were the minds of their particular juries; rather than whether the case against them were more reliable and likely to be true. The Inquiry is concerned, and its anxiety may be shared by the general public, that innocent people may have been convicted, and guilty people may have been acquitted or never charged at all. There can be no public confidence in such a system.

CHAPTER 6

A FAIR SYSTEM FOR INVESTIGATING CRIME

6.1 Through its analysis of the trials in this and the previous chapter, the Inquiry has concluded that grave injustice was done. Therefore its first recommendation is that if the Court of Appeal does not quash the convictions of Winston Silcott, Engin Raghip, and Mark Braithwaite, when their application for leave to appeal comes to be heard, the Home Secretary should examine the cases promptly with a view to the grant of a full pardon. There are precedents for the grant of a full pardon even where the Court of Appeal has ruled in favour of the prosecution, for example in the case of Mr Cooper and Mr McMahon in the Luton Post Office case, whose appeal was refused several times before the Home Secretary himself intervened to release the two men on a pardon. The Home Secretary's review should also take in the affray convictions, in particular as a matter of urgency the cases of those who are still in prison.

6.2 For the future, the Inquiry believes that the kind of investigation conducted in the aftermath of the Broadwater Farm riots must never happen again. A system of investigation must be devised which is fair both to society and to the suspect. The present system is clearly unfair to both the suspect and to society, for in the result it worked individual injustice without securing the conviction of many guilty people. Only in the 20 cases where defendants pleaded guilty can one have any confidence that guilty people were brought to justice. The requirement for a fair system is all the more essential in cases where emotions run high. In the Broadwater Farm investigation the emotions of police officers, as were many others, were understandably aroused by the circumstances of PC Blakelock's death. But in those circum-

stances, for there to be a system of investigation, in which police officers held all the cards, and the arrested people none, was almost certain to work injustice. The most important cards which were not held by the arrested persons in these cases were (i) an independent record of what they said; (ii) access to legal advice.

Tape Recording

6.3 In the Inquiry's first report we said:-

> "We find it to be something of a perversion of priorities that whereas sophisticated technology is available to the police for them to restore and retrieve vast quantities of information on computer, the simple device of a tape recorder has not been installed except as an experiment in a few police stations."

The experience so far obtained from the tape recording experiment shows that tape recordings can in different circumstances be useful both to the prosecution and to the defence. For the prosecution a tape recording settles a conflict about what was said, and has undoubtedly persuaded a number of defendants to plead guilty when otherwise they might have alleged that the police record was false or distorted. For the defence, there have been cases — some known to the Chairman — where the tape recording has revealed ways in which a defendant was pressured by the police, prevented from telling the story he/she wanted, so that ambiguities and distorted interpretations of what he said can be cleared up. The Inquiry recommends an immediate investment of Government funds into the equipping of all police stations with tape recorders.

6.4 When tape recorders have been installed, there may be attempts to introduce into evidence things alleged to have been said by the defendant before the tape recording was switched on, which are then repudiated on tape. While there may be cases where suspects will talk "off the record" this is not a reason for allowing a court to rely on such evidence. There is far too much danger of abuse by unscrupulous officers, and as past experience with "verbals" has shown, it is impossible for either the police to prove or the defendant to disprove the disputed admissions. Accordingly the Inquiry recommends, that where a tape recording system has been installed in a police station, only tape

recorded interviews should be admissible in evidence. This recommendation would cover both question and answer interviews, and occasions where a suspect is making a written statement of confession.

Access to Solicitors

6.5 The provisions of Section 58 of the Police and Criminal Evidence Act 1984, quoted above (5.30), are undoubtedly an improvement on the old Judges' Rules. They have been given a strict interpretation by the Court of Appeal in the case of R v Samuel. The court referred to the 3 sub-paragraphs (a) to (c), in which the only reasons for delaying the right of access to a solicitor are set out. It pointed out that if a solicitor does something knowing that it will result in one of the three consequences happening, the solicitor will almost inevitably be committing a serious criminal offence. The court said that the suggestion that a solicitor might unwittingly pass on a message "seems to contemplate a degree of intelligence and sophistication in persons detained, and perhaps a naivety and lack of common sense of solicitors, which we doubt often occurs." Accordingly, the court concluded:-

> "Any officer attempting to justify his decision to delay the exercise of this fundamental right of a citizen will, in our judgment, be unable to do so save by reference to specific circumstances including evidence as to the person detained or the actual solicitor sought to be consulted."

6.6 It remains to be seen whether the Samuel judgment will bring about a change in practice in police stations. As the Court of Appeal observed, the circumstances envisaged by the Act in which a solicitor would pass on information will be rare or nonexistent, unless the solicitor himself/herself deliberately colluded with the client in a conspiracy to pervert the course of justice. In such a case, the solicitor would be committing a crime and could be charged. The Inquiry therefore recommends that there should be no reasons for denying or delaying to a suspect his/her right of access to a solicitor. The Inquiry recommends that Section 58 should be amended to this effect, and that meanwhile this should be adopted as the practice.

6.7 However, the granting of an absolute right to see a solicitor will not cover the cases where the person arrested says, or is claimed by the police to have said, that he/she does not want to see a solicitor. A remarkable statistic was provided by DCS Melvin during the Broadwater Farm trials, namely that of 359 people arrested, 232 signed a form saying that they did not want to see a solicitor. The tribunal has little doubt that the vast majority of the 232 either did not appreciate what they were signing, or did not appreciate how useful it might be to have advice from a solicitor, or did not know the identity of a solicitor, or were simply too frightened to request a solicitor. Since the passing of the Police and Criminal Evidence Act a scheme of duty solicitors was set up for the provision of legal aid for people arrested and held in custody. The Inquiry recommends that any person held in custody, who has not specifically requested to see a solicitor, shall, before any interview takes place with him/her about the case for which he/she has been arrested, be introduced to the duty solicitor for the purpose of obtaining confidential advice about his/her rights. The Inquiry further recommends that no confession should be admissible in evidence unless either it was made in the presence of a solicitor, or it was made after the defendant had seen a solicitor, and had repeated in the presence of that solicitor that he/she was content to be interviewed without a solicitor being present.

The Right to Silence

6.8 The Home Secretary has announced that he is contemplating introducing legislation to change the law on the right of silence. The proposed change would mean in effect that, instead of the present practice whereby a suspect is told "you are not obliged to answer any questions", he or she will be told "if you do not answer my questions, the court at your trial may draw the inference from your silence that your are guilty". This would abolish the absolute right of a suspect to keep silent. It would add enormously to the pressure upon vulnerable and inarticulate people in custody at the police station, and make it more likely that they would make false confessions. The Broadwater Farm trials show that people detained in police stations need *more* protection from the law, not to have one of their few rights taken away. The Inquiry therefore recommends that the right of silence is retained.

The Length of Detention

6.9 The Police and Criminal Evidence Act provides a much stricter code than existed before governing the length of time over which an arrested person may be detained in the police station. In summary, detention may last for 36 hours after reception at the police station. Then a Magistrates' Court may issue a warrant of further detention for up to 36 hours. On a second application the Magistrates' Court may issue a further warrant for a period which does not exceed 96 hours in all from the time of reception into custody. This procedure would have been of value to the Broadwater Farm arrested people, if it had been in force at the time, for it would have enabled them to have a review of their detention, and access to legal advice, after 36 hours.

6.10 However the Police and Criminal Evidence Act did not make any change in the law which allows Magistrates to grant a remand into police custody for successive periods of 3 days, instead of the usual procedure whereby a defendant is either remanded into prison or released on bail. As has been shown above, the power of the Magistrates to remand into police custody worked considerable injustice. The rationale of allowing remands into police custody is that there are cases where defendants who have already been charged are prepared to give a mass of information to the police which cannot be obtained in the time limits available. But the danger is that the power to remand will be used, as it was in the Broadwater Farm cases, to enable the police to go on interrogating a suspect after the normal permitted period has expired.

6.11 The Inquiry notes that if a person who has been charged is genuinely wishing to give further information to the police, there is nothing to prevent the police interviewing that person in the remand prison. The procedure in a remand prison is that if a prisoner wishes to see a visitor, he or she may do so. Accordingly, the Inquiry recommends that the power of a Magistrates' Court to order a remand into police custody be abolished. Pending any change in the law the Inquiry recommends that Magistrates' should not exercise that power.

Information to Families

6.12 In its first report the Inquiry reported on the anguish which had been suffered by families, where a son, brother or

husband had been arrested, and the relatives were given no information by the police as to where he was. Indeed there appears to have been a deliberate policy to remove arrested people to a variety of police stations, and to give out the minimum of information as to where they were. The Inquiry finds this to be inexcusable. However serious the offence being investigated, those close to the arrested person have the right to know where he or she is. Since any relatives making enquiries of the police will know that the person who has been arrested, there can be no reasons of security preventing that information from being given. The Inquiry wonders whether in reality the secrecy was designed to spare the police the embarrassment of having solicitors and relatives coming to ask to see the arrested person. The Inquiry recommends that in future, particularly when a large number of arrests are being made, an information network is set up to inform families about the fact of the arrest, the place of detention, and the details of any court appearance.

Legal Representation

6.13 As to the quality of legal representation, the Inquiry has no basis for criticism of the performance of barristers and solicitors in their handling of the cases. However, the Inquiry does recommend that solicitors and barristers do more to inform and explain to clients and their families exactly what is going on during a trial. Several relatives told the Inquiry that they were bewildered by the world of the law into which they were suddenly thrust. It should be noted that although lawyers have a duty of confidentiality to their client, it is quite permissible - with the client's consent — to explain the case to concerned relatives, and to a Defence Campaign which is trying to inform the outside world about the issues.

Disciplining of Police Officers

6.14 It is clear that police officers in many cases broke the rules during the Broadwater Farm investigation. In one case — the treatment of the juveniles in the murder trial — their breach of the rules was recognised and criticised by the court, and this had led to an investigation. In all the other cases it seems unlikely that any disciplinary proceedings will happen. The Inquiry recommends that the Police Complaints Authority review all cases where there are allegations that the rules were breached, and particularly cases where arrested persons were improperly denied access to a solicitor. Such a review would be

possible, even in the absence of a formal complaint, if there was a reference from the Commissioner of Police to the Police Complaints Authority. The Inquiry further recommends that all those responsible for disciplinary proceedings against officers who have broken the rules, including those officers responsible for the oppression of the juveniles B and C, should invoke their powers seriously, and should regard such conduct as a very serious case of disciplinary misconduct.

The Choice of Charges

6.15 A significant feature of the Broadwter Farm cases was that a policy was adopted by the police to charge everyone who was alleged to have taken a part in the disturbances with "affray" or in a few cases "riot". The Crown Prosecution service evidently approved this policy. But in earlier disturbances, such as Brixton in 1981, a quite different policy had been followed: alleged participants were charged with "threatening behaviour" in the Magistrates' Court, unless there was evidence of a specific act such as using a petrol bomb or causing injury. As a result sentences were much lower and trials were held more quickly. The Inquiry deplores the blanket use of affray charges, especially against juveniles and young people. They have created great bitterness, and are unlikely to have prevented future acts of rioting. The Inquiry recommends that if there are future disturbances of this kind the use of heavy charges in the Crown Court should be strictly limited.

Procedure at Trial

6.16 The Inquiry has drawn attention to the injustice which was caused by each accused person being tried singly in the vast majority of cases. It would have been fairer to the accused and given a more complete pricture to the jury, if cases involving the same investigating officers had been dealt with in a joint trial. It can happen that so many people are tried at the same time that it becomes too burdensome for a jury; but there would have been no difficulty in taking together the cases of up to 5 or 6 defendants. The Inquiry recommends that the court rules be changed, so as to allow for the judge to order a joint trial of a number of defendants, if either the prosecution or the defence so apply, if the judge considers that it would be in the interests of

justice to do so. At present under the law only the prosecution can take the initiative in trying defendants together.

6.17 The decision whether to admit evidence obtained in disputed circumstances rests upon the trial judge, interpreting the criteria laid down in Section 76 of the Police and Criminal Evidence Act (quoted at 5.33). If applied strictly, the provisions of Section 76 would be a real protection against oppression and against threats and inducements being made to the police to vulnerable suspects. The Inquiry is concerned that in these trials the provisions were only used in the cases of two juveniles. The Inquiry urges judges to show more awareness of the appalling pressures suffered by defendants in isolation in police stations, and to make regular use of their powers under Section 76 whenever confessions have been obtained without legal advice after long periods of interrogation.

Compensation for People Acquitted

6.18 Finally, the Inquiry notes that there is no compensation available as of right to the 26 men who were completely acquitted in the Broadwater Farm trials. In order to obtain compensation from the court, they would have to prove that the prosecution against them was instituted maliciously and without reasonable or probable cause — a heavy burden of proof which the defendants in this case would be most unlikely to discharge. Britain is virtually alone among European countries in not having any statutory scheme of compensation for people acquitted. It is clear from the evidence given to the Inquiry that the suffering experienced by those men, in loss of liberty, stress, insecurity, family upheaval, the inability to plan their futures, and direct financial loss was very severe. The Inquiry recommends that a statutory scheme of compensation for acquitted defendants be set up, and that meanwhile ex-gratia compensation be given to the 26 men who were acquitted in the Broadwater Farm trials.

PART 2