

Courts of law and decision making

MISHAL HUSAIN: An Englishman's home is supposed to be his castle. It's a belief as old as the common law itself. But what can you do to lawfully protect yourself and your property from intruders? In August 1999 farmer Tony Martin heard intruders break into his isolated farmhouse in Norfolk. It wasn't the first time he'd been burgled but this time he was prepared to defend himself.

MICHAEL BUERK: Here a farmer has been charged with murdering a sixteen-year-old suspected burglar at his home in Norfolk. Tony Martin, who lives in a farmhouse near Wisbech is also accused of wounding a twenty-nine-year-old man with intent to cause grievous bodily harm. He'll appear before King's Lynn Magistrates tomorrow.

RICHARD BILTON: Forensic officers remain on site some three days after the shooting. The whole farm, its orchards and yards remain sealed off.

NORFOLK POLICEMAN: We are establishing, or we think we are establishing, what has occurred that Friday night out of Emneth. But it is a difficult enquiry. There are teams of officers not only in Newark but also here in Norfolk trying to piece together the clues.

RICHARD BOLTON: This is a remote area and people are distraught at the killing. Fifty-four-year-old Tony Martin lived on his own on his 350-acre farm. It's reported he'd been burgled twice before. The police were called to his home at just before midnight on Friday, but it was a further twelve hours before they found the body of sixteen-year-old Fred Barras. He was from Newark in Nottinghamshire and his family are devastated by his death.

FAMILY FRIEND: Fred was no, no model teenager, but all he'd done is like petty theft and whatever. He's never hurt nobody in his life. He's never, you know, he's never gone in intending to hit anybody or anything like that. And I know he shouldn't have been on that man's place. But in saying that, you can replace goods but you can't replace his life can you.

MISHAL HUSAIN: At the trial the court decided that Tony Martin had gone well beyond the common law concept of reasonable force in self-defence. He was convicted of murder. His sentence was life imprisonment alongside ten years for the wounding offence and one year for possession of an illegal firearm. So what does the law actually say about your right to defend your own property?

NEWSNIGHT REPORTER: It used to be on the side of the defendant. Sir William Blackstone, the eighteenth-century jurist and father of the modern law ruled: 'If any person attempts to break open a house in the nighttime and shall be killed in such an attempt, the slayer should be acquitted and discharged'. This all changed with the 1967 criminal justice act, which stated: 'A person may use such force as is reasonable in the circumstances in the prevention of crime'. In 1971 there was further guidance from the law lord, Lord Morris: 'If there is some relatively minor attack it would not be commonsense to permit some act of retaliation which was wholly out of proportion'.

CHARLES CADBURY: There is no legal definition of reasonable that I know of and having been at the Bar for eight years, I could never find anyone who would give a cut and dried explanation.

BOB MARSHALL-ANDREWS, MP: Well 'reasonable' is what a jury of twelve people believe collectively is reasonable. And that's the best possible test. And as to the state of mind of the person, all juries are told that that is an important consideration. You must take into account the mind of the person who believes himself to be under threat. In this case they plainly did and they came to the conclusion that what this man did was not reasonable.

MISHAL HUSAIN: So the law is open to case-by-case interpretation. And the legal outcome depends very much on the circumstances. A few months after the Tony Martin case, retired miner Terry Regan also caught an intruder in his home.

TERRY REGAN: Put these lights on, open this door and I heard a noise at me kitchen window.

RICHARD BILTON: What, somebody's over there?

TERRY REGAN: Yeah, somebody's in, somebody's in me kitchen. They climbed through this kitchen window and I found him hanging in, hanging through my kitchen window here. This one.

RICHARD BILTON: What did you do?

TERRY REGAN: Grabbed hold of his leg. I'm trying to get him in; he's trying to get away. I'm trying to get him in; his trouser leg split. I fell on the sink unit, picked a knife up and stabbed him.

RICHARD BILTON: So what was around? What did you grab for when you were -?

TERRY REGAN: This were the knife I used. It weren't actually this one, but it were very, very similar to this one.

RICHARD BILTON: So from nowhere this becomes a weapon that you find in your hand.

TERRY REGAN: It does, it does yeah. But it were also one I used for my supper the night before.

RICHARD BILTON: Did you threaten him with it or did you just, what did you -?

TERRY REGAN: Oh no, I didn't get the chance to threaten him. I'd no intentions of picking it up and stabbing him. But I were met with confrontation and I dealt with it as I saw fit. It were two minutes of madness what's changed his life for a long, long time.

RICHARD BILTON: Terry Regan was arrested and charged with grievous bodily harm. He'd stabbed the burglar five times. Had he crossed the line from self-defence to attack? But eventually the case was dropped. The Crown Prosecution Service decided they'd never get a jury to convict him. The burglar on the other hand got eighteen months.

MISHAL HUSAIN: So one man was never charged while another went to prison. What we're seeing is the ongoing development of the common law. A case-by-case process that emphasises precedent and established practice.