



# FACULTY OF ADVOCATES

27 May 2015

Ref: L01-7/WJW/GA

Mr Ned Sharratt,  
c/o Public Petitions Clerks  
Room T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP

## **CONSIDERATION OF PETITION PE1562 (Perverse Acquittals)**

Thank you for your letter of 29 April inviting me to respond to Petition PE1562 which calls on the Parliament to urge the Scottish Government to consider the need for trial judges to have the power to refer jury verdicts to the High Court of Justiciary in the event that the judge believes the verdict to be perverse.

I do not support this petition. The proposal runs counter to certain basic principles upon which our criminal justice deals with serious criminal charges. The system is predicated on two propositions: (1) that the Crown bears the onus of establishing guilt beyond reasonable doubt; and (2) that in solemn proceedings it is for the jury to assess whether or not the evidence which has been led has met the required standard.

The proposal would involve substituting one person's assessment of the weight and quality of the evidence (the trial judge's) for the collective view of the jury. Further, the proposed remedy is a referral to the High Court (presumably sitting as an Appeal Court), where the matter would require to be assessed by judges who had not heard the evidence and would be even less well placed to assess the quality of the witnesses than the jury.

The ultimate outcome would presumably be a retrial. This would undermine the finality which – with very limited exceptions – attaches to jury verdicts in our system. Finality is an important principle in this context. It is most important, in my view, that the police and

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prosecuting authorities know that they have a single opportunity to seek to bring home guilt.

I recognise that an appeal may be allowed on the basis that no reasonable jury would have convicted the accused; and that, in the context of the proposal to abolish corroboration, the Faculty has supported giving the trial judge power to withdraw a case from the jury on similar grounds. The position is not symmetrical because of the burden of proof which, properly, lies on the Crown.

**James Wolffe QC**