguished Members of Faculty, distinguished guests, ladies and gentlemen, thank you for the compliment of your invitation and for the courtesy of your attention.
2. Just before I succeeded Sir Denis O'Connor as chief inspector of constabulary, in 2012, Parliament amended the Police Act 1996 to require the chief inspector of constabulary to publish every year an essay on the state of the police. The essay is included in the inspectorate's annual report, but it can and does go wider than reporting on the inspections carried out in the year. In July 2019, I published my sixth State of Policing report. Although there are recurring themes in each of them, and those themes are consistent with what my predecessors were tackling – things such as failures in crime prevention, failures in equipping officers with the tools they need to do their jobs properly, failures in the quality of leadership and supervision – there are also material differences, principally in the speed and nature of change in offending, and how the police need to go about tackling these problems. I intend to deal with some of these today, and to discuss remedies including single-system operation, improvements in prediction in demand and asset stewardship, and the condition of the criminal justice system.
3. Significant police reform took place between 2010 and 2018. It was the greatest amount of police reform since Sir Robert Peel established the Metropolitan Police in 1829 and the counties

and boroughs outside London were compelled to establish police forces in the 1850s. In many respects, the reform programme was essential; in some respects, some measures which may have been attractive on paper haven't worked out as well as intended.

4. There were reforms to pay and conditions, especially moving from time-based service to skills- and contribution-based pay; the establishment and now re-energisation of the College of Policing under Mike Cunningham; setting up the National Crime Agency; reform of the inspectorate; the establishment of the inspectorate's PEEL programme and now risk-based inspections; force management statements; super-complaints; the replacement of ACPO with the National Police Chiefs' Council, and the reform of local democratic accountability with the creation of police and crime commissioners and their London and Manchester equivalents. That is a great deal of reform.

5. There have also been major reforms in criminal law and criminal procedure, including in matters concerning violence against women and girls, modern slavery and human trafficking, forced marriage and other things. And the budget cuts compelled forces to find much-needed and overdue efficiencies. But in too many respects not all the efficiencies have been found and exploited, and more are needed; but they have to be realistic. Policing is ever-changing: from the recent protests where the Metropolitan Police requested mutual aid for only I think the second time in recent years, to the threats from cyber and terrorism, and significant increases in sexual offences. There are always several significant areas where policing can improve. But to be efficient, you need to invest; and invest means do it first, do it early not afterwards, and invest in the right things and at the right times, at fair and affordable costs. That includes of course technology such as mobile electronic devices, well-designed and efficient force intelligence systems, and much else besides. We still have officers in some parts of the country using paper and pencil, having to key the information in at the station at the end of their shifts on an insufficient number of force laptops. That sort of thing is intolerable; it is a waste of public money and a

frustration and an obstacle impeding police officers being able to do their jobs. In policing, there is virtually no use of artificial intelligence and machine-learning, even though that intelligence and those techniques are in widespread use in the commercial sector. In too many respects, officers and staff are still having to read every page of downloaded data from electronic devices which can run into thousands of pages. The average smartphone can produce 5,000 pages; the average household has perhaps eight or nine individual electronic devices, and they might all have to be taken in. These devices have to be properly interrogated because there may be relevant evidence on them, incriminating or exculpatory. Disclosure requirements are of enormous importance, and the magnitude of the investigatory task is now a very considerably larger job.

6. I used to be a partner in a City of London law firm. My former partners are using this technology today to do commercial due diligence on company acquisitions, large commercial transactions and major financings. They use this software to read millions of pages in a very small fraction of the time that it used to take in the days when I began my career forty years ago, when you had to read everything and make notes, and you got tired and made mistakes. Modern technology of the kind I have described can do this in a flash. There are several pieces of sophisticated software commercially available; you can buy it off the shelf, and it is not expensive. You can use it and teach it to understand texts and codes and the ways in which people communicate, and then you can get that information significantly faster and with a higher degree of reliability than having people read everything. If this technology is used to great effect in the commercial sector, then I cannot see why it should not be used in the most essential safety-critical public service of all.

7. Since 2010 there has been an exponential increase in the complexity of crime and the advances of technology. These things make a great deal more work for police and prosecutors. That is not where we were in 2010 or even later. It is essential that officers and staff have the time and the skills to do this job well. Justice delayed is justice denied. In too many cases, under our

present system justice never arrives at all, whether for the victim, for the accused or for the witnesses.

8. The public have increasing demands on the police service. Those demands have grown and they will not reduce. The face and the complexity of crime is changing: for example through the use of social media, sexual abuse of children from afar, and online fraud. Technology now facilitates crime. And offenders will find new and more sophisticated ways in which to commit crime and evade detection.

9. As the Commissioner of the Met, Dame Cressida Dick, said in June this year, crime today has four distinctive and distinguishing aggravating characteristics: its volume, its complexity, encryption and speed. The police have to get ahead of that; meeting that intensified and complex demand requires strong leadership and investment.

10. Some forces can improve on their efficiency, but others are struggling to meet even basic demand. It is essential do things better and more cost-effectively and to greater effect; that is the only way the police service will meet the demands it will face in the years to come.

11. What we now need - more than ever before - is single-system operation. Crime is no longer predominantly local. The 43-force model designed in the 1960s and implemented in 1974 is no longer working as it should. Too many forces are still operating in an insular way. Collaborations are failing or collapsing. The Devon and Cornwall and Dorset merger cracked. The present model is policing based on an old system for a very different world. The time has now come for the Home Office to step forward and to use its influence and its unique legal powers to remove the barriers to co-operation and single-system operation, whether on a regional or national basis, and to establish that true single system. I am not talking about redrawing the map and merging police forces. We should establish single-system operation through a 43-force

collaboration agreement called the Network Code. It is a piece of legal machinery which will secure regional and national co-operation by means of qualified majority voting. It can be made to apply to things such as the establishment of common technical standards for information technology, and requiring compliance with them whenever forces upgrade or replace their technology. It could be made to apply to co-operation in the dissemination of intelligence, training of officers, including those who may be required to work outside their force areas, the obvious case being undercover officers. It could be made to establish common procedures for demand prediction, asset stewardship (particularly officer welfare), and resource planning. It could be made to apply to almost anything where a purely local approach is not consistent with efficiency and effectiveness in serving the public.

12. That is not to say that local conditions and circumstances will be disregarded; the contrary is the case. The appropriate degree of flexibility and respect for local circumstances will be of great importance.

13. You may ask, what is wrong with the present regime, operated through the National Police Chiefs' Council and Chiefs Constables' Council? Why not rely on the present parallel arrangements for co-ordination under the umbrella of the Association of Police and Crime Commissioners? The answer is those things do not work well. Both require unanimity; and even where there is a 100 per cent acceptance of a particular proposition, any one chief constable can later decide no longer to participate and do his or her own thing. So at present nothing is settled; nothing is reliably committed to; nothing is binding.

14. The network code, if it's adopted, will be a contract. It will be a 43-force collaboration agreement. Its signatories will be the 43 chief constables and the 43 local policing bodies of England and Wales. It should also include the National Crime Agency, British Transport Police and the Civil Nuclear Constabulary, and their democratic or oversight agencies. And the Home

Secretary should be a party, with special voting and veto rights. In time, other public agencies could be brought in to certain aspects of the regime, but to begin with and until it settles down, it should be limited to law enforcement.

15. How will decisions be made? My proposition is that there will be different voting thresholds for different classes of decision; some may require a 60 per cent vote, some may require 75 per cent, and so on. None should require 100 per cent, because that is what we have now. Perhaps the hardest part of this design will be the allocation of votes, to ensure fairness for forces of all sizes and circumstances. It may be that there should be two classes of votes, and attainment of minimum thresholds in each voting class for each decision. So, Class A votes may be allocated according to force size or population served, or some variant of that (the undamped funding formula comes to mind). And Class B votes may be allocated on a simple model of two votes per force, irrespective of size. A decision would have to pass in both Classes A and B. Those familiar with the United States Congress may recognise this model: Warwickshire as South Dakota or Vermont, West Midlands as Texas, and the Met as California. You get the idea.

16. There should be minority protections and of course transitional provisions, so that whatever is decided upon can be introduced in an orderly and affordable way. And there should be flexibility, probably in the hands of the Home Secretary, to ensure anomalies and difficulties can be ironed out. Moreover, the code should contain its own change procedure, so that by appropriate threshold vote the provisions of the code itself (except certain entrenched provisions) can themselves be adjusted to meet new circumstances.

17. I should emphasise that this is a proposition, not a settled programme. The inspectorate has no right to insist upon this. Only the Home Secretary can do that. However, I believe that when the plans for this are fully laid out and explained, there will be a high degree of acceptance of this, and I have every expectation these ideas will be improved when they are put out to

consultation. All I ask is that the parties who will in due course need to accede to this idea approach it constructively and with the knowledge that the pooling of sovereignty which this entails will be worthwhile because what they get back will be far more valuable than what they put into it.

18. If this approach is adopted, the 43-force model stays intact, and the distractions and agonies of reorganisation can be avoided. Sir Robert Reid, the former chairman of the British Railways Board, once said: "When you reorganise, you bleed". The police service should not risk that; it doesn't need to; there is a better way. The network code, established as I have described it, is something which the police service has needed, with ever-increasing intensity as crime and disorder have developed and spread. It will be attainable far more readily and easily than with any other model. The territorially-generated frustrations which have impeded policing and law enforcement since 1962 can be dissolved, and the service can work in a far more co-ordinated and co-operative way, to the benefit of everyone, particularly the public whose safety and security are our primary objectives.

19. In my latest state of policing report I said that the criminal justice system today is defective and dysfunctional. The state of prisons was recently described by the Chief Inspector of Prisons, Peter Clarke, as deeply troubling, with jails plagued by drugs and violence, appalling living conditions and a lack of access to rehabilitative activity. Prison libraries are locked out of use. Prisoners are spending far too long in their cells, not having enough time for education and skills training, and of course these failures intensify the corrosive circle of offending. We have had a collapse of the model of probation. In February this year, Dame Glenys Stacey, who recently ended her term as Chief Inspector of Probation, said the probation system had buckled under the strain. There are appalling inefficiencies and failures in prosecutions, with inexcusable delays in bringing cases to court and disgracefully late changes to charges, with prosecutors given inadequately prepared papers at the last-minute causing disruption and delays to trials, and consequent injustices to the accused, the complainants and the witnesses. The Victims'

Commissioner, Dame Vera Baird, spoke recently about the unwillingness of people who have been through the criminal justice system - as witnesses or victims - to do it again. She said almost half of them would never do it again because of their experiences of delays and frustrations. That is a depressing indictment of our criminal justice system, and it must change. It doesn't stop there. We see the decay in our courts: the physical fabric of the buildings is deteriorating before our eyes. There are injustices and inefficiencies through the waste of court time: 500 courts closed, court hours cut, courts standing idle when trials are being delayed and accused persons, victims and witnesses are waiting a year and two years just to get to trial. And as Cressida Dick also said recently, the courts are emptying and detection rates are woefully low. We have also very recently heard about the severe threats to justice through the under- funding of criminal defence and prosecution work. The voices of the very recently retired President of the Queen's Bench Division (who is the judiciary's head of criminal justice), the last President of the Supreme Court, and the last Lord Chief Justice, must be heard and heeded. Access to justice is a right of everyone: the accused, the victim, the witnesses and the community. It is essential, and yet in too many respects it is the preserve only of large corporations, the very wealthy or the very, very poor. And even they must wait too long, and suffer the inefficiencies and frustrations which pervade the system.

20. So why has the criminal justice system come to this state? Funding cuts are the basic answer; unlike health and education, there are very few votes in criminal justice. Policymakers and others pay too little attention to criminal justice, that is unless and until their lives or the lives of people close to them are touched by it, whether as victims, witnesses or accused. Then the failures and inefficiencies – the many injustices of the system – appear to them in stark and shocking terms. But by then, of course, for them it is too late, and they have to endure it.

21. So, what is my locus as Chief Inspector of Constabulary to say all these things about the wider criminal justice system? I expect the answer is easily apparent. All these solvable problems with criminal justice have severe knock-on effects on the police, on their morale and their ability to

do the jobs they are committed to do. The strain on officers and staff is now very severe, and this is intensified by the frustrations of the failures of the system. Far too many officers are being run ragged. They are facing severe dangers on the streets and very heavy pressures in the caseloads they carry and the nature of the crimes they are dealing with, especially crimes against children and other vulnerable people.

22. The Government has recently announced a net increase of 20,000 police officers. And there will be many more associated police staff to train and support those 20,000. Since the police service loses 6-7,000 police officers every year through retirements and resignations, over the three years of the 20,000 increase, the service is facing recruiting perhaps 45,000 people. That is an enormous task, and a great deal of work is going on to plan for that. We must also recognise that this welcome increase will bring new pressures on other parts of the criminal justice system: on prosecutors, the courts, prisons and probation. If the recruitment and deployment of the extra 20,000 is done perfectly, and perfectly effective police officers are recruited with 100 per cent success in achieving the objectives of Peel's first principle of prevention, then there won't be any need for additional people in the criminal justice system. But of course hardly anything happens perfectly, and there will inevitably be increased pressure on the system.

23. In order properly to predict and evaluate the true pressures on the system – and here I am speaking about the police part of the criminal justice system – it is necessary to have reliable information about demand, and forces' condition, capacity, capability, performance, serviceability, efficiency and security of supply. All well-managed enterprises – public sector and private sector, whatever they are doing – need to know those things to make efficient and effective decisions. They need to know future demand as far as it can be predicted. Of course nobody expects perfection. All predictions are wrong; the question is how wrong. So forces need to make their best assessments of future demand. In this respect, much value will be derived from a proper

consideration of the approach of a harm-focused approach, using instruments such as the Cambridge Harm Index.

24. Forces also need sound asset stewardship and efficiency, and to know what financial resources they are going to have to use those assets to meet that demand. For the last two years, a great deal of that information comes in the form of force management statements. These are instruments borrowed and now adapted by the inspectorate from the world of economic regulation, based on network management statements in the regulated industries such as energy, water and transport.

25. Force management statements are now in their third year. After a certain amount of reluctance and resistance from some forces and police and crime commissioners, they are proving successful. Of course there is more work to be done to achieve their highest practicable degree of standardisation, respecting local conditions, and so comparability and utility. By measuring all demand on the police and the state of forces' assets – predominantly people, the most complex assets of all – and how those assets will be used to meet demand, the statements reveal an essential truth. That is that the police cannot ever meet all demand, and find and tackle all crime and disorder, and satisfy the many other demands they face, such as finding missing people and tackling the consequences of failures of others properly to treat people with mental ill-health.

26. Once fully mature, force management statements will enable the public - through their elected representatives - to make a determination of what they want the police to do and the standard to which they want it done. Crucially, they will also enable people to decide how much they are prepared to pay efficient forces to prioritise, and therefore what they want the police not to do. This is one question recently discussed by Peter Neyroud in his essay *De-policing and Homicide*. It is concerned with rationing police services whilst meeting the increasing expectations for public protection and preventing rising levels of violent crime.

27. Of course the determination of priorities has an almost inevitable knock-on effect on the other public services and agencies whose primary purpose is to deal with the causes of crime and disorder, and as far as practicable to prevent them. As we all know, prevention is not only the job of the police. Indeed police intervention should be the last thing that happens before an offence is committed. Health, education, housing, social services, family cohesion and discipline – these are the agencies and the things which have the primary capacity to prevent things going wrong, or to intervene early to reduce or mitigate their effects. This involves the diversion of young people from crime and disorder. So much can be achieved by programmes such as those in Wales and elsewhere in respect of adverse childhood experiences.

28. Force management statements – self-assessments by every chief constable, used by the inspectorate and others – expose a fundamental and essential truth. It is an essential truth which applies throughout society, and it applies just as much in criminal justice. It is a truth about demand being met by supply.

29. As you probably know, I used to be the economic regulator for the railways (1999-2004). One of the things I had to do was to determine how much money the railway infrastructure provider - first Railtrack, later Network Rail - would require in each five-year period if it were efficiently to meet projected demand. In October 2000, I increased the financial settlement of Railtrack from £10 billion to £14.8 billion. At almost exactly the time I made that decision, the multi-fatality Hatfield rail crash took place. A train travelling at 115 mph derailed at Hatfield because of an unremedied engineering failure which caused the rails under the train to break. Because Railtrack had an inadequate knowledge of the state of its network, it did not know where else this form of metal fatigue might cause another catastrophic failure. So the company threw on 1200 emergency speed restrictions on many parts of its network, and of course the operational integrity of the railway was severely degraded for many months, leading to very hostile criticism from the public,

the media and, fatally for Railtrack itself, politicians. Sir Alastair Morton – then chairman of the Strategic Rail Authority – called it the railway's collective nervous breakdown. These severe operational failures led in October 2001 to an unconstitutional and illegal political attack by the government on Railtrack, forcing the company into administration on a false statement that the company was insolvent. Because the company was not insolvent, the Government's plan included a threat by the Government to use emergency primary legislation to extinguish my independence as regulator if I stood in its way. I told Railtrack I would be prepared to intervene to prevent this, but the company's top management decided not to resist, the company did not take my help, and the Government got its way, renationalising the network without its threatened legislation against me.

30. Network Rail was the Government's chosen successor to Railtrack. It inherited all Railtrack's problems except the current hatred of Railtrack. But it still needed money. And it remained my job to determine what a competent and efficient network operator would require to meet future demand. Pre-Hatfield, my determination of £14.8 billion was unsound because Railtrack did not have reliable and sufficient information about the condition, capacity and capability of its network. That is why it put on so many emergency speed restrictions. And if Railtrack did not know, the regulator did not know either; that was perhaps the biggest frustration I acquired when I became regulator. Although in my first year as regulator my staff and I strained every muscle to improve knowledge of the network, it could not be done in so short a time, and the financial settlement decision had to be made in October 2001. So at that time I had to make my £14.8 billion decision on what was obviously unsatisfactory and incomplete information.

31. After Railtrack had been politically and corporately defenestrated, Network Rail faced the same problem. The £14.8 billion settlement obviously was not enough, but what was the true (higher) figure? The emergency legislation (drafted, but never used) was to prevent the regulator doing a further financial review of the network operator's requirements for money. That review was

exactly what the company needed, and it did not matter whether the company was Railtrack or Network Rail. As the chief executive of Railtrack said at the time, the laws of physics and the realities of engineering were not going to change with political affections for one company over another. The rails, signalling systems and the rest of the network needed maintenance and renewal whatever the political weather.

32. In 2002, Network Rail could not properly take over the network until Railtrack was brought out of administration. In order to achieve that, the Government had to convince the High Court that the company was no longer insolvent (which had been the basis on which the Government had forced Railtrack into administration a year before). To do that, it needed the independent regulator to be prepared to do the financial review I had always been willing to do and which the Government had been determined to stop in 2001. I did the review, and of course decided – according to economic and engineering principles, not political ones – that the network operator, Network Rail, needed a great deal more money than I had determined in the case of Railtrack. The figure was £22.2 billion, which was an increase of £7.4 billion over the settlement for Railtrack. Under the legislative regime for the railways at that time, the decision on what the figure would be, and when and how it was to be paid, was mine, not the Government's. (The law was changed after I left office in 2004.)

33. The Secretary of State for Transport was not pleased with this. He could not direct me to come up with a lower figure; as said, that was my decision. However, he had the ability to get the figure down by reducing demand on the network, using the powers Parliament had given him to reduce the size of the network and the intensity of its use. He could have directed line closures and he could have cut back on the amount of traffic on the network through his powers over franchising passenger rail services and the support he gave to rail freight services.

34. Some time before I announced my decision, I told the Secretary of State what the number was likely to be. He and the Treasury had, until then, maintained that it was the Government's position that Network Rail should have no more money than the £14.8 billion settlement I had given to Railtrack. I knew that to be unsustainable. We had calculated that if Network Rail were to have only the £14.8 billion allocated to Railtrack, the Secretary of State would have to reduce the size of the national network by 25 per cent; he would have to reduce the numbers of services using the remaining network by a further 25 per cent; there would be a 100 per cent cut in enhancements to the network (so no new projects), major cuts in renewals and a consequent increase in maintenance, and a significant fall in network performance (because assets would fail more often). And we thought there would have to be a six per cent year-on-year increase in passenger fares. Understandably, the Secretary of State was unwilling to announce all that. I said that unless he decided to reduce the size and intensity of the use of the network – in other words, reduce overall demand – I would put up the financial settlement by £7.4 billion to £22.2 billion. And since I heard nothing more from the Secretary of State on the matter, that is what I did, in December 2003.

35. The message I had been giving to the Secretary of State was this: you cannot meet 100 per cent of projected demand for 60 per cent of its efficient cost. Either demand and performance are reduced, or more money has to be provided. In other words, you can't get a quart out of a pint pot. Those are the economic realities. It is the same reality which prevails in all other public services: you can't have 100 per cent of whatever it is you want for 60 or 70 per cent of its efficient cost. That truth applies in the criminal justice system, in policing, prosecutions, courts, prisons and probation, as it applies everywhere else. The laws of economics are as immutable as the laws of physics.

36. Reducing demand on the police and the rest of the criminal justice system is necessary, to ensure that the costs of crime and disorder, both in financial terms and in terms of human suffering, are minimised. The causes of crime and disorder are many and often complex. They

include social dysfunctionality, families in crisis, the failings of parents and communities, the disintegration of deference and respect for authority, alcohol, drugs, a misplaced and unjustified desire or determination to exert power over others, envy, greed, materialism and the corrosive effects of readily-available hard-core pornography and the suppression of instincts of revulsion to violence. Most have nothing to do with the police.

37. Prevention – when it is done most efficiently and effectively – takes place far upstream from the interventions of the police. It happens in the home, at school, with housing and social conditions, in health with timely treatment, and early intervention with chaotic and troubled families. It is when these agencies, parents and communities fail that the problem intensifies and often becomes chronic. Then it ends up with the police, and may go on to prosecution, then prison and probation, where the chances of long-term remedy reduce sharply at every step of the way.

38. Despite this obvious truth, public resources and investment in things which will be far more effective in keeping people safe, diverting others from crime and disorder, and preventing hopelessness and misery, are unsustainably low. Communities, through their elected representatives, and in possession of reliable and verified facts, need to decide where they want to invest in prevention and being safe. The costs are significantly lower upstream, and neglect in the early stages only causes the problems to worsen and grow. Prosecution and prison are the most expensive and least effective remedies for the ills of society.

39. This point has been very eloquently made in the work of Barnes, Hyatt and Sherman (2016) in *Even A Little Bit Helps*. Their thesis on the use of cognitive behaviour therapy for high-risk offenders shows that investment in other public services (health in this instance) may well have an equal if not greater positive effect on reducing demand on the police, than for example adding to the numbers of police officers. But we must also remember that forces must have enough people to meet whatever demand they face, and the decisions on the skills new police officers must have

and the quality of their deployment will be crucial. Their primary objective of prevention must always carry due respect and weight.

40. For the UK to retain its well-deserved and world-renowned reputation in policing, the difficult questions that I have raised need to be answered. I believe that the public will is probably there to do so. This cannot come early enough.

41. In conclusion, I wish to thank Professor Sherman and his staff for your invitation to speak to you this evening, and for the honour to come to the Police Executive Programme. Its contributions to evidence-based policing are considerable, and without them policing and therefore the public would be materially worse off.