

Select Committee on Environment, Transport and Regional Affairs
Minutes of Evidence

Examination of Witnesses

MR DAVID BERGMAN AND DR GARY SLAPPER
Centre for Corporate Accountability

TUESDAY 2 NOVEMBER 1999

Chairman

193. Good morning, gentlemen. Welcome to the third session this morning. Could I ask you to identify yourselves for the record please?

(Mr Bergman) My name is David Bergman, I am the Director of the Centre for Corporate Accountability. Dr Gary Slapper is on our Advisory Council and is a Director of Law at the Open University.

194. Do you want to add anything to the memorandum you sent in?

(Mr Bergman) Just a couple of short introductory remarks which might help clarify a couple of things. First of all, we would like to say that our comments and criticisms are primarily about the structure of the Health and Safety Executive and the lack of resources and the procedures and practices of the Health and Safety Executive rather than of the Health and Safety Executive inspectors themselves. The second point is the importance of distinguishing incidents where an inspector might come to a workplace and discover breaches of health and safety law but no death or injury has taken place, and the incidents where a death or major injury has taken place and the Health and Safety Executive inspector comes to investigate. In the first incident, the criminal law might have a very limited role because the absolutely key thing is to ensure the prevention of death or injury. In a situation where death or major injury has taken place, although it is important to ensure there is no recurrence and those dangerous conditions are improved, there is also an important issue about moral justice and accountability.

Mr Oler

195. You have got the word "accountability" in your centre's name, Mr Bergman, can I ask whether the figures you have produced about the HSE's failures—and you have painted a fairly shocking picture about this—have been independently validated by anyone?

(Mr Bergman) The statistics are raw material which we obtained from the Health and Safety Executive and which we had analysed, so these are statistics not that we have made up but—

196. Has somebody validated them so you are not taking them out of context?

(Mr Bergman) We are more than happy to provide you with the raw data so you can do the analysis yourself, but I can assure you these statistics are absolutely accurate.

Mr Cummings

197. What is the Centre for Corporate Accountability and how are you financed?

(Mr Bergman) The Centre for Corporate Accountability is a new organisation which has been in existence for four or five months and we bring together all the main players who have been involved in issues of accountability in relation to corporate activities—lawyers, academics and activists—and this is what the organisation is about. We are concerned with undertaking research, advocacy and in due course of time advice on these issues. We are funded by trusts—

Mrs Dunwoody

198. By whom?

(Mr Bergman) The funds we do have are from trusts.

199. But you are a full-time employee, are you?

(Mr Bergman) Yes, I am. We are at the moment in the process of seeking more substantial funds and the funds we do have are from a trust called the Ante Trust. We are a completely independent organisation.

Mr O'ner

200. Can you explain who the "activists" are? You mentioned "activists" in your answer to Mr Cummings.

(Mr Bergman) By the word "activist" I simply mean people who have been involved in concerns about hazards and health and safety and corporate accountability over the years but may not be academics and may not be lawyers.

201. I know you have sent your evidence in but perhaps you could explain for the record why you think the HSE has such a low prosecution rate?

(Mr Bergman) Just to clarify, after major injury the HSE only prosecutes 10 per cent of major injuries it investigates and 20 per cent of deaths it investigates.

202. They are fairly alarming figures, but if you look at the Crown Prosecution and their two tests, one is that there has to be adequate evidence of the offence and, two, that the prosecution should take place. Have you analysed those figures to see whether there was adequate evidence of an offence taking place?

(Mr Bergman) What I can say about that is this: all these studies undertaken by the Health and Safety Executive and independent studies, including a study by Dr Gary Slapper, indicate that about 70 per cent of deaths are the result of management failure, and you would expect a proportion similar to that to result in a prosecution. A study done by the West Midlands Health and Safety Advice Centre also supported that Health and

Safety Executive Study. So there is a clear divergence between what studies indicate prosecution rates should result after investigations into deaths and major injuries and what actually does take place.

203. Are you really saying that the HSE is so unprofessional that it cannot separate its preventative work from its injury and death investigations?

(Dr Slapper) As Mr Bergman said in his opening remarks, we are not here to make any allegations of unprofessionalism or personal incompetence—

204. You have made that point but you have put some corporate irresponsibility on to the HSE.

(Dr Slapper) Structural inability to perform in that way.

205. That is a nice lawyer's term.

(Dr Slapper) Six from ten[1] major injuries are not even investigated. If that corresponding deficiency was present in the playground or street corner, if it became evident that serious injuries were inflicted on children in the playground or on citizens in the street and were being uninvestigated at that rate of 60 per cent[2], that would be regarded as structurally inadequate.

206. Why are they not investigated?

(Dr Slapper) We can present evidence for that, although that is a question which really needs to be put at the door of the Health and Safety Executive.

207. What is your view as to why they are not being investigated? Is it because people who have been injured do not press it forward?

(Mr Bergman) The key issue here is about a lack of resources that are available to the Health and Safety Executive so that it does not have the ability to investigate more than 11 per cent of the major injuries that are reported to it. Also, a failure of the Health and Safety Executive to recognise the significance and importance of investigating these incidents, first of all to ensure that they do not take place again but also to ensure that any criminal offences that may have been committed by the companies and company directors are discovered and prosecuted.

208. I need to get it right in my own mind because it is impossible to inspect and police every property or every factory within the UK. Self-inspection works. What I am concerned about is if someone is doing self-inspection with proper health and safety reps and something occurs, a serious injury or a death results from it, are you telling me that health and safety representative cannot go direct to the HSE and expect the HSE to prosecute?

(Mr Bergman) That is exactly the case. The company is under a legal obligation to report that injury. In our statistics we talked about the most serious injuries, the major injuries. The company has a duty to report that major injury to the Health and Safety Executive. The Health and Safety Executive will then decide amongst those injuries that have been reported to it which ones it investigates. The only criteria it uses is information that the company provides.

209. Do they use it, do they prosecute as well? Do they have to investigate before they can initiate a prosecution?

(Mr Bergman) Absolutely because they have got to discover the facts of the case, whether or not it was simply an "accident" as we really understand the word "accident" or whether or not it was as a result of criminal conduct. Without that investigation there can be no prosecution. Failure of the HSE to investigate 90 per cent of major injuries is calamitous.

210. You think there should be a separate body that will do the prosecutions and that body that does the prosecutions should delegate down to the health and safety reps within those places where the accidents occur?

(Mr Bergman) Not really. What we are arguing is that within the Health and Safety Executive there should be an administrative division so that on the one hand you have inspectors who undertake preventative inspections. They are the ones who go around to the workplaces and find out whether or not there are breaches of health and safety law. Those inspectors give advice, they give oral and written advice, they impose an improvement notice, they impose a prohibition notice and in the odd situation they prosecute. That should be one set of inspectors. On the other hand there should be a different set of inspectors in an administrative way, and they may move between the two, whose sole function is the investigation of deaths and major injuries. The reason for that is that those inspectors require a different set of skills, forensic skills, and they need to have time and resources to be able to undertake those investigations. At the moment, because they are merged, an inspector who is conducting an investigation knows he has got ten other inspections to do that week and, therefore, either that investigation does not take place or the rigour of that investigation is compromised.

Mr Donohoe

211. You argue that the HSE inspectors are less than competent at prosecuting cases in the courts. Why do you argue that?

(Mr Bergman) The Health and Safety Executive should be contrasted with the Environment Agency and local authority Environmental Health Officers. Just to confirm our evidence, I spoke to both the Environment Agency yesterday and the Institute of Chartered Environmental Health. If you take the Environment Agency first, they told me that no Environment Agency inspector undertakes prosecutions. In each region there is a legal group and there is a legal prosecutor. There are lawyers who undertake the prosecutions. The Environment Agency inspector might be a witness in court but they do not take the prosecution. It is exactly the same case for Environmental Health Officers.

Chairman: Jobs for lawyers.

Mr Donohoe

212. You would say that it is jobs for the lawyers. Is this the hidden agenda as far as your trust is concerned? Virtually all of your members have some kind of attachment to the law.

(Mr Bergman) That is not quite the case. On that point, just to sting it right at the beginning, the lawyers who are involved are basically civil law lawyers so they would not be involved at all in prosecutions undertaken. The HSE inspectors do not have the competency because that is not their expertise. The criminal justice system operates in every other sphere through the use of lawyers.

213. No, they do not, not in industrial tribunal courts.

(Mr Bergman) In the criminal justice system. Here we are talking about prosecuting in a magistrate's court.

214. Just to diversify for a second, would you argue as a trust that it should be the case in industrial tribunals, for instance, it should only be lawyers who prosecute cases?

(Mr Bergman) To be honest, that is not our expertise.

215. That is the comparator.

(Mr Bergman) It is not a comparator actually. We are talking about the criminal justice system and the serious crimes that either go to the magistrate's or the Crown Court. Earlier in discussion with other witnesses you talked about fines. There are lots of other reasons but one of the reasons why there are low fines is that a high percentage of death and injury prosecutions take place in the magistrate's court. Although it is up to the magistrate to decide whether the case gets referred to the Crown Court, the HSE inspector's assertions in court are absolutely crucial. We believe that these statements to the court should be made by lawyers.

216. Surely that is lack of training on the part of the HSE to their inspectors? That is nothing to do with the fact that you need to be a lawyer to be able to prosecute cases.

(Mr Bergman) When we talked to the Environment Agency and the Institute of Environmental Health Officers they could not believe that HSE inspectors do the prosecutions. They said they would never allow one of their inspectors near a court, that is not their expertise, they are not lawyers, they are expert health and safety enforcers.

217. You do not need to be a lawyer to prosecute a case.

(Mr Bergman) I suppose our argument is that—

Mrs Dunwoody

218. We are always very gullible in this Committee and we accept everything everybody tells us but you do have quite a lot of high powered lawyers who make a lot of money out of cases which are prosecuted. I am sure this is just coincidental. What we are really asking you is why do you think that the extra involvement of lawyers will make that much difference? It seems to me that you are arguing, on the one hand, for a set of

people who are better trained at inspecting but, on the other hand, when they get to a certain point all their responsibilities should be handed to the lawyer. Or are you insisting that lawyers should enter from the beginning without any health and safety training and take over the case?

(Mr Bergman) I think Gary has got a point. In the normal course of events when it is a road traffic incident, when it is any other crime, you have the investigators who do the investigation and they pass that information on to the Crown Prosecution Service. There was a time, of course, when the police did their prosecutions but it was thought appropriate that you had an independent body that undertook the prosecutions. What we are arguing is that lawyers who are trained as prosecutors, that is what we are saying, should undertake this work which only they are competent at.

Mr Donohoe

219. If this was to be employed would this not be an additional drain on the HSE's resources and because of that they would not be able to do half of the work that they do just now because all of that resource would be going to professional lawyers who would be picking up £1,000 a day in the court?

(Dr Slapper) If the debate is restricted by the notion that we are looking at an institution with a defined budget and different ways of apportioning that budget then I think it is fair to say that the Centre and people attached to it would immediately make the observation that any move towards the heightening of criminal justice focus by that institution would correspondingly diminish the resources being spent on—

Mrs Dunwoody

220. That is not the basis on which the conversation is being carried out.

(Dr Slapper) I am sorry. Mr Donohoe was saying if there was a greater focus.

221. He was asking if that is not the reason why you are prosecuting this particular case, which I think is quite a valid question to ask.

(Mr Bergman) Can I just take you up on the point you have made. In fact, it is a waste of time for the Health and Safety Executive inspector to be involved in organising the prosecution case, it is a job for lawyers.

Mr Donohoe: I had this job as a trade union official who took more industrial cases than any lawyer ever did in Scotland and was more successful than any of them. I do not accept that lawyers are better placed in these kinds of courts.

Mrs Dunwoody

222. Shocking advertising.

(Mr Bergman) This is not "these kinds of courts", this is ordinary courts of the land, the criminal justice system and the criminal law. That is really important to recognise.

Mr Cummings

223. Could I press you on this one. Who prosecuted in the case of the Southall train disaster?

(Mr Bergman) That was an initial prosecution by the Crown Prosecution Service and then when that prosecution failed, the Health and Safety Executive undertook the prosecution.

224. They hired lawyers?

(Mr Bergman) Because it went to the Crown Court they hired lawyers, exactly.

225. I understand where the gentlemen are coming from, Chairman, but, quite frankly, if you are up against high powered lawyers, as you would have been in the case of Southall because of the enormous sums of money involved, you would want the best possible brief and perhaps someone in the Health and Safety Executive could not have done it. Are you suggesting that there should be a Health and Safety Prosecution Service for instance?

(Mr Bergman) I think one should look at the way the Environment Agency does it. It is quite a parallel organisation and it is a new organisation that has taken on modern ways. They have their own internal expert lawyers who undertake the prosecutions and they are prosecutors within the Environment Agency. In very important cases they go to the Crown Prosecution Service but basically they have their expert lawyers in house. That means that they do the prosecutions which they are expert at.

Chairman: I would not press this too hard because the Committee is about to look at the Environment Agency and I am not totally convinced that the Committee is impressed with their prosecution record.

Mr Donohoe

226. Can I just ask a nice sympathetic question of you. How should the law be changed to enhance corporate accountability?

(Mr Bergman) There are a number of important changes that are possible. The first key change that we would argue for is for the law to be changed to impose safety duties upon directors. At the moment safety duties are imposed upon employers who are generally companies. That allows directors to escape accountability and also not to have clear responsibility for safety. Ensuring that just as directors have fiduciary duties and financial duties that they also have very clear cut safety duties, that is one thing. The second thing is an amendment to the Health and Safety at Work Act. We talked about the possibility of imprisonment. At the moment if a director is prosecuted, and as our evidence shows between 1996-98 of 47,000 major injuries and 500 deaths not one director or manager was prosecuted, if they were prosecuted and convicted the law does not allow them to be imprisoned unless they committed four particular technical offences like breaching a prohibition notice or using explosives. Under the normal offence that they would be prosecuted for they could not be imprisoned. We believe that as with the environment legislation and other regulatory legislation there ought to be the power to imprison. Secondly, there needs to be change to the principle underlying the law of corporate

manslaughter. That has already been discussed in terms of whether or not there should be a new offence of corporate killing. The Law Commission produced a report in 1995, the Government said that it was going to enact that legislation. There are possibilities that it may be in the Queen's Speech, I do not know. Clearly there needs to be reform to the law of corporate manslaughter so that it is easier to prosecute a company for manslaughter. Then there are a number of sentencing reforms that we would argue for. The need to have proportionate fining is one. That would mean that the fines are clearly proportionate to the wealth of the company. In brief those are the sorts of reforms that we are interested in.

227. So you would want a fine to the company, not to the individual?

(Mr Bergman) We believe that when an investigation takes place there should be an investigation into the conduct of the company. If there is evidence discovered which allows for a prosecution against the company the company should be prosecuted. When there is evidence against the director or the senior manager then the director or senior manager should be prosecuted, as is allowed under the current law. The appropriate sentences should be imposed depending upon whether the company or the director has been found guilty and convicted.

228. You would jail directors and maybe even foremen in companies if they were held responsible, it would not necessarily be the director of the company, would it?

(Mr Bergman) I missed that, sorry.

229. Responsibility passes right down the chain as far as the health and safety statute is concerned. How far down the line do you go, to the foreman, to the charge hand in terms of the person who goes to jail? If they are found to be culpable are they the ones who go to jail, are they the ones who are fined?

(Mr Bergman) I think Dr Slapper has a comment but just to comment on that. First of all, we think it is very important that clear cut safety duties are placed upon directors so that investigators start at the top of the company and they discover whether the director has carried out his or her responsibilities properly. Occasionally you get situations where, for example in a train crash, at first instance it looks as though the train driver might have been the cause of the disaster. In a situation where that takes place and where that worker has been placed in dangerous conditions by poor management of the company we do not think that it should be in the public interest for that worker to be prosecuted.

Mr Brake

230. You advocate a naming and shaming policy to highlight companies that have a very bad safety record. Can you explain how this would work?

(Mr Bergman) As you know, the Environment Agency started a naming and shaming campaign earlier this year. They did that through the use of fines. Basically they added up all the fines that were imposed upon different companies and they did the top ten. We do not think that is necessarily the right way to go about it. We think the way it should work is by looking at the number of offences that are committed by a company or a corporate group committed in a period of one year or a five year period. That would be one way in

which a naming and shaming policy could work. Each year you would produce the ten companies that had been convicted of the most health and safety offences.

231. So it would be the number of convictions rather than the seriousness of the convictions that you would be measuring?

(Mr Bergman) You could make it even more precise. It is difficult to do because the health and safety offences themselves do not distinguish between the seriousness. Obviously if a company is being prosecuted for manslaughter and another company is being prosecuted for health and safety offences you can grade them but generally all health and safety offences are of equal importance.

232. Would you envisage naming and shaming individuals within those corporations?

(Mr Bergman) That is not our policy, no.

233. Finally, do you have a league table in mind already after your four or five months in operation and would you like to name the companies who are in the top ten currently?

(Mr Bergman) We have not done that. You may be aware that the Channel 4 *Dispatches* programme did try to do that over a ten year period. The corporate group that had the most convictions over a ten year period was Tarmac plc. I am sure that I could give you the information on the other ten.

Mr Brake: I would like that.

Mr Olnier

234. Briefly on this, in any league table it is only going to be 30 per cent accurate, is it not, because you told us earlier that 70 per cent of things go unprosecuted?

(Mr Bergman) It is difficult to work out an objective test. It seems to us that convictions, where a company has been convicted of a criminal offence, is an objective test. You could also do a league table of prohibition notices and improvement notices. Those are other options. We do think it is important that the Health and Safety Executive does have a naming and shaming policy because it has an impact upon deterrence. If I can just quote, in an Environment Agency report from its press officer to the Environment Agency's Board, it said: "What is particularly striking is the extent of broadcast coverage, both nationally and regionally, which is probably the greatest media impact the Agency has achieved in a single story". That was the result of their naming and shaming policy. They thought it was very effective and I think the Health and Safety Executive would also find it is very effective.

Christine Butler

235. Could I take you back to your main thesis and that is accountability of directors of a company. Could I ask you if you feel that the Health and Safety Executive pay enough attention to the way companies deploy staff? Not what is written on a piece of paper in terms of their conditions of service or how they must manage machinery, but in all the duties that staff have to do and their hours of operation in doing it? My problem with you

is you seem to be looking toward prosecution, what about a preventative role here in addressing the responsibilities of the company directors? Do you think there is a serious flaw there in the work of the Health and Safety Executive, and if there is how could it examine companies and really look at this issue?

(Mr Bergman) I just have to say that I accept that prevention is absolutely key but I have no particular expertise in that area so I do not think that I can give you an answer.

236. How do you think that the record of reporting accidents to the Health and Safety Executive could be improved?

(Mr Bergman) I think that it is another scandal, if I can just use that word. As you know, only 40 per cent of major injuries that actually do take place are reported to the Health and Safety Executive. Although there are a number of other ways that could ensure that those numbers are significantly increased, they are not being used.

237. What are those ways?

(Mr Bergman) At the moment the obligation is on the employer to report the injury to the Health and Safety Executive. Obviously the company, although they are legally obliged, has a vested interest in not reporting that injury to the Health and Safety Executive. The Health and Safety Executive should be encouraging workers, trade unions, lawyers, doctors, maybe insurance companies, I do not know how that would work out, all other bodies within civil society who could ensure that injuries are reported to the Health and Safety Executive rather than simply relying on employers.

Mr Cummings

238. Can you explain why the Health and Safety Executive's enforcement seems to be so very patchy in different parts of the country?

(Dr Slapper) The evidence that I have garnered and looked at suggests that difference is attributable to resources and the way that they are deployed locally, so there would be varying roles and the centrally determined policy within the Executive, the way that translates to action within any given field team, varies and also varies according to the nature of what it is that is being investigated. Some parts of human work are easier to investigate and to determine the cause of an accident than others. In certain parts of agriculture, for example, it is easier physically and it takes less time to go to a site and to determine the cause than in some much more complicated parts of work areas.

239. Are you saying that it is basically left up to the regional directors or area directors rather than have guidance from the centre?

(Dr Slapper) There is guidance but in translating that into action operational decisions are made which account for that variation.

240. How do you believe that this variation could be addressed?

(Mr Bergman) I think one problem is that the Health and Safety Executive itself—I know you will find this hard to believe—does not even know about these variations. This particular analysis on a regional basis and on an industry basis the Health and Safety Executive has never done before. That is my understanding from having talked to people

there. So until there is first of all a recognition that there is a real problem, that there are these enormous disparities between one industry and another industry, say for example for an agricultural worker it is five times more likely their injury is investigated compared to a miner, until the HSE recognises that they cannot actually deal with it.

Mrs Ellman

241. You compare the HSE's response record with that of police responses to serious injuries, why do you make that comparison?

(Dr Slapper) Paragraph 11 of our evidence here picks up the point that only 40 per cent of amputations were investigated between 1996-98. It is an alarming figure. Sixty per cent of amputations are not investigated. We are not in a position then to really judge what the cause was or what level of blame there was or where it lay. Potentially, of course, that is comparable to what the rest of English law recognises as a serious crime. If you expose a fellow citizen to risk of injury in a way which the law regards as reckless then you can end up, as hundreds of people are, in jail for that. If you do the same thing in the course of employment or commercial activity, in other words if you expose someone to the same level of risk, because of the context in which you are doing it it becomes more excusable in a sense that society at the moment has not put the resources into examining what the causes of amputations are in six out of ten cases. What shows all the superficial evidence of being a serious crime is not taken any further. It is the same with manslaughter. Since 1965 25,000 people have been killed at work or in commercially related circumstances and of those 25,000 only five cases, that is zero five, have been followed by manslaughter prosecutions, of which only two were successful. It is an infinitesimal follow-through by the apparatus which is charged with labelling a crime as a crime, if I can put it that way. That seems to be central to this general concern. It is not the blood thirsty pursuit of people for its own sake. I noticed that the representative who gave evidence earlier, Mr Tudor, following an observation by—

Mrs Dunwoody

242. Who is one of your members I see.

(Dr Slapper) Following an observation about corporate manslaughter from Mrs Dunwoody said that he would want that to be a crime but he said "I would not want lots of employers to go to jail for that". I think that is a highly prejudicial remark.[3] I do not want lots of employers to go to jail. I do not want anyone to go to jail. The fewer people that society has in jail the more healthy that society is. I am not in favour of sending people to jail as a general principle. I want to highlight the inconsistency that there seems to be between labelling one type of human behaviour which exposes human beings to grossly negligent risk of death, which it categorises as a crime and puts thousands of people in prison for, and the same level of exposure to risk about which it does nothing, as is testified by the fact that only two prosecutions have followed from 25,000 cases potentially of corporate manslaughter.

(Mr Bergman) Can I follow specifically on one of the points. A major injury on the road, that could just be an accident, a total accident, in the same way as a major injury at work could be.

243. I did not think you accepted the concept of an accident.

(Mr Bergman) I am using inverted commas.

244. Quotes "accident".

(Mr Bergman) Until they are investigated you do not know what they are. The police obviously acknowledge that and recognise that because they have a system to investigate every major injury on the road. They will only prosecute those where there is sufficient evidence to indicate due lack of care but they will prosecute those when they have evidence. It is a very clear comparison.

Mrs Ellman

245. Where does your figure come from, this very low level of investigation of very serious matters?

(Mr Bergman) The statistics which are aggregated in our report to you are initially from raw data that we obtained from the Health and Safety Executive. So in terms of the Health and Safety Executive data, that is from the Health and Safety Executive. In terms of the police, that is through looking through the Audit Commission. For example, we found out that 15 police forces have a policy of attending the scene of every major injury on the road within 20 minutes. Now, as we know, the Health and Safety Executive does not investigate most of those. It is a very interesting comparison.

Mr O'ner

246. There are more policemen than there are inspectors.

(Mr Bergman) Absolutely, it is resources. It is a resources issue but it is also a mind set issue.

247. We are going to have an industrial workers' police force, are we?

(Mr Bergman) We are arguing for proper resourcing of the Health and Safety Executive.

248. Just a quick one because the witnesses have been in throughout all of this evidence session. The picture you paint of UK industry and its lack of safety is slightly different from the evidence we received from John Monks, the General Secretary of the TUC. Do you not agree with his evidence?

(Mr Bergman) I think what is important is that the statistical evidence that we have is mutual evidence[4]. Ask the Health and Safety Executive to corroborate, they will not find anything wrong with this evidence. If you think that the way we are portraying it is as you suggest then that is because the statistics portray it as so. The fact that there are so few investigations and prosecutions is a reality unfortunately.

Chairman

249. The point made earlier was that the health and safety record in this country is better than in most countries within the Common Market.

(Mr Bergman) There are two points about that. The fact that we are better than even the worst records in other countries is something that we cannot be complacent about. That is one point. Secondly, we are talking about injuries and deaths that do occur and the lack of accountability that takes place in relation to those, not other injuries that could take place. We are talking about the reality of injuries and deaths that do actually take place in this country.

250. But if there were more prosecutions have you really any evidence that those numbers of accidents and injuries would drop dramatically in the future?

(Mr Bergman) I think it stands to reason that if I was a company director or a company and I knew that I could get away with nine out of ten major injuries that took place in my company in the sense that they would not be investigated and, therefore, I would never face the possibility of prosecution, I would be complacent. There is no deterrence in the system, there are no sanctions. I think that the key statistic here is that within 1996-98 there were 47,000 major injuries, 500 deaths, not one director or senior manager prosecuted. Forget manslaughter, forget grievous bodily harm offences, just for health and safety offences. When you know that in any situation you are not going to have any sanction against you then where is the deterrent? In the rest of the criminal justice system it is an ordinary principle, you need sanctions to deter criminality. Companies are the more deterrable forms of offenders because they are driven by a profit motive.

251. You have made very strong criticisms, you are suggesting that more resources are needed. Is that enough or is it really that the Robens tripartite system of health and safety in this country is not working?

(Mr Bergman) Clearly resources are inadequate. I am sure when the Health and Safety Executive comes to see you in a few weeks' time they will say "well, we have to undertake preventative inspections", and they do have to undertake those. They will say "if we do that, we cannot therefore do investigations". If you want to increase investigations, if you see that as an important function of the Health and Safety Executive they need more resources. Clearly they also need to have a whole different mind set and attitude. They have got to recognise that in certain situations after a death or injury criminal justice and accountability are important, that the victims of those incidents demand it and society also requires it. In terms specifically of Robens, I do not think we have got many comments particularly about the tripartite arrangements, that is really not our expertise. What is clear is that the conclusions of Robens were based upon empirical evidence that was rather flawed even at the time and has now been overtaken by evidence that indicates it just has no bearing. Its main conclusion was that criminal law was an irrelevancy and we would argue that just does not bear up to any of the information that is currently available today. The other key failing of the Robens Report was that its critique of the criminal law—which was that it is time-consuming and what is far more important is to ensure that HSE inspectors spend their time on preventative inspection, on making sure that death and injury does not take place—is absolutely right in relation to

general breaches of health and safety law, in those situations the criminal law is not relevant. What it failed to do was distinguish those situations from a situation where death or injury had taken place.

Mrs Dunwoody

252. Do you see this new function as the lawyer being avenger, is that what you are suggesting?

(*Mr Bergman*) Just very quickly before my colleague—

Mr Olnier

253. Jumps to your defence.

(*Mr Bergman*) Lawyers run the criminal justice system. We are not arguing that lawyers should have any extra roles that they do not have now. First of all, what we are basically arguing for is enforcement of the criminal law. We are not asking for vengeance. We are just arguing that companies ought not to be immune from the criminal law in the way that they are. Why should this one form of defendant be immune from investigation and prosecution? All we are arguing is that the law should be enforced.

(*Dr Slapper*) If I can reply on this point about the need to have it recognised as a crime even though the record of the United Kingdom in Europe or the wider setting of the world is a very good one comparatively. Of course, that is no comfort to the hundreds, or I should say more accurately thousands, of relatives and bereaved people who are left in a terrible state as a result of something which is largely inexplicable. We sit here at a time after recent incidents where this has been graphically brought home to the British public, the complacency about safety on a wider setting and we have had some atrocious results. I spend a lot of time helping and advising bereaved people and trade union organisations in this and would never accept or ask for any money in return for it. As far as I am aware that same principle applies to everyone who is attached to this organisation. If I can take the opportunity to refute the suggestion that was made in broad terms earlier, I do not think there is any untoward motive by anyone attached to the organisation or in its wider setting by people who support the organisation. There is clearly a need for people with particular expertise in relation to something like the criminal justice system to carry the thing forward.

Chairman: On that note, can I thank you very much. Any comment that we have made is to get to the truth. Can I finally say to both yourselves and to the Pesticides Trust that it has been refreshing perhaps that whereas in the past we have often had a rather cosy relationship between witnesses and the Health and Safety Executive, you have at least given us something substantial to think about. Thank you very much.

1 *Witness correction:* One in ten.

2 *Witness correction:* 90 per cent.

3 *Note by witness:* If you agree to a new corporate manslaughter law, as Mr Tudor did, you cannot then prejudge how many people will be sent to jail under that law. The number jailed will depend upon the number of offences.

4 *Witness Correction:* Uncontestable evidence.

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