

# 英国刑事审判与检察制度

BRITISH CRIMINAL JUSTICE SYSTEM AND PROSECUTION SYSTEM

主编：王晋 刘生荣

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# 英国刑事审判 与检察制度

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Speakers (演讲人): Robin Booth (罗宾·布斯)  
Garry Patten (加里·帕顿)  
Len Higson (伦·黑格森)  
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# **British Criminal Justice System and Prosecution System**

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## ☆英国刑事审判与检察制度☆

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## **Speechs at the Opening of the Seminar**

### **Speech of Lord Justice Otton**

Good morning. I am Philip Otton, a Judge. I will introduce to you the participants in the seminar on the role of the Prosecution.

In any country the method in which the prosecution of offences against the criminal law is conducted is very important. In England and Wales, we have had a centralized, national prosecution service for some years. Originally, it was locally based with the police having direct access to solicitors for the purpose of presenting cases in court. A commission was established to explore whether this method was still appropriate, and the commission recommended that there should be a centralized system, to be known as the Crown Prosecution Service; the word "Crown" being synonymous with the word "state". It has a hierarchy headed by the Director of Public Prosecutions, and there are local area offices throughout England and Wales. The position in Scotland is quite different; Scotland has had a national prosecution service, the Procurator Fiscal system, for hundreds of years.

We are going to hear this morning how the Crown Prosecution Service operates in England and Wales. During this seminar we will also hear how Procurator Fiscal system operates in Scotland, where the role of the prosecutor has been markedly different from that in England.

## 在研讨班开幕式上的致词

### 奥顿大法官的致词

早晨好！我是菲利普·奥顿，一名法官。我将向各位介绍本检察职能研讨会的与会者。

在任何一个国家，对触犯刑法的犯罪提出起诉的方法都是很重要的。在英格兰和威尔士，我们建立集中统一的检察机关已经多年了。起初，检察机关是同地方警察机关对应的机关，为了向法院起诉，直接同沙律师联系。后来，我们成立了一个委员会来调查研究这种方式是否适当。该委员会建议，应当建立一个集中统一的检察院。这就是大家所知道的皇家检察院。此处的“皇家”是“国家”的同义词。皇家检察院是检察长领导下的检察系统，在英格兰和威尔士各地设有地方检察院。在苏格兰，情况大不相同：苏格兰具有一个全国性的检察系统，其历史已有几百年了。

今天上午，我们要听一听关于皇家检察院如何工作的介绍。在这次研讨会期间，我们还会听到关于苏格兰的检察机关如何工作的介绍。苏格兰检察官的角色同英格兰检察官的角色具有显著的差别。

I should now like to invite Mr. Wang Jin to say a few opening remarks, and I will then introduce the members of the British team. Before I do so I would like to say how pleased we are to be here. We regard it as privilege to be in China, and to be able to demonstrate to you face to face how our prosecution service works. But perhaps more important we are here to learn how you handle the prosecution of criminals. We accept there is no monopoly of wisdom. We have much to learn from you, and we hope that you might find something that we present in this seminar of interest and use.

### **Speech of Mr. Wang Jin**

Respected Lord Justice Otton, Ladies and gentleman.

First of all, I would like to extend warmest welcome to all British gentlemen on behalf of the procurators of China and on behalf of the Supreme People's Procuratorate of China.

We all know that Great Britain enjoys a long history of the rule of law and it has a highly developed legal system. Concepts, originating from Common law system, like the presumption of innocence, the right of silence and discretion, are adopted by many countries' jurisdictions. Compared with the British legal system, China also has a long history of law and an excellent history. We have formulated our own legal system including the prosecution system as the result of developments over thousands of years.

China's prosecution system has developed very fast since 1979, that is after the Cultural Revolution. The Prosecutor's Office of China faces a lot of new problems since the amendment of criminal law and criminal procedural law. New challenges facing the Chinese Prosecutors are the supervision of the prosecution and new trial methods as just adopted. For any legal system to keep its vitality, it is important to absorb the experiences of others and to

现在，我该请王晋先生致开幕词，然后介绍英方代表团的各位成员。在此之前，我想说，我们来到这里感到非常高兴。我们把来到中国并面对面地说明我们检察机关如何工作视为一种荣幸。不过，或许更为重要的是，我们来此了解一些有关你们如何开展刑事起诉工作的情况。我们认为，没有人能垄断智慧。我们想要向你们学习的东西是很多的。同时，我们希望，在这次研讨会上你们能够从我们所讲东西中发现感兴趣和有用的内容。

## 王晋先生的致词

尊敬的奥顿大法官，女士们，先生们：

首先，我很高兴代表最高人民检察院和在座的中国的检察官们向诸位英国绅士表示热烈的欢迎。

我们都知道，英国拥有悠久的法治传统和高度发达的法律体系。起源于普通法系的一些概念，比如无罪推定、沉默权、自由裁量权，被许多国家的法律所接受。同英国法律体系相比，中国也有着悠久而灿烂的法制史。我们业已建立的包括检察制度的法律体系，是历经几千年发展的结晶。

在文化大革命之后，即从1979年开始，中国检察制度的发展非常迅速。随着刑事诉讼法和刑法的修订，中国检察机关面临着许多新的问题。诉讼监督和刚刚采取的新的审判方式是中国检察官们面临的新的挑战。对于任何一个要保持其活力的法律体系来说，吸取他国的经验并基于本国的经验来发展，是很重要的。中国最高人民

build on its own experiences. The Supreme People's Procuratorate of China has given great emphasis to exchange with counterparts in other countries including the prosecution service in the United Kingdom. In 1994, when we were entrusted by the National People's Congress to draft the Prosecutors Law of China, we had invited prosecutors from other parts of the world including the prosecutors from The United Kingdom to help us. Later, the prosecutors — general from Scotland and England were invited respectively to Shanghai and Tianjin to give us their advice. In this January, The Supreme People's Procuratorate organised a group composed of young prosecutors to go to Scotland and to England, as well as to Northern Ireland, to study your judicial and prosecution systems. And in the latter half of this January, The Supreme People's Procuratorate sent another group composed of young prosecutors to Great Britain to study your experience in anti — corruption cases and also in the use of criminal evidence in courts. Over the past year, four prosecutors from different levels of the prosecutor's office in China studied in the United Kingdom. For example, Mr. Shang came back only last week from Great Britain.

The seminar on the prosecution service today symbolizes a new step in the cooperation between China and Great Britain in the prosecution field and law cooperation, so that we can learn from each other and both benefit. Lord Justice Otton and other members of the panel may have noticed that the audience present are all very young, but these prosecutors are all the backbones of the prosecutors office of all levels, and some of them have ever been to Great Britain. So the Chinese procurators will treasure this opportunity to share the experiences with you. Yesterday, we organised a tour of the British colleagues to the National Prosecutor's College and a local prosecutor's office. I think through these activities, our

检察院历来十分重视同包括英国在内的其他各国检察机关开展交流。1994年，我们受全国人大的委托，起草检察官法。当时，我们邀请了包括英国检察官在内的其他国家的检察官来帮助我们。在这以后，苏格兰的总检察长、英格兰的总检察长曾经分别应上海市人民检察院和天津市人民检察院的邀请，率领代表团来中国提供咨询。今年1月，最高人民检察院组织了一个青年检察官代表团到英国，对苏格兰、英格兰以及北爱尔兰的司法制度和检察制度进行了考察。1月下旬，最高人民检察院又派出了另一个青年检察官代表团到英国，学习你们在反腐败方面和刑事证据在法庭中的运用方面的经验。在过去的一年里，有四位来自中国各级检察机关的检察官在英国留学。张先生就是上个星期刚从英国留学归来的。

今天在这里举办的关于英国检察制度的研讨会，标志着中英两国在检察领域和法律合作方面迈上了一个新台阶。我们可以相互学习，取长补短。奥顿大法官和其他的英国朋友可能已经注意到了，在座的中国检察官们都很年轻，但是，他们是中国各检察机关的骨干力量，他们当中有些人曾经去过英国。中国的检察官们将十分珍惜这次与英国同行分享经验的机会。昨天，我们组织英国同行参观了国家检察官学院和一个基层的检察院。我想，英国同行们通过这些



British colleagues will have an initial impression or understanding of prosecution in China. I hope in the next two days, we will further our exchange and understanding. I believe this seminar will be crowned with success.

**Speech of Lord Justice Otton:**

Mr. Wang Jin, thank you very much for the compliments paid to us. It has not escaped the notice of my colleagues that our average age far exceeds the average age of the audience. But in Britain, and I believe in China, we believe that old men sometimes have a little wisdom to pass on to the young. May I also thank you for organizing the visit yesterday. I know from talking to those who were present that they found it a very interesting explanation, and it may be a useful way of setting foundation for this morning's discussion.

May I introduce first of all Mr. Garry Patten who sits on my left here. Mr. Garry Patten is the Assistant Director of Casework Services at the Crown Prosecution Service. He has the responsibility for commenting on the content of proposed legislation, and preparing casework, policy and operational guidance for all the CPS staff. He also co-ordinates the CPS's contributions to international initiatives affecting its strategic objectives, and reports to the Director of Public Prosecutions, who is, of course, the most senior prosecutor in our country. He represents the United Kingdom at the Council of Europe, and on the Committee for Experts on the Role of the Public Prosecutor.

Sitting next to him is Mr. Robin Booth. He is the second member of the English team. He practised as a private solicitor before joining the Crown Prosecution Service. He is now the Assistant Chief Crown Prosecutor responsible for the Fraud Division, which handles serious fraud and corruption cases. He has extensive training experience both as a lecturer and an organizer of training