



*A qualitative study of social interaction in a magistrates' court.*

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**A qualitative study of social  
interaction in a Magistrates' Court**

**Gordon Read**

**A thesis submitted in partial fulfilment of the requirements of  
Sheffield Hallam University  
for the degree of Master of Philosophy**

**September 1996**

**Collaborating Organisation: Rotherham Magistrates' Court**





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# A QUALITATIVE STUDY OF INTERACTION IN A MAGISTRATES' COURT.

GORDON READ

## **Abstract.**

This thesis has explored the court from a dramaturgical perspective and has focused on the structure and procedural organisation, the power and influence indices and the individual and group roles and interactions, their aims and their conflicts.

The study has entailed the use of participant and non-participant observation but in particular a series of in-depth interviews. These involved magistrates, both lay and professional, Justices' Clerks, court clerks and a court usher, probation officers and advocates, both prosecution and defence. A certain amount of 'privileged' information has also been utilised during the research where this was considered to be both appropriate and ethical.

An unusual aspect of the study is that the researcher is also a magistrate, with a considerable number of years experience on the Bench, who made the decision to carry out the main body of his research in the courts where he adjudicated. It was recognised that he could be seen by the participants in the setting, not as an outsider carrying out a programme of research, but as an insider attempting to negotiate the dual roles of *insider-magistrate* and *outsider-researcher*. It is, therefore, not only a study of the procedures and the participants within the magistrates' courts but also the researcher's own conflicts and the methodology employed in trying to keep the two roles separate in order to carry out an objective piece of research.

The research findings suggest that there is considerable evidence to support the view that courtroom interaction, the organisation and the procedures often fall short of the abstract ideals of justice.

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## **INTRODUCTION.**

### **The Researcher.**

As a mature student in the late nineteen-eighties the researcher graduated with honours in Social Studies.

The researcher is also a magistrate of some considerable experience. He was appointed a Justice of the Peace on the Commission for the County of South Yorkshire in 1975. At the commencement of the study the researcher was a member of his Bench's Probation Liaison Committee and had been appointed to the Lord Chancellor's Local Advisory Committee. By the conclusion of the research he had also been elected a Deputy Chairman of the Bench, Chairman of the Bench Chairmanship Committee, Chairman of the Probation Liaison Committee and a member of the Magistrates' Courts Committee.

It was the combination of these two roles, those of sociologist and magistrate, which presented the researcher with the unusual, if not unique, opportunity to carry out an ethnographic study of the Magistrates' Courts both as an insider, and beyond his 'known world' of the Bench and the Retiring room into which he had been introduced and 'socialised'.

### **A synopsis of the study area.**

The court is a Petty Sessional Division Court located in a metropolitan borough in South Yorkshire. The town and its outlying districts have a population of around a quarter of a million people. The ethnic communities account for approximately 2 per cent of the total population and are mainly Asian in origin. The area has a high unemployment rate which, as a percentage of the working population, is well into double figures, this being due to the demise of the coal and steel industries upon which the economy of the area was largely reliant.

At the commencement of the study in the early nineteen-nineties, the Bench consisted of 139 lay magistrates on the active list. Of these 53 per cent were male and 47 per cent female. In terms of ages, 2 per cent were under the age of forty years and 69 per cent were aged between fifty and seventy years. In respect of their occupational groupings, 40.3 per cent were placed in the professional, managerial or self-employed categories, 12.2 per cent were either lecturers or teachers and a further 11.5 per cent were described as supervisors. Those who were described as either 'other grades' or 'other employees' accounted for 16.5 per cent. Those not in employment, all female, accounted for 19.5 per cent. (Retired employees were categorised by the occupations in which they had been employed immediately prior to their retirement). Two magistrates had been appointed from the ethnic minority groups, that is 1.4 per cent of the total. In an area which was overwhelmingly Labour in its voting behaviour, the Bench comprised of 41 per cent who were on record as supporting Labour, 36 per cent who had indicated on their appointment to the Bench that they supported the Conservatives and 9 per cent were aligned with the Liberal/SDP, the remainder were considered to have no particular political affiliation. In addition to the lay magistrates, the Bench also included a stipendiary

magistrate, a full-time, legally qualified magistrate who is normally a qualified solicitor and will have spent many years working in the magistrates' courts.

The staffing of the courts comprises of a Clerk to the Justices, who at this time was a qualified solicitor and who also acted as a deputy stipendiary magistrate in other courts. The Deputy Clerk to the Justices was a qualified barrister. On the legal side they were supported by a principal court clerk and eight court clerks, the vast majority who were either qualified solicitors or else in the process of qualifying. The courts were also served by six court ushers who were mainly employed on a part-time basis. The administrative staff had a complement of twenty-nine people who were variously dealing with court listings, magistrates' rotas, fines, compensation and maintenance payments, their collection and enforcement. The court is administered by its own Magistrates' Courts Committee, which consists of thirteen magistrates who are elected annually by the full Bench, in addition there is a Licensing Committee, Betting and Gaming Committee, Probation Liaison Committee as well as Youth and Family Panels. The conduct of existing magistrates and the selection process for the appointment of new magistrates is overseen by the Lord Chancellor's Local Advisory Committee. During the first year of the study, some 2,500 courts were held of which approximately 80 per cent dealt with matters related to adult crime. This workload involved the lay magistrates in 5,873 half day sittings, this equated to an average for the year of 43 sittings for each magistrate, almost one half day sitting each week.

The probation requirements of the court are provided by the South Yorkshire Probation Service. They have offices and facilities both in the town and the outlying districts, these include specialist facilities such as a community service unit, a motor project for dealing with some of the very serious road traffic offenders and a residential probation hostel. The routine daily presence in the courts is undertaken by probation officers and assistants who are specifically assigned to the 'court team'.

The area is policed as a division and sub-divisions of the South Yorkshire police. The majority of criminal prosecutions are brought to the court by the Crown Prosecution Service. Other prosecuting agencies include the Local Authority, the Department of Health and Social Security, the Health and Safety Executive, the TV and Vehicle Licensing Authorities, the National Rivers Authority and the British Railways Police. The town at the commencement of the study had approximately eighteen firms of solicitors, some who had found the demands on their services sufficient to justify the opening of 'branch offices' in certain outlying areas of the borough.

During almost the entire period of the 'observation and interviewing' phases of the research, the court was located on three sites. The main courthouse was a late nineteen-twenties building and was very typical of the architecture of that period. The building housed three courtrooms, the two main courtrooms with their high ornate ceilings and large and elaborate windows contained oak furniture and wooden seating which was set at various levels to emphasise the status of the occupants and the hierarchical structure of the court. The docks

were bedecked with brass rails and the whole scene was overlooked by large public galleries, although these were no longer in use. The cells which were used to house those defendants who for various reasons were appearing 'in custody', were located in the basement of the building. The waiting areas for these courts were two, often smoke filled, corridors in which long wooden benches provided the seating. ( See Appendix C). The interview facilities at the courthouse were considered by all parties to be inadequate and the catering facilities, a 'coffee bar', were provided by the ladies from the local branch of the Women's Royal Voluntary Service. The magistrates' assembly room also doubled as the retiring room for all three courtrooms, and was even used on occasions as an additional courtroom. It was not uncommon to have all three benches deliberating on their decisions in the same room and at the same time.

The second site was, until the mid nineteen-eighties, a medium sized comprehensive school, part of which after its closure, was converted into a courthouse. The conversion was quite impressive, especially when compared to the main courthouse. Its three courtrooms all had modern furniture and 'wall to wall' carpeting. The waiting areas, whilst more spacious and airy, did lack any catering facilities. Because the 'secure accommodation ' in the building was quite limited, this courthouse was normally used for Youth, Family or Road Traffic courts and for those matters which were at the lower end of the crime scale of seriousness. Despite the efforts made in the conversion of this building, much evidence that it had once been a school remained. One was never quite certain when adjudicating, and especially in the role of court chairman, whether one was playing the role of the headmaster in the classroom or else the magistrate in the courtroom, or indeed whether the roles were somewhat similar.

The third site consisted of the offices and administration, these were housed in a building of similar age to the main courthouse and situated some two hundred yards away from that building. As with the other court buildings, this building was quite inadequate to fulfil the requirements of the present day.

The town's need for a new courthouse was acknowledged by the Home Office and the Lord Chancellor's Department, the construction of the new building commenced during the period of my research. The new ten court courthouse opened for business in the spring of 1994.



## **CHAPTER 1 THE LITERATURE REVIEW.**

### **1.1 THE COURTS AND THE PEOPLE.**

#### **1.1.1 THE MAGISTRATES**

##### **1.1.1.1 The magistrate - a custodian of a repressive instrument or the representative of the collective view.**

Some of the more radical researchers of the last thirty years have cast the magistrates in the role of the custodians of a system which they see as being both repressive and ideologically dominated. The magistrates are seen to operate in an authoritarian manner within a system which is primarily concerned with surveillance controls (Pearson, 1980, p79). Carlen sees the major function of the magistrates as the 'protection of the institution of private property and the prevailing modes of capitalist production' (Carlen, 1976, p12).

Not surprisingly, the perspective of those commentators who report from within the system is quite different. Members of the judiciary, including the magistrates are seen as being distinct and separate from both the executive and the legislature (The Magistrate, July/ Aug. 1990, p134). Tuck sees the magistrate as being unique in the criminal justice system in that, 'they are in the best sense disinterested', they are not bound by sectional jealousies and unlike some of the participants, 'they have no axe to grind' (Tuck, 1992, p28). Sir Thomas Skyrme, a former Secretary for Commissions in the Lord Chancellor's Department, sees the magistrates as representing, 'The collective views of a cross section of the population'. In practice the magistracy, 'enables the citizen to see that the law is his law, administered by men and women like himself and that it is not the esoteric preserve of the lawyers' (Skyrme, 1983, p8).

##### **1.1.1.2 Never mind the width just feel the quality. - The selection process.**

According to the Magistrates' Association, 'justices need intelligence, common sense, integrity, and the capacity to act fairly'. They must 'learn to act judicially'.. 'Justices should be accepted and respected members of the local community' (The Magistrate, June, 1990, p96). Some writers have argued however, that some of these requirements, and specifically those which target people who, '.. wield a certain amount of authority in the community', tends to result in the magistracy being, '.. consistently selected from a small section of society' (Fitzgerald and Muncie, 1983, p112) and in practice, therefore, the ideological view that the magistracy should be seen to be fairly selected does not stand up to scrutiny (Pearson, 1980, pp84-88). Some researchers have also identified that there is an additional unspecified requirement, an emphasis on the candidate's ability to fit in to the ethos and the expectations of the Bench (Parker et al, 1989, p173). This coupled with the candidates' ability to combine their occupational commitments with the judicial and training requirements is also claimed to legislate against some sections of society and in particular the 'working class' (Jackson, 1993, p132). Any initiatives that have been implemented with the intention of attracting a greater working class representation have failed (Pearson, 1980, p80). Many studies have found that

the magistracy has an over representation of middle class, professional and managerial types, whilst both women and the ethnic minorities are under represented (Baldwin, 1976, p171. White, 1985, p14. Jackson, 1993, p132). In practice the fact that a high proportion of those candidates who are appointed have been put forward by existing magistrates does mean that the magistracy is quite often 'self-perpetuating' (Pearson, 1980, p85). Therefore because of such narrow and restrictive social backgrounds, a cross section of outlook and experience certainly appears to be lacking on the Bench, and it can be argued that the appointment of these individuals to positions of judicial power merely reflects and supports their social position and prestige in the local community (Fitzgerald and Muncie, 1983, p111). But this was not a view shared by the Lord Chancellor, in his address to the Magistrates' Association in 1991 he said, 'My office has looked at the last 40 submissions received from my local advisory committees. This survey reveals that of the 875 new justices appointed by me, 22.3 per cent were under 40, 32.5 per cent were between 40-45, 24.2 per cent were between 46-50, and the rest that is 21 per cent were over 50 years of age. 452 were males and 423 were females .. It seems to me that Advisory Committees have done well to find a reasonable spread of candidates' (The Magistrate, Dec.1991/Jan.1992, p217).

#### **1.1.1.3 With a wealth of life's experience, who needs training? Socialisation and training.**

Not only are magistrates said to emanate from a narrow social base they are also considered to be badly trained and when discharging their duties are likely to consider their own practical experience as being of more value than any information provided and which has been obtained through penological theory or research (Parker et al, 1989, p73). Neither are these criticisms restricted only to those who observe the magistrates' courts from the outside. Samuels, JP, a barrister who writes regularly in The Magistrate, has also expressed an opinion that the training of magistrates is both inadequate and requires to be professionally organised. 'Dreary lectures' or 'unreal sentencing exercises' need to be replaced by such issues as the psychology of the courtroom, the psychology of the defendant, communication, group dynamics, the art of chairmanship, the evaluation of evidence, the art of analysis, the art of judgement and the principles of sentencing (Samuels JP, 1991, p66). But not all training in the magistrates' courts is formal, Parker would argue that whilst magistrates are carefully socialised, in so far as, 'their general world outlook is channelled, in training, into the performance of specific tasks in an institutionalised manner', informally senior magistrates can also exert a considerable influence on the socialisation and the performances of less experienced magistrates (Parker et al, 1989, pp83-84).

#### **1.1.1.4 The lay magistrate - a symbol of power and authority or a vulnerable amateur.**

In discussing the power which is invested in the lay magistracy, Raine and Willson described them as the, 'most uninstitutionalised and powerful of the lay groups'. As members of

Benches they are seen to enjoy special status and authority. Despite this 'special treatment' magistrates do admit to some feelings of vulnerability whilst undertaking their duties in the courtroom. The problem would appear to develop from a situation where although the lay magistrates are 'invested with legitimate power', very few of them have 'expert power', and the level of vulnerability has tended to increase as the law and its application has become ever more complex (Raine and Willson, 1993, pp188-189). They also observed that magistrates and judges were also failing to win public confidence in their ability to do the job. Defence and prosecution lawyers, 'could frequently be heard expressing their views that the lay magistracy was becoming out of its depth'. Even the magistrates most stalwart defenders, the magistrates' clerks, began to express doubts about the lay system's 'capacity to deliver justice in the modern age' (p46). Parker et al. had found that some benches were still struggling to implement the 1976 Bail Act some three years after it came into force (Parker et al, 1989, p58). The magistrates themselves acknowledged that there were shortcomings within their ranks and that some magistrates, 'are alas not up to the job. We all know them' (Samuels, 1991, p66).

Magistrates are expected to absorb and assess a great deal of information in a short space of time and in order to convert it into a usable form they quite often have to manipulate it. This can be done in a number of ways. They might 'screen out certain elements, scale down or scale up, they will schematize the data to make it more acceptable to them and they selectively highlight what they feel is crucial' (Brown, 1991, p13). Neither do magistrates necessarily see the need for sentencing guidelines, explaining away the wide variations in sentences by stressing the human factors, the proclivities of the sentencers or the sentencing traditions which operate within the local jurisdictions (Parker et al, 1989, pp16-17). But neither are the magistrates necessarily free agents. As Carlen found, not all magistrates find that justice as they might want to perform it as individuals is congruent with justice as they feel the public might want it performed (Carlen, 1976, p64). Paul Firth, the then Clerk to the Rotherham Magistrates was quoted in the local press as saying, "Magistrates are becoming more and more constrained and feel that they are applying the law first and justice second" (The Advertiser, March 12/1993). In general the lay magistrates are also accused of not intervening enough, of being afraid to ask questions, of adopting a play safe attitude (Crowther, 1990, pp26, 89). This view was also supported by Parker who saw the lay magistrates as the only lay people in the court machinery, '.. they recognise their limitations, they are not there everyday', neither as a policy do they receive any legal training. As a result, '..they have no interest in making fools of themselves... They learn to value the formulae they are given' (Parker et al, 1981, p66).

#### **1.1.1.5 Professional justice is better justice, assumption or fact? The professional - amateur debate.**

As has already been discussed there has been a growing concern about the standard of justice which is administered in the magistrates' courts and one often quoted solution is the professionalisation of justice (Walker and Stammer, 1993, pp148-149) This proposal, of course,

must be based on the assumption that professional justice is better justice. But is it? In support of the argument it is claimed that in their training lawyers are trained to think logically and abstractly and to conceptualise and evaluate arguments from a number of different perspectives. People who have not received this type of training or who do not have this type of background, and that is the majority of lay magistrates, are more likely to think affectively, that is from feelings and from set points of view. Because of this, affective thinkers, and hence the majority of lay magistrates, are more likely to reject those opinions which conflict with their own (Boon, 1993, p74). Concerns are also expressed about the resource efficiency of magistrates' courts, the time taken to dispense with cases, the delays, the number and lengths of adjournments. In Samuels' words, 'The present system of administration in the magistrates' courts is little short of scandalous' (Samuels, 1991, p66). It is generally accepted that stipendiary justice is both quicker and cheaper than lay justice. An example of this, as demonstrated by Crowther, is the additional time taken by advocates because lay magistrates do not intervene or question enough and give no indication of what they are thinking until they announce their verdicts. Advocates consider, therefore, that there is a need to cover all eventualities 'and argue their cases at three times the length before the lay justices than they employ before the stipes .. treating the lay justices, sitting perhaps once a fortnight, as they would a jury' (Crowther, 1990, p23). But Walker and Starmer are less certain that professional justice is unfailingly superior to lay justice. They remind us that all verdicts depend on facts as well as law 'and there are many who still believe that the minds of the lay magistrate are more accurate fact diviners than those of lawyers' (Walker and Starmer, 1993, p148). This argument is one which also receives the official support of the Lord Chancellor's Department who feel that an erosion of those ' .. precious qualities of local knowledge and common sense that a group of lay magistrates could be expected to bring to justice' would be detrimental. (Raine and Willson, 1993, p46). Despite this there are continuing signs of creeping professionalism within the magistracy with 'flying, itinerant, regional stipendiary magistrates increasing in number'. This is a welcome trend according to Samuels, because they are professional lawyers, they can take the long complicated legal cases, they can also deal with some of the more sensitive cases (Samuels, 1991, p66). Badge, a Senior Metropolitan magistrate, considers that whilst there is a definite role for the professional magistrate this needs to be clearly defined and to fully professionalise the magistracy would not be an acceptable alternative,' .. because trial before a lay bench is a trial by one's peers, and as such is priceless' (Badge, 1989, p196).

### **1.1.2 THE MAGISTRATES' CLERK.**

#### **1.1.2.1 Manager, administrator, mentor, intermediary, helper - the many roles of the magistrates' clerk.**

Magistrates' clerks fulfil many functions in the magistrates' courts. Their primary function is to advise the magistrates on their legal powers, on the law and procedures, either in

the courtroom or the retiring room. Another part of their role is to manage the business of the day and to ensure that the courts run smoothly. They also have the task of administering legal aid and when this not granted, or in cases where the defendants choose not to be represented, it falls to the clerk to assist the unrepresented defendant in the courtroom. In addition to these everyday tasks the Justices' Clerk also has the responsibility for training the lay magistrates. Without the clerks it can be quite justifiably claimed that the courts would not and could not work (Ralphs and Norman, 1992, p123). In performing these functions the clerks have a positive duty to prevent the courts from making mistakes in law (Crowther, 1990, p25), and a concern to protect the magistrates from getting it wrong in public (Parker et al, 1989, p59). They are supposed to provide legal advice to the magistrates but not to influence (Darbyshire, 1980, p202). Because of their powerful position in the administration of legal aid they can influence the level of representation in the magistrates' courts (Sanders and Young, 1994, pp258-260). It is also claimed that their duty in assisting the unrepresented defendants is often moderated by their allegiance to the rules and the courts (Astor, 1986, p232).

#### **1.1.2.2 Head of the household, family solicitor or merely the butler?- the relationship between the clerks and the lay magistrates.**

The Le Vay report, 'Magistrates' Courts: a report of scrutiny', describes the role of the magistrates' clerks as a combination of a butler and the family solicitor. The 'butler's role' permits the clerk, deferentially to challenge the magistrates' wishes without challenging their authority, .. the 'family solicitor' is traditionally permitted to enter delicate areas and intervene, 'citing precedents, rules and regulations without challenging the status of the patron' (Home Office, 1989. Raine and Willson, 1993, p164). This also concurs with the views of Samuels, who sees the clerk as being , ' .. friendly, helpful, patient and deferential, yet clear and firm and able and willing to speak his mind in a cogent, forthright and frank manner whenever this is necessary (Samuels, 1981, p84). In days gone by some clerks ruled the lay benches with a 'rod of iron', but abuses of authority by clerks are now rare (Crowther, 1990, p25). Over the years close relationships have been developed with a high level of mutual respect for each others' responsibility and expertise, although some odd pockets of contention do occasionally surface. A survey amongst magistrates did reveal that, ' .. domineering clerks are still seen as an occasional hazard' (The Magistrate, Nov. 1990, p185). Although the Clerk to the Bradford City Justices was reported as bemoaning the fact that, 'The professionally qualified court clerk regrets that he is seen as something of a servant, to speak when spoken to, and to offer advice when he is asked' (The Magistrate, July 1989, p109).

#### **1.1.2.3 Court clerks do influence, it could not be otherwise.**

As has already been indicated the role of the clerk is to provide legal advice but it is not to influence. Nevertheless the clerks do occupy a very powerful position in the sentencing process (Darbyshire, 1980, p201). In practice it is inevitable that the clerk does in fact influence

the sentencers. 'It is admitted. It cannot be otherwise' (Crampton, 1979, p210). But does this influence exceed what is expected from the clerk's defined role? McLaughlin found that, '.. magistrates appear willing to include their clerks in the decision process to a degree beyond that allowed by law' (McLaughlin, 1990, p365). Parker et al. observed that, ' ..the tone and style of the regime set by the clerks at the beginning of a session impinges gently but firmly upon the magistrates'. Neither was this the only area where Parker found evidence of the clerks' influence. Their role in the training of magistrates also gives them a high degree of influence, an influence which those magistrates with little knowledge of other courts may not even be aware (Parker et al, 1981, p66: 1989, p99). Not that the clerks use their influence in order to 'clone' magistrates, 'but it does leave the way open for all Justices' Clerks to influence their magistrates at an early part in the magistrate's career' (McLaughlin, 1990, p362). So how influential is the clerk? As a result of her research Darbyshire concluded, that the court clerks did have considerable influence not only in matters of law, but also on decisions concerning fact and sentencing (pp 202-203). One of the solicitors in the McLaughlin study stated, "I don't look for who is sitting on the bench, but what is important is, who is the court clerk, this is decisive" (p367).

#### **1.1.2.4 Magistrates make decisions, their clerks offer advice?**

In principle the magistrates are the decision makers and their clerks are in the business of offering advice. However Darbyshire found that the clerks whom she interviewed, '.. took it for granted that the lay justices would invariably accept their advice on law and although it was the bench who announced the ruling on a point argued before them, they were merely repeating the clerk's decision' (Darbyshire, 1980, p201). Neither do the magistrates disagree with this perception, '.. as a matter of good practice, justices should accept the clerk's advice on matters of law, practice and procedures (Ralphs and Norman, 1992, p40). But the clerks have been accused of exceeding their remit by, '.. busying themselves in pre-court negotiations and tidying up many cases before they reached open court' (Parker et al, 1981, p50). They were also observed, '.. wheeling and dealing in more informal settings', such as immediately prior to formal hearings and negotiating at pre-trial reviews (Sanders and Young, 1994, p298). Some also considered that the court clerk had '.. a great potential for secretly influencing sentencing decisions without any recourse to public checks' (McLaughlin, 1990, p260). In 1983 it was being suggested that the clerks should be subjected to stricter rules and that the clerk-magistrate consultations be subject to a greater level of safeguards and openness (Heaton-Armstrong, 1983, p341). However by 1989, Badge was suggesting that not only should the clerks be allowed to give advice to the justices but the Clerks to the Justices should also be given limited judicial powers in the interests of efficiency (Badge, 1989, p196).

### **1.1.3 THE ADVOCATES.**

#### **1.1.3.1 The nature of the art is persuasion - The defence advocates.**

The heading for this section is the view expressed by Lord Scarman in his forward to Crowther's book, 'Advocacy for the Advocate', first published in 1984. Pannick writing in 1992, extends this single statement quite considerably, 'The task of the advocate is to be argumentative, inquisitive, indignant or apologetic as the occasion demands and always persuasive on behalf of the person who pays for his voice' (Pannick, 1992, p1). In the discharge of his office the advocate must always remember that whilst he has a duty to the client, there is also a duty to one's opponent, the court, the state and to oneself (Lord Atkin cited in Crowther, 1990, p136). It is not the duty of the advocate to judge the client (Samuels, 1990, p8), but to put before the court all that the client would have done and said himself or herself had they had the ability to do so. The advocate is said to earn his living, '.. propounding views to which he does not necessarily subscribe and which are sometimes anathema to him, on behalf of clients whose conduct may not interest him, will often offend him and can occasionally cause him outrage ..' (Pannick, 1992, p1). But there are limits to which the advocates are expected to go in the representation of their clients. As early as 1889 in the Court of Appeal, Lord Esher stated, " .. counsel is not bound to degrade himself for the purpose of winning his client's case". Neither is it the advocate's job to deceive or mislead the court. The advocate should put to the court what is known to be true, the advocates should check out the truth of what they are told as far as they can. However unless they actually know that something is untrue they are still entitled to put it before the court with a rider which indicates that the reliability of the information has not been established, "I am instructed by my client ..." (Samuels, 1990, p8). Because of the 'professional standards' within which they should operate the advocates can sometimes find themselves in the difficult situation of trying to explain to their clients why they are prevented from taking the steps and making representations in the way that the client would wish, especially if the standards and the suggested method of representation clash. But how do the advocates satisfy the demands of the client and the demands of the court, or indeed do they? To some it appears that the key value of the solicitor in the courtroom is to, '.. aid the smooth running and administration of the court by 'sorting out' the awkward defendant by providing a line of communication between accuser and accused, unhindered by language problems' (Williamson, 1980, p51). In the United States, Emerson saw the lawyer's 'pitch' as emphasising, '.. the strong points of the delinquent's life and character, note any features of his general situation that tend to diminish responsibility for the commission of a serious delinquent act by appealing to sociological and social frameworks' (Emerson, 1969, p189). Likewise in England, the Carlen study was told by some defendants ' ..that the solicitor who works regularly in one court is often more prepared to accept the police version of events than their own, and that the best the solicitor is prepared to do in court is not to represent their

own views, but instead to represent them as a character worthy of clemency, treatment or a second chance' (Carlen, 1976, p91).

#### **1.1.3.2 Clients or commodities - the myth of legal representation.**

In the previous section the role and the responsibilities of the advocate were discussed in some detail, but as has already been indicated by the views expressed by some of the observers from outside of the legal profession, not everyone sees the advocates in the role of the 'champion of the defendant'. For example Carlen claimed that '.. technically the solicitor is supposed to represent the interests of his client in court, this supposition is mythical' (Carlen, 1976, p91). Solicitors were often seen as being so closely in tune with the Bench's sentencing policy that they were seen as part of an integrated 'back loop' which acted to reinforce Bench practices. It was even claimed that the solicitors who appeared regularly in the same court developed their mitigation rules in line with the operational rules of that court (Parker et al, 1981, p59). Studies in the Crown Court found that the defendants frequently found it difficult to decide whose side their barrister was on, 'so closely did he appear to be involved with the prosecutor' (Baldwin and McConville, 1977, p85). One of the Guildford Four, Paul Hill, recalling the events of his trial wrote, 'I used to watch our barristers in court. .. In the conventions of the English bar it is said that such men are merely advocates doing their job, that they have no personal interest or feeling towards the defendant. That is untrue. Havers and Hill revelled in what they were doing, it was written on their faces. Yet, and at first it was odd to see, our barristers, the men fighting for us, seemed not to harbour any antipathy towards Havers and Hill. Indeed, they were pally, they seemed more at ease talking to them than to us. I got the impression that any of our barristers could easily have gone to Havers' seat and taken over the running of the prosecution. They were no different' (Hill, 1990, p135).

Criticisms were also made of solicitors because it was said that they tended to view many defendants, and particularly those who were legally aided, as commodities to be sought after and accumulated and to have little interest in their cases (Bankowski and Mungham, 1976, p58). This claim was also supported by the experiences of some of the defendants in the Carlen study, who on being directed to apply for legal aid found that they were subjected to an outside court training on what they had to say inside. Such training often being in the last ten minutes before a case was heard and often by a young solicitor whom they had never seen before (Carlen, 1976, p91).

#### **1.1.3.3 It's just a game to them, they don't see it as someone's whole life at stake**

Parker et al, found that magistrates made reference, ' .. to unprepared advocates who ask for adjournments on the slightest grounds, this causing delays in the administration of justice'. They also perceived defence lawyers as inhibiting their search for the 'truth of the case'. At worst they were seen to distort the truth by presenting only the defendant's side, and by their mere presence they obstructed any possibility of direct communication between the



bench and the defendant. (Parker et al, 1989, p98). However some of these criticisms were considered by some of the 'more informed' members of the judiciary to be misguided. Samuels wrote, 'Magistrates are sometimes too ready to condemn their [the advocates] conduct and ethics, without perhaps fully appreciating the problems and difficulties besetting the advocate dealing with a client facing a criminal charge' (Samuels, 1990, p8).

Neither have the probation officers been slow in expressing opinions about the defence solicitors. One probation officer told Carlen, "The trouble with solicitors, .. it's just a game to them. They don't see it as someone's whole life at stake" (Carlen, 1976, p53). Although it must be admitted that not all defence solicitors are viewed in the same way. Some are seen as able, professional, well prepared and conscientious, while there are others who are seen as being on easy money, not making a real effort to present their client's case, poorly briefed, just trotting out the usual stock phrases (Brown, 1991, p85), and using social enquiry reports [pre-sentence reports] for scripting pleas of mitigation (Carlen, 1976, p55).

#### **1.1.3.4 The 'ministers of justice' - the prosecutors.**

In the nineteen seventies, most of the prosecuting in the magistrates' courts was undertaken by the police themselves, a situation which at the time was seen to be not without its problems. Whilst it was not disputed that many of the police officers who prosecuted were both very competent and very experienced, they were not, '.. as people who had investigated the cases themselves, altogether detached and impartial' (Green, 1990, p195). In practice 'the prosecuting counsel should not attempt to obtain a conviction by all means at his command. .. He should lay before the Court fairly and impartially the whole of the facts which comprise the case for the prosecution and should assist the Court on all matters of law applicable to the case' (Code of Conduct of the Bar of England and Wales, 1990). The Crown Prosecution Service (CPS), was formed in 1986 to carry out the prosecutions on behalf of the police. The CPS considers itself as, '.. being essentially reactive. Rather than setting its own prosecution policy, it sees its job as carrying out, efficiently, police prosecution policy (Leng, McConville and Sanders, 1992, p134). But the CPS do have the responsibility for deciding if a matter should be prosecuted in the courts. When deciding whether or not to proceed with a prosecution, the CPS lawyer has to decide whether certain criteria have been satisfied. 'Firstly, .. is there sufficient substantial, admissible and reliable evidence that a criminal offence has been committed and is there a realistic prospect of conviction?' If the answer is yes, then it should be asked, ' ..does the public interest require a prosecution?' (In the Public Interest, A CPS pamphlet). If a prosecution is proceeded with, it is the job of the CPS lawyer to put the facts fairly and impartially before the court, the prosecutor must always ensure that all relevant legislation and authority, whether in favour of the prosecution or otherwise, and any procedural irregularities are brought to the attention of the court. The duty not to mis-lead the court places on the advocate a positive responsibility to ensure that any factual information is .. completely accurate (National Standards of Advocacy: A Guide for Crown Prosecutors). Even before the

onset of the CPS, McBarnet saw the prosecutors as being at something of a disadvantage in their dealings in the court in that, '... the prosecutor seems to be given all duties and the defendant all the privileges. The rhetoric poses the trial as a test for the prosecution. The accused need do nothing'. Although in practice it was also seen that this advantage was somewhat eroded in that the defence had unequal access to information (McBarnet, 1981, pp102, 111). Whilst the prosecutor is expected to comply with the standards as outlined above, '... there is no reason why the prosecution should lean over backwards to help the defence in their mitigation of a case, but there is every reason for assisting the unrepresented defendants to the best of their ability' (Crowther, 1990, p33).

#### **1.1.3.5 The gap between the standards and the actual level of performance.**

But despite all of the performance standards and claims of fairness and impartiality, the prosecutors still manage to be the objects of criticism. In 1977 the defendants complained that in the final analysis, '... it is the prosecution version of events that is accepted by the courts, ... even though it is, in their view, frequently incomplete and distorted, and is therefore viewed by the defendant with a sense of injustice' (Baldwin and McConville, 1977, p113). Even with the creation of the CPS, the magistrates were very critical of, '... young, inexperienced CPS lawyers, unprepared, inarticulate and unknown. ... They also questioned the level of discontinuances on prosecutions (Raine and Willson, 1993, p30). In the study area, the CPS were criticised for watering down charges with the result that, '... violent offenders are escaping justice because assault charges are being downgraded by the prosecutors who want to cut costs' (The Advertiser, March 12/1993). Crowther also questioned some of the facts that the CPS were producing to the courts, and in particular the defendants' antecedent histories, which he suspected, '... were seriously wrong in more than 50 per cent of cases' (Crowther, 1990, p138).

#### **1.1.3.6 A source of unbiased information.**

Do the criticisms outlined in the previous section affect the influence that the CPS has on the decision makers? Parker et al concluded that most of the critical comments related only to the professional competence and efficiency of the prosecutors. They were not seen as introducing bias to the proceedings by attempting to make things appear worse than they really were. Their conclusion was, 'It may well be that the prosecutors, distanced from the offender in terms of source information, and distanced from the sentencing process in terms of making recommendations to the court, were seen as a source of unbiased information' (Parker et al, 1989. p99).

## **1.1.4 THE PROBATION OFFICER.**

### **1.1.4.1 The Probation Service, a criminal justice or a social work agency?**

In the 1970s the Probation Services were seen almost as independent social work agencies with the function of 'advising, assisting and befriending the defendants/clients'. The Probation Service of 1993 is seen in a very different light with officers required to work within agreed policies and with a much greater level of accountability both internally as well as to central government (Raine and Willson, 1993, p29). First and foremost the Probation Service has to respond to the wishes of the court. It is a criminal justice agency, and as officers of the court the probation officers must implement programmes in the way envisaged by the courts (Jones et al, 1992, p40). Historically the Probation Service has also been seen to have had a predominantly rehabilitative approach, for example a probation order was not necessarily viewed as a punishment, a situation which the Criminal Justice Act of 1991 sought to redress. Amongst its many recommendations was one where the person convicted of a crime should be referred to as 'the offender' rather than 'the probationer' (Wasik and Taylor, 1991, p49). There was now a government requirement for the officers to be agents of the court overseeing the sentences of punishment in the community, '...a role which many probation officers resist' (Graef, 1993, p6). Graef claims that the criminal justice system sees the probation officers as being on the side of the criminal but he argues that if they are, then this is only in response to a positive requirement, because 'nobody else in the system looks to the offenders' needs'. Others consider that in pursuing the role that it has, the Probation Service has provided the maintenance of a necessary equilibrium between the interests of criminal justice and those of social welfare (Harris, 1988, in a paper presented at Madingley College, cited in Jones et al, 1992, p42).

### **1.1.4.2 There is a requirement to play to the rules of the game.**

In 'The Probation Handbook', probation officers are advised that, '... the court game has to be played by the rules, whatever your feelings about that may be' (Jones et al, 1992, p78). In their 1981 study of the magistrates' courts, Parker et al. also found that most of the probation officers in their sample subscribed to the necessity for game playing. It was also found that in the actual courtroom setting, the presentation and performance of the probation officers was characterised by 'passivity'. Apart from actually providing reports, which had been prepared by the Probation Service at the request of, and for consideration by the sentencers, the officers generally kept a low profile (Parker et al, 1981, p129).

### **1.1.4.3 Well meaning but soft, yet sometimes cruelly unfair - The Probation Service's relationships with the other court users.**

In their study of the early nineteen eighties, Parker et al, found that probation officers were critical of the majority of Benches for being too middle aged, too middle class and often

lacking the necessary insight into the social world of those they judged. Neither were they satisfied with the performance of many defence solicitors and particularly those who practiced in the juvenile courts, whom were described as, '...money making, middle class plagiarists'. With regard to their relationships with the police, these were considered by most probation officers to be 'quite good' (Parker et al, 1981, pp133-134), although it was recognised that the police considered them to be, '..well meaning but soft' (Carlen, 1976, p51).

It was not only the police who held this view. Later in the decade, Parker et al found that there was a consensus that the Probation Service was still seen as being more concerned about helping people and not tough enough for the more heavily convicted offender (Parker et al, 1989, pp94-95). Samuels was also critical of the Probation Service and in particular their apparent total rejection of the use of custody as an alternative in sentencing. He wrote, 'Nobody likes custody. But alas sometimes it is really inescapable or virtually so. Yet the Probation Service always recommend a non-custodial sentence, refuses to face up to a custodial sentence'. This policy can also be unfair on the defendant in that it can raise false hopes. Samuels warns, 'Beware of raising false hopes and expectations. A recommendation for probation or community service when custody is very likely, and indeed happens, may be a very cruel practice'. Samuels also expressed his concern about the lack of two way communication between the magistracy and the Probation Service, communication which he considered to be essential for the good of the criminal justice system, the public and the defendant (Samuels, 1989, p121).

### **1.1.5 THE DEFENDANT**

#### **1:1.5.1 To be or not to be - a cool, calculating strategist, or a diffident, remorse dominated apologist.**

Defendants have been described in numerous ways, rights assertive, the strategist, remorse dominated and passive (White, 1985, p60-61). In reality however, expressions of genuine remorse are exceedingly rare and very few defendants could be said to be contrite, indeed, 'expressions of cynicism, bitterness and anger are far more common' (Baldwin and McConville, 1977, p108). This view confirmed the earlier findings of Carlen who had observed, 'indifference, fear, contempt or hatred', as the most marked features of the defendants' attitudes towards the courts (Carlen, 1976, p33).

The defendants in court have been observed as being, 'typically confused, worried and relatively inarticulate', conditions which the court procedures do little to alleviate. First time offenders in particular expressed their sense of confusion and a feeling of being excluded from the process (Bottoms and McLean, 1976, p134). Even in Sweden, where there is less formality about the court hearings, one study found that 90 per cent of the defendants in the sample claimed that they still felt vulnerable and exposed in the courtroom (Adelsward, Aronsson and

Linell, 1985, p7). Not that a demonstration of confidence by the defendants would necessarily be welcomed by the courts. In the opinion of McBarnet, defendants are not expected, 'to play the role of the confident punch pulling advocates, .. because it clashes with the incompetence and deference routinely demanded of the lower classes who dominate the courts. .. The defendant may be diffident, nervous, contrite, he may not be cool, calculating or tricky, unless of course he is that rarity, an unrepresented, middle class defendant ..' (McBarnet, 1981, p135). According to Carlen, the defendant in the magistrates' court, 'is by definition an incompetent member of society' (Carlen, 1976, p129).

#### **1.1.5.2 The blindfolded man in a maze - one defendant's perception.**

Within the contests of the court, the defendant has been described as, 'the dummy player absorbing both the gains and losses of all the other contestants' (Carlen, 1976, p42), or as 'a pawn in the information games of the courtroom' (Brown, 1991, p13). They are unlikely to understand in more than a superficial way what is taking place, let alone participate effectively in the proceedings. Defendants are seen to be external to the network of intimate relationships which comprise the regular make-up of the court, a network whose objectives are not necessarily concordant with those of the defendant (Baldwin and McConville, 1977, p84). The defendants themselves expressed dissatisfaction with their courtroom experiences, an experience which often left them feeling frustrated and alienated in a ceremony which frequently appeared to them as being unreal. As one defendant described his experience, "I never made any decisions, they were all taken for me. .. I was just being dragged along on the tide of what they [the solicitors and barristers] said. It's just like a blindfolded man being guided through a maze. I had to go, but I wasn't sure where I was going" (Baldwin and McConville, 1977, p86).

#### **1.1.5.3 Defendants don't expect to receive justice ...**

Many defendants do not expect justice to be done in the magistrates' courts, which are seen as amateurish and pro-police. Neither are their opinions of the Crown Court much better. In the opinion of one persistent offender, " .. the legal system is bollocks 'cos in the end it's up to the judge and his views and attitudes on life. And all them judges, they're brought up in upper class backgrounds, and they can't look at life from our point of view. .. The law puts more of a sentence on money than they do on peoples lives, I think that's disgusting' (Graef, 1993, p109). As has been indicated in previous sections, many would argue that if 'magistrate' was substituted for 'judge' and 'middle class' for 'upper class', there would still be a large element of truth in this defendant's statement. But if the defendants do not have confidence in, or respect for the courts, how do they cope with the situation in which they find themselves? One way is for the defendant to mentally withdraw from the process and, 'let the proceedings take their course as if they were not present' (Baldwin and McConville, 1977, p92). Another way is to play along with the situation, a ploy which Blumberg called the 'cop-out' and which is in

essence a charade. In doing this, the accused is expected to project an appropriate and acceptable degree of guilt. Providing that the defendants play their part, the judiciary will assume that the defendant is contrite and is showing remorse and this will be taken into account in the ultimate decision. Blumberg saw this as, 'a highly structured system of exchange, cloaked in the rituals of legalism and public professions of guilt and repentance. .. For the accused, his conception of self as a guilty person is largely temporary. In private he will quickly re-assert his innocence' (Blumberg, 1967a, p89).

### **1.1.6 INTER-GROUP INTERACTION**

#### **1.1.6.1 Interaction in the magistrates' courts is a matter of uneasy compromise.**

In reviewing Parker's study of the courts in the early nineteen eighties, Cavanagh expressed the opinion that, 'If team is an appropriate expression at all, .. then there are three teams, the prosecution, the defence and the bench, each performing its own function which is different to that of any other' (Cavanagh, 1981, p192). But however disparate these teams are, it is essential that they develop good working relationships. As one Chief Clerk informed Carlen, "...the chief thing about a court if it is going to function at all, is that we all have to get on with each other" (Carlen, 1976, p43). Not only is it the courts which are dependant on good inter-team relationships, so is the whole of the criminal justice system. Writing in 'The Magistrate', Faulkner, the Principal Establishment Officer at the Home Office, told its readers that in carrying forward the government's policies on sentencing, supervision of offenders, the treatment of victims and the prevention and reduction of crime, the successful implementation of these policies depended on the effective cooperation between the courts, the operational services, the practicing legal profession and voluntary organisations, a sense of common purpose which could not be imposed. He added, 'Effective cooperation is not easy to achieve. There are deep differences in the background, outlook, expectations of both the services and those who make their careers in them' (Faulkner, 1991, p73).

So how do these teams cooperate in order to achieve this sense of common purpose? According to Carlen, only with some difficulty. Situational alliances are formed which prevent, 'constant open conflict between overtly opposed professional teams within the court'. But even so the 'the pervading mode of interaction between the different legal and enforcement teams represented in the magistrates' courts .. is one uneasy compromise'. But not all alliances are formed for the 'common purpose'. It is accepted that some alliances are made in order for teams to either, 'maximise their gains or to minimise their losses'. For example, solicitors will use their credibility as 'good lawyers with a social conscience', in order to obtain information from probation officers. In turn, many probation officers feel that they can do a better job for their clients if they have built up good relationships with the police. All of the groups feel that there is a need to be in good standing with the magistrates.

Whilst it is acknowledged that these alliances do exist, and that they are in the opinion of many court professionals, 'an inevitable and integral part of the game'. It was considered important that the existence of these alliances should not be apparent to either the defendants or the magistrates. The 'images of justice must not be tarnished by careless explication of subterranean assumptions of court solidarity' (Carlen, 1976, pp 42-60).

## **1.2 TRADITIONS, RITUALS, EFFICIENCY AND JUSTICE.**

### **1.2.1 THE RITUALS, LAYOUTS AND LANGUAGE OF THE COURTS.**

#### **1.2.1.1 Magistrates' Courts - the image and the reality.**

In 1981 McBarnet wrote, 'to enter the lower courts is to be taken aback by the casualness and rapidity of the proceedings'. In support of this statement she claimed that the things which are normally associated with the courts of law, the solemnity of the occasion, the skills of advocacy, the adversarial joust, the slow and careful precision of the evidence were all conspicuous by their absence. The way in which the courts were conducted may even have conveyed the impression that the business which was being dealt with was 'trivial'. But was this by accident or design? In the opinion of McBarnet it was not due to any oversight, but an impression cultivated overtime in order that the magistrates' courts could operate without consideration to a pre-requisite of true justice, due process. As she reminds us the offences and the penalties may seem trivial to the onlooker but are often seen as being far from trivial by the recipients of the penalties (McBarnet, 1981, p123, pp143-147). This last point was also graphically illustrated by one of the defendants interviewed by Carlen in her study of the Metropolitan Magistrates' Courts. The defendant told her, "It looks like a game, but when you get sent down you know it's bloody well for real" (Carlen, 1976, p94).

It is also claimed that much of the research which has taken place in the English justice system during the last thirty years has shown that the perception that the English trial system is the fairest in the world is also misconceived and that the only people who still persist with this view, 'are those whose acquaintance with other jurisdictions are minimal' (Baldwin and Bottomley, 1978, p131).

Whilst recognising that there are large numbers of both practitioners and observers who see the British justice system as being in crisis, Allan Green, a former Director of Public Prosecutions argued that this could well be a matter of degree and even one of perspective. In expressing his own view, he saw it more as a 'crisis of confidence in relation to the system which is basically sound' (Green, 1990, p191).

#### **1.2.1.2 A symbolic reassertion of order and authority, or a means of self-justification -**

##### **Rituals and symbolism.**

Rituals, including the ritual of criminal justice, are ceremonies which, through the manipulation of peoples emotions, prompt particular value commitments on the part of both the participants and the onlookers and therefore act as a kind of 'sentimental education' which generates a particular mentality and a particular sensibility. In the opinion of Garland, many see the rituals which are embodied by the criminal justice system as a focus for the diffuse concerns, worries and emotions that constitute the public mood in relation to crime. The procedures are seen as more than just some instrumental mechanisms by which individual



offenders can be processed, they are seen 'as symbolic reassertions of order and authority which help deal with the feelings of helplessness, disorder and insecurity which crime introduces into their lives' (Garland, 1990, pp67-68).

In her study of the magistrates' courts, Carlen demonstrated how spatial organisation, temporal routines and linguistic codes were all employed by the courts, not only to emphasize the symbolic meaning of the occasion but also to underline the existence of a hierarchical structure in which the various participants are allocated their places dependant upon their status. The rhetorical presentation of both the legal and judicial personnel is reinforced by the use of 'supportive props and scenic devices of the temporal and spatial conventions', also used is, 'collusive inter-professional showmanship'. In support of her arguments, Carlen cites a number of examples. One of these is the way in which the magistrates' entrance to the courtroom is, 'both staged and heralded'. Another is the way that the usher ensures that the magistrate, 'is granted deference throughout the court hearing'. Carlen also noted that there was a concerted effort among the professional groups to portray an appearance of 'authority and wisdom'. This is done by the use of a self-justificatory vocabulary where among others, the magistrate becomes, 'Your worship', and the clerk to the court, 'the learned clerk'. The fixtures and fittings of the courtroom also have their legal and presentational significance. These include the raised position of the bench which denotes the status of the magistrates, the railed and guarded dock which denotes the captive state of the defendant and the witness box, which without any of the symbols of detention signifies the voluntary status of the witness (Carlen, 1976, pp21,31).

But there are those who argue that not all of the courtroom procedures are implemented in order to emphasize the symbolism of the courts, but that many have been developed over time for good practical and organisational reasons (Atkinson and Drew, 1989, pp222-232). However there are still those who would argue that the court procedures have been symbolised to such a level that, 'the inexperienced defendant can often be placed at an acute disadvantage' (Fitzgerald and Muncie, 1983, p85).

#### **1.2.1.3 The way in which people are positioned in the courtroom can be crucial to their ability to participate in the proceedings.**

The spacing and placing of people on formal occasions, such as a court hearing, can be strategic to their ability to effectively participate in the proceedings. A situation which Carlen claims is often exploited in the magistrates' courts by the way that the defendants, the main protagonists in the drama, are usually allocated the position farthest away from the magistrates. A policy which is seen to create a great deal of misunderstanding due to the defendant being excluded from hearing much of the dialogue and therefore causes the proceedings to be regularly punctuated by a series of 'pardons' or 'blank stares' (Carlen, 1976, pp21-23). In addition, the rules of spacing and placing on ritualistic occasions will indicate the roles of those who are officially involved in the proceedings, define their territorial rights and

define the relative status of the people present (Emerson, 1969 p175: Carlen, 1976, p21). In the traditional English courtrooms, spatial dominance is often achieved by means of structural elevation, with the magistrates raised up above the rest. The defendant is also raised to a higher level than the other participants, not as high as the magistrates, but high enough to be in the public view.

But are these spatial arrangements designed as part of the ritual, or are there also practical advantages in organising the physical features of the courts in the way that they are? Atkinson and Drew suggest that in order to satisfy the requirements of, 'public audibility and understandability', in what is in reality a 'public' court, then 'to see and categorise who is currently talking would seem crucial if monitoring by all those present is to be a practical possibility', even though it is conceded that for some of the participants the process may seem both oppressive and unpleasant (Atkinson and Drew, 1979, p222). But in using this argument they do query whether the occasion does need to be repressive or whether the proceedings should be humanised along the lines which have been adopted by the Swedish courts. In the lower courts in Sweden, the judges do not sit on a raised platform, nor are the defendants confined in a dock, neither is there a requirement for people to stand whilst addressing the court. Instead the judge sits behind a desk, the defendants sit with their advocates, and the prosecution and the defence sit facing each other across a distance of five or six metres, from behind tables which are set apart from the public.

#### **1.2.1.4 The legal language, a method of symbolic control.**

Whatever else is said about the proceedings in the magistrates' courts, there appears to be very little disagreement in 'the fact that talk is all pervasive and a highly significant feature'. The fact that the language used has been designed in order to provide for a, 'higher degree of specificity and standardisation', than that used in the more general areas of social life, is one of the reasons that some observers of the court scene are critical of the legal procedures (Atkinson and Drew, 1979, p10). Indeed Carlen argues that the use of formal language, a language which is unfamiliar to the vast majority of defendants, means that they play the 'information game' under a handicap (Carlen, 1976, p81). Neither is this situation unintentional, but a policy by which the boundaries of formal symbolic control in the courts are created (Carlen, 1976, pp98-104).

Clerks to the courts are under a statutory obligation to state the detail of the specific offence with which the accused person is charged, in ordinary language and avoiding as far as is possible the use of technical terms. It is also conceded that many of the magistrates and clerks do go to elaborate lengths to explain to the defendants the meanings of the legal phraseology which needs to be used, but often to no avail. The defendants either do not hear or still do not understand (Carlen, 1976, p22). In fact some would argue that the situation can even be exacerbated. Defendants, who are already fearful by being in an unfamiliar environment and frequently in the dock, can be further confused by attempts to explain the

formal rules and legal meanings to them (Fitzgerald and Muncie, 1983, p85). Difficulties in hearing are said to be endemic in the magistrates' courts, but Carlen argues that poor acoustics cannot bear the total responsibility for what is in reality a 'chronic breakdown in communication'.

Neither does the problem rest solely with the spoken word. There are also criticisms of the documentation which is used to communicate with people who are not regularly involved in the courts. 'The convoluted legal phraseology of court summonses and other documents place some defendants and witnesses in some confusion about what to do' (Raine, Feb.1991, p5). Neither is everything that is communicated within the actual courtroom necessarily communicated orally. Carlen observed that to cope with the mass of 'situationally evolved knowledge' which needs to be instantly decoded 'an elaborate system of signalling has developed between the regular court officials, a system from which the defendant is excluded'. The system consists of a network of signs, gestures and cues, and Carlen claims that things which cannot even be said within the confines of the magistrates' room, can be written in between the lines of the social enquiry report [Pre-sentence report] (Carlen,1976, pp75-76).

### **1.2.2 PROCEDURE AND CONTROL.**

#### **1.2.2.1 A presumption of innocence or an implicit assumption of guilt. The 'due process' and 'crime control' models in the magistrates' courts.**

In the nineteen sixties, the American scholar Herbert Packer, reasoned that systems of criminal justice needed to be examined to determine to what extent they corresponded to the theoretical models of 'due process' and 'crime control'. In the due process model the major principles were a presumption of innocence and a requirement that the guilt of the accused be proved beyond reasonable doubt. It suggested a system where the onus of proof was placed firmly with the police and the prosecutors. The due process model represented a formal and judicial criminal justice system. In the crime control model the formal judicial procedure is replaced by more informal administrative processes. It is a system where the emphasis is placed on the speedy processing of suspects and defendants, where the presumption of innocence is replaced by an implicit presumption of guilt. In identifying these two models Packer admitted that in isolation they could not accurately define what went on in the courts and neither was he setting them up as models for what should be, 'but just as a convenient way to talk about the operation of a process whose day to day functioning involves a constant series of minute adjustments between the competing demands of two value systems' (Packer, 1968, p153). A decade or so later Packer's theories were in fact questioned by King who, whilst agreeing that they could be adequately applied to the trial situation, considered that they were not adequate for explaining the procedures which were used when dealing with guilty pleas. King identified a further four models, the 'medical model', the 'bureaucratic model', the 'status-passage model' and the 'power model'. King claimed that whilst each of the six models satisfied

a different social function, there was considerable overlap and none should be considered as mutually exclusive. The aim of the due process model was justice, whilst the crime control model was more concerned with punishment, the aim of the medical model was rehabilitation, whilst the bureaucratic model concentrated on the efficient and economic management of crime and criminals. Of the final two models, the status-passage model tried to ensure the public shaming of the defendants, its two key words being denunciation and degradation, the power model was there for the maintenance of class domination, to reinforce class values, to alienate the defendant and to emphasise the differences between the judges and the judged (King, 1981, Chapter 5).

The proponents of the English justice system have no doubts that the system conforms in every way with the due process model and even the critics admit that the model does conform with the rhetoric of the English system. These supporters see the crime control model as being inapplicable and inappropriate and usually reject it totally, a rejection which White suggests is somewhat premature. In support of this argument he makes reference to the high number of guilty pleas which are processed by the courts, a procedure where no proof of guilt is required, where there is no independent assessment of the evidence and where the adversarial procedures on which the court system is based are almost totally absent. The processes which have resulted in the conviction have mainly taken place in the police station where 'all the evidence shows routine violations of the rules designed to protect the interests of the suspects' (White, 1985, p114). Neither is White's view an isolated opinion. McBarnet suggests that the lower courts are deliberately structured in defiance of the ideology of justice and are therefore much less concerned with this ideology than they are with direct control. 'Almost all criminal law is acted out in the lower courts without traditional due process' (McBarnet, 1981, p153). Carlen describes the notion of due process as 'an euphemistic gloss on the articulated play which occurs between legal and enforcement personnel' (Carlen, 1976, p42). More recently Sanders and Young wrote, 'It is no exaggeration to say that the magistrates are crime control courts overlaid with a thin layer of due processing'. They purport that at every stage in the procedure the defendants are 'saddled with handicaps' which reduces their willingness or ability to insist on their rights in the courts (Sanders and Young, 1994, p304).

#### **1.2.2.2 A just criminal justice process should meet certain minimum criteria -**

##### **The need for procedures.**

There is a requirement for a just criminal justice process to fulfil certain minimum criteria. The system needs to be open, with individuals aware of what is happening and why. Those involved should know how they can influence the course of events, especially for the matters which concern them. The powers and extent of the discretion of the decision makers needs to be explained at all stages of the process and these powers should be subject to scrutiny. The reasons for decisions should be made explicit (Baldwin and Bottomley, 1978, p5). But there is also an argument that if these requirements are to be met then the procedures

need to be formalised, The adversarial elements which underpin the process need to be subjected to controls. The verbal exchanges which are a fundamental element of the proceedings, take place in a setting where there are often several parties with competing aspirations and goals, and who all wish to put forward their version of the argument. The order in which they are allowed to put their arguments and even the way in which they are allowed to present the argument may well need to be predetermined, or even limited. If not there is always the danger that just anyone who is present may begin talking as and when it suits them and without due consideration for the other parties present. It is argued that this formalisation not only assists in the control of the proceedings but also aids the collection of 'relevant and impartial evidence', as well as contributing to the assessment of its validity. Atkinson and Drew state that there is an argument that this formalisation of the legal procedures can be seen to be necessary in respect of the verbal exchanges which take place 'on the grounds that, were mundane ways of talking left unattended to arrive at decisions on the sorts of matters dealt with by the courts, all safeguards against the ad hoc, prejudicial, biased and haphazard resolution of disputes would be lost (Atkinson and Drew, 1979, p9).

In theory the criminal court trial is seen as a relatively well defined communication situation. There is a clearly detailed structure with certain fixed norms of interaction. There are rules which govern the way that certain topics should be treated. The participants are subjected to a system of 'taking turns'. However, 'in actual practice there is considerable variation. Actor roles and interaction rules are implemented somewhat differently and participants make different assumptions about the major goals and functions of the trial'. On the one hand the trial is a well defined situation, on the other hand it is complex and involves subtle accommodation processes and compromising attempts at attaining several and conflicting goals (Adelsward, Aronsson and Linell, 1985, pp30-32).

### **1.2.2.3 Whose system is it, the professional court users or the accused?**

So there are procedures and there are rules, rules which have been developed to ensure that a sense of order is maintained throughout the proceedings, which otherwise might well deteriorate into an indecisive and unedified 'free for all' if people were allowed to join in and make verbal contributions when and how they pleased. But Baldwin and Bottomley argue that procedures on their own, however 'just' they are claimed to be, are inadequate if they fall short of the ideals of justice. In their view, 'the criteria against which new procedures and policies should be measured are those of a criminal justice process responsive to society and answerable to it, rather than a more private kind of justice which revolves around concerns such as professional status and organisational efficiency, thereby elevating self-interest and bureaucracy above the ideals of a more truly social justice' (Baldwin and Bottomley, 1978, p5). Other observers have also been critical of the way that the legal system gives the appearance of being organised around the needs and the priorities of the professionals, including the magistrates, and where the role of the laity is regulated to fit in with them (Raine and Willson,

1993, p183). This view was endorsed by Low who had told a conference in Cambridge some twenty years earlier, "We can almost see the legal system responding before our very eyes to the needs of the professional classes, rather than those of the accused persons whose ends it is manifestly intended to benefit" (Low, 1973, p17). Carlen claimed that the procedures enabled the 'mandarins of justice' to control the legal situation, to control both the type and level of information, and also to suppress, 'alternative performances evocative of unpermitted social worlds'. In fact whenever the legitimacy of the legal and judicial processes are put under threat, remedial routines are invoked to redress the situation (Carlen, 1976, pp104-105).

#### **1.2.2.4 The case of the disadvantaged defendant.**

Not only is the defendant put in a position where he or she is unable to challenge the court, but the procedure or 'procedural pedantics', routinely exclude the defendant from being able to effectively participate in the proceedings of his or her own trial (McBarnet, 1981). If this view appears to some to be rather extreme or radical, it is not an isolated opinion but one which has been expressed in a number of different guises by many of the social scientists and criminologists who have carried out studies in the courts during the last thirty years. In the nineteen sixties Cavanagh concluded that the court situation, the size, the formality, the attendant publicity, the requirement to conform to a set of rules which appeared familiar to everyone but the defendant, must put that defendant at a disadvantage (Cavanagh, 1967, p31). Baldwin and Bottomley considered that anyone who has seen inarticulate and frightened defendants struggling to engage in the technical business of cross-examination in a straight forward case, even in the lower courts, will have felt the same sense of frustration and humiliation that the defendants must have experienced. In their opinion this 'cannot be squared with justice' (Baldwin and Bottomley, 1978, p131). Others argue that there exists fundamental and inherent biases in the judicial process which operate very much to the detriment of the naive, the inarticulate and the powerless (Baldwin and McConville, 1977, p95). Atkinson and Drew discovered that defendants had been described in various ways, baffled, bullied, thwarted, misunderstood, coerced, oppressed and manipulated. Neither were these numerous and unpleasant experiences considered to have resulted from pure coincidence, but rather as a result of the activities and utterances of judicial and court officials and from the way that the occasion is organised (Atkinson and Drew, 1979, p11). Carlen's detailed study of the magistrates' courts concluded that the trials in the lower courts far from being an impartial weighing of each side's case, as is claimed in the rhetoric of the legal system, are in reality no more than elaborate games, rituals, in which those who regularly participate know the rules, whilst the defendants are just there to act as the 'dummy players' and absorb the gains and losses of the other players. If the defendant steps out of the prescribed role and challenges the absolutism of the legal rules on the grounds of '...an overt appeal to commonsense, the defendant's challenge can be portrayed as being either out of place, out of time, out of mind or out of order' (Carlen, 1976, p104).

The plight of the defendant has been recognised by those within the system. Indeed in Sweden attempts have been made to make the criminal trial much less formal and solemn. Despite this, an overwhelming majority of defendants still maintain that standing trial remains an upsetting experience (Adelsward, Aronsson and Linell, 1979, p7). Whilst nothing as 'revolutionary' as this has been undertaken by the English courts, Rosemary Thompson, then a Deputy Chairman of the Council of the Magistrates' Association, wrote to its members on the subject of 'Dealing with Disadvantage'. She reminded the magistrates and particularly court chairmen, 'how alien and unfamiliar a court actually is to defendants and witnesses'. How difficult it is for those who are not familiar with the courts to identify the various roles, and how baffling the procedures can be. She was particularly critical of the language which she described as arcane and which 'assumes that everyone in court is well educated and articulate'. So how can the court chairman assist the situation and ensure that both the witnesses and defendants are able to communicate to the court and say what they want say without too much unnecessary stress? The things which Thompson considered to be totally inappropriate were 'overbearing, domineering or uninterested demeanours'. So too is the language which is too full of legal expression and jargon. The chairman needs to be alert to non-understanding and ready to explain decisions in the simplest and most everyday language which is consonant with the dignity of the court. It needs to be recognised that witnesses do attend court in order to help the judicial process and that defendants are innocent until proved guilty. Neither group should find that the experience of attending at court itself causes greater anxiety and tension than is inevitable. The chairman should ensure therefore, '...that they deal with everyone with perception, understanding and sensitivity to any kind of disadvantage they may feel' (Thompson, 1992, pp111-112).

#### **1.2.2.5 The courtroom ceremony, unnecessarily humiliating or an appropriate part of punishment process?**

The courtroom ritual has been perceived as a degradation ceremony, a ceremony which allows society to express its moral indignation by affecting the ritual destruction of the accused, who is portrayed as an enemy of the people and their consensus values. It is in reality 'a ceremonial stripping of a man of his dignity' and acts as a prelude to the judicial punishment. The courtroom proceeding is organised as a ceremonial confrontation between the legal order and the person who is said to have violated that order, a confrontation which has been purposely designed to induce a certain type of impact on the violator. To this end the courtroom ceremony 'is characteristically organised to degrade and humiliate the delinquent involved' (Garfinkel, 1956, pp420-424: Emerson, 1969, pp172-174: Carlen, 1976, pp23-24). Indeed, Carlen claims that 'bewilderment and embarrassment are openly fostered and aggravated, uncertainty coolly observed and manipulated' (Carlen, 1976, p20). Neither is this practice universally condemned, indeed there has always been a school of opinion which has regarded the inconvenience and the humiliating experience of the court appearance as an appropriate

part of the punishment (Raine and Willson, 1993, p125). But is the degradation ceremony common to all courts? The Parker et al study of the early eighties found that whilst the 'countryside court' behaved in a 'disagreeably aggressive and bombastic way' towards the defendants, the proceedings in the 'city court' were characterised by civility to all including the defendant and his parents by due process (Parker et al, 1981, p49). The fact that there is some unacceptable treatment of the defendants appears not to be in dispute. It is a matter which has also been condemned by people within the court system as being 'grossly improper'. (Young and Clarke, 1980, p24). In their book, 'Chairmanship in Magistrates' Courts', they write, 'Every person whatever he may have done, or be alleged to have done, deserves to be treated with the dignity that is due to him as a person. .. It should never be forgotten that the defendant is a human being, with the same sensitivity as everyone else'. They do, however, insist that courtesy needs to work both ways and if a witness or a defendant shows disrespect or contempt for the court then, '..the chairman should not hesitate to rebuke him'. Ralphs and Norman writing twelve years later were also advising court chairmen that, 'The court should never further diminish the defendant's dignity'. (Ralphs and Norman, 1992, p17). The Leeds District Magistrates' Court issued a set of guidelines to its regular court users in which it stated, 'The main purpose of this document is to reinforce the authority of the court and to ensure that the dignity of all court users is recognised and respected. .. Magistrates, officers of the court and court staff should address one another and defendants, witnesses and members of the public, in a respectful and courteous manner appropriate to their position' (Leeds District Magistrates' Court, 1994). Raine during his research in the courts found it reassuring 'that the majority of users perceived their personal treatment by the court officials to be satisfactory, though in some respects considerable scope for improvement was identified with implications for the training of those dealing with the public, this applying particularly to court staff' (Raine, 1991, p6).

But how does the 'degradation ceremony' affect the defendant? Emerson expressed the view that, 'Blumberg's finding that the criminal convicted on a guilty plea quickly reasserts his innocence,[previously discussed], does not as the author argues, unequivocally indicate that the courtroom ceremony is without profoundly degrading effects. Indeed it is a plausible suggestion that the post guilt proclamation of innocence reflects exactly the need to re-assert and re-establish self on favourable terms after a deeply humiliating experience' (Emerson, 1969, p214).

#### **1.2.2.6 The squalor of its environs. The court waiting areas.**

Not only were the courts criticised for the way in which the defendants were treated in the courtrooms, the waiting areas of many old court buildings were also described as antiquated, crude and squalid. Conditions which prompted Carlen to comment that, '..the stark contrast between the ceremony of the courtroom and the squalor of its environs, as well as the chronic organisational conflicts within the courts, mirrors the contrast between legal rhetoric



and judicial reality'. Not only was it the squalor of the waiting areas which was criticised but also the long waiting time which the defendants were often expected to endure, a time when they are said, '... to become more and more nervous, harbouring fears, usually unfounded, that they will be sent to prison'. These waiting areas often lacking the necessary facilities to enable the defendants to either consult with their solicitors, speak with their probation officer or obtain refreshment (Carlen, 1976, p27; Raine, 1991, p5). Not only was it the defendants who were subjected to this far from satisfactory environment, witnesses and victims were also expected to wait for long hours in the same room as those they were testifying against (Raine and Willson, 1993, p36). These were all unsatisfactory situations which warranted change. While some were perhaps dependent upon the provision of new buildings, it was also suggested that some situations could be improved by, '...block listing to reduce waiting times and smiling staff to keep tempers sweet and so on' (Raine, 1993, p50).

### **1.2.3 JUSTICE AND EFFICIENCY.**

#### **1.2.3.1 A Lebanese bazaar, a washing powder commercial, or justice in a magistrates' court?**

The magistrates' courts have frequently attracted criticism from researchers for the way in which they dispense justice and in particular, '... for their role as a conveyor belt for the guilty pleas which constitute 95 per cent of their caseload (McBarnet, 1978, p23; 1981a, p181). Rosett gained the impression that the guilty plea process, '...looks more like the purchase of a rug in a Lebanese bazaar than like the confrontation between a man and his soul' (Rosett, 1967, p75). Bottoms and McClean expressed the opinion that the process had much in common with a commercial for a washing powder, 'it was slick, rapid and familiar'. A process where the emphasis had been placed on speed rather than on fairness (Bottoms and McClean, 1976, p137). Carlen insists that in the magistrates' court the ideals of justice have been 'subjugated to organisational efficiency' it is a place where, 'contrived alliances and tacit understandings between court officials ensure that the cases are disposed of as quickly as possible' (Carlen, 1976, p95). Others have argued that the need for speed has routinised magistrates' justice too much (White, 1985, p61), and that many of the injustices which occur are essentially the product of a system that gives too little protection to the innocent and too often sacrifices the needs of the individual to the requirements of bureaucratic efficiency (Baldwin and McConville, 1977, p115). McBarnet concluded that the positive characteristics of summary justice are not legal as much as they are economic and bureaucratic. In short it is fast, easy and cheap (McBarnet, 1981a, pp189-192).

Lord Donaldson sitting in the Court of Appeal in 1989 stated, "Time spent in court is costly both to the nation and the parties. It is therefore vital that it is used economically and effectively" (cited in Pannick, 1992, p194). Samuels as we have seen considered the administration in the magistrates' courts, '...little short of scandalous', and that the magistrates'

courts must qualify as the most inefficient public institution, in which there are 'unacceptable delays, users are deeply frustrated, cost is excessive, injustice, alas, inevitably results' (Samuels, 1991, p66).

#### **1.2.3.2. Justice delayed is justice denied, justice rushed is justice denied -**

##### **Adjournments and delays in the magistrates' courts.**

As has already been indicated, a great deal of concern has been expressed by those who work in the magistrates' courts about what they see as the inefficiencies within the system, and of particular concern are the number of adjournments and the lengths of the delays. The Magistrates' Association's Legal Committee communicated to its members its concern about the substantial increase in adjournments. Adjournments were requested by prosecutors who required time either to prepare advanced disclosure, to review cases in order to decide the appropriate charges, or time to obtain further evidence. These were just some of the reasons given. On the other hand, the defence request adjournments so that legal aid applications can be dealt with, because they have not received the advance disclosure to which they are entitled, or just simply because they need to take instructions. Both parties ask for adjournments because of the non-availability of witnesses. The committee did remind the members that the granting of adjournments is not an administrative decision but a judicial decision (The Magistrate, 1993, p69). The question is should adjournments be granted as a matter of course? Some argue strongly that the preparation of cases, whether prosecution or defence, should not be hurried, 'even if some delay seems wilful on the part of the defendant, because to do so would compromise justice' (Raine and Willson, 1993, p152). Alternatively, Green, a former Director of Public Prosecutions argues that when there is a delay in the proceedings, when cases are adjourned, then witnesses' memories fade, witnesses move away and cannot be brought back to court, and so it is often in the interests of justice that the defendant is brought to trial speedily. In Green's opinion, 'Justice delayed is justice denied'. However he also concedes that on occasions, '...justice rushed is justice denied as well' (Green, 1990, p195). Crowther, a barrister, a former stipendiary magistrate and Recorder, in an address to the Middlesex Area magistrates was critical of the magistrates and their part in contributing to the increased delays and costs in their courts. He said, "Lay magistrates are often too tolerant of requests for adjournments by defendants, solicitors and the CPS. These have become so easy to gain that magistrates no longer ask themselves what is reasonable. If they were refused more often, word would soon get around and motivate others to move more quickly" (The Magistrate, 1990, p198).

### **1.2.3.3 The three E's, economy, efficiency and effectiveness.**

In the early nineteen nineties much of the emphasis in the magistrates' courts had shifted and was more concerned with managerial organisation and administrative performance. The three E's of economy, efficiency, and effectiveness had become the watchwords of the court administrators. The previously mentioned LeVay Report, combined with other initiatives, such as performance related pay schemes and fixed term contracts for senior staff, were seen as the way forward, a way of creating a more efficient management structure, improved management performances and the way to develop a better quality of service for those having to use the courts. Policies which prompted the then chairman of the Bar, Anthony Scrivener Q.C., to condemn the proposals as being more appropriate to " ..a meat packaging factory" (Raine and Willson, 1993, pp111-116: Walker and Starmer, 1993, p155: Rozenberg, 1994, p50). In 1992 the Home Office introduced a new set of performance related criteria which would be used in deciding a court's funding allocation. Courts would in future be allocated their finances dependant upon how many cases they handled, how efficiently they enforced the fines they had imposed, and to a lesser extent the speed and quality of their work. Scrivener also criticised this initiative as being 'designed to save money rather than to dispense justice' (Rozenberg, 1994, p51). Concern was also expressed by the court administrators themselves. J.D.Green, the Clerk to the Justices at St.Helens, publicly condemned these proposals and argued that, 'The product of justice will .. be increasingly disregarded and the budgetary rewards will go to the courts with the efficiency of the sausage machine' (Green, 1992, p19).

There were also strong arguments that this pre-occupation with managerialism had affected the nature of the justice which is dispensed in the courts. Jones was of the opinion that 'there has also been a shift away from a formal commitment to rational justice and the 'rule of law' to managerial justice'. She claimed that in the new criminal justice system, recognising the rights of the accused persons can be seen as being inefficient and uneconomic. The due process of law is seen as being too expensive, too inefficient and too ineffective. In any case the 'old system' let too many guilty people go free. (Jones, 1993, p200).

Since the initial proposals were introduced, the Lord Chancellor, due to a rising tide of opposition has found it necessary to make a number of concessions, and the proposals concerning fixed term contracts for senior staff and performance related pay have been totally withdrawn (Rozenberg, 1994, p277).

### **1.2.4 POWER AND INFLUENCE.**

#### **1.2.4.1 The message sent is not always the message received.**

The power of the clerk, solicitor or magistrate is illustrated by their ability to convert the message which the defendant is trying to convey into one which is more aligned with their own perceptions of the criminal justice system and the decision making process (McBarnet, 1981a, pp181-183: Brown, 1991, p112).

But who possesses the real power, and who exerts the greatest influence? Brown has no doubts, not only does the final decision rest with the magistrates, they also have an advantage in 'the politics of translation'. In practice 'they can refuse to consider information which is not presented in an acceptable way and thus establish obligatory passage points. They are potentially, therefore, the most powerful of the would be definers' (Brown, 1991, p10). But in arriving at their decisions, which factors have the greatest influence on these magistrates? Parker et al concluded that, 'sentencing is more influenced by the magistrates own moral judgement of the defendant's character than by anything else'. This preference for one's own judgement is created, 'because of the belief that few of the courtroom actors who make sentencing recommendations to them can be trusted as free of bias in favour of the defendant' (Parker et al., 1989, p102).

As has already been discussed, the relationships between the magistrates and their clerks are somewhat complex. These range between the magistrates being described as, 'the puppets of the clerk' (Parker et al, 1989, p100), and the clerk being depicted as, 'being very much like the butler' (Brown, 1991, p102; Raine and Willson, 1993, p186). But what is not in doubt, and as discussed in an earlier chapter, the magistrates' clerks and their court clerks, whether as the 'puppet master' or even as the 'butler', are very important and influential people in the magistrates' courts.

Previous discussions have identified some of the perceptions which the magistrates possess about advocates. There are defence advocates who are seen as unprepared and who inhibit the magistrates' search for the truth of the case. Prosecutors are often seen as being young, inexperienced, unprepared and inarticulate, but they are also seen as a source of unbiased information. But how influential are the advocates? In the opinion of Carson, their influence can be quite considerable. Because it is the advocates who decide not only what questions will be asked, but also how the questions will be directed, this function effectively gives the advocate the power of a censor. In reality, 'the lawyer determines what the court hears almost as much as if he or she were to both ask the questions and give the answers' (Carson, 1990, p38).

Finally, how much influence do the probation officers have, or to be more precise the reports which they prepare and present to the sentencers? As has already been shown, the probation officers are seen by some to be well meaning but soft and as being too much on the side of the defendants. The Probation Service has been criticised for its unrealistic and totally negative approach to custodial sentences. There are magistrates who have accused the probation officers of trying to usurp their powers, others accuse them of making unrealistic recommendations. However it is generally agreed that the probation officer is closer to the defendant and therefore has a more intimate knowledge of the defendant than the magistrates themselves. Because of this the reports which they present are seen as a valuable aid to the magistrate's own assessment of the defendant's character (Parker et al, 1989, p95).

#### **1.2.4.2 'Plea bargaining has no place in the English criminal justice system'.**

The heading for this section is a quote attributed to Lord Scarman and was made in 1978 (R v Atkinson cited in Raine and Willson, 1993, p131). Some fourteen years later Pannick was advocating that the lawyer is paid to argue the point, not to decide it (Pannick, 1992, p133). Yet in 1976, Carlen wrote, 'Everybody knows that there is much negotiation between police, counsel, defendants and probation officers outside the court. .. But in the open court the law is displayed as a symbol inviolate, a power transcending machinations of the powerful and self interested' (Carlen, 1976, p113). This aspect of the 'proceedings' was also a cause of concern for Baldwin and McConville who argued, 'If a reduction in sentence for a guilty plea is administratively necessary it should, in our view, be so stated and not disguised in the legal play of words which may be convincing to lawyers, but would be viewed by anyone else as mere cant and hypocrisy' (Baldwin and McConville, 1978, p125). In the early nineteen eighties there was still a great deal of evidence which indicated the continuation of pre-court, out of court and indeed in court negotiating. The three major players in this activity were the clerk, the prosecutor and the defence solicitor. The people who were notably absent were the magistrates 'who were almost totally ignorant of the extensiveness of attempted pre-court negotiations' (Parker et al, 1981, p50).

Now in the nineteen-nineties there is no longer the need for these covert activities. There has been an official shift of emphasis, the introduction of a number of new initiatives, among which were the introduction of administrative penalties. These included fixed penalty procedures, cautioning by the police and vehicle rectification schemes. In addition pre-trial conferences and reviews were introduced, the latter providing 'fertile ground' for plea, or charge bargaining. All are procedures which could imply some transfer of decision making away from the judiciary and towards the other agencies (Raine and Willson, 1993, Chapter 6). Some of these procedures have also conferred broad discretions upon the police and the CPS in relation to prosecution decision making. In fact it can be argued that the CPS now possess the power to veto any prosecution and is therefore the ultimate gatekeeper of the criminal courts (Leng, McConville and Sanders, 1992, p132).

So what is plea bargaining, or charge bargaining as it is sometimes called. It typically involves the defendant agreeing to plead guilty in exchange for the prosecution withdrawing the initial charge and substituting a less serious charge in its place. In the strictest sense it can be argued that the parties involved in the 'deal' have supplanted the magistrates in their role as the decision makers. The law in practice places little constraint on the prosecutor's ability to 'charge bargain'. The Crown prosecutors have the authority to make additions, deletions or alterations to charges. Having said that the 'Code for Crown Prosecutors' does stipulate that, 'The overriding consideration will be to ensure that the court is never left in the position of being unable to pass a sentence consistent with the gravity of the defendant's actions .. Administrative convenience in the form of a rapid guilty plea should not take precedence over the interests of justice'.

But the administrators and advocates have not been slow to recognise the opportunity for economic benefits. The pressure which is being put on the court managers to achieve greater efficiency has encouraged a trend towards pre-trial intervention (Walker and Starmer, 1993, p155). The strategy can also be adopted to increase the chances of a case being decided in the magistrates' court, (assuming that the lesser charge is a summary offence or an offence which is triable in either the Crown Court or the magistrates' court). Summary justice is cheaper and this is a way of saving money (Raine and Willson, 1993, p131).

### **2.1 SELECTION OF THE TOPIC - A practical research programme based on personal interest.**

According to Jorgensen, the selection of a topic can be dependant upon a number of different factors. It can be a matter of personal interest, a subject of some scholarly concern, or it may even result from a matter which is viewed as problematic by other people and is therefore considered to be worthy of investigation and analysis. In referring to those topics which are derived from personal interest, he expressed the view that, 'Personal interests hold potential for new insight and creativity, inspired by emotional and intellectual identification with the topic of study. ... These interests may be what sustains a participant through months or even years of demanding labour' (Jorgensen, 1989, p27).

Whilst my own choice of topic could be said to be a matter of scholarly concern, the real stimulus was very much a matter of personal interest. My interest in the proceedings in a magistrates' court was derived from my experiences as a lay magistrate and the knowledge and outlook which I had acquired as a social science undergraduate. A combination in which some may consider there are a number of conflicting components. Haralambos claims that the sympathies of many sociologists tend to lie with the deviant. (Haralambos, 1985, p451). Indeed Becker has argued that in practice the agents of social control, the police, the judges, the probation and prison officers are the real villains of the piece, 'Those who process the deviants and slap on labels' (Becker, 1963, pp155-162). As a magistrate of some experience, I was well versed in the court, its procedures and its people. Whilst not accepting everything that I witnessed in the courtroom at its face value, the questions which I was prompted to ask were generally constrained by my knowledge of the environment into which I had been socialised. However as a social science student, I had been introduced to the works and concepts of the symbolic interactionists and in particular to the works of Goffman. I was specifically interested in his theories of dramaturgy and role playing (Goffman, 1959), both of which I could associate with my own experiences of the courtroom. It was therefore, from these arguably different perspectives that the topic which I had chosen to research originated.

But it is not always sufficient just to have a personal or philosophical interest in the topic, there can also be more practical matters which need to be considered. As a lone part-time researcher, constrained by the demands of a full-time occupation in the steel industry, and with only a limited amount of time which could be allocated to a research project, this also had to be an influential factor in my choice, albeit a consideration which was subordinate to the more theoretical factors. But it did mean that the project had to be relatively small and it had to be in a setting which was both easily accessible and conveniently located. My choice did indeed heed McNeill's warning that a lone researcher can only be involved with relatively small groups or a clearly delimited social context and that when choosing the topic, observers must always consider the matter of access and be aware that some institutions or groups do have the power to restrict or even refuse access to researchers (McNeill, 1990, pp125, 71).

In selecting my own topic I did have a personal interest, based not only on a wealth of experience gained as a magistrate, but also the newly acquired academically motivated questioning approach of a social scientist. 'A qualitative study of the interaction in a magistrates' court', did meet the criteria of studying a relatively small group. Because of my standing in the magistrates' court as an 'insider', I did not foresee too many problems in gaining access to either the group to be studied or even to some of the less accessible areas of the setting.

## **2.2 THE LITERATURE SURVEY - Magistrates' justice, the 'just world' of the insider or the 'repressive world' as portrayed by some observers?**

In my naivety I thought that a research project consisted of selecting a topic, gaining access to the study setting, carrying out a number of overt or covert observations, conducting a number of interviews and discussions with the relevant members of the group being studied and then withdrawing from the setting in order to write and submit a thesis. To my surprise my supervisors told me that it could take the best part of a year to even review the relevant literature and only when I had done this would I be properly prepared to enter the setting as a researcher, a setting in which I had been personally involved for fifteen years. They were right, I was wrong.

The benefits which can be obtained from a review of the literature are considerable. It allows the researcher to consult previous knowledge and experience, or in my case, knowledge and experience gained from a different perspective. It enables the researcher to consider, and to utilise where necessary, the discussions which have already taken place in the particular area of interest and to use these, where appropriate, in support of an argument. This is in effect borrowing the authority of earlier researchers (Gilbert, 1993, pp29-30). A research of the literature may also stimulate ideas, assist in the formulation of specific research questions and assist the researcher to 'devise a theoretical or analytical framework' (Arber, 1993, p35).

In my particular case the result of the literature research had a more unusual outcome, the initial reaction being something of a culture shock. At the outset it was suggested that I should read 'Magistrates' Justice', Carlen's study of the magistrates' courts which had been published in the mid-nineteen seventies, a period which approximated to the time that I had been appointed to the magistracy. Through this work I was introduced to Garfinkel, Emerson and Blumberg. Sometime later I was reading, amongst others, McBarnet, Bottomley, Baldwin, McConville and the studies of Parker et al. Who were these people I asked, and how could they describe the law courts, and in particular the magistrates' courts, the courts with which I was so familiar, in such derogatory terms? I came across unfamiliar phrases such as 'an organised system of complicity' (Blumberg, 1967). 'This courtroom ceremony is characteristically organised to degrade and humiliate the defendant' (Emerson, 1969, p174). 'The courtroom proceeding is one of those barbarous ceremonies..' (Goffman, 1952, p503). I saw the courtroom procedure described as a 'ceremonial stripping of a man of his dignity'



(Garfinkel, 1956, pp420-424). Carlen used such expressions as 'ritualistic control of the situation', the 'convoluted control of information' and 'the suppression of alternative performances'. She perceived the function of the courts as the 'protection of the institution of private property and the prevailing modes of capitalist production' (Carlen, 1976, p12). According to McBarnet, the lower courts were 'deliberately structured in defiance of the ideology of justice' and that 'almost all criminal law is acted out in the lower courts without traditional due process' (McBarnet, 1981, p153).

If this was how the courts were perceived, what about the magistrates? What about me? Parker et al questioned our competence. We were seen to be predominantly middle aged, middle class, not legally trained, in fact not very well trained at all. We were not considered to be very 'streetwise' and often lacking the insight into the social world of those we judged. When in court 'they put on a mask and play in role and become highly selective in which parts of their life experienced selves they employ when acting as magistrates'. But neither are we interested in making fools of ourselves and in order to conceal these shortcomings, we learn to value the formulae which we are given. Parker also argues that contrary to popular opinion neither is magistrates' justice cheap (Parker et al., 1981, pp66, 134; 1989, pp171-173). All very damning and at that time these were comments which received anything but my whole hearted approval.

So how does a mixture of a 'subjective participant' and an 'objective researcher' react to these types of criticism? Is the magistrates' court the world of the insider, where despite its admitted shortcomings, the aim of the system is seen as the dispensing of justice as impartially and as efficiently as it can, a place where the members of the community can be judged by their peers? Or is it the world as viewed by some observers, a degradation ceremony designed to humiliate the defendant whilst protecting the institution of private property and the prevailing modes of capitalist production? When reviewing the Parker et al study 'Unmasking the Magistrates', J.E. Towler J.P. wrote, 'Draw breath, .. suppress indignation, count to ten, .. Home truths are never comfortable, but to see yourselves as others see you is often salutary, and even half truths deserve attention.' (The Magistrate, 1990, p91). With this advice in mind I was able to set out one of the main objectives of the research, 'To evaluate how in reality courtroom interaction conforms to the abstract ideals of justice'. In addition, the literature survey succeeded in stimulating a number of ideas and it also assisted me in formulating a number of specific questions for my research, questions which in practice helped me to distance myself from the more familiar insider role with which I was automatically associated.

## **2.3 THE SELECTION OF THE SETTING.**

### **2.3.1 To play on my home ground or to try and arrange an away fixture.**

Should I choose my own court as the setting for an in-depth study of courtroom interaction? A setting of which I had a detailed and intimate knowledge, not only of the court and its procedures but also of its people? Or should I select a 'foreign' setting, a court where I

would be less familiar with the organisation, more detached from its people and even more importantly, a setting where I would not be immediately recognised and responded to as an insider, as an influential member of the group being studied, but rather in the preferred role of the researcher? The geographical location and the practical benefits to be gained from researching in my own court were overwhelming in terms of both time and convenience, but the question I kept asking was, could I remain in my own court and still be objective? What advice could I glean from the literature? What had other researchers concluded? I read that participant observers often selected field settings based, in part, on their previous involvement in the setting (Adler, 1981; Hayano, 1982; Rambo, 1987). Indeed the researcher may already be a participant before deciding formally to conduct research in the setting (Jorgensen, 1989, pp30-31). But as Jorgensen also pointed out, there are a number of other considerations which need to be dealt with before the appropriate decision can be taken. Is the setting accessible? At least I knew that my own court was. Is the range of participant roles that the researcher can assume adequate for what is trying to be achieved? I was already a participant, I also knew that I could observe, although I could not be sure how the 'subjects' would respond to my 'new role'. In addition I also had ready made contacts with some of the other groups and agencies who were associated with the courts although in some instances any access to these areas might well have to be facilitated by a 'gatekeeper'. Will the researcher be able to remain in the setting long enough to obtain the required information? In my own court I knew that there were no limits. Whilst I knew the answers to these questions in respect of my own court, I was not so confident in answering them for other courts. Neither, Jorgensen reminds us, are all settings totally open. Within most complex organisations there are 'cliques of people whose activities are kept secret from non-members'. Even 'public' establishments are not always totally visible to the general public and that includes researchers. Appropriately Jorgensen mentions the criminal trial as a typical example, 'Almost everyone may observe a criminal trial. ...Access may be gained by assuming the role of a spectator, a role readily available to most people. Each of these settings however also contains backstage regions, closed to just anyone. ...Not everyone is invited to the judges' chambers'. Well again there should be no difficulties in my own court with this aspect either, I am a member, I am the 'judge'. The selection was made. The location of the court was convenient for a part-time research project. I could even combine some of my research effort with my formal court duties, or so I thought, and I had access not only to the setting in general, but also to some of the less accessible regions as well. The advantages of a 'home fixture' were too numerous to ignore. As Jorgensen concluded, 'The more you know about a setting, the easier it is to make an informed decision whether or not it will be possible to investigate the topic of interest' (Jorgensen, 1989, pp40-45). I knew my setting well and I had made an informed decision.

### **2.3.2 An appropriate setting to enable the objectives of the study to be fulfilled.**

The setting, as previously described, is a medium sized and very busy court. It possesses most of the elements which one would expect to find in a typical magistrates' court. In addition it is a court which was in a state of change, preparing to move from an inadequate set of old buildings into a new ultra-modern courthouse. It was also in the act of bringing its old and laborious recording and financial systems into the twentieth century and the age of computerisation. The court also had the benefits of having a mixed bench, lay magistrates and a stipendiary magistrate, which presented the opportunity to compare 'amateur' and 'professional' justice. Along with all other courts it was having to contend with the policies of efficiency which were being imposed by the 'political masters'. A proposed reorganisation in the managerial structure of the courts, performance indicators, cash limiting and fixed term performance related contracts for senior members of staff. The court and its magistrates were having to grapple with the various and sometimes quite demanding changes in legislation, the Children Act 1989, the Road Traffic and Criminal Justice Acts of 1991 to name just three. The setting was therefore considered by the researcher to be eminently suitable for the purpose of the research.

The researcher was also 'at home' in this environment. He had been a member of this particular Bench for a considerable period. As an experienced and 'senior' magistrate he chaired the courts on a regular basis. He had been a member of the Probation Liaison Committee for a number of years and also sat on the 'court team' and 'bail hostel' sub-committees. For two years prior to the commencement of the project he had also been a member of the Lord Chancellor's Local Advisory Committee and as such was involved in the interviewing of candidates for the magistracy. During the early part of the research period he was elected to the Magistrates' Courts Committee.

To prevent a totally 'blinkered' view based solely on the events of one court, plans were also made for the observer to attend at other magistrates' courts at Hull and Sheffield as well as the Crown Court at Doncaster. These visits were intended to enable these courts to be used as comparator courts and also to expose the researcher to less familiar environments.

### **2.4 PERMISSION AND CONSENT - The privileged insider.**

It is one thing to select the desired research setting, it can prove to be far more difficult to gain access to that setting. Not everyone welcomes being put under the microscope and this applies particularly to the powerful elites and institutions. The experience of some researchers indicates that to some closed groups research may be 'ideologically anathema'. Other groups feel threatened, that they may be exploited or else the research may result in damaging disclosures (Hornsby-Smith, 1993, p54). On the other hand there are some who claim that the reason for the reluctance of bureaucracies and the powerful people who control them is simply to obscure the truth (Encel, 1978, p47). What does not appear to be in doubt is the ability of these groups to either deny access completely, or to vastly reduce the amount of

access. Even the so called open institutions may become decidedly closed and react defensively, erecting barriers against anything which is perceived as an external threat from hostile intruders (Hornsby-Smith, 1993, p59). Even where access is granted to a setting this may require extensive negotiation with, and permission from a 'gatekeeper, if not for access to the setting itself, permission may well have to be negotiated to access some of the less public elements of the setting (Arber, 1993, p37). My only knowledge of these and other pitfalls was what I had read in the literature. At no time did I experience this type of response although I was aware that other requests to the court to assist in academic research had been refused. I also realised that in the past both the courts and the magistrates had been subjected to quite severe criticisms, my own review of the literature had indicated as much. I was soon to realise that I was a privileged researcher, and this of course was due to my 'insider' status. I was not seen as the hostile intruder or as an external threat, it was also considered unlikely that I would be interested in exploiting the situation or that I would make any damaging disclosures. But these are all assumptions, in reality it was not considered necessary to discuss such matters. Neither did anyone try to hijack the agenda (Fielding, 1993, p160). What I was offered was a very positive promise of support.

Jorgensen writes, 'The most ideal situation is one in which the authorities and other participants in the setting welcome the researcher, where overt access is gained by seeking permission from the highest possible authority and convincing everyone in the setting that the researcher can be trusted. The more the people in the setting, especially those in positions of authority, are prepared to support the research, the more likely is successful access to the setting (Jorgensen, 1989, p46). In my case most of the criteria set down by Jorgensen appeared to have been achieved.

But can constraints be inadvertently placed on the researcher, not because there is a lack of trust but because there is a high degree of trust? Can an assumption that 'we are in safe hands with this researcher', or 'this researcher will not reveal any damaging disclosures', in practice inhibit the researcher's 'quest for the truth of the matter'? This was a dilemma to which I gave a great deal of thought. I concluded that as a social scientist I must ensure that the research would be carried out with a high level of objectivity and in reality I did not see my research being constrained to either a greater or lesser extent than that of any other researcher who would also be bound by the ethics, the rules of confidentiality and the protection of the individuals anonymity and privacy which are said to be the cornerstones of any social research.

## **2.5 RESEARCH DESIGN - Some researchers seem to have loose notions.**

'Some researchers seem to have loose notions of what they are intending to investigate once they have negotiated access to a research site' (Bryman, 1988, p67). Bryman's statement was an accurate description of my own situation. After I had negotiated my access to the courts. I did not really appreciate what the next steps should be, what was expected of me, and I entered the study area with only the most basic of plans. Once again it

was back to the literature, back to the 'drawing board'. The literature referred to a research design, an approach which was likened to a 'blue print', a procedure which should be defined and organised 'so that it allows the researcher to see how each step will follow the one before' and in so doing will enable the researcher to develop a knowledge and understanding of the situation (Fetterman, 1989). A good research design allows the researcher to develop a systematic and knowledgeable approach to the research as well as providing a system for managing valuable time and a method of checking actual progress against a plan. The basis of the research design in the opinion of Pelto, is that 'it involves combining the essential elements of investigation into an effective problem solving sequence' (Pelto, 1970, p331; Fetterman, 1989, p18; Arber, 1993, p33). According to Fetterman, a useful research design 'limits the endeavour, links the theory to the method, guides the ethnographer....' (Fetterman, 1989, p18).

But are loose notions or loose strategies necessarily a bad thing in ethnographic research? Should research be subjected to a set of rigid rules and conditions? Filstead argues that 'qualitative research is concerned with the discovery of theory rather than the verification of theory' (Filstead, 1979, p38). Jorgensen expresses an opinion that, 'Whilst the researcher may have a theoretical interest in being there, exactly what concepts are important, how they are or are not related and what therefore is problematic should remain open and subject to refinement and definition based on what the research is able to uncover and observe' (Jorgensen, 1989, p18). Whilst not being a supporter of researchers with loose notions, Bryman appeared to support the principle of open strategies when he wrote, 'an open research strategy widens the opportunity of uncovering entirely unexpected issues which may be of interest to researchers and beneficial to research, areas which may not have been visible to them had the scope of the study been foreclosed by a structured, and hence a potentially rigid strategy' (Bryman, 1988, p67). My own mentor, Ashworth, wrote that in 'insisting on the refutability of theories, the testing of the hypotheses, the setting up of the research needs, if appropriate, to allow the data to run counter to expectations if that is how the world actually is' (Ashworth, 1987, p8). With regard to my own research, my preconceived ideas and familiarity with both the setting and the people within it, I considered a more open approach as being particularly appropriate. However Ashworth did add the proviso that in arguing that qualitative research can deliver adequate descriptions with demonstrable validity this adequacy and validity does depend on the correctness of the research procedure. The question of validity echoes throughout the literature. It is argued that social scientists are likely to exhibit greater confidence in their findings when these are derived from more than one method of investigation, direct experience and observation, interviews with a range of different informants and documentation are all suggested as ways of gathering information. By using a variety of techniques, the influences or leads drawn from one data source can be corroborated by another (Denzin, 1970, p310; Lacey, 1976, p60; Fetterman 1989, p89; Jorgensen, 1989, p53). It is also suggested that it is extremely important to ask whether or not and the extent to which the researchers' procedures have provided direct access to the insiders' world. Limited access



generally results in less valid and reliable findings (Jorgensen 1989, p37). In the familiar world of the courts, as an insider who had already forged many relationships over many years, as a member of various committees and as the recipient of a great deal of documented information, I envisaged little difficulty in fulfilling most of these requirements.

## **2.6 THE SURVEY PERIOD - An insider trying to get out not an outsider trying to get in.**

Certain authors recommend that the research process should be divided into a number of separate phases, the favoured number indicated is three. The initial phase, described as both the 'passive stage' (McNeill, 1990, p79) and the 'survey period' (Fetterman, 1989, p18), is a period in which the researcher seeks to gain an understanding of the culture, a time to learn the basics, to become familiar with the language, and to identify the various relationships which exist (Bryman, 1988, p150). It is seen as a relatively unstructured period, a period when information is gathered by means of informal conversations and informal observations. The second phase is the 'interactive stage' (McNeill, 1990, p79) or the 'post-survey period' (Fetterman, 1989, p18). This is a more structured period during which the researcher needs to identify not only the significant themes but also any gaps and problems which exist within the research. By means of observation and formal interview the researcher should by this time have started to penetrate the 'fronts' which are invariably erected against the outsider. The final phase, normally referred to as either the 'review or re-appraisal', should be a highly structured phase. By this time the researcher should have identified the certain relevant patterns of behaviour, the goal of the researcher should be clear and he or she should be in a position to test their ideas. This is also the time when a review of the earlier phases should be undertaken. This is also the point of the project when the researcher should be giving some thought to the timing and method of withdrawal from the group.

While I found all this theoretically and academically interesting, how could it be applied to my own project? There was no doubt that some of it was relevant, particularly the second and third phases. Although I wasn't an outsider I could still envisage some people erecting 'fronts' against this 'part-time amateur sticking his nose into the world of the courtroom professionals'. Another problem to consider was in the third phase, whilst I would have to decide a time to withdraw from the setting as a researcher, in reality I could remain, and would expect to remain, in the study area for many more years as a magistrate, I wasn't in a position where I could just 'cut and run'. But what about the initial period, the 'survey period', a time of informal conversations and informal observations, a time to gain an understanding of the culture, to learn the language, to familiarise oneself with the setting and its people? I considered that I had already carried out a survey period of approximately fifteen years duration. But should the idea of a survey period just be simply rejected? I still had a problem. It is true that I was not an outsider trying to gain access, but I was an insider trying to distance myself from the inside in order to carry out an objective, valid and relatively unbiased piece of research. As a 'senior' magistrate, I not only knew the people within the setting but they knew

me. They did not know me as a social science graduate who was undertaking research but as someone who regularly presided in the courtroom and who tradition demanded that I be addressed as either 'Your worship' or 'Sir'. My requirement from the initial phase therefore was to disentangle myself from my more familiar and formal role in order that people would function 'normally' when I was present in court in my informal role, to recognise my role as a researcher and during interview to describe things 'as it is' and not the way they think that I think it should be.

## **2.7 FAMILIARITY AND STOCK OF KNOWLEDGE - Can 'insider' researchers see the wood for the trees.**

There is within the methodology a deal of discussion about the advantages and disadvantages of a researcher's familiarity with a setting and the value or otherwise of the 'stock of knowledge' with which the researcher may be armed when entering that setting. This discussion went straight to the crux of one of my concerns, my own familiarity with the study area. One side of the argument suggests that personal experience gained from direct participation in the world of the insider is extremely valuable and especially if that experience has been specifically derived from having performed membership roles in the setting. Jorgensen refers to a number of examples to support this argument. Two of these are the research studies of Ferraro and Rambo. In the first example it is said that Ferraro's interest in wife battering came about from her own first hand experience as a battered wife, and because of this she was able to set up a quick rapport with other women who had suffered similar experiences. In the second example, Jorgensen suggests that Rambo's previous subjective involvement in the world of the exotic dancers which she subsequently researched, 'resulted in a much more accurate (objective) description than would have been possible by any other strategy' (Jorgensen, 1989, pp 27, 65). McNeill holds the view that insider knowledge can be advantageous because the central characteristic of social action is that it has meaning for the people who are involved in it and in order to achieve this you have to start from where they are (McNeill, 1989, p69). Alternatively outsiders are seen to have none of these advantages. Some argue that outsiders cannot hope to acquire more than a crude notion of the insiders world until they understand the culture and the language which is used to communicate its meaning (Jorgensen, 1989, p14). It is also said that newcomers may lose their way in a maze of unfamiliar behaviours and situations (Fetterman, 1989, p41). Neither is this lack of communication necessarily a ploy on the part of the insiders to conceal the reality, many of the groups 'own taken for granted pre-suppositions are not conscious and therefore cannot be elucidated to newcomers' (Ashworth, 1991). But there are counter arguments. There is an argument which says that as an outsider looking in, the researcher can overview the scene noting major and distinctive features, relationships, patterns, processes and events. This is extremely important because insiders do not view their world from this standpoint, and once this newness gives way to familiarity then this original awareness will be forever lost

(Jorgensen, 1989, p82). Another concern which has been expressed is that although ethnographic research into one's own culture may not take as much time to reach the same point as someone who is less familiar, familiarity can result in some events being taken for granted leaving important data unnoticed and unrecorded (Fetterman, 1989, p46). This concern was also expressed by Ashworth, who, whilst accepting that the rich fore-understanding of an insider puts them in a good position to do relevant incisive work, questioned whether they lack critical distance, fail to see viewpoints other than the ones they are used to, and perhaps are unable to perceive the taken for granted framework which maintains the social fabric that they know, (but unreflectively), so well (Ashworth, 1987, p13). It is important at the outset of an enquiry to remain open to the unexpected and especially if the researcher has previous experience in the setting. Jorgensen writes, 'previous knowledge may be inappropriate, somewhat slanted or even incorrect'. As a researcher one should be properly critical of personal experience. He warns, 'Your experiences, because they are your experiences, are subject to even more critical examination than the experience of the other members (Jorgensen, 1989, p93).

In an assessment of my own experiences and my own efforts to recognise them, Ashworth described the situation very accurately when he wrote, 'Many features of attunement to the stock of knowledge at hand are clear in the ongoing work of my student Gordon Read. He is engaged in an ethnographic study of the magistrates' court. .. Read is himself a senior magistrate having served for some fifteen years as a Justice of the Peace .. It has taken Gordon Read a great deal of time to begin to problematize the magistrates' court with which he is so familiar. To do this he had to absorb research literature, especially literature unsympathetic to the current working of the legal system, he has had to spend time sitting in the public area of the court during hearings presided over by other magistrates and has had to find ways of putting himself imaginatively into the position of the other players in the courtroom drama, the various legal officers, the witnesses, the court functionaries and the accused person. His membership in the stock of knowledge is an hindrance to observation, though participation in the social world is second nature (Ashworth,1991).

Ashworth was right, I had participated in the court setting for a decade and a half. As a magistrate I prided myself as being part of an honest if sometimes inefficient legal system. I may on occasions have questioned the ability of some of my colleagues, particularly in the role of court chairmen. I never doubted their motives, integrity or their commitment to the dispensing of justice. I also recognised that solicitors varied not only in the levels of their advocacy, but also in their commitment to their clients and the respect they showed to the courts and the benches who adjudicated in them. I could also be critical, and in open court if the occasion so demanded, about the presentation of and proposals contained in the Pre-Sentence Reports which had been prepared by the Probation Service. Despite these criticisms I must admit that I held a rather comfortable view of the magistrates' courts from my elevated position on the bench. It was therefore essential in the interests of accuracy and objectivity that I did



seek and absorb the alternative perspectives in the ways described by Ashworth and detailed in the literature.

## **2.8. ENTRY AND GAINING ACCEPTANCE.**

### **2.8.1 After fifteen years of involvement in the setting, they now told me it was time that I became inconspicuous.**

In reading the methodology literature, I found that the advice offered by people who had experienced entering a research setting was generally consistent. The advice was that in the initial stages the researcher should attempt to be as unobtrusive as possible, to blend in with the setting and to 'avoid anything which would call attention to oneself' (Jorgensen, 1989, p73). The participant observer needs to become a part of the scenery and hence largely invisible (Bryman, 1988, p113). 'All researchers agree that it is important to remain inconspicuous at this stage' (McNeill, 1990, p77). On the face of it this appeared to be very sensible and pertinent advice. But what about the researcher who has already been a participant in that setting for fifteen years, a participant who has done anything but blend into the setting? How can that person suddenly exchange the role of a participant to that of an observer and succeed in becoming inconspicuous? For fifteen years I had entered the setting in the role of the magistrate, I had entered the courtroom through the entrance which is reserved for the magistrates. For a number of years I had regularly presided in those courts. Now I wished to enter the courtroom not as a magistrate but as a social scientist, as a participant observer. I wanted to enter the courtroom through a different entrance, I wished to be unobtrusive, I wanted people in these initial stages to forget that I was there and to perform their usual roles.

Not surprisingly, I decided that the odds for achieving this were somewhat stacked against me. However not to be defeated, I reasoned that if I entered the courtroom in my accepted role as a magistrate, I could observe both the court proceedings and its actors from my elevated position on the bench. This would mean that I could carry out my observations of the courtroom at the same time as I was fulfilling my judicial duties. This method would not only overcome my dilemma but it was also seen as an effective way of ensuring that my precious time was well utilised. The fact that I would be observing covertly did not present a problem for me, I considered this method to be justified in that it was one way of ensuring that the actors behaved normally during my observations in the courtroom, something which could not be guaranteed if I announced myself and then observed overtly from the well of the court. Unfortunately this was not to be quite the simple solution I had assumed, the combining of the two roles was not as easy as I thought it would be. As Ashworth accurately described the situation, 'In Read's case, he fondly hoped that he would be able to be a scientific observer in the court while participating in its action. This proved to be quite impossible when he was presiding, since he had proper concern for the fatefulness of the proceedings, and could not allow himself to adopt a cool observational attitude in which the stock of knowledge is

meditatively, even playfully, questioned' (Ashworth, 1991). Even when sitting as a 'winger', I still found that the need to focus my attention on specific aspects of the proceedings and the facts of the case precluded me from viewing the courtroom procedures and its actors from any perspective other than as a magistrate.

Whilst I did not totally abandon this method of participant observation, it was relegated well down the list of techniques for obtaining information. It now appeared that the only course of observation available to me was to survey the proceedings from the well of the court. But as I have already indicated there was no way that I could pursue this option and still remain unobtrusive. So how could I limit the adverse effect? How could I ensure that people acted 'normally' in the court setting? How could I encourage people to react to me as a social scientist and not as a member of the magistracy? How could I persuade people to tell me about things as they see them and not as they think I would like them to be? How could I guard against some of the actors agreeing to cooperate in the research because they considered it to be in their longer term interests to do so? At the time of entering the setting as an observer, I seemed to have all of the questions and very few of the answers.

I did enter the well of the court, and if I had entertained any ideas that I would be able to adopt a low profile then any such thoughts were quickly dispelled. Even though I had indicated my intentions to the Clerk to the Justices, these had obviously not been communicated to the other court users. I had read that, by and large, ethnographers prefer to be open about their participation, but frequently display concern about the effect of their presence on the people they observe (Bryman, 1988, p112). So what was the reaction to my unexpected appearance in an unexpected role in the courtroom setting? From the lay magistrates who were sitting on the bench I received enquiring looks, there were whispered conversations. Was this the first step in the strongly rumoured and much feared appraisal system for magistrates? That was one theory. I also received a bemused look from the court clerk. Why had I entered the court through the wrong door and why was I sitting in the seats adjacent to those normally occupied by the general public? (The reason for sitting in that specific position was that I thought it would afford me a good vantage point for observing the court whilst at the same time being out of the normal sight line of the majority of the court users). Was I there on behalf of the 'boss', the Clerk to the Justices, to check on the efficiency or otherwise of the court ushers? At least one court usher thought that I was. Many people who attend in the courtrooms are subjected to a series of questions, my initial experience was little different, I too was questioned, albeit very politely. Solicitors, probation officers, police officers, court clerks and court ushers were all keen to have their questions answered, their curiosity satisfied and any apprehensions they had, hopefully reduced. Possibly the most surprised person was the stipendiary magistrate. His reaction was to despatch the court usher to request my attendance in his office at the end of the morning session. Now it was my turn to be worried, I had never appeared before a stipendiary magistrate before. In answering all of their questions I was guided by the advice that 'in participating overtly it is important to deal with

people's questions openly and directly, you need to normalise your presence in the field' (Jorgensen, 1989, p71).

### **2.8.2. Gaining acceptance in the setting did not appear to present a problem, but in which role was I accepted?**

The quality of data is improved when the participant observer establishes and sustains trusting and cooperative relationships with the people in the field (Jorgensen, 1989, p69). Only by getting close to their subjects and becoming insiders can qualitative researchers view the world as a participant in the setting (Bryman, 1988, p96). One way of achieving this according to the methodology literature is to maximise trust with a few key people in the setting, although in doing this one needs to guard against being seen as involved with the authority structures of the organisation, such impressions could affect the behaviour of those being observed, especially those confined to subordinate roles in the organisation (McNeill, 1990, p76: Jorgensen, 1989, p45). Reactions to the observer will vary, being demonstrated by a whole range of emotions, suspicion, contempt, hostility, indifference, curiosity, friendliness, over deference. Participants may be obstructive and totally uncooperative, others may see the relationship as being intrinsically valuable and a source of prestige and power (Jorgensen, 1989, p74).

Much of what I read gave me cause for concern, not that I anticipated an hostile reception, my concerns were to the contrary. To many people I was an insider, I had been a member of the Bench for many years and as such I was confident that I already had the respect and trust of the majority of my magisterial colleagues. In addition I had always considered that my working relationships with the court staff, the court clerks and court ushers, had been very good. As has already been indicated I certainly had the trust and the support of the Clerk to the Justices. But what about the other court users, the prosecutors, the defence advocates, the police and the probation officers? Did they see me as an insider or was I just one of those lay magistrates, the amateurs who put in an appearance once a week or once every other week, and are not really true insiders? I was much less certain about what their response would be. Others might argue that I could be viewed as slightly more than just another lay magistrate. As I have already indicated I also sat on a number of the more 'influential' committees within the system and I had set out on my research with the full support of the Clerk to the Justices. As a member of the Magistrates' Courts Committee, which in essence acts as the management committee for the courts as well as being the employer of the court staff, it would not have been unnatural, therefore, for people to associate me with the 'authority structure of the organisation'.

So how does one minimise the adverse effects, penetrate the fronts, smooth the path and gain acceptance, not just as an insider, because that status already existed, but acceptance as a researcher, a participant observer? I was told that time is generally an ally, the longer or more frequently that the observer is in the setting, the more people are likely to

perceive you as non-threatening and take your existence and presence for granted. From my own experience I would certainly subscribe to that point of view. But I still had something of a problem in that I was still having to perform a 'dual' role because my visits to the well of the court were being regularly interspersed with attendances at court in my more 'normal' role as a magistrate, the decision maker and sentencer. I had read that it is important to reassure the insiders that you are not there to harm either them or their interests. In practice I was never made to feel that this was ever an issue. However, in order to dispel any possible misconceptions, I did discuss my research plan with them, I did answer their questions as directly and as honestly as I could and I also gave them assurances regarding their anonymity and confidentiality.

From the very outset information, advice and help was forthcoming, cooperation within the research was promised. This came from colleagues, both lay and professional, from the defence advocates, and providing that the appropriate request was put in writing I also had a promise of cooperation from the Probation Service. Potential allies and 'key actors' were identified. These were the court clerks whom I considered to be at the centre of the courtroom proceedings, the court ushers who like the legendary 'office tea lady' seemed to have some knowledge of everything and everybody, and the Clerk to the Justices whom I was confident had the authority and the influence to open those doors which I might find were initially closed to me. These were also people with whom, as I have already indicated, I enjoyed good relationships.

Jorgensen also advises that, 'Morally respondent participant observation requires that you be alert for ways of providing something of value in exchange for what you can get from insiders' (Jorgensen, 1989, p72). In practice I found that this theory can be somewhat 'double edged', because whilst I was willing to respond positively to certain suggestions, I found that there were some expectations placed on me which I was unable or unwilling to deliver. On the one hand I was asked by two senior magistrates if I would observe and give feedback on their performances when presiding in the courtroom, this I was willing to do. I was asked by the Deputy Clerk to the Justices, who had delegated responsibility for the training of lay magistrates and certain members of staff, if I would consider developing a training module for lay magistrates in conjunction with my research, I was delighted to be asked. However my presence in the courtroom also resulted in my becoming a 'sounding board' for some people's concerns. I was asked for my opinion on the way that certain advocates behaved in court? How I viewed the way that some court clerks disrespectfully treated the magistrates? After having observed a trial I was approached by the prosecution advocate and asked to pass an opinion on the magistrates' decision. As a magistrate I might have passed an opinion on some of these matters, certainly not all. As a participant observer I had no desire to become involved, I did not wish to alienate any of the insiders, I felt the need to maintain a neutral position. But keeping on the right side of people is not always possible, because whilst I could pursue this

policy as a participant observer, it was not a policy which I could necessarily, or even wish to, adopt when I was sitting on the bench.

Just the simple fact that I was present in the courtroom caused some problems which it could be argued were detrimental to participant observation. On the first morning when the bench retired to deliberate on a case, I observed that the formality of the court ceased abruptly and the whole of the courtroom took on a relaxed atmosphere, some actors formed into groups where there was a general hubbub of conversation and laughter, advocates in loud voices appeared to be competing in trying to organise their workloads for the morning with the court clerk. It was anything but the well ordered procedure with which I was familiar and I must admit that the change took me by surprise. I had now seen the court in a totally different light than at any other time in my courtroom experience. I was even more surprised therefore, when later in the morning and in conversation with the court clerk, I was told how subdued people appeared to have been that morning each time the bench had retired when compared with other days, a change which could only be attributed to my presence in the courtroom. Another small problem I encountered was how I should dress in my role as a participant observer. As a magistrate I was well aware that I should be formally attired. If I dressed casually would this be frowned upon by the court users, who were also expected to dress in a formal manner when in court. If I dressed casually would I be seen as being disrespectful to the court? I played safe, I wore a suit. Whilst this was ideal for the courtroom it was definitely the wrong type of dress for the waiting areas. If I was hoping to sit in the corridors of the court in order to covertly observe the behaviour and eavesdrop on the conversations of the defendants, then I was to be disappointed, as soon as I appeared in these areas the noisy conversations and the rumbustious forms of behaviour were quickly curtailed. Even on subsequent visits when I dressed in a more casual manner, the mood in these outside areas changed almost as soon as I walked into the setting, I can only assume that despite my efforts to blend into the scene people were still somehow aware that I was a magistrate. For example whether formally or casually dressed I noticed that any conversations which were taking place between advocates and their clients soon changed from being conducted in normal tones to those of whispered conversations immediately my presence was noticed.

However as had been forecast, time was an ally, and my visits to the courtroom were eventually accepted with a greater degree of normality, although this was never true of the waiting areas where I continued to be viewed with some suspicion by the defendants, their family and friends and even by one or two advocates. It appeared that whilst I was in the courtroom, the setting with which I was associated, I was accepted. But in the areas where magistrates were hardly ever seen, even in my role as a researcher, I was not really welcome. Overall I had negotiated the actual entry to the setting fairly well, with the reservations already discussed, but I was under no illusion that it had proved quite impossible to follow the advice of the literature 'to remain inconspicuous'. And I was never totally certain all the time I was

observing how the participants saw my role. Where I was on the magistrate-participant observer continuum, I was never sure.

## **2.9 SIGNIFICANT THEMES.**

As I have already indicated, my problem was not the usual one which is experienced by ethnographers entering the setting for the first time. I did not feel overwhelmed by the mass of detail which made up the organisation, I already had a great deal of knowledge about its structure and its inner workings, I understood most of its specialist language and knew many of its people, many as colleagues, some as friends, and I was aware of how the socio-cultural system operated. I had no doubts that I was familiar with the setting, I was also very conscious that I had a considerable number of pre-conceived ideas. Because of this I was 'blind' to much that happened in the courtroom, those things which happened and were taken for granted, practices and procedures which were very rarely, if ever, questioned. I was well past the stage of asking such questions as 'How is the space organised? How are the people in this space organised? How are they attired and is there any relevance in the way that they are? Can you see signs of social status and rank? It appeared that because of my long time presence in the setting I had become so immersed in the proceedings that I was no longer able to stand back 'and generate a fruitful perspective of what is of interest' (Jorgensen, 1989, p33). I also accepted the argument that neither is it possible to observe every situation that is of interest within a setting. It therefore became apparent that there was a real need to force myself to stand back and to focus my attention on areas of specific interest.

But how could I bring about this transformation? How could I focus? How after having been exposed to the magistrates' courts system for so long could I realistically stand back and ask 'What is going on here?' (Rist, 1984, p161). My solution to this problem was not to stand back and view the situation, but to try and view the situation, not through my eyes, but through the eyes of others, and specifically through the eyes of those observers who had been particularly critical of the courts and the procedures. On the surface this was a very simple technique. In practice I found it to be quite a painful process. It frequently involved me in having to make adjustments to my hitherto comfortable outlook. Some of the criticisms would have been easy to dismiss as extreme and inapt. But gradually and having read the criticisms for the umpteenth time I realised that the 'hair on the back of my neck no longer bristled', I began to see how some of the views expressed could have been arrived at, I even started questioning some of my own long held views of the organisation, proceedings and the objectives of the magistrates' courts.

By asking these questions a number of significant themes emerged. Was, as I had read, the organisation of the courts designed to degrade and humiliate the defendants? Were the courts more interested in organisational efficiency than in dispensing justice? Is the defendant really 'a dummy player' in a courtroom drama which some would liken to a farce, 'the theatre of the absurd'? How do the various actors see their roles and how do they view their

relationships with others? Who really holds the power in the magistrates' courts system? How do the highly qualified and experienced professional court users really view the part-time, often inadequately trained, amateur decision makers, the magistrates? These were questions which as a magistrate I had never found the need to ask, these were now the themes on which I considered that my research should be focused.

### **2.10 GATHERING INFORMATION - Observation, documentation and speech.**

According to Polsky, 'Successful field research depends on the investigator's trained abilities to look at people, listen to them, think and feel with them, talk with them rather than at them' (Polsky, 1969, p120). Fielding emphasises the effort that should be made by the researcher to think oneself into the perspective of the members, 'the introspective, empathetic process Weber called *verstehen*' (Fielding, 1993, p157). Because of my role, knowledge and my existing relationships with the members, I considered that I was already in the fortunate position to fulfil many of these desirable, if not essential, requirements.

It has also been argued that the major strength of participant observation is that it is not just a single method for gathering information but in reality embraces a number of different ways of obtaining data and by employing a variety of techniques it enables inferences and leads obtained from one information source to be corroborated or followed up by another. Ethnography's customary mix is observation, documentation and speech, the latter usually in the form of interviews.

My 'game plan' was based on the use of these basic techniques. From the outset it became apparent that interviewing would form a significant part of my research, a factor which was gradually reinforced by the concerns which I progressively experienced in my efforts to carry out direct observation. As an insider I had a great deal of access to documentation, minutes of meetings, training and bench circulars, information issued by both central government departments and by other agencies involved in the criminal justice system as well as the 'trade journals'. I also had, through the relationships which already existed with the other members in the setting, the opportunity to have informal discussions in the relaxed atmosphere of the magistrates' assembly room or more formal discussions under the auspices of the many meetings which I attended during the period of my research. Initially I also considered using questionnaires in conjunction with ranking techniques in order to test out my theories on 'power and influence' in the courts, however having covered this topic in depth during the many hours of interview which I undertook, I concluded that to use questionnaires would not only be time consuming but superfluous. I did use photography as an additional tool in order to portray what I considered to be important physical factors of the setting, and because 'several hours of verbal description of the setting may be reduced to a few minutes of photography' (Jorgensen, 1989, p103). Neither of course could I ignore the years of personal experience that I had acquired as a result of my direct participation as an insider, the advantages and disadvantages

of which have already been debated, some of this experience and knowledge must, I was convinced, inevitably prove to be a useful source of information.

#### **2.10.1 Seeking different angles and perspectives - The aims of observation.**

Through participation the researcher is able to observe the meanings and interactions of people from the role of the insider (Jorgensen, 1989, pp13-15). In my particular case I considered this advice to be inappropriate, no matter which role I wished to assume I was, and had been for a considerable period of time, an insider. I was already familiar with the courtroom scene, I had observed the occasion, the procedures, the participants. I had experienced the unusual and the mundane, the pleasures and the frustrations, the tears and even some laughter, the arrogance and the humility, and the conflicts and the 'deals'. I had witnessed all of these, but it had always been through the eyes of the magistrate and from an elevated position on the bench. My aim therefore was to observe and seek different angles and perspectives, to view the proceedings through the eyes of the social scientist and not only to view the courtroom from a different position but also to explore its environs, the waiting areas. I had, for the most part, progressed well past observing the overall situation, taking the 'wide angle view'. I was conscious that I had already reached the stage where I needed to focus my attention on matters of specific interest, and yet at the same time I was always mindful not to totally overlook the mundane. I did focus, I did seek different angles and perspectives but despite this I did not consider that I was necessarily successful in obtaining copious amounts of new information from my many hours of observations. In reality, in the actual courtroom, I found that relatively little ran counter to expectation.

#### **2.10.2 To elicit rich, detailed material - The informal interview.**

I gradually realised that interviews would form an important part of my research. I was also aware that not all individuals or groups are willing to offer themselves for 'interrogation', unless there is something in it for them, and in my case there wasn't. I also concluded that even though I had assumed the role of a researcher, the people whom I wanted to interview knew me best as a magistrate. This in itself created its own difficulties and effectively prevented me from interviewing two of the groups of people who were involved in the system. These were at one extreme the police, and at the other the defendants, although I did in fact hold informal conversations with members of both of these groups. With the police I was quite content to maintain the distance, independence and the neutrality which the magistrates' courts have gone to considerable lengths to demonstrate since the days when these courts were known as 'the police courts'. In any case apart from their participation in actual trials, there was only normally one police officer present in the courthouse at any one time, the responsibility for the custody of defendants having been placed with private contractors. When it came to interviewing the defendants I envisaged that there could be a number of problems. In the first



instance, there was the availability of defendants who would be willing to be interviewed. Secondly there was a distinct possibility that many of the defendants would not wish to cooperate with someone who had possibly fined them, given them a community penalty or even sent them to prison at sometime in either the recent or the distant past, or if not, this could conceivably happen in the near future. Thirdly, and as a result of this, I had to be mindful of my own safety. In restricting the groups to magistrates (lay and professional), court staff, advocates (both prosecution and defence), and the Probation Service, I reasoned that the views of both the police and the defendants could be explored, albeit indirectly, through these participating groups. In practice the role and the concerns of the defendants formed a central theme in the interviews.

Having selected the groups I found little or no problem in enlisting their cooperation. I personally selected and approached the magistrates whom I wished to interview, magistrates whom I saw as representing a cross section of the Bench. I was advised by the Clerk to the Justices about whom he considered would be the best members of his staff to approach, I knew these people well, and fully endorsed his recommendations. I again selected and personally approached the defence advocates. I initially approached the Probation Service through my membership of the Probation Liaison Committee, or to be more precise through its Court Team sub-committee. Whilst my approach was positively received, I was asked to make a formal request in writing, a request which was subsequently granted. Volunteers were asked for and the response to this was excellent. Gaining access to the Crown Prosecution Service by comparison presented more of a problem in that I had no specific point of contact. This door was however opened for me by the Clerk to the Justices. At no time did I meet with any opposition, I gave assurances in respect of confidentiality and anonymity, I also gained total cooperation for my requests to tape the interviews, and the impression gained throughout was that people were very willing to participate.

Informal interviews, so I read, should be user friendly, a mixture of conversation and embedded questions (Fetterman, 1989, p49), and this was the format which I adopted. The interviews were all held at the convenience of the interviewee, sometimes at the workplace, sometimes in the home, on one occasion in the foyer of a local leisure centre and on another in a car, very early one morning travelling on the motorway to Hull. All but one of the interviews were held on a one to one basis. The only departure from this practice, was an interview involving two interviewees, and on this occasion both of the participants gave the impression of being slightly constrained by the other's presence. All of the interviews were taped using a microcassette audio recorder.

But how was I 'to elicit rich, detailed materials that can be used in qualitative analysis' (Lofland, 1971, p76)? How could I as someone who was already known to all of the interviewees in a specific role, prevent the respondents from giving the answers which they might anticipate I would prefer to hear? How could I encourage the respondents to communicate their underlying attitudes, beliefs and values, rather than presenting the glib easy

answer (Fielding 1993, p138)? Once again I decided to use a 'third person' approach. I formulated many of my questions around the criticisms which had been expressed in the literature, some of which I had witnessed during my own observations. Many of the questions could be interpreted as contentious, all of them were designed to promote a reaction. (See Appendix A). But by presenting them in this way I personally was able to 'hide' behind the observations and the criticisms of others, i.e. "the criticisms are nothing to do with me". I considered this technique to have been highly successful, the majority of interviews carried on apace for periods of one to one and a half hours, and one or two for considerably longer. The information gathered during these interviews I considered to be both 'rich and detailed'.

### **2.10.3 Analysis of Interview Transcripts.**

The procedure used in the analysis is based on that described by Giorgi (1985). All of the interviews which were conducted during the research were analysed using the method detailed below. The aim of the procedure is not only to assist the researcher to make sense of the data but also to ensure that the 'world' of the informant, as he or she sees it, is clearly understood.

Having conducted and taped the interview, a verbatim transcription of the tape is then produced. The next stage involves the researcher combing through the transcript, identifying and sequentially numbering specific items of subject matter or blocks of text which express a 'self contained meaning'. This process whilst being very time consuming certainly focused the attention of the researcher not only to what was being said but also the context in which it was being said. At this stage any information which was not considered relevant to the research was put aside. A crucial consideration in the process is the need for the researcher to make explicit and test his or her presuppositions, values, judgements, etc., (to avoid influencing and distorting the meaning as intended by the informant), while illuminating the person's own meaning by drawing on any knowledge which is available to the researcher.

The next stage is to group the 'meaning' units as themes. In this phase the researcher tries to summarise the informant's main concerns. Where units with a shared meaning occur at different points in the text, these are brought together and under a theme which accurately describes them both. When a number of meaning units are found to reveal a number of different aspects of a similar and more central theme, these are gathered together and relabelled under this more general heading.

Finally the researcher looks for any general themes which are common throughout the group. At this stage it is important that the researcher safeguards against any over generalisation.

### **2.11 VALIDATION - subjects should be given the right to comment.**

In addition to using the different types of data collection which have been described in the earlier sections of this chapter and the other steps which were taken in order to ensure the

accuracy and validity of what had been seen and heard, I considered that one further safeguard was still necessary. This was to invite the people within the system, both those who had knowingly taken part in the research as well as those who had not, to read either parts or the whole of the draft thesis. 'Subjects should be given the right to comment on findings by being provided with transcripts of interviews and draft publications' (Fielding, 1993, p170). 'The success or failure of either report or full blown ethnography depends on the degree to which it rings true to natives .. These readers may disagree with the researcher's interpretations and conclusions, but they should recognise the details of the description as accurate' (Fetterman, 1989, p21).

I did ask specific people to read and comment and I was also approached by two people who expressed an interest in reading the draft and who also agreed to comment. These insiders included magistrates, both lay and professional, the court staff, who were represented by both the Justices' Clerk who was in situ when the research commenced and who had made an important contribution to the research, and his successor, the current Justices' Clerk. The advocates were involved through a defence solicitor, who had also been interviewed as part of the study. My approach to a senior member of the Probation Service was not taken up.

The comments which I received were both positive and encouraging. Two of the 'respondents' expressed their views in the form of a 'taped discussion', a further two communicated their thoughts in writing, while the remainder expressed their views verbally and 'informally'. Some extracts from the written and taped responses are listed as follows:

The thing that sold it to me was the fact that it contains all points of view from a cross-section of court users'. I readily recognised that as our court, my court. The ways that different solicitors have, I can pick them out. I don't think it offends anybody either, neither do I think it praises any part of the system' (a lay magistrate).

'Most courts I've been in as a clerk or otherwise as part of the Court User Groups .. I would say that it is pretty representative, it is the 'warts and all' type of scenario'.

'I think the people whom you have interviewed have genuinely tried to answer your questions in a way they personally believe in rather than telling you what you want to hear'.

'You might have found a fairly representative court in this particular one' (a Justices' Clerk).

'The balance is extremely fair and does not give the impression of being written by someone who as a leaning towards one particular agency. This I feel is the strength of the work ..'.

'I do not agree with some of the opinions expounded by some of the court users, although some of their points do find sympathy with me ..'.

'I was most impressed with the area concerning the question of a 'Professional or Amateur Magistracy ...'

'I also feel that the work is easy to read and fairly reflects the views held by the various court users' (a defence advocate).

'Reading through the various references I was struck by how outdated most of the opinions are which were written more than, say, ten years ago'.

'For reasons which will be obvious to you, I now read it in a different light, or perhaps I should say from a different perspective. I look at all of the criticisms of the way defendants are treated and their perceptions of the Magistrates and I see how they apply to me. ... I might even suggest that it become compulsory training for all magistrates, lay and others' (a Stipendiary Magistrate).

## **CHAPTER 3 THE INTERVIEWS - summaries.**

### **3.1 Introduction.**

I have already discussed and outlined in the previous chapter the organisation of, and the methods used in the interviews which were carried out during the research period. The information gained, the opinions expressed, and the openness with which the 'insiders' appeared to approach the interviews, all contributed to this extremely important phase of the research. As such it is my intention to report the information obtained in some detail. While this chapter only contains a relatively brief summary of the interview information, if the reader wishes to study some of the opinions which were expressed in greater detail then I have included a more extensive description in the appendices, this includes both the types of questions which were used, (see Appendix A), as well as many of the responses which were received (see Appendix B). The feedback from the interviews has been organised in order to reflect the perceptions of the different groups who are regularly represented in the Magistrates' Courts, i.e. the magistrates, the court staff, the advocates and the probation officers.

### **3.2. THE MAGISTRATES' PERCEPTION.**

#### **3.2.1 The magistrates' role.**

The magistrates are in no doubt that they are the decision makers in their courts and that they have the power, not only in the decision making process, but also in the way that the courts are controlled. However having the power to control the proceedings is one thing, using it effectively is another and the general standard of behaviour in the magistrates' courts suggests that this power could be used to greater effect. And not is it only the behaviour of the defendants which indicates this, the standard of behaviour exhibited by some court professionals is also seen, on occasions, to fall short of that required for both the setting and the occasion. Poor behaviour in the courtrooms is a matter which must be addressed by the presiding magistrate, whether it be a stipendiary or the chairman of a lay bench.

Whilst it was evident from the responses which I received to my questions, that new magistrates with their 'newly trained minds' are welcomed to the Bench, it is also apparent that changes, and particularly major changes to the court and its procedures are generally unwelcome. As one magistrate said, "Everybody has got a vested interest in keeping things as they are". Another was prompted into expressing the opinion that some magistrates may even hide behind the familiarity of the procedures in order to disguise their own limited knowledge.

The lay magistrates with whom I spoke conceded that the courts in which the stipendiary magistrates preside are more efficient in terms of time and procedural organisation than are those which are chaired by the lay magistrates. They are not, however, convinced that this greater level of procedural efficiency necessarily results in a better quality of justice. One magistrate even suggested that there could be a danger of the professional who is trained in

law and who sits in the courts everyday becoming "... cut off from everyday people" and becoming "a little bit anaesthetized", a situation in which the dispensing of justice can become just another part of a job.

### **3.2.2 Organisation and degradation.**

The magistrates were unanimous in their views that if the courts are going to function effectively then the people who are dealt with in the courts must have respect for both the institution and the authority with which it has been invested. It was emphasised that this respect is not for the magistrates as individuals but for the authority which is invested in them. I was again reminded that the magistrates are there to administer the law as the representatives of the Queen, and if there is no respect for the authority which they represent, then the system will break down. The magistrates were also in general agreement that contrary to certain stated opinions that the courts are too strict, they would argue that the courts are often not strict enough in enforcing the standards of behaviour which are in keeping with the status of the court and the importance of the occasion. Poor behaviour should not be tolerated by the courts. The aim of the courts is to get at the truth in order that a correct decision can be arrived at and to "... dispense justice as best it can without being distracted either physically or verbally". If the basic common standards of decency are not displayed by those who are attending at court then the courts are fully justified in taking the appropriate action. In the words of one magistrate the offending parties need "to be jumped on". But it was stressed that the presiding magistrates do need to be able to distinguish between those defendants who are being intentionally disrespectful from those who are not.

The court has a duty to impress on those people who attend, be they defendants, witnesses or the professional court users, the importance of the occasion. It is the symbolism, the rules and the procedures which form the structure of the courts which enable these objectives to be achieved. In the words of one magistrate it needs to be "very awe inspiring", because if it isn't then people fail to recognise the significance of it all. There was also a consensus that if the courts are made more informal, this could well have the effect of diluting the way in which the authority and the decisions of the court are perceived by those who are being dealt with. The claims which have been made by some observers that the intention of the courtroom ceremony is 'partly to facilitate the physical control of the defendants and any others who step out of place' is partially conceded, but only in so far as it is required to emphasise the authority of the court. In any case it is argued that the enforcement of such policies is restricted to a relatively few occasions.

Much of the courtroom symbolism and many of the procedures are grounded in the traditions of the past. They are not, I was told, just the product of some individual whim but have evolved over time and have been shaped by the adversarial system upon which they are based. The system comprises of an accuser, a defender and a decision maker and, because of this, there needs to be a structured procedure to ensure that the arguments which are put

forward are properly marshalled and presented. It is also argued that some of the traditions which persist in the courts are associated with the age and the design of the older courthouses, some of which were built in the last century or the earlier part of this century and are still in regular use. This was a factor which was particularly pertinent to the study area. These courthouses were built in an era when defendants and their treatment were viewed somewhat differently than they are today, built in an age when it is quite conceivable that the aim of the courts was to degrade and humiliate the defendants. The current treatment of defendants is not seen to be either as oppressive as some observers have claimed or as frequent as has been suggested. One magistrate told me that this was not her perception of what courtroom ceremony was about and if this was the aim, "I would not want to be a magistrate". However it was admitted by some magistrates that even if the degradation of the defendant is not the intention of the procedures, the way in which the procedures are applied by some magistrates, and in particular against the more vulnerable types of defendant, then it may well have that effect. However, this type of practice was condemned and was said to identify the 'wrong type of magistrates'. But the Fines Enforcement court was singled out as the one area where humiliation and embarrassment do intentionally form part of the courtroom procedure. As one magistrate told me, "It is the exception which proves the rule ..". In these courts humiliation is used in order to communicate to the defendants that not only are they 'working the system' but the court knows that they are. The general message received from the magistrates whom I interviewed was that the humiliation and degradation of the defendants is not only undesirable but it can also be counter productive.

The way in which the courts are physically organised and laid out can also have the effect of humiliating defendants. Defendants frequently find themselves in situations where they are 'beyond the familiar boundaries of face to face communication and where they are asked to comment on intimate details of their lives'. This practice whilst strongly condemned by one magistrate, was not seen as a major problem by another, " ..providing that the reasons for this questioning are explained to the respondent". In any case it was argued that the defendants should not be too surprised by these requirements. They should either have been prepared as to what to expect by their solicitors or in the case of the unrepresented defendant, by the pre-hearing literature with which they are issued.

The reaction which I received when I tried to portray the defendant as Carlen's 'dummy player' was quite forceful. I was told that not only were many of the regular 'clients' not seen as being at a disadvantage, but that many of them not only know how the system works, but they also know how to manipulate it to their own advantage. I was also told about the way in which many unrepresented defendants, rather than being taken advantage of in the courtroom, are assisted in presenting their side of the argument, not only by the court clerks whose job it is, but even on occasions by the advocates who are prosecuting them.

Neither are embarrassment and humiliation the sole preserves of the defendants. Even some of the people who attend at court regularly can be subjected to some humiliation.

One example is the policemen whose evidence in the witness box has been found wanting and is then totally discredited by the advocates. One magistrate expressed the view that there is a need for the justices to protect witnesses against humiliation by advocates, " ..otherwise witnesses may be discouraged from attending court and carrying out their public duty", a situation in which justice would be the loser. I was also told about cases where the defendants have pleaded guilty, and the absent victims, who have no need to attend at court and may not even know that the matter is proceeding, "can have their reputations sullied" with apparent impunity by the defence solicitors presenting a very one sided story on behalf of their client. A story which is rarely challenged by the prosecution, who in any case are acting for the police and more likely than not have little knowledge of the victim.

Once again I was assured that not all courtroom ceremony is for ceremony's sake. The hierarchical seating arrangements and the positioning of the defendants and the general public are just two examples where the arrangements can be claimed to have practical merit. There is a need for security when the courts are dealing with those defendants who are charged with the more violent offences or who it is thought may try to abscond. I was also told of one occasion when the magistrates were intimidated by the behaviour and actions of the general public, intimidation which could possibly affect the decision making process. Whilst there was a great deal of agreement among the magistrates that some of the courts could be liberalised by the introduction of more informal settings, it was again emphasised that it needs to be recognised that there are an assortment of courts, all carrying out different functions, not all of which would benefit from a more liberal approach. Whilst it was agreed that some changes might well be made, how and what these changes should be was not immediately apparent. All were insistent however, that whatever changes are made, these must not be allowed to diminish either the dignity of the court or respect for the law.

There was a general consensus among the magistrates with whom I spoke that in expecting the defendants and the witnesses to show respect for the courts, then there is a need for this respect to be reciprocated. In other words, the defendants should also be given the opportunity to act with dignity. A starting point for this should be 'the presumption of innocence', a fundamental part of the justice system which it is thought some magistrates appear to forget. Other ways in which it was considered that the dignity of the defendants could be preserved was by asking them to do things rather than telling them or by prefixing their surnames with the appropriate title rather than just referring to them simply as 'Smith'.

### **3.2.3 Justice and efficiency.**

The overall view of the magistrates who were interviewed was that 'justice is not subjugated to organisational efficiency'. While it was agreed that the court proceedings are structured, this is seen as being fundamental to the running of the courts. If there weren't rules and procedures and if people were allowed to make their contributions as and how they liked, then matters " .. would ramble on for ages". I was told of times past when there had been less



pressure on the participants to proceed with the business and when magistrates who had been sitting for most of the day were expected to continue adjudicating well into the evening to prevent cases having to be adjourned, sometimes part heard, in order to prevent defendants and witnesses having to return to court on future occasions. But the question asked was, "What is the quality of justice dispensed by the magistrates under such conditions"? So while it was accepted that there had been a recent tendency to speed up the proceedings, it was not considered that this had been done at the expense of achieving the main criteria of the courts, that of dispensing justice. One magistrate did express some dissent with this prevailing view and did suggest that there are occasions when the courts could operate " ..with a little more common sense" in order that the defendants are allowed to say what they want to say, in the way they wish to say it without being constrained by the rules of the court.

One magistrate also commented that both the number and the length of adjournments had been reduced in recent times as the result of the courts pursuing a definite policy. This had been achieved by the combined effects of the Lord Chancellor's review of, and amendments to the Legal Aid legislation and the increased probing and questioning by the magistrates about why adjournments are being requested and why it needs so long to bring matters back to the court. This was a policy in which the magistrates had been prompted by the court's 'senior professionals', the Justices' Clerk and the stipendiary magistrate. In the opinion of this particular magistrate this action had been necessary to curtail the practices of certain unscrupulous solicitors.

#### **3.2.4. Power and influence.**

The power is ultimately with the magistrates, not only do they have the power of sentencing, they also have the power, if they so wish, to manipulate events. This 'manipulative power' has a greater relevance to those courts in which the stipendiary magistrates preside, "because they know what the advocates are up to". The magistrates are said to reach their decisions in all sorts of 'devious ways'. They listen to what is being said and forget what is being inferred, they also use their instinct because that also has a part to play and then they make up their own minds.

But who influences the decision makers? It has been argued that advocacy is all about the power of persuasion. According to the professional magistrate, the lay bench are possibly more willing to be influenced by the advocates than are the professionals. An opinion which was not disputed by at least one lay magistrate, who was of the opinion that some colleagues take too seriously what the advocates have to say and this is not always because of the power of their argument, but often because of the esteem in which these particular advocates are held. Whilst the presentations of the Crown Prosecution Service are seen as largely factual, even if sometimes not very well prepared, it was felt that the presentations of the defence advocates needed to be filtered in order to, "...separate the facts from the subjectivity which clouds them".

There were differing opinions about the influence, or otherwise, of the Probation Service and the Pre-Sentence Reports which they prepare at the request of the courts. Whilst a stipendiary magistrate saw them as a useful source of background information, he also expressed strong reservations about how influential they actually are in sentencing matters. One lay magistrate voiced his concern about the wide variations in standards. I was told about reports which are of poor construction and bad technique, and these reports tend to be 'pushed to one side'. But I was also told that a good report can be a 'clincher', a report which brings out the pertinent points, some of which are not immediately evident to the bench from just looking at the defendant, and especially if that report also contains 'good proposals'. But it was emphasised that it always needs to be remembered that these reports are not only susceptible to the prejudices of the writer but also to those of the reader. It is a report which is, "Written by humans for humans".

The court clerks can without doubt manipulate the benches. The extent to which this is done is not only dependent upon their communication skills, but also on their determination to influence. I was told of courts, not in the study area, where there are customs and practices which could easily be interpreted as encouraging the court clerks to exceed their roles as advisers to the magistrates and to involve themselves in the actual decision making process.

### **3.2.5 The magistrates' perception of the defendant.**

The magistrates with whom I spoke reiterated the point that all magistrates need to remember that when the defendant comes into the court for the first time, and until such times as they are found guilty, or alternatively admit their guilt, then there should be a presumption of innocence. Assuming this, then the defendants should be allowed to present both themselves and their cases in the best possible light. But whatever the intentions of the magistrates are, in reality they are seen to make judgements on the defendants which are often based on the appearance and the body language of the defendant and the 'experience' of the magistrate.

As previously stated, when I expressed an opinion to the lay magistrates, that the courts in which the stipendiary magistrates presided were generally more efficiently run than those in which a lay bench adjudicated, this was not challenged. But what was queried by those magistrates was where the defendants' priorities lay, an efficiently run court, or a less well organised and less professional presentation, but a feeling that they are more likely to get justice by being dealt with by people who are more like themselves. The magistrates were also conscious of the defendants' lack of understanding of the proceedings and particularly those defendants attending at court for the first time. One magistrate had no doubt where the blame lay, it is the "legal jargon which is extensively used in the courtrooms" by all of the court professionals, including the defendant's own representative. A situation which was described as a, "...conspiracy against the defendant".

### **3.2.6. The magistrates' perception of themselves and the other court users.**

The public's perception of magistrates is that they are middle aged and definitely middle class. This was also the perception which one of the magistrates whom I interviewed had prior to her appointment to the Bench. On appointment she said that she was surprised to find that this impression is not totally true, although it could not be denied that some of the magistrates, "a few of the older ones", did fit the stereotype image. There was also agreement that the Bench does not accurately reflect the community which it represents and there is a need to broaden the social base from which magistrates are appointed. In the past magistrates have been recruited through a restricted network of individuals and organisations and largely by the recommendation of people who were already part of the judicial system. In an effort to widen the scope of recruitment, new initiatives are being tried, even to adverts being placed in the tabloid press. But as one lay magistrate emphasised, even when 'working class' people are interested, some of whom would be ideal candidates, their employment status, or quite often the lack of it, is often seen as a barrier to them putting themselves forward.

But irrespective of their backgrounds, once the magistrates have been appointed and have sat on the bench for some little time, it was suggested that there is a tendency for them to adjust their thinking and their values in line with the culture and the ethos of the Bench. As it was described, a levelling up or a levelling down which is dependent upon where the magistrate starts, a levelling which is, "all to the good of the Bench ..". This, however, was not necessarily the universal view. Another magistrate was very much of the opinion that magistrates need to be appointed for their independence of thought, because it is only in this way that the magisterial system can be continually revitalised. The need for magistrates to have an understanding of the community in which they sit in judgement was also seen as an essential requirement. The stipendiary magistrate whilst being sympathetic to this view, did outline the difficulties of the professional magistrates who live in the areas where they also sit on a daily basis and who could, as a result, have some difficulty in living a 'normal life'.

Some advocates are perceived by the magistrates as pompous and arrogant and, at times, disrespectful to the Bench and in particular to the lay magistrates. It is accepted that solicitors do study magistrates and learn about their idiosyncrasies, knowledge which they then use to manipulate the proceedings to the benefit of both themselves and their clients. The opinion which Parker et al. expressed as a result of their 1989 study, that 'defence solicitors are seen to inhibit the magistrates' search for the truth of the case', was supported by the magistrates with whom I spoke. This was seen to apply particularly when the case for the defence is so weak, and by adopting a smoke screen, they do come between the magistrate, the defendant and the truth, a ploy which is not always viewed favourably by the magistrates. It was also said that the adversarial system can be described as a 'bit of a game', a game where defendants can sometimes have difficulty in deciding whose side their solicitor is on. Although it was considered that there was less likelihood of this happening in the magistrates courts than there was in the higher courts because of the more diversified roles of the advocates. But even

if it is seen as a game, it is a game which is taken seriously, but sometimes with different rules for the prosecution and the defence solicitors. For example it appears that while it is acceptable for the defence to take advantage of an inexperienced prosecutor, it is not considered acceptable for the prosecution to pursue a similar practice with the defence. It is also seen as vitally important for the advocates to retain their credibility with the Bench because "...his bread and butter depends on you". But it is also commercially important that, at the same time, the solicitors are seen to be representing their clients, and so the advocate has to find a way of satisfying both of these requirements. A method favoured by some solicitors is to preface their remarks with the words, "I am specifically instructed to say ... ", but in the opinion of the professional magistrate this course of action does have its dangers.

There was no doubt in the minds of any of the magistrates whom I interviewed, that the Probation Service pursue a 'non-custodial policy', a policy which did not appear to attract much support from the magistrates, either lay or professional, a policy which has brought both the service and its officers into disrepute. The Probation Service were also criticised for presenting an unbalanced view and of not having the public's interest at heart. The probation officers are seen more in the social worker role than as officers of the court and they were accused of being motivated by political attitudes. It was considered that these are more the trends of recent years which have not necessarily been to the benefit of the judicial system.

In discussing the advantages or otherwise of inter-group relationships, the subject of some parties gaining pecuniary benefits was implied. In this instance there were unsubstantiated suspicions that the police tend to direct clients towards the offices of certain solicitors but not towards others. The solicitors whom appear to gain are those who are seen as being less contentious in their attitudes and those who are considered to be 'spikey' appear to miss out.

### **3.3 THE COURT STAFFS' PERCEPTION.**

#### **3.3.1 The roles of the Court Staff.**

The court clerks act as the legal advisers to the magistrates, they also fulfil the role as administrators in the courtroom, organising and ensuring the continuity of the proceedings and the disposal of the day's business. The level of involvement in these particular roles varies and is often dependent upon whether the court is presided over by the stipendiary magistrate or a lay magistrate. As a legal adviser to the stipendiary magistrate the court clerk's role is virtually, but not entirely, non-existent and even as the 'administrator' of the court their role is somewhat curtailed. In the words of one court clerk, working with the stipendiary allows them to have a bit of a rest. Alternatively, working with a lay bench can be stressful, the level of stress being dependent upon the ability or otherwise of the lay chairman.

The main tasks of the court usher are to keep order and to assist the court clerk in the smooth running of the courtroom process. By and large, the court ushers are only trained in the

basics of the job and they are 'encouraged' to develop their own skills for dealing with people and organising the defendants and witnesses for their appearances in the courtrooms. The ushers see a large and important part of their job as giving help and assistance to those attenders at court who are obviously in need of it, these generally being those defendants who are appearing at court for the first time. The ushers are not normally perceived by the defendants as being part of the 'establishment', but more as a buffer between the court and themselves.

### **3.3.2 Organisation and degradation.**

I was told that many of the rituals and procedures in the magistrates' courts are relics of the past and no one has stopped to ask whether or not they still serve a purpose now. The main courthouse in use in the study area, which was built in the first third of the century, together with the language of the courtroom, were likened by one of the court clerks to an age more representative of Charles Dickens. The age and the design of the court buildings were seen to have perpetuated many of the traditions and procedures which are still in existence. It was also agreed that a great deal of symbolism is still in evidence, although it was considered not to be as prevalent in the magistrates' courts as it is in the higher courts. The language of the courtroom was considered by both the Justices' Clerk and the court clerks to be archaic. The title, 'Your worship' was described as anachronistic. The opinion expressed, was that it is still possible to show respect, maintain dignity and recognise authority "without going over the top". Neither should the formal language of address be forced upon the defendants. If, in addressing certain members of the court, some incorrect and non-formal titles are used, then providing that no disrespect is intended, then no disrespect should be assumed by the courts.

It was admitted that in the older buildings there is often a 'stark contrast' between the courtrooms and their environs, particularly the waiting areas. Comparisons were made between the formality, the ordered presentation and the relative quiet of the courtrooms and the 'horrible' waiting areas with "wooden benches often awash with tea and coffee", and the shortage of interview rooms or segregated waiting areas for the witnesses. But not all of the problems can be blamed on the age or the design of the courts, or indeed are necessarily the fault of the courts themselves. Vandalism, especially by some of the young offenders who attend at court, was also seen as a major contributor to this 'squalor'. People who attend court because they are either accused of, or are guilty of, offences involving criminal damage to property, do not necessarily show respect for public buildings, even courts of law. Whilst it was agreed that it is difficult to defend many of the claims which are made about the conditions of the waiting areas in many of the older courthouses, it was considered that it would be difficult for the critics to make similar claims about the modern courthouses with their improved amenities, interviewing facilities, vandal proof designs and materials and closed circuit television monitoring systems.

Neither should it be assumed that all of the rules which are enforced in the magistrates' courts have been designed simply to demonstrate the symbolism and the ceremony of the occasion. For example, there are often good reasons why some defendants appear in the 'dock'. Some defendants have histories of violent behaviour, others have shown a propensity to abscond. If there were no rules to stress the importance of the occasion and the need for a certain standard of behaviour, then it is claimed that some people would take advantage of the situation. Unfortunately, however, it appears that those who contravene the rules inadvertently and those who misbehave intentionally are often treated the same way. The Justices' Clerk was very definite in the view that the authority invested in the decision makers must be safeguarded. But once again it was emphasised that this respect is for the law and for the authority invested in the individual, not for the individual who has been given that authority.

The court staff considered that, in this day and age, people would find it quite difficult to justify claims that the rules and procedures in the magistrates' courts are aimed at demeaning the defendant. The degradation of defendants was considered to be the exception rather than the rule, although once again it was admitted that in the Fines Enforcement courts, the 'fine defaulters' were quite often humiliated in order to "get the message across" and to reinforce the seriousness of the defendant's situation, something which the defendants either don't realise or choose to ignore. But as one court clerk commented it is a strange situation where on the one hand you are trying to give the defendants a fair hearing, while at the same time you are giving them a hard time.

It was recognised that rather than always demanding that the defendants and witnesses conform to the rules and procedures, the courts also need to recognise the individuality and the shortcomings of many of the people who attend at court. If someone genuinely cannot comply with requirements of the court, then allowances should be made which still enables that person, wherever possible, to participate effectively in the proceedings. If someone is told to do something and unintentionally fails to follow those instructions, then they should not be rebuked but reminded and it should be explained to them why it is necessary to comply.

Within the magistrates' courts system there are a diversity of courts. While they are all concerned with justice some mete out punishments whilst others are more concerned with matters which are more of an arbitral nature. Some require a very formal setting, others can be dealt with in a more unceremonious environment. It was considered important by the court staff with whom I spoke, that the courtrooms reflect these differences. Not only is it the defendants who can feel threatened and intimidated by the courtroom arrangements. In a small informal courtroom, where the court clerks and the defendants are in close proximity, some of the court clerks and particularly the female clerks can also feel threatened and intimidated.

### **3.3.3 Justice and efficiency.**

There have been large amounts of legislation introduced into the criminal justice system as a whole, and into the magistrates' courts in particular, over the last forty years with the sole intention of either reducing the workload of the courts or enabling the courts to deal with this workload in a more speedy and efficient manner. In the opinion of the Justices' Clerk with whom I spoke, the adverse effect of this legislation on the dispensing of justice has been minimal. Whilst it was admitted that magistrates are now being encouraged to challenge the need for, as well as the length of adjournments, this right to question was defended. The argument being that unless the questions are asked then the magistrates will not necessarily understand why the adjournments are being requested. If they do not understand, then it is unsafe to assume that to adjourn matters is always in the best interests of justice, because, "justice delayed is justice denied". It was emphasised however that the decision on whether or not to adjourn must only be based on the merits of the matter under consideration and not upon other peripheral issues such as the workload of the courts or whether it is the 'umpteenth' case which has been adjourned during that session. Cash constraints should not be allowed to become a major influence in judicial decision making. Neither should the state of the prisons and whether they are full or not be allowed to influence the sentencing process.

But cash limiting is seen to be affecting at least one of the agencies. It is claimed that the Crown Prosecution Service are adopting a practice which could be likened to 'plea bargaining'. This is a practice where 'charges are being watered down', and not only when the original charges cannot be supported by the evidence but also, in the opinion of some of the court staff, when there is "clearly evidence to support a stronger charge". Whilst this policy can often be seen as advantageous to the defendant it was not considered to be in the overall interest of either the criminal justice system or the public at large. In the opinion of the Justices' Clerk, once justice becomes cash limited then "it's not justice anymore".

There was a general rejection by all of the court staff with whom I spoke that, 'justice is subjugated to the interests of organisational efficiency'. Whilst it was agreed that there is a policy to fully utilise the time of both the courts and the sentencers, this policy is in place "simply to get on with the job". I was assured that there is neither a policy or any instructions issued to the court staff to ensure that specifically defined workloads are achieved within a set timescale.

The Justices' Clerk did tell me about some Courts who are currently experimenting by running courts during the evenings and at week-ends. This is being done in an effort to meet the requirements of those 'clients' who cannot attend at court during the day because of business or work commitments. This is being done to try and overcome the current unsatisfactory situation, where it is thought that there are a number of people who plead guilty to relatively minor offences and ask that they be dealt with in their absence, not because they have committed the offence, but because it is seen as a more convenient, and possibly

cheaper, way of disposing of the matter than having to absent themselves from work in order to plead their case. But is it justice?

#### **3.3.4 Power and influence.**

The regular professional court users have to accept that the magistrates are the decision makers. Whether this fact is accepted willingly or whether it is just tolerated, depends on the respect or otherwise that the court users and in particular the advocates have for the individual magistrates.

But who influences the magistrates? The degree of influence that the court users can exert on the magistrates can very often depend on the reputation or standing that each of these individuals have with the magistrates, in other words their credibility. I was told that as advisers to the magistrates, the court clerks need credibility if the advice which they give is to be seen as reliable and therefore acceptable to the magistrates. Some advocates see credibility with the magistrates as being vital to their role in the courtroom and therefore strive to maintain it, but there are a minority of advocates to whom credibility means very little. Credibility and influence are seen as variable components in the decision making process and very much personality and performance dependent. For example, Who the bench are? How they view the advocates? How good the advocate's performance is and how hard the advocates are perceived to be trying on behalf of their clients? These are all factors which could affect the outcome.

The advocates are also aware that the magistrates and court users all have their differences and idiosyncrasies and they use this knowledge and adapt their strategies accordingly in order to benefit their clients. In addition to this manipulation of the courts and the magistrates by the defence advocates, it was also argued that the current practice of the Crown Prosecution Service to accept pleas to lesser charges than those originally made is now in reality taking some of the sentencing initiative away from the magistrates.

The Justices' Clerk admitted that the court clerks have a 'massive potential' for influencing judicial decisions and some actually do. The Justices' Clerks themselves, have the potential by being able to influence Bench policy decisions and sentencing practices. An ideal vehicle for doing this is through their complementary role as the Training Officer, a role which includes the training of both the magistrates and the court staff. The day to day potential for influencing the magistrates is with the court clerks, sometimes in the courtroom, but more often in the restricted confines of the Magistrates' Retiring room. The court clerks admitted that the influencing of the magistrates was almost inevitable just by the simple act of giving advice. Whilst the court clerks claimed that they would never go into the Retiring room with the sole intention of persuading the magistrates to a certain course of action, when they do disagree with the decision of the magistrates, they admit that this can be transmitted through their reactions and body language and this has sometimes been sufficient to cause the magistrates to re-think their decisions.



In the magistrates' courts there are two main areas of decision making, the judicial which is the province of the magistrates and the administrative which the court clerks see as their responsibility. This is a view which is obviously shared by the Lord Chancellor who in recent legislation has given the court clerks the power to make administrative decisions in the absence of the magistrates, providing that all the relevant parties in the matter are also in agreement. The problem in the courts however, is that judicial and administrative decisions are not always mutually exclusive and can overlap. I queried if there was a danger, where decisions were being seen to be made by people other than the magistrates in open court, then this could undermine the authority of the magistrates as the decision makers, particularly in the eyes of the defendants? The Justices' Clerk agreed that even if in reality the magistrates are not the actual decision makers, it is important that the impression that the final decision has been made by the bench should always be conveyed to the onlookers and particularly the defendants.

### **3.3.5 The court staffs' perception of the defendant.**

The court ushers do not categorise the defendants by the types of crime with which they are associated, only by the degree of familiarity they have with the court and the level or amount of assistance which they require. It is also this level of experience which often determines a defendant's attitude towards the court. The first-time attenders tend to be fearful, the more experienced attenders don't appear to be bothered. It was definitely the opinion of the court staff and particularly the court usher with whom I spoke, that waiting does not affect the defendants' thoughts about sentencing. It was considered that those who entered the courtroom fearing a custodial sentence, were already in fear of a custodial sentence when they arrived at the court building. Although it was agreed that the longer they wait, the more frustrated they become, and the more likely they are to commit acts of vandalism within the court's waiting areas.

Similarly the defendants react in different ways to the sentences which they receive. As already stated, most of the people who receive custodial sentences were 'half expecting' them anyway. Others who were expecting to go to prison and are given alternative non-custodial sentences often show their relief when leaving the courtroom. In the opinion of the court usher, there are some young persistent offenders who do give the impression that they are laughing at the court and their demeanour in the courtroom is nothing like it is when they go back into the waiting areas.

The confusion which is experienced by some defendants in deciding where the loyalty of their advocates lay was addressed by the Justices' Clerk. Whilst agreeing that the observations which had been made in the Crown Court could well be substantiated, it was thought that this confusion is less likely to occur in the magistrate' courts where the roles of the advocates as prosecutors or defence solicitors very rarely inter-change. While it was agreed that it must be difficult for defendants to be able to understand why their 'sole prop' in the

courtroom drama should appear at times to be in friendly conversation with the opposing advocate, it was also necessary to understand that neither can the adversaries just be "opposing each other day in, day out, because the system wouldn't work".

According to the court usher, when some of the defendants leave the courtroom it is evident that they just haven't understood what has happened, "he hasn't a clue". However the usher placed the responsibility for this lack of understanding with the defendants themselves. I was told that the communication of information is good and that "people bend over backwards to explain to the defendants what's happening", but the reason that they don't understand is because they haven't listened. This however, was not everyone's opinion. I was told about the courtroom language, the courtroom jargon, which it was admitted is a very efficient way for the regular court users to communicate with each other, but a language which should never be used in the presence of the defendants or the clients. Because in the final analysis it is these clients who need the explanation as to what has happened and what it means and it should be conveyed in a language which they can understand.

### **3.3.6. The court staffs' perception of the magistrates and the other court users.**

The quality of a lay bench is often dependent upon the competency of its chairman. In terms of quality, some lay benches are considered by the court staff to be equally as good as those courts in which the stipendiary magistrates preside. The main difference is the time scales required in the decision making process. Because of the lay magistrate's need to consult, then the time required is much longer. On the other hand some lay benches, and particularly those who are considered to have a poor chairman, can be, in the words of one court clerk, 'stressful'. The business of sentencing and how each individual bench views it is dependent on the two or three magistrates who comprise that bench. Some benches are considered to be weak and will do anything that is asked of them, often without questioning. There are others who just make up their minds and irrespective of any contrary opinion or advice stay with their decision. I was also told of occasions where the decision had been arrived at because of the persistence and resolve of the magistrate in the minority 'to win the argument'. Sentencing is also influenced by Bench Sentencing policies and by the custom and practice of the Bench.

Magistrates' courts can be accused of being self-perpetuating, a claim which may well have some justification. It is a fact that the majority of new magistrates who are appointed are put forward for consideration by existing magistrates. One of the qualities which is considered when recommending new magistrates for appointment, not that it will be found on the 'official list of judicial qualities', is whether or not that person will fit into the existing Bench.

The court staff see the stipendiary magistrates' courts as being more 'professional'. The 'stipes' deal with cases at greater speed and so get through the the court's business at a more efficient rate. There is little doubt that they are better at dealing with those cases which involve complicated legal argument. The courts in which the stipendiary magistrates preside

are seen as being much harder in their sentencing practices in so far as they impose more custodial sentences. They are seen by the advocates as being more difficult to deal with than are the lay benches. There is a perception among many advocates that "they can get a lay bench to do what they want". As has been previously stated, the court clerks consider that it is much easier to clerk for the stipendiary magistrate than it is for a lay bench, but having said that, even the 'stipes' are prone to the occasional mistake in either their decisions or their pronouncements.

The different teams involved in the magistrates' courts are motivated by different aims and objectives. These can be dictated by the vested interests of the group, the individuals in that group or the people whom the group or individuals in the group represent. The main teams are the court team which consists of the magistrates, the court clerks and the ushers. Then there are the prosecution who may consist of a prosecutor, the police, the victim or complainant and any prosecution witnesses. A third team will be the defence and may well consist of the solicitor, the defendant and any defence witnesses. The final team will most likely be the 'social worker' team, the representatives of the Probation Service. Some of these team members, the professionals who attend at court every day may also be members of another team, the 'professional court users team'. This means that some of the regular professional court users could well see themselves as belonging to more than one team, teams which could conceivably have conflicting loyalties.

### **3.4 THE ADVOCATES' PERCEPTION.**

#### **3.4.1 The roles of the advocates.**

The advocates see their role as representing the best interests of their clients and not just someone who is employed to 'regurgitate' what they have been told. This interpretation, however, does not always coincide with the client's understanding of the situation and on occasions there can be differences of opinion about the quality of the representation which has been provided. From the professionals' point of view, what a client considers to be good representation and what in reality is good representation are not always one and the same thing. But it was agreed that some advocates do 'play to the gallery' giving the impression that they are putting personal publicity and self-interest before the interest of the defendant.

It was also seen to be incumbent on the solicitors to prepare clients for their court appearances, to brief them on what to expect, to warn them of the possible outcomes and to explain to the often bemused client what the outcome of the hearing was and what its consequences actually mean. I was told that this function is not always satisfactorily fulfilled and quite often depends upon the client's 'court experience' and whether or not, in the opinion of the solicitor, a briefing is deemed necessary or if indeed the solicitor's busy schedule even allows the time to carry it out. Sometimes, however, this decision can be taken out of the hands of the solicitor and at a late period in the proceedings. I was told of instances where a court

insists that a case should be heard even though the solicitor in the case is involved elsewhere in another court. This type of situation results in defendants being represented, at short notice, by a solicitor of the same firm but who is possibly not known to the defendant. Some of the defence solicitors did query whether by not spending more time preparing the defendants and their witnesses for the courtroom they did in effect prejudice their case? Especially when they compare many of their witnesses with those of the prosecution who are either trained in giving evidence or else experts in their particular field and familiar with the requirements which are demanded in a court of law.

There was total agreement amongst the defence advocates that they do operate in a highly competitive commercial market. This market has, in the opinion of at least one of the solicitors, created an unfortunate situation where many solicitors have, against their natural preference, had to develop a business first, solicitor second mentality, a change of emphasis which is seen as being detrimental to the interests of justice.

The prosecutor whom I interviewed summed up his role by describing himself, slightly tongue in cheek, as a "minister of justice rather than an avenging angel". The general feeling of the Crown Prosecution Service solicitors who practice in the study area, is that the rules tend to militate against them. This view is based on the fact that the prosecution have to declare their information and intentions beforehand whilst the defence can withhold both, even to the point of constructing an 'ambush defence' during the actual hearing. Another area which also appeared to cause some concern to one of the prosecutors with whom I spoke, was that nearly all of the preparation for the cases is gleaned from documents, statements and information submitted on paper, and there can be occasions when the impression gained can be totally transformed with the introduction, in the courtroom, of the human element.

#### **3.4.2 Organisation and degradation.**

The solicitors were united in the view that there is a need to maintain the dignity of the court. There was no desire by any of them to dispense with the old traditions. Even the language, considered by many to be archaic, was seen as a means of showing respect, a respect which needs to be retained. But it was the view of one solicitor that the language of the courtroom can be used, and is indeed used by some, to demonstrate their power over the groups who are excluded by its use.

The advocates were also in agreement that there is a requirement to demonstrate the seriousness of the occasion. The proceedings "should be strict and should be extremely firm". Not only does this fact need to be enforced with the defendants and the witnesses but also with the court professionals, who are not always seen to treat the proceedings with due respect.

But in attaining the required standard of behaviour, this should not be achieved at the expense of humiliating and degrading the defendants. In the opinion of the solicitors with whom I spoke, when defendants are humiliated they are also put at a disadvantage and this must ultimately affect the intended impartiality and the fairness of the system. It was also pointed out

that what the courts sometimes interpret as disrespect is not always intended as such and can be brought about either through ignorance on the part of the defendant or more commonly by nervousness created by the occasion. In the opinion of one solicitor a demonstration of common courtesy by the courts to the defendants tends to add to the dignity of the occasion, humiliation of the defendants detracts from it. It was recognised that where people do show blatant disrespect to the courts then they could be said to be ".. the authors of their own misfortunes and they should be dealt with accordingly".

The claims that courtroom procedures are designed to humiliate and degrade the defendant were not wholly accepted by these advocates. But neither was it disputed that these procedures are too often applied in an unsympathetic manner or that in some courts some people do have a disregard for the feelings of the defendants. The way in which defendants are addressed by their surnames only, without them being prefixed with the appropriate title, came in for particular criticism. The fact that defendants are often told to do things rather than being asked to do things was another area of concern. Within this debate there was one dissenting voice, a defence solicitor who considered that many defendants ".. actually lost that quality of respect to be called Mister by the reason of the severity of their offending".

Another subject on which there was a high level of agreement was the presumption of innocence. It was claimed that this presumption is not always readily apparent in the English courts and yet it is a fundamental issue which should always be at the forefront of the magistrates' thinking. When defendants attend at court for the first hearing they are only charged with having committed offences and it is important to remember that they are not necessarily guilty of those offences.

The age and the design of some courthouses were blamed for many of the shortfalls which are experienced in the treatment of the defendants. The old courthouses were described by one of the solicitors as 'architectural accidents', which had been designed in an age when people had a different view about how people should be treated in the courtroom. Not that outdated design was seen as being totally responsible for the hierarchical structure of the court and the defendant's place within it. It was recognised that there are also some good practical reasons for the courtrooms being designed and arranged in the way that they are. For example the magistrates need to be raised and seated at a higher level than the other participants. This not only allows them to be seen in their role as sentencers, but it also enables them to see what is happening in 'their court' and to control the proceedings. Neither should the design of the courtrooms and the 'artificially stretched distances for face to face communication' necessarily be seen as an insurmountable hurdle either, especially for the represented defendant. I was told that the skillful advocates have the means to protect their clients from being humiliated. One solicitor expressed the opinion that in this day and age when so many people who appear in court are either unemployed or in receipt of benefits, the idea that defendants are embarrassed or stigmatised by having to divulge their financial status is now outdated.

All of the advocates who participated in the interviews were agreed that whilst some improvements could be made to the courtroom system and to the benefit of the defendants, any improvements should not be allowed to detract from the dignity of the court. It was generally accepted that there will always be defendants and offences where security and safety must be given a high priority but it was also recognised that there are other 'regulatory type offences' where a more informal setting would be appropriate. The solution according to one solicitor is not necessarily to dilute the present traditions, the respect for other court users or the dignity of the court, but simply to upgrade the degree of respect that is shown to the defendants.

#### **3.4.3 Justice and efficiency.**

One of the criteria now used to assess efficiency in the magistrates' courts is the speed with which the workload is moved through the system. The emphasis often appears to be on the avoidance of delays and those courts who fail to comply are financially penalised. The view expressed by all of the advocates was that the justice system is now largely dictated by monetary considerations.

Changes to the Legal Aid system were also criticised, but as was to be expected this criticism came almost totally from the defence advocates. One solicitor was particularly concerned because in his view the criteria which had to be met in terms of income now excluded all but a relatively small proportion of society from being able to obtain the benefits of meaningful legal representation. It now appears that effective legal representation is only available to either the wealthy who can afford to pay, or to those people who are on state benefits, such as Income Support, who can call on the state to finance their defence. It was felt that this would leave a large tract of the general public who would either not be represented or else would be inadequately represented through the Duty Solicitor system.

All of the solicitors were agreed that there is now a greater emphasis on reducing not only the number of delays, but also the length of those delays which are granted. Neither does this policy necessarily produce the increase in efficiency which is intended. The solicitor who is being pressured may well elect for the 'safe option' and enter a not guilty plea on behalf of the client in order to gain the required time to take proper instructions and make a true assessment of the situation, an action which can create additional delay rather than save time. The defence solicitors with whom I spoke were also incensed by the fact that the majority of delays in the courts are perceived to have been caused by them, a perception which they were anxious to correct. One solicitor had no hesitation in telling me where he placed the blame. On occasions it was caused by the financial constraints which had been placed on the various agencies but more often it could be blamed on the attitudes and the inefficiencies of the police and the prosecution, or alternatively the inability of the courts to deal with legal aid applications in time for the first hearing. The solicitors were very much in agreement that unnecessary delay is not

only detrimental to the courts, but as a general rule it is not in the defendant's interest either, because 'justice delayed can also be justice denied'.

In pressuring the advocate to proceed this can also pressurise the defendant. The solicitors find themselves having to take instructions with undue haste and in unsatisfactory conditions in the courthouse, sometimes in close proximity with other defendants. Whilst this maybe an environment with which the experienced advocate can cope, the same cannot always be said of the defendants, some who may find themselves in an unfamiliar and stressful situation, now made worse. To force the defendant into making a hasty decision in such circumstances is seen as unfair. As I was told, it is important that whatever the outcome, whatever the sentence, "The defendant ought to go out of the courtroom, or to the cells and to his prison sentence thinking that he's had a fair hearing", and this is not always the case.

Financial constraints and the importance of performance indicators have created a situation where in order to save time and consequently money, and where a case can be dispensed with at an early stage in the proceedings, the prosecution are frequently willing to accept a guilty plea to a lesser offence than that with which the defendant was originally charged. This can result in defendants, who originally intended to plead not guilty, being tempted, but I was assured not pressured, into pleading guilty to lesser offences. A policy somewhat akin to 'plea bargaining'.

#### **3.4.4 Power and influence.**

With varying degrees of enthusiasm there is an acceptance that the magistrates are the decision makers, a fact which in any case is dictated by the judicial system. When asked how influential the advocates are in the decision making process, I was told that this often depended on a number of imponderables. The advocate's power of persuasion, how well the advocates know the magistrates or vice versa. How well the facts are presented, knowing what to say and what to leave out. It was readily accepted that much of what happens is to do with both the personalities involved and the tactics which are adopted and these can vary from courtroom to courtroom, from day to day. I was told that the same case put before two different benches could produce stark differences. It was admitted that solicitors do use their knowledge of the different lay chairmen to the benefit of their clients. Cases are transferred between colleagues if it is suspected that a magistrate holds any bias against the solicitor who originally intended to present the case. There may be occasions when solicitors will even seek an adjournment in order to avoid a particular bench or magistrate, although I was told that this is a 'ploy' which is generally suggested by the defendants themselves and one which is generally discouraged.

Some solicitors see retaining credibility with magistrates as being vital. Credibility is not seen as being either automatic or permanent and one way of losing it is to be seen to be submitting 'ridiculous' applications before the bench on a regular basis. Once the advocate does lose this credibility the job can become exceedingly difficult.

The power of the professional lawyer group as a decision making unit was seen as being quite considerable, although I was assured that this power was only invoked to deal with the 'really mundane and peripheral points' which were of little interest to the magistrates and only used in order to move the workload through the courts. It was agreed though, that to some observers in the courtroom this action could quite easily give the impression that the professional lawyer group are the actual decision makers and that the magistrates are only there to endorse decisions which have been made elsewhere. The group of professional court users who are seen to possess a great deal of power within the court system are the court clerks and particularly in the 'behind the scenes' area. As I was told by one solicitor who had experienced life as a court clerk, this power and influence can be used in one of two ways, the direct approach which is to blatantly tell the magistrates what action they should take or a more indirect method which is to draw their attention to certain matters and get them to give greater thought to the "sub-text of what they've heard".

#### **3.4.5 The advocates' perception of the defendant.**

Many defendants are considered by their advocates to be culturally ill equipped to participate effectively in the proceedings in the magistrates' courts. Some were described as 'silly', whilst others were labelled as 'unscrupulous' and 'criminal people'. However not all of the defendants could be defined by these categories, there were also some who were deemed to be bright and others described as being 'streetwise'. There were those regular attenders at court who had enough knowledge of both the court and its proceedings to allow them to 'play the system' and to present themselves in such a way as to deceive the sentencers. Rather than being the 'objects of the game' as has been claimed by some observers, these regular attenders can also be seen in the role of the 'creators of the game'.

The advocates agreed that defendants do experience varying emotions towards the courts. This may be apprehension brought about by not knowing what to expect, they may have only a limited knowledge about what attending at court entails. Others may experience fear, those who have either pleaded guilty, or who intend to plead guilty, may be in fear of what sentence will be imposed. Those who are innocent of the offence with which they are charged may well feel contempt for the court because of the unnecessary trauma to which they are being 'unfairly' subjected. At the end of the hearing the emotions experienced may very well depend on the outcome. Magistrates express concern that some defendants leave the courtroom and give the impression that they are laughing at the court. This I was assured by the advocates did not happen, or if it did only very rarely. Defendants do leave the courtroom and they do laugh but this can nearly always be explained away as a release of tension. Defendants frequently fear that the worst is going to happen to them. Their solicitors quite often prepare them for the worst possible outcome, so when it doesn't happen, when the outcome is better than was expected, then they can often be seen to be expressing their relief as they leave the courtroom.



Previously expressed views that the defendants either understand very little or nothing at all of what has happened in the courtroom, even though they are central to it, were generally accepted by the advocates as having a great deal of foundation. However the view was expressed that this description should only apply to unrepresented defendants and if it could also be said to apply to represented defendants then there was 'something amiss' with the representation being provided. The reasons for this lack of understanding are numerous but the main reasons were thought to be, the emotional state of the defendant brought about by the occasion, the legal jargon of the court, the complicated pronouncements which are used to explain some of the court decisions or just simply poor communication skills. But it was agreed that everyone in the court has a role in trying to ensure that the defendant does understand what is happening, what has happened and what the consequences are, because "... that is what the whole thing exists to do". As it was explained, if people do not know what has happened, how can they have the confidence to know that they have been dealt with fairly? Why should they have respect for the institution and the wider thing called law?

It appears, not unnaturally, that the defendants assess the quality of the advocacy which they receive, not upon the performance of their advocate, but on the results which are achieved. If the solicitors do not follow the instructions given, or fail to say what they were asked to say and an unfavourable result is obtained, then inevitably the defendant blames the advocate. Whether the instruction was seen as irrelevant either to the defence or as mitigation in the case appears to be immaterial. If the solicitor advises against the making of a futile application then the defendant may well question the loyalty of that advocate. If the defendant sees his solicitor in 'friendly' conversation with the prosecutor in the courtroom, either between cases or during a case and whilst the magistrates have retired to deliberate, then the question of loyalty can again come to the fore. Whilst the importance of this demonstration of loyalty to the defendant was recognised by the advocates whom I interviewed, it was also argued that good inter-personal relationships with the other professional court users are also necessary. I was told that in a court the size of that in the study area, a medium sized court, it is in the interests of all the court users to have good working relationships. In any case it was considered virtually impossible for the adversaries to continually keep up a war of attrition. I was also told that because of the heavy time commitments of many solicitors, then the only available opportunity to discuss pending cases with the opposition was in the courtrooms and when the opportunity presented itself. It was admitted that in any event much of the conflict is only a facade, but it was also accepted that in the interest of advocate-client relationships it is a facade which needs to be maintained. There was however a general agreement that because of the different structures which exist between the two courts and different roles which exist between barristers and solicitors, the defendant's confusion about 'whose side his advocate is on', is more likely to apply to the Crown Court than it is to the lower courts.

But to gain the impression that the defence representation is a total facade would be a misrepresentation of the truth. I was told of cases where advocates were affected by the

outcome. Cases where a judgement has gone against them and where in their opinion, an innocent person has been found guilty or a person deserving of bail has been remanded in custody, and the solicitors do get "very uptight about it".

#### **3.4.6 The advocates' perception of the magistrates and the other court users.**

Defence solicitors must be successful to survive in a highly competitive commercial world. The solicitor who cannot get on with people will not enjoy success. It was suggested that whilst some of the alliances which are formed can be financially beneficial to one or other of the parties involved, most alliances are built on the mutual respect of the people involved. Neither do these alliances only benefit the people concerned, it was also claimed that because everyone is basically working towards the same end, that is to get cases dealt with expeditiously, then justice itself also gains. In the opinion of one solicitor, the best and most productive way of dealing with a case is to "work together to resolve the problem rather than going into every problem as though it were a fight". Most of the alliances which are formed are done so on a reciprocal basis, by "soft pedalling on the facts" or not making as much of something as one could in certain circumstances and then when the need arises and a return favour is required, it is usually given. It would however be wrong to assume that the court scene is one of total unity and compromise. I was told that court professionals are very quick to criticize each other, particularly when someone has failed to produce something which was promised within the timescale agreed. I was also told that it is not unusual for an experienced defence solicitor to take advantage of, and manipulate the inexperience of a new prosecutor, in fact it is expected that this will be done. However it is not considered acceptable for an experienced prosecutor to take advantage of an inexperienced defence solicitor.

All of the advocates saw the magistrates as being middle aged and middle class but they did not necessarily share the view of some observers that they are not very 'streetwise'. It was suggested that one reason why this 'narrow' band of society is over represented is probably economically determined. They are the only section of society who are financially able and who are allowed through their employment to meet the time commitments which are demanded of magistrates. This situation has created a magistracy which is not really representative of society as a whole and is therefore seen as a weakness in the system. In the opinion of another solicitor, the reasoning behind the lay magistracy is that they are able to bring the 'common touch' to the courts' system. In practice it was claimed that the longer that magistrates sit on the bench, the more they lose their original feelings and beliefs and the more they adapt to the culture and the ethos of that court. Because of this process of 'standardisation', often influenced by the more senior and experienced magistrates, the traditions and sentencing practices for a particular Bench in a particular town are perpetuated. When a magistrate loses this 'original feeling' and has not acquired either the knowledge or the experience of the professionals then there is also a danger that the magistrate may 'fall between two stools', having "achieved the worst of two worlds and lost the best of one". However I was assured that the advocates'

overriding opinion of the lay magistrates is one of respect. Whilst it was accepted that the lay magistracy is something of a lottery, they are seen as bringing qualities and a vision to the proceedings which are sometimes absent in the regular court professionals, who can miss things through looking at matters in purely legalistic terms.

In expressing their views about stipendiary magistrates there was a consensus that in terms of time, their legal knowledge, their ability to 'read between the lines' and their greater skills in communicating with the court and the defendants, then the courts which are presided over by the 'stipes' are seen as being more efficient. The stipendiary magistrates were also perceived as being much harder in their sentencing in so far as they impose more custodial sentences than their lay magistrate colleagues. The advocates also find that the stipendiaries are often able to indicate their views about a case and the probable means of disposal, something that a lay chairman can only do after consultation with colleagues, and this often short circuits the procedure in that only the pertinent points then need to be addressed. Where the advocates regularly appear before a stipendiary they also get to know what he or she likes to be told. But the advocates did admit that they can find appearing in front of the stipendiary magistrate quite daunting, they feel that there is a need to be better prepared, they are not allowed to get away with as much as they are with a lay bench and this applies particularly to trials where some of the defences which are offered would not be entertained by the 'stipe'. But a number of criticisms were also made. The stipendiary magistrates were criticised for being overly concerned with the speed with which they dispense with their workloads. On occasions, they were even accused of prejudging issues before all of the facts had been presented to them, and neither did they make much effort to conceal this. They are seen to be more selective than the lay magistrates when deciding what they want to hear and what they do not want to hear. But despite these criticisms, at least one solicitor expressed a preference for an all professional magistracy.

The Probation Service, in the opinion of one of the advocates whom I interviewed, comprises of ideologically motivated people who are committed to arriving at a particular result, that is to prevent people being sent to prison, a policy which does not necessarily provide the best solution in every case. To this advocate this is an area of concern and something which needs to be borne in mind by the magistrates when considering the 'proposals' contained in what is seen as a very influential document, the Pre-Sentence Report.

### **3.5 THE PROBATION OFFICERS' PERCEPTION.**

#### **3.5.1 The probation officer's role in the court.**

The role of the probation officer can be split into two main tasks, that of an officer of the court, a provider of information to assist the magistrates in their decision making role, and as a 'social worker' whose role is designed to 'advise, assist and befriend the defendant', a role which has become somewhat modified to include more of an element of punishment as a result

of recent legislation. In the opinion of the probation officers who participated in the study, the courts attach far too much importance to the former and this is to the detriment of the service which is provided for the defendants in the courts. It is a situation which urgently needs to be reviewed and redressed in order that the officers can direct more of their efforts to the latter part of the role, a role which the probation officers would far sooner perform. There is a general and largely accurate view that the probation officers tend to play a passive role in the courtroom. This has been interpreted by some as a tactic which has been intentionally adopted so that by keeping a low profile the officer can give the impression to the onlooking defendants of a position of neutrality between them and the courts. However I was told by one probation officer that the way that this role is played is not always open to choice but is often dictated by the bureaucratic procedure that exists in the courtroom and which discourages many probation officers from playing a prominent role in the front stage area, although I was assured that they remain very active behind the scenes.

### **3.5.2 Organisation and degradation.**

There was a consensus among those probation officers who participated in the study that there is a need for rules in the magistrates' courts to ensure that a complicated set of procedures and a number of conflicting interests can be channelled into a workable system. The problem as seen by these probation officers is not with the rules themselves but in the asymmetrical and dehumanising way in which the rules are applied by some of the regular court users, including the magistrates. The layout of the courtrooms and the way in which they are organised was also a subject of some concern and a subject of conflicting views. Whilst there was a great deal of concern expressed that the defendants need to be protected from humiliation by the courts, it was also recognised that there is also a requirement to separate the magistrates from the rest of the court in order to demonstrate their impartiality as the decision makers, and to achieve this, abnormal distances for face to face communication can become a pre-requisite. But a great deal of concern was expressed about the way in which the defendants are treated by the regular court users. The way in which the defendants are paraded in the courtroom was likened by one probation officer to a 'cattle-market'. Another described their treatment as a conspiracy of ego inflation, a method used to "... heighten the self-importance of the ones who conspire together in this ..". It was however conceded that this type of treatment is not universal and that there are court personnel who can be observed to be actively working against the degrading of the defendants in the courtroom.

There was an overall view among the probation officers that the courtroom proceedings should and could be liberalised and without the need to forfeit the solemnity, which it is accepted needs to be retained in order to mark the importance of the occasion. It was the considered opinion of one officer that the special location, the timing and the status of the participants involved in the court scene all marked the significance of the occasion without having to resort to much of the symbolism, the traditions and the procedures. The degradation

ceremony was certainly not considered to be a necessary part of the court system but more as an abuse of power by some of its regular participants.

### **3.5.3 Justice and efficiency.**

The probation officers were also unanimous in their view that all too often the magistrates' court is not seen as a place where justice is dispensed but more as a place where the defendants are processed. An environment where the probation officers occasionally try to resist the flow but generally finish up being carried along with the rest. An environment where only now and again do they come across a case which really appeals to their innate qualities and their social worker training. The court and its participating agencies all operate in a setting which is influenced by such factors as performance indicators and cash limiting and for some just the simple fact of trying to survive in what is seen as a highly competitive business environment. In this setting the emphasis appears not to be on justice per se, but is more concerned on negotiating cost effective deals or ensuring that the maximum number of clients are processed through the system as quickly as is possible in order to ensure that a legal business survives and that the jobs of those whom it employs are safeguarded. Such, for example, are the divided demands which are placed on the defence advocate, not only a duty to the client but also a responsibility to a business and the people it employs.

In this pursuit of efficiency I was also told about courts which appear to proceed almost in spite of the presence of the defendant, where if a cardboard cut-out was substituted for the defendant, it is doubtful if anybody would spot the difference. A situation where even the represented defendants are not sure what their representatives are going to say on their behalf. A setting in which the magistrates appear to be more interested in the crime and its appropriate 'sentencing tariff' than they are in the person, the individual, who stands before them. Neither was this isolation of the defendant necessarily seen as occurring by chance. It was felt by at least one officer that the procedures are purposely kept opaque on the assumption that the less the defendants understand and the more confused they become, the easier it is to keep control of the defendants and hence the proceedings. But it was pointed out that there can be a corollary to this type of approach in that it is likely to promote a negative response from the defendants, not only to the magistrates' courts and their system of justice but also to the sentences which these courts are empowered to impose.

### **3.5.4 Power and influence.**

The probation officers were in no doubt that the power in the courtroom rests with the magistrates, they were described by one probation officer as 'untouchable'. But they also identified another powerful and influential group of people, the professional lawyer group, which consists of the court clerks and the advocates, a decision making network from which both the non-legally trained probation officers and the amateur lay magistrates are excluded. The power and influence of the court clerks whilst being acknowledged was also questioned because of

the covert way in which it often appears to be used. Attention was drawn to the fact that much of what the magistrates hear and see is produced in an open court and is therefore subject to argument or scrutiny. This openness does not however apply to all of the advice which is given to the magistrates by their clerks, a great deal of which is provided, "behind closed doors".

An oft used word when discussing the level of influence which the varying groups are able to exert on the justices is 'credibility'. The probation officers were agreed that whether or not their reports, and in particular their 'proposals', are accepted by the sentencers very often depends on the report writer's credibility with the magistrates on the day. What was of particular concern to the officers is how credibility is defined. It was feared that when credibility is granted to individuals, the decision is often based on the personality of the individual, not their ability, two different elements which can and often seem to be confused by the magistrates. This concern was expressed, because it was seen that some advocates attempt, and apparently succeed in 'hoodwinking' the magistrates.

The Pre-Sentence Report is the means by which the probation officer can influence the sentencers. It was generally agreed that these reports are written with the defendant, the underdog, in mind. Other considerations such as matters of public interest are seen as the "preserve of the bench". A problem can arise when some probation officers take these sometimes conflicting interests to extremes and this can result in the influence of the report being devalued. It was, however, considered that a number of relatively recent events had resulted in an improved level of report writing and presentation. These were Criminal Justice Act 1991, the introduction of National Standards and the appointment of a stipendiary magistrate to the Bench. The view expressed by some previous researchers concerned with the magistrates' courts had suggested that many magistrates see the Pre-Sentence Report as an attempt by the probation officers to usurp their sentencing powers. This is a perception which is still seen to exist by the probation officers whom I interviewed. This fact had also been more widely recognised and recent guidelines which have been issued to the officers were designed to ensure that the sensibilities of the sentencers are not offended. I was assured however, that by and large the magistrates within the study area are more receptive to 'constructive proposals', than had been experienced by the probation officers who had worked in other Petty Sessional Divisions.

### **3.5.5 The probation officers' perception of the defendant.**

The defendants in the magistrates' courts are seen as people who are disadvantaged by the system and who are subjected to rules and procedures which restrict their opportunity to participate effectively in the occasion. The majority of defendants are often seen as either having personal shortcomings, or as being in such an emotional state that, at best they only partially understand what is happening around them in the courtroom and at worst they have no idea at all. Their treatment by some of the magistrates and the other court users is seen as being both officious and disrespectful and they were described by one probation officer as

"cannon fodder for the court system". Although once again I was told that it would be wrong to categorise all of the defendants who attend court in this way. Some of the more regular attenders at court were described as being both bright and streetwise, knowing not only the system but also how to play it.

The probation officers see themselves as having positive relationships with their clients. They tend to be non-judgemental and have a degree of empathy with the client's situation. They see their relationship with the client as being totally different to that of any of the other court users, a relationship which on occasions can result in them becoming a 'privileged confidant'. The probation officers with whom I spoke were acutely aware of the need to maintain a professional distance between themselves and the client and not to do so was considered to be detrimental in two ways. In the first instance it would not be helpful to the client and secondly it would fail to demonstrate an expected level of objectivity to the sentencers, a balancing act which the probation officers need to achieve if they are going to maintain credibility with both the client and the courts. Whether or not the client sees the probation officer as 'just another part of the system' often depends on how helpful the officer can be to that client and also on how responsive the client is to that assistance at that particular time. It can also depend on the client's past experience with the Probation Service or indeed any of the agencies which are associated with 'the system' and whether this contact was considered to have been beneficial or otherwise. What was also emphasised is that a good officer-client relationship needs to be two way. It cannot be based solely on providing for the client, there is also a requirement for the officer to make demands on the client. I was told that it is quite likely that a probation officer who is perceived as being 'soft' by the magistrates may also be seen as a 'waste of time' by the client.

#### **3.5.6 The probation officers' perception of the magistrates and the other court users.**

The probation officers see the magistrates as the decision makers whose abilities vary between the extremes of 'good' and 'abysmal'. They see them as poor communicators who jealously guard their sentencing powers. They are seen as being mainly middle class, although this narrow basis for selection is not seen to be as restricted today as it was in times past. However they are still seen to emanate from a different world than the people with whom they are dealing. Even those people who are apparently appointed from 'working class' backgrounds are often seen to assume middle class values after they have served on the Bench for a period of time. These magistrates were also considered to be more critical of the defendants from similar backgrounds, seeing them 'as lacking moral stamina' and therefore subjecting them to harsher sentencing. The magistrates are also considered to be subject to personal prejudices and also to making assumptions when dealing with the defendants. But lay magistrates are also seen as generalists who have a non-vested interest, who can inject the system with an "invaluable dose of commonsense" and have the potential to question the existing system. The relationship between the probation officers and the magistrates within the

study area is considered to be good and much better than that which has been experienced by officers in other areas. Despite this, the probation officers still found that they are frequently humiliated by the magistrates who make either careless or deliberate comments in the courtroom. The probation officers in the study expressed a strong preference for the professional magistracy whom they saw as being tougher to convince but more consistent because of their greater knowledge and experience. The lay benches were seen as easier to convince but also as quite unpredictable. The consensus of these probation officers was that they would rather do 'battle' with a stipendiary magistrate than take their chance in a 'lottery' with a lay bench.

The probation officers were very outspoken in their criticism of advocates and in particular the defence solicitors. The solicitors treatment of, and their attitudes towards their clients was described as 'squalid'. It was considered that the advocates major concern was the pecuniary benefits which could be obtained and they were seen to be colluding with a system in which the welfare of the defendant, their client, is given a low priority. They are still considered by some officers to be 'money making plagiarists' who use much of the information that is produced in the Pre-Sentence Report. However this view does not appear to be as strongly held as it was in the past, it was conceded that solicitors now use the information which is produced in the reports rather than depending totally upon it. Even so, solicitors were still heavily criticised for their apparent lack of preparation.

The Probation Service's relationship with the police is best summarised by one officer who said, "The probation officer who thinks he's got a good relationship with the police is self deluding". The only areas of real cooperation appear to be among small groups who have been set up to deal with specialist areas and where there are mutual interests. A situation which also appertains to their relationships with Crown Prosecution Service.

In talking to the probation officers it became quite apparent that as a group they see themselves as separate from the other professional groups who comprise the magistrates' courts system. In their own words they are made to feel 'marginalised' by these other groups. This does not however appear to be a straightforward exclusion of one group by the others, there is a dichotomy. Whilst they are excluded from what they consider to be an arena of power and influence, the professional lawyer network, they are also aware that there are pressures on them to demonstrate their allegiance and loyalty to the courts. Despite this perceived marginalisation, the probation officers do succeed in developing working relationships with the other groups in the system, albeit these relationships are normally based on mutual benefit and reciprocal arrangements. In short, whether they are seen as part of the court by the other court users is said to be dependent upon whether they are seen to be useful to some other agency or individual at that particular time.



## **CHAPTER 4. ANALYSING INTERACTION - OBSERVATION AND DOCUMENTATION.**

### **4.1 An Introduction.**

As I have already indicated, the information gathering phase of my research design was based on ethnography's customary mix of observation, documentation and speech.

The interview phase has already been described and recorded in the previous chapters.

I had been exposed to the general courtroom scene for an extensive period of time prior to my decision to carry out a programme of research. During that time I had become very familiar with the courtroom and its procedures, it was very difficult therefore to get away from the view that a courtroom, is a courtroom, is a courtroom. There was no doubt that my awareness of the criticisms of both the courts and their procedures did enable me to approach the court scene from a number of new and different perspectives. In reality however, I did find that my observations in the courtroom became somewhat restricted and inevitably focused. I found myself looking for the unusual rather than the ordinary, the specific rather than the general. As a result of this I did not consider the direct observations in the courtroom to be the most productive of my research activities.

As a magistrate, as a member of the Magistrates' Courts Committee, the Lord Chancellor's Advisory Committee and the Probation Liaison Committee, I received a profusion of documents. These documents were extremely varied and consisted of Government circulars, predominantly from either the Home Office or the Lord Chancellor's Department, white papers, green papers, discussion documents and directives. Then there were the trade journals, 'The Magistrate', or the 'Justice of the Peace'. There were circulars and minutes from the Central Council of the Magistrates' Courts Committees. At the local level I received minutes from those meetings which I attended and also from many I didn't. In addition there were circulars, training information and newsletters, not only those produced by the courts but also by the other agencies involved in the criminal justice system. During the period of my research I also found that both the national and the local press were extremely interested in the happenings and the 'crises' in the criminal justice system.

My final source of information was the views and opinions which were expressed by the various participants. These were expressed in a number of forms, as well as the interviews, there were meetings, training sessions, seminars or just simply in informal discussions.

### **4.2 ORGANISATION AND DEGRADATION.**

#### **4.2.1 Quality of service - the human interaction aspects.**

In an article in The Magistrate in early 1991, Raine expressed concern that traditionally the standards for quality had generally focused on the quality of judicial decisions rather than on the process as a whole. He was of the opinion, an opinion which was shared by many court users, that there was considerable scope for improving many aspects of judicial

administration, improvements which would better fulfil the expectations and needs of those who experience the court systems. High on the list of priorities should be 'the dimension of personal treatment'. The quality of service might well be improved markedly so far as users were concerned 'by careful attention to human interaction aspects'. Indeed, the conclusion drawn was that many of the 'shortcomings of, and limitations to, the service provision that at first light seemed inevitable in old cramped and ill suited court buildings, could be mitigated to a considerable extent by visible, knowledgeable and helpful staff in waiting areas and by courteous and sensitive behaviour of personnel in the courtroom' (Raine, February, 1991, p6). This theme was also taken up by the Lord Chancellor. In his address to the Magistrates' Association in 1991 he emphasised the importance of the courts having effective reception arrangements for non-professional court users 'so that they can be informed as to where they should go or where they should wait. The importance of having capable ushers cannot be overstated' (The Magistrate, Dec. 1991/ Jan. 1992, p199). A year later he was committing the Magistrates' Courts' Service to the development of the Citizens' Charter initiative. Whilst conceding that many courts were hampered by old and often cramped buildings, a situation which was particularly relevant to the study area at that time, he did not consider this to be wholly restrictive. 'The human contact between staff and users is most important .. I would urge you to see us as the public do' (The Magistrate, Dec. 1992/ Jan. 1993, p197).

There was obviously a need for change, a need for greater emphasis on the 'human interaction' aspects. So how did the magistrates' courts respond? The Magistrates' Courts' Service Inspectorate commenced its three yearly inspections of magistrates' courts early in 1994 and ranking high on their agenda was the quality of service which these courts provide. Having inspected a number of courts, they found '.. recently there has been a deliberate shift in emphasis which gives the needs of users a higher priority .. A working group has been established to focus on a Courts' Charter initiative .. a Quality Forum has been set up. .. a Magistrates' Courts' Charter has been produced .. '(HM Magistrates' Courts' Service Inspectorate, executive summaries, April 1994-April 1995).

But how did the study area perform in respect of the 'personal treatment' of non-professional court users. A 'Quality of Service' survey which was undertaken in 1992, and whilst the court was still located in its old and inadequate buildings, found the reactions to be mixed. When asked the question about the 'availability of staff to deal with queries', 28 per cent considered it to be very good and a further 54 per cent rated staff availability as satisfactory. In assessing 'the helpfulness and friendliness of court staff', 46 per cent considered the standard to be very good while a further 44 per cent placed it in the 'satisfactory' category. In an identical survey carried out in 1995, a year after the courts had moved into a purpose built, ultra-modern courthouse with a permanently manned reception desk, 30 per cent rated the availability of court staff as very good but only 46 per cent considered it to be satisfactory. The answers to 'the friendliness and helpfulness of staff' question were identical in both of the surveys. Over the same period however, it was considered that 'the quality of information provided by ushers

or other court officials on arrival at the courthouse' had improved considerably. In 1992 only half of those surveyed considered the quality of information worthy of being placed in either the 'satisfactory' or 'very good' categories, by 1995 this had improved to 76 per cent.

My own experience of visits to foreign courts is that they all resemble 'bureaucratic rabbit warrens', and particularly in the non-public areas. To date I have the dubious record of having been temporarily lost in the city courts of Manchester, Liverpool and Sheffield, even though at two of these courts I was there on official business and had been given directions by a 'helpful receptionist'. In the study area, many of the magistrates breathed a sigh of relief when direction signs were erected in the new courthouse which identified the routes from the magistrates' assembly room to the ten courtrooms which are located on three different levels.

#### **4.2.2 A caring, responsive and fair service, or a system which is fundamentally disrespectful.**

Addressing the Bishop of Lincoln's conference on 'Respect in Prison', July 1991, Howard Zehr described the criminal justice system as 'fundamentally disrespectful', as a 'technical process of establishing blame and handing out pain'. He argued that, 'At present our system robs victims and offenders of autonomy, it depersonalises them. It is based on the requirements of the most bizarre cases, but uses the the same procedures for petty ones'. According to Zehr, 'We learn respect from being respected, not by being disrespected' (The Magistrate, April 1992, p53).

From my observations and experience within the magistrates' court at that time, I doubt whether Dr. Zehr would have received universal support for these claims. In fact a view occasionally expressed by some magistrates was that by committing certain types of offences, especially those which involved violence and theft, then these offenders risked forfeiting their right to be treated with respect. But despite this there were moves afoot within the courts to improve the levels of courtesy afforded to court users, both professional and non-professional. In 1990 at a training seminar for bench chairmen within the study area, the attenders were told that, 'Patience and courtesy should be shown to defendants, advocates, witnesses and prosecution alike'. They were also urged, 'To address defendants as Mr, Mrs or Miss, or by first name and surname'. In 1992 the Judicial Studies Board were producing a list of suggested competences against which bench chairmen could be appraised, these competences were subsequently adopted by the Bench in the study area. One of the major categories was 'Dealing With People', a category which included such competences as, 'Ensuring courtesy to all court users', 'Addressing defendants in an appropriate manner', 'Avoiding a patronising tone' and 'Showing appropriate concern for distressed parties and witnesses'.

It was conceded that until relatively recent times there had been little or no training in magistrates' courts on the subject of human awareness, 'but now dealing fairly with people, including race issues, had become an integral part of training' (Black People in Magistrates' Courts, Justices' Clerks' Society, 1995). A review carried out by the Justices' Clerks had also

found that the majority of their members and the magistrates who they advised were convinced that 'equality of treatment is provided in their courts to all court users'.

In the course of their inspections, carried out in a twelve month period between 1994 and 1995, the Magistrates' Courts' Service Inspectorate once again found wide variations in the way that court users were treated, and particularly in the way that defendants were dealt with. In some courts the staff were observed to be '.. courteous and helpful'. Inspectors observed staff dealing with users '.. sensitively and professionally'. In other areas the staff were seen to be '.. courteous and responsive to the needs of users'. In another area they observed instances where '.. staff went out of their way to assist in matters outside the normal responsibility of their post'. The '.. calm efficiency and helpfulness of the court ushers' was singled out for special mention. Unfortunately these observations were not universal. In another area it was reported that while the professional court users were happy with the service they received, it appeared that '.. the needs of defendants and witnesses did not seem to be a high priority'. In one specific courthouse it was observed that prisoners were sometimes chained to tables, radiators, window bars and even a piano while waiting for their cases to be called. Handcuffed prisoners were walked through public areas for access to toilets and courtrooms (Magistrates' Courts' Service Inspectorate, executive summaries, April 1994-April 1995).

As I have already indicated, in my own court only 10 per cent of those surveyed were dissatisfied with the helpfulness and friendliness of the court staff. The Magistrates' Courts Committee is still awaiting its first visit from the Inspectorate. Unlike the larger city courts which I visited during the research period, my own court only uses the dock for those people who are produced into the courtroom from the cells, that is those prisoners who are either produced from custody or who have been arrested on warrants. Neither are all of the prisoners who are escorted into the dock always handcuffed, a decision which seems to be left to the custody officer. As one police custody officer informed me, "You know those you can trust and can't trust, the ones who are likely to jump over the dock. You check with the CPS and identify those who aren't going anywhere, [those who it is anticipated will be remanded in custody]. We identify the ones who have caused trouble in the cells or when they were arrested. We don't 'cuff' non-payers, [fines defaulters]". Not that this system was necessarily a guarantee of a defendant's behaviour in the courtroom. During the period of my survey one young male prisoner leaped over the dock rails and escaped from the courthouse to enjoy a few days of unexpected freedom. However, the practice of not putting all of the defendants into a secure area within the courtroom for their hearing, and especially those alleged to have committed violent crimes, was a matter of concern to a number of the lady magistrates who experienced some anxiety for their personal safety.

#### **4.2.3 A demonstration of courtesy is now an integral part of courtroom procedure.**

Accepting that dealing fairly and courteously with people is now said to be an integral part of the system in magistrates' courts. How does this show itself within the confines of the

actual courtroom? From my own observations I found the way that defendants and other non-professional court users are treated is almost as diverse as are the individuals who participate in the courtroom interactions. Like the Magistrates' Courts' Service Inspectorate, I also observed a great deal of courtesy, helpfulness and even concern from both the magistrates and the court professionals. But I also witnessed instances of defendants being given a 'rough ride', although on the majority of occasions when this occurred it could have been argued that the recipients had brought it upon themselves because of the disrespect they had shown for the court, however on other occasions this argument would have been difficult to substantiate.

I have been repeatedly impressed by the courtesy which the court ushers display towards, not only the regular court users, but also towards witnesses, defendants, the defendants' families and friends as well as members of the general public. Their general helpfulness and politeness appears to be one of the constants in the courtroom and I have regularly been surprised to hear them address people, some whose alleged crimes they must find most offensive, as 'Sir' as they have escorted them into the courtroom and told them where to stand. An overall impression of courtesy is generally maintained throughout the court hearings, although some of the politeness comes over as being part of the courtroom procedure and somewhat superficial, but some of the concerns which are demonstrated for some of the non-professional court users do appear to be very genuine. Defendants in court normally have their surnames pre-fixed with the appropriate title when being addressed in court or by their first and surnames when the decisions of the court are being announced. There are occasional lapses by some stipendiary magistrates who have traditionally referred to defendants by only using their surnames. Defendants are no longer told to stand or to sit as and when required, they are now asked to do so, although when asked to stand they have very little choice in the matter. I have also seen magistrates apologise to defendants for any inconvenience caused when administrative errors have resulted in their unnecessary attendance at court. Witnesses are frequently thanked for attending at court and giving their evidence, and considering the stressful situation that many witnesses experience, they are entitled to this type of acknowledgement.

During the course of my research I have also seen examples where the magistrates and the court professionals have shown a genuine concern for the plight of some of the people who appear in the courts. I have seen people with severe financial difficulties have their fines remitted or else be sentenced to one day's detention in default, a sentence which in practice means that they are 'detained in the courtroom' until the end of the afternoon's court business. On one occasion I observed the considerable lengths to which a prosecutor went to in order to obtain a placement in a secure psychiatric unit for a mentally ill defendant because he felt that a remand to prison, the only other realistic and a much easier alternative, would have been totally inappropriate for this defendant. I witnessed an occasion when the husband of a very distraught defendant was permitted to sit next to her throughout the hearing in order to offer his support and act as a calming influence. I observed a case where because of the emotional

state of the defendant, a condition which was also a cause for medical concern, the bench demanded a 'stand down' pre-sentence assessment in order that the matter could be dealt with on the day rather than subjecting the defendant to further weeks of uncertainty and emotional strain. Defendants with disabilities are regularly allowed to sit throughout the proceedings once they have taken the oath. I was, on one occasion, party to a defendant, a homeless and regular petty offender, being given a short custodial sentence so that he could spend the Christmas and New Year period in the 'comfort' of a prison cell. He had 'burgled' his solicitor's office in the hope of being arrested and sent to prison. We could and possibly should have sentenced this defendant to a non-custodial alternative. Defendants who are charged with relatively serious offences and who arrive at court unrepresented are routinely asked if they wish to seek legal advice, either by consulting the duty solicitor or by seeking an adjournment of their case so that this advice can be obtained.

Whilst assisting unrepresented defendants in trials is a recognised part of the court clerks' duties, it is a duty which my observations suggest is taken very seriously. Not only are their rights and the procedures to which they must conform explained very clearly and in some detail, but I have also witnessed occasions where the court clerk has appeared to almost take on the role of the defendant's advocate in their dealings with the prosecution and the problems which many unrepresented defendants experience in the cross-examination of witnesses. Not that this should be taken as an indication that the prosecution take advantage of the unrepresented defendant. To the contrary, I have also observed these defendants, not only being supplied with writing materials by the prosecutors in order that they could make notes, but also with good practical and legal advice.

#### **4.2.4 Non-professional court users can be disadvantaged by courtroom practice and procedures.**

Imagine a typical early morning scene in the magistrates' court. The first case of the morning is being heard, the defendant has pleaded guilty but there is a great deal of mitigation and the defence solicitor is addressing the magistrates on his client's behalf. For the defendant this is an extremely important day. The court is crowded there are numerous solicitors sat around waiting for the cases in which they are involved to be called, some are making notes others are involved in conversations with associates and colleagues. The court clerk is busy organising the morning's schedule, most of the defence solicitors are keen to have their cases dealt with early so that they can deal with their business in other courtrooms or else get back to a busy office. There are comings and goings, files and fresh information are being fed to the various professional court users. Probation officers keep moving in and out of court. Solicitors use the courtroom as a convenient route to see their clients who are being held on remand in the cells. Solicitors, unlike barristers in the Crown Court who tend to creep in and out of the courtroom, appear to 'breeze' in and out of court. Family and friends of the defendants, defendants waiting for their own cases to be called or just general members of the public who

wish to gain access to the public area at the rear of the courtroom all add to this general situation. The observer is left with the impression of an almost incessant background noise, a hub-hub of conversation, the rustling of papers, comings and goings and the opening and closing of doors. What impression is the defendant left with on this, an important day in his life? Unfortunately for some, this is not an imagined scene but a scene based on observation and reality. Some court chairmen do attempt to keep this level of disturbance within reasonable levels. The stipendiary magistrates certainly demand that a greater level of courtesy and respect be shown to the court. The later in the court lists that a defendant's case is called, the fewer are the people present, the less are the peripheral distractions and the more the defendant becomes the centre of attention for all those who are present in the courtroom rather than just those who are directly involved in the case. Fortunately trials are not subjected to this type of situation because of the way in which they are scheduled and allocated to specific courts rather than being included in a general court list.

But of course trials do contain some pitfalls, and particularly for the non-professional witness and the majority of defendants. The problems can start from the very outset when they are asked to take the oath. "Take the book in your right hand and read the words on the card". A very simple statement unless you are either a poor reader or else you cannot read at all. This situation is not as infrequent as some people may think and it can be a source of considerable embarrassment and humiliation, and definitely not designed to put the witness or defendant at their ease. Then they are instructed on how they should deliver their evidence, normally by their solicitor. "I will ask you the questions but please address your answers to the magistrates, [this often involves the witness turning through an angle of 120 degrees if he or she wishes to face the advocate and then the magistrates]. Please keep your voice up because the magistrates need to hear your replies. At the same time will you please watch the pen of the court clerk, the gentleman sat there, because he will be taking notes of what you say. Please answer at a speed which will enable him to take accurate notes. I know it is difficult but please try". Having successfully negotiated these hurdles and having presented their evidence, they are then cross-examined by the 'opposition'. During this period it may be courteously suggested to them 'that they are mistaken', or that 'they are being economical with the truth', [and some are], or else 'the evidence you have given is a load of lies' [and occasionally it is difficult to draw any other conclusion].

From my observations it appears that the professional witness is better equipped to handle this situation. They give the impression of being more in control, they know the rules of evidence and also the speed at which to present it. If they have any anxieties they do not openly display them. Unless they are referring to their notes or handling exhibits, they stand with their hands clasped either in front of their bodies or behind their backs, unlike the amateur who tugs at his collar, plays with his tie, [obviously borrowed for the occasion], drums his fingers on the edge of the witness box and shuffles uneasily from one foot to the other. As one prosecutor told me, "I was trained to watch how people give their evidence, whether they move

from one foot to another and such things as that. Unfortunately with these witness boxes you can't always see". The professional is also more adept at handling the awkward question, they refuse to speculate, if it is not recorded in their notebook then it was either not said or it did not happen. If they do not understand a question then they ask for clarification before even attempting to give an answer. But even professionalism can be subjected to criticism on occasions, I saw an attempt to discredit a witness because his testimony from the witness box was almost word perfect with his statement which had been made some ten months earlier. I also heard a solicitor, who was experiencing a great deal of difficulty in getting a police officer to agree with his version of events, accuse the officer of being flippant in the replies to his questions. The court chairman did intervene on this occasion and expressed an opinion that some of the questions being asked, "... were tending to invite this type of reply".

Then there is the unrepresented defendant. I formed the impression during my period of research that the trial procedure, in which the prosecution presents its case and then in turn the defence present their case, with witnesses being challenged as and when they have given their evidence, sometimes appeared to act as a constraint on the unrepresented defendant. Although the rules and the procedure were always clearly explained, all that the defendants wanted to do was to tell the magistrates their side of the story. They listened to the prosecution evidence, but when they were asked if they had any questions for the witness, all they wanted to do was to give their version of events. When they were stopped and told it was not their turn to give evidence, they simply looked confused and sat down. Only rarely was the evidence of the prosecution witnesses challenged. Another common failing, is that in presenting their own evidence, the unrepresented have a tendency to introduce hearsay evidence, [evidence given by one witness about what some third party is supposed to have said]. On being stopped and told that this is inadmissible this just appears to cause further confusion and further frustration.

There is also further disadvantage caused by the language of the courtroom. 'Ignorance of the law is no excuse, yet no one can pretend that the law is easy to understand. Courts pride themselves on 'open justice' but the terminology can be inaccessible to ordinary people' (Gibson, 1991, p57). Once again moves are afoot to try and improve this perceived shortfall. Among the list of competences for court chairman, as suggested by the Judicial Studies Board, are such proposals as 'ensuring defendants and all in court understand what is going on', 'using simple language without jargon', and 'speaking clearly and concisely'. The principle appears sound, but it is not only 'ordinary people' who can be confused by the language. At a training seminar for magistrates with approximately one year's experience, a request was made on behalf of the group for a 'Glossary of Terms' which would help them better understand the legal jargon of the courtroom. Advanced disclosure, Section 9 statements, prima facie case, old style committals were just a few of the terms which were creating confusion amongst the decision makers.



**4.2.5 Some non-professional court users may be intentionally given a 'rough ride' in the courtroom, and some 'regulars' might consider it well deserved.**

But it is not only the systems and procedures which can disadvantage the attenders at court, it can also be the way that they are dealt with as individuals by individuals. While it is the stated intention in the magistrates' courts to treat all court users with courtesy, it cannot be denied that some defendants, in certain situations, are accorded anything but respect. In some instances it might be difficult to even describe the treatment they receive as fair and in some situations the courts might even be accused of setting out to embarrass or even humiliate the people involved. Having observed and even participated in some of these types of situations, I know that magistrates and court professionals would argue that this sort of treatment is only meted out in situations where the recipients have either shown disrespect to the court or a disregard for its orders.

It appears that the art is in balancing the human approach to the non-professional court users with the dignity of the court. I have frequently seen defendants and witnesses enter the courtroom with their hands in their pockets, wearing hats and chewing. Usually a quiet word or indication from the court usher is enough to redress the situation. Sometimes it requires the intervention of the chairman or the court clerk. This type of incident is an almost daily occurrence and normally accepted as unintentional. But what happens when there is a blatant refusal to comply with the request? On one such occasion the defendant refused to take his hands from his pockets and informed the bench chairman that his hands were cold. The chairman said in that case he would stand the case down until later in the list thereby giving the defendant the opportunity to leave the courtroom and warm his hands. The defendant suddenly realising that there could be a long wait ahead, took his hands out of his pockets, apologised to the court for his 'unreasonable behaviour', and the hearing proceeded. Of course I have also seen advocates addressing the bench, hand in pocket and leaning against the backs of their seats, I have yet to see the proceedings halted and a solicitor told to take his hand out of his pocket and to stand up straight. On another occasion a defendant was produced from the cells area wearing a hat which he adamantly refused to remove, also refusing to give any explanation. This defendant was quickly removed back to the cells and remanded in custody in his absence. Then there are those defendants who have attended at court, they intend to plead guilty but want 'to have their say' generally about what they see as the unfairness of it all, a say which is often delivered in an aggressive and sometimes abusive manner. From my observations these defendants are normally granted a reasonable degree of latitude but if they persist, my own method of dealing with the situation is to stand the case down, ask the defendant to wait outside of the courtroom and to inform him or her that we will proceed with the case as and when they feel able to apologise to the court. A strategy which normally produces the desired outcome, at least for the court.

When discussing this subject with a stipendiary magistrate, I was told, "My own view, supported by many other 'stipes', is that we tend to show greater courtesy to the unrepresented

defendants than to some advocates. My own stance is quite simple. I expect an advocate to know certain things and to conduct himself according to certain standards. I expect the non-professional user to know considerably less and behave according to the ordinary standard of any citizen in a court. This means for me to get cross with a non-professional, they have to misbehave and probably more than once. For me to get cross with an advocate, as you have observed, requires little more than the advocates appearing not to be properly prepared ..".

Not only is it the defendants who are on the receiving end of the courts' rebukes. I have seen members of the public reprimanded for behaving in the courtroom in the same way as they would in the 'taproom of their local public house'. I also witnessed an occasion when a young couple in the public seating decided to pass the time 'kissing and cuddling' while the young man was waiting for his case to be called. The chairman gave them the choice of staying in the courtroom or going into the waiting area. Having elected to stay, the couple were then somewhat embarrassed when the chairman insisted that they sit with an empty seat between them. On another occasion when observing 'covertly' from the public seating in one of the city courts, I nearly found myself ejected as part of a group who found the antics of their friend, a defendant, quite amusing. Although not part of this group, I found myself in the middle of them and as a result we were all subjected to severe rebuke from the chairman with a warning that any repetition would see us removed from the courtroom. Fortunately 'my new found friends' heeded the chairman's words. Was this taking my research too far I wondered?

But the defendants who appear to be at the forefront of the displeasure which is demonstrated in the magistrates' courts are the fines defaulters. These are the people who at some earlier hearing, when they had either pleaded or were found guilty of an offence, were ordered to pay a fine, compensation or costs and in some instances all three. Many of them had requested time to pay at so much each week and some would even have had some say in the rate at which repayments could be paid. They have been brought back to court because they have failed to pay as ordered. Where the true circumstances of the defendant's means were not known at the time the sentence was imposed and where the initial fine was set too high, or alternatively, where there has been a marked change in the defendant's circumstances then, as I have already indicated, the courts can demonstrate a great deal of common sense and understanding. It is where the failure to comply is construed as being wilful or where the defaulter is considered culpable that the attitude shown by the court is anything but courteous. From both my observations and personal experience, the questioning in these courts is quite often aggressive, the answers given are often deemed as unacceptable. The defaulter's means, down to the smallest detail are declared and scrutinised in open court. He or she is left in no doubt that in the court's opinion the debts to the court should be given an extremely high priority in their list of financial outgoings. Finally the defendant is often given the impression that there is a high probability that he or she could receive an immediate prison sentence, whether in reality this is likely or not.

Below are extracts from an actual case in which a fines defaulter was dealt with in a court in the study area. The defendant had been arrested and brought to court for non payment of a fine which had been imposed for a television license offence. The woman was in her thirties, her husband was unemployed, they had eight children:

Court clerk: Why haven't you paid your fines?

Defendant: It's only a television license, thousands get done for that.

Court clerk: So you don't take it seriously then?

Defendant: Yes, but I must pay it weekly.

Court clerk: But why haven't you paid these fines?

Defendant: My 'washer' broke and I had to get a new one.

Court clerk: So you bought a 'washer' but you can't pay your fines.

[ By this time the body language of both the participants suggested that a degree of hostility had entered the proceedings]

Defendant: I've got eight kids to look after. What would you do?

Court clerk: You are not here to ask me questions, you are here to answer mine.

Chairman: Your priority must be to pay your fines to the court.

The defaulter was found to be culpable and the alternative of five days imprisonment was imposed but then suspended. From my experience of these courts, while the questioning routine was very familiar, imposing the custodial alternative on a mother, especially one with a number of young children, was unusual. My impression was that this was due to the hostile atmosphere which had been created between the court clerk and the defendant, and this in turn had influenced the bench in their decision making. I have during the course of my research discussed the problem of the non payment of fines with both magistrates and court staff and there is a strong feeling that many people will try to get away with not paying their fines for as long as they can, and in some instances it is only when the final sanction has either been threatened or made that they pay as ordered.

Also during the course of my research, although it must be emphasised only on rare occasions, I have seen courts treat defendants, not only disrespectfully, but also unfairly and in a way which suggested to me, as an observer, that justice is not always seen to be done, [even if in reality it might well have been]. In one of the courts which I visited I observed a case in which a male defendant who had been arrested and charged with burglary was opposing the prosecution's application that he should be remanded in custody. Part way through the address which his solicitor was making on his behalf, an address with which the defendant was obviously unhappy and which he had unsuccessfully tried to interrupt on a number of occasions but he had been instructed by the chairman to keep quiet, the defendant then tried to dismiss his solicitor. He shouted, "[Name of solicitor] ..I'm sacking you". He was again told to be quiet and again he objected, "There's no way he'll get me bail". Again he was instructed by the chairman to be quiet, and once again he tried to dismiss his solicitor. Finally the defendant became very abusive and he was then forcibly removed, still struggling and swearing, back to

the cell area. The dignity of the court was restored, the advocate continued to address the bench on 'his client's behalf, the prosecution claimed that the defendant's behaviour supported their application and the defendant was duly remanded in custody. After the decision had been announced the court appeared to treat the matter as if it had been nothing more than an amusing interlude, the only concern seemed to be for the unfortunate defence solicitor who had had the misfortune to have to contend with an unreasonable client. As an observer, I was left wondering why defendants are not allowed to dismiss their solicitors if they are not satisfied with the representation which they are receiving, even if this is during the actual hearing? In a different court and very late in the day, a well meaning chairman hearing an application for a remand in custody, made an unfortunate comment which was seized upon by the defence, a comment which effectively barred himself and his colleagues from making a decision on the application. A statement was then made to the effect that because there were no other magistrates available in the building to hear the case, a statement which I had strong reasons to suspect was incorrect, then the defendant would be remanded in custody overnight for the application to be heard before a different bench the next day. As an observer I had no way of knowing whether or not the application would have been granted or refused. But I did leave the courtroom feeling that the defendant could have been penalised for an error inadvertently made by the court chairman. Having witnessed these events it is easy to see why some critics of the magistrates' courts' system have claimed that irrespective of who makes the mistakes it appears that the court and its regulars, the magistrates and the court professionals cannot lose, while at the same time it is very difficult for the defendants, even with rights, to win.

#### **4.2.6 The defendant's friend - the defence advocate.**

Some defendants are fortunate enough to attend court with legal representation, a defence advocate whose role is to look after the defendant's interests and provide a measure of protection against some of the pitfalls which have been outlined in previous chapters. As one solicitor explained to me, a major part of a defence advocate's role is to put forward the client's case in the best possible light and to obtain the best possible outcome for the client, in the majority of cases this equates to the lightest possible sentence. I have no doubt that in countless cases this is done. I have witnessed advocates making very impassioned pleas on behalf of their clients, I have seen the look of satisfaction on their faces and their obvious delight for their clients when the decision has gone in their favour. I have also occasionally experienced their thinly disguised expressions of annoyance when it hasn't. I have seen advocates and clients chatting happily away to each other and on first name terms, especially with their regular clients, in the back of the courtroom. I have also seen them sharing a period of apprehension while they have been waiting for the magistrates to return to the courtroom with their decision.

During the same period I have also seen clients left in total isolation in the courtroom to await their fate, not knowing whether they should continue to obey the last instruction they

heard, which was to stand as the magistrates left the courtroom to consider their verdict, or whether they should follow everyone else's example and sit down. Their solicitor doesn't offer much guidance either, often he is already in conversation with some of the other court professionals, perhaps about some social event, or it is quite possible that he is already discussing somebody else's case with the prosecution. What I have also found intriguing is the way in which advocates sometimes portray their clients to the magistrates. I have frequently heard solicitors describe their clients as 'not the brightest of people' or 'not a very literate man'. On one occasion I heard a defendant described by his representative as 'one sandwich short of a picnic'. On another occasion and in an attempt to prevent his client being sent to prison, an outcome which appeared to me to be almost inevitable, a solicitor described his client as '...having low esteem, of being semi-literate, of having the inability to find a job, having scant regard for either the criminal justice system or discipline. "He is not helping himself and he has a bad record". Not surprisingly the magistrates were not impressed by what the advocate had said about his client, the defendant was sent to prison for four months. I don't know in any of these examples what the clients thought about it all. I was left with the question, 'If these are your friends, who needs enemies'?

#### **4.2.7 Do defendants always display their real emotions?**

How are defendants really affected by the courtroom situation, its procedures and the way that they are dealt with by the various people with whom they come into contact? As Carlen observed, 'Defendants come into court in all shapes and sizes. They are of all occupational classes, [although from my own observations, by far the vast majority were from the working classes, or to be more precise, the unemployed class], they are of all nationalities ..' (Carlen , 1976, p33), but my own conclusion is that they react in many different ways. As I have already made reference, I have seen defendants who were extremely distraught because of the circumstances in which they have found themselves. I saw one defendant who was so nervous that when he was asked by the court usher to stand *by* a chair he, to his subsequent embarrassment, stood *on* the chair. I have also seen defendants give expression to their feelings in particularly aggressive ways, arguing with the court staff and magistrates, swearing at magistrates, throwing doubt on the parentage of magistrates and on one occasion even spitting at the magistrates. Admittedly the actions identified in these latter examples normally occurred as the defendant was being led out of the dock and on his or her way to prison. I have also witnessed occasions when the defendants expressed what appeared to be genuine gratitude to the court clerks, probation officers, advocates and even the magistrates for the way in which they had been dealt with or assisted in the courtroom.

I have also, on many occasions, been quite amazed by the apparent calm and relaxed demeanours of many defendants, some of who were, in my opinion, in rather perilous situations, situations where their future freedom was at considerable risk, an opinion which often proved to be true. My observation notes described one defendant as, ' Showing a lack of

interest in the proceedings, lolling back, gazing at the ceiling, apparently not concerned even though a custodial sentence is a distinct possibility'. On another occasion I was prompted to write, 'Some defendants don't listen and give the impression of not being interested. They gesticulate to family and friends at the back of the court and appear to find the whole proceedings amusing'. I have also seen, while the magistrates were out of the courtroom considering their verdicts, defendants in the dock happily chatting away and even sharing a laugh and a joke with their police or security escorts. After a number of months of observing I made a note, 'Defendants generally appear to be in control of their emotions. In all but a few exceptions, I have not seen many outward signs of stress, even from those who were in danger of being remanded in, or sentenced to periods in, custody'.

But do the outward signs tell the whole story? In conversation with a young man whom I was sitting next to in the public seating of a court in the study area, I asked,

Q. Have you been to court before?

A. Yes, on motoring offences.

Q. What do you think of it, did you realise what was happening?

A. Not the first couple of times, but then it's okay, then you know what's happened.

Q. On those first occasions, when did you realise what had actually happened?

A. When I was laid in bed the next day.

#### **4.2.8 The battle of the Poll Tax courts.**

Of course it would also be wrong to assume that all defendants enter the arena of the courtroom totally unprepared for what is awaiting them. In fact during the course of my research there was a brief period, admittedly in a specific type of court, where the defendants appeared to gain the upper hand, albeit only temporarily. The courts were those set up to deal with people who had not paid their Poll Taxes. The story is best told through extracts from two documents. The first document is a set of guidelines which were issued in some areas of Lancashire to the defendants in Poll Tax proceedings when they attended at court. The second is a letter written by the treasurer of the Wye Borough Council and circulated to assist other local authorities and magistrates' courts in their dealings in this type of court.

The first document suggested that defendants should adopt the following tactics during the hearing. 'Key aim, drag out the entire procedure, put pressure on the magistrates, prevent the magistrates reaching the cases of people not present, (otherwise they will just 'rubber stamp' thousands of liability orders in one session) .. Be prepared to make lengthy speeches about circumstances, denounce the Poll Tax .. this drags out the procedure and puts pressure on the magistrate .. Do this even if you plan to ask for an adjournment at the end of your entire hearing. .. Ask to be represented if you lack confidence .. You can quote the case 'MacKenzie friend', this does not prevent you speaking in your own defence as well. .. Do not demand an adjournment until you have dragged them through the whole argument. .. Do not be intimidated by the language of the court. At every opportunity ask them to explain in laymen

terms. Pretend you didn't hear, get them to repeat things etc. .. With 'MacKenzie friend', you are able to suspend proceedings for a few minutes while you examine the evidence ..' (A document obtained by the Bury MBC, July 1991).

The second document indicates some of the disruption which was experienced during these courts. ' .. I have just returned from a 'post mortem' with the Magistrates, their Clerk, Court staff and Police at which the Magistrates' Clerk confirmed that he had totally underestimated the opposition and in 31 years had never failed to be able to control the Court. He resolved that this would never happen again. .. The general consensus was that the rule of law must prevail and that close cooperation between the Court officials and the Police to exercise firm discipline inside and outside the court was absolutely necessary. I was also promised that next time the proceedings would concentrate on allowed evidence and defence only. No extraneous issues would be allowed nor would more than one Mackenzie's Friend per defendant. It was further agreed that attempts would be made to arrange courts on the same day as other areas so as to dilute the protest groups...(Letter from the treasurer of the Wye Borough Council, July 1990).

The courts did eventually gain the upperhand. I was told that at the Leeds Magistrates' Courts the first Poll Tax case which they heard took a total of three hours, the second, two and a half hours. By a series of procedural restrictions such as not allowing Mackenzie Friends to address the court, by imposing sanctions on them if they provided the wrong advice to the defendant, and by specifying a limited number of defences which the court would accept to these charges, the average time in the Leeds courts for each Poll Tax case was reduced to just three minutes.

My own experience of adjudicating in a 'Poll Tax' court did not involve me in any high drama. In total, applications were made for 1,241 liability orders to be issued. There were four defendants present who wished to appear in the courtroom. All four admitted liability, it was apparent that they had only attended at court in order to express their dissatisfaction with the local authority. This they were allowed to do, although it did not affect the outcome of the hearings, perhaps it made the attenders feel better for having been heard. The whole proceedings took one and a half hours and for most of this period the magistrates were 'unemployed' in their Retiring room.

As I said earlier in this section, it appears that the art is in balancing the human approach to the non-professional court users with the dignity of the court. In the opinion of the Lord Chancellor, 'A human approach does not threaten the dignity of the court. Rather it enhances it. An austere and self important air merely distances the court from the public and puts at risk the sense of ownership of local justice which is so important to us all' (The Magistrate, Dec. 1992/ Jan. 1993, p197).

### **4.3 JUSTICE AND EFFICIENCY.**

#### **4.3.1 Excessive and spiralling costs - Expenditure in the Criminal Justice System.**

In 1991 the estimates for expenditure for the various criminal justice agencies totalled £7,636 million. The main costs of the system were incurred by the Police and Forensic Science Service and the Prison Service, which between them accounted for just over 80 per cent of the total. Of the remainder, the Crown Courts accounted for £125 million, the Magistrates' Courts £294 million, the Crown Prosecution Service £198 million, the Probation Service £320 million and the cost to the nation of Criminal Legal aid was an estimated £372 million. During the preceding five years the costs had grown considerably. In real terms, expenditure in the Magistrates' Courts had increased by 37 per cent, the costs of the Probation Service by 32 per cent and the Criminal Legal aid bill by a massive 76 per cent. Since its inception in the financial year 1987/1988, the cost of the Crown Prosecution Service had risen by 32 per cent. (Costs of the Criminal Justice System, Home Office, 1992, p11). It was also recognised that the further that suspects or offenders were taken into the system, the greater were the resource costs employed. That is, the Crown Court costs were greater than those in the magistrates' courts and custodial sentences were more expensive than the non-custodial options. Figures produced in 1987/88 showed that the average costs of a guilty plea to an 'either way' offence, that is an offence which can be dealt with to its conclusion by either the magistrates or the Crown Court, was £122 in the lower courts and £300 in the Crown Court. Similarly a not-guilty plea cost £295 and £3100 respectively. The costs to the participating agencies also varied considerably dependent upon where a case was being heard. For example in the case of the Crown Prosecution Service, the average cost per defendant in the magistrates' courts was £45, the comparable cost in the Crown Court was £390. These figures adequately demonstrate that the earlier that cases can be disposed of in the criminal justice system, the more cost effective it is. 'Not that the criminal justice system should only be considered in terms of resource costs'. (Sir Clive Whitmore, Permanent Under Secretary, Home Office, 1990, p4).

Despite this view, and not surprisingly when one takes into consideration the Government's policies on public spending, resource costs did become an important factor in the administration of the criminal justice system during the period of my research. Pressures were exerted on the magistrates' courts and the other agencies in the system, pressures which were also to affect some of the inter-group relationships within the system.

#### **4.3.2 'Magistrates' Courts' Committees may feel that the Home Office is obsessed with cash and efficiency'.**

This quote was part of a statement made by an Assistant Under Secretary of State for the Home Office when addressing the Central Council of the Magistrates' Courts' Committees in November 1991 and it did appear to correctly assess the feelings of the magistrates' court with which I was involved at that time, particularly their concerns about the impending



introduction of performance related funding allocations. The formula which was introduced in April 1992, made financial allocations to the magistrates' courts according to that court's performance in four criteria. Sixty per cent of the funding was based on the completed case load; 25 per cent was based on fines enforcement and efficiency; 10 per cent on the time taken to complete 'indictable' or 'either way' offences and the remaining 5 per cent on quality of service measures. The whole was to be phased in over a period of five years. The fact that the performance indicators were weighted in this way not only placed new pressures on the magistrates' courts as a whole but on the lay magistrates in particular.

The local reaction to this was very predictable. In a circular to the Bench early in 1992, the Justices' Clerk wrote, 'No matter how the arrangements are wrapped up in officialese, the fact remains from now on, the Home Office was to tell each of us how much we could spend and what we had to do to get the money. .. There is no getting away from the basic principle of control from the centre. .. From the Bench's point of view, the money you get (and consequently the staff, the training, the building and everything that goes with it) depends now entirely on how efficiently you deal with the workload and how quickly you enforce fines. Every adjournment costs money .. The administration of justice never was particularly easy and the new financial constraints are just another factor to be taken into account in each case. .. The following year's budget depends entirely on what you are doing now. I would not like to think that we would have to join those courts who have been left with no option but to close down courtrooms and make staff redundant' (Court Newsletter, February, 1992). So here were the lay magistrates, the 'great unpaid', suddenly saddled with the responsibility for the future of the court and its staff. Not that this created any apparent changes, to the observer in the courtroom it appeared to be very much business as usual.

A review of the funding arrangements in 1994 recommended that the emphasis should be shifted from the performance of the court to its workload and proposed that the funding criteria should be revised. Forty-five per cent of the allocation should be based on the out-turn, i.e. actual expenditure, averaged over a five year period; 10 per cent on the standing population of the area; 35 per cent based on the completed case load (averaged over three years, rising to five years as statistics became available); 5 per cent on fines enforcement and efficiency and 5 per cent on the time taken to complete 'indictable' and 'either way' offences.

#### **4.3.3 The 'Battle of the Magistrates' Courts' - The granting and control of adjournments.**

Not only was pressure being exerted on the lay magistrates locally to improve their levels of efficiency in the control of the courts, there were also periods between 1990 and 1993 when the magistrates were being subjected to national pressure, and in particular from their own organisation, The Magistrates' Association, to exercise firmer controls in this area.

In 1990, magistrates were informed that in the previous four years the average length of adjournments had increased from between 22 and 24 days to 26 days. They were also told

that 'As the increase is clearly identified as being within the court system, maybe the time has come for more courts to take command' (The Magistrate, Sept. 1990, p139). Later the same year they were told by Eric Crowther, an advocate and former Stipendiary Magistrate, that they were ' .. often too tolerant of requests by defendants, solicitors and the CPS. These have become so easy to gain that magistrates no longer ask what is reasonable. .. the remedy is in the magistrates' hands' (The Magistrate, Nov. 1990, p198). The Chairman of the Bristol Magistrates informed her colleagues how the 'battle' with the professional court users should be fought. 'Delay can be reduced and the quality of justice enhanced by the strict application of common sense criteria. .. During the early months of our battle for control, there was much blood on the floor, that we survived is due in some measure to the resilience of the troops, but largely to the single minded general, our Magistrates' Clerk, who led, encouraged and supported us' (The Magistrate, July/Aug. 1990, p134).

Despite these efforts the number and length of adjournments continued to increase. The emphasis appeared to change and became more concerned with the non-fiscal aspects of adjournments. The Clerk to the Batley and Dewsbury Magistrates wrote, 'There will be an emotional cost to many defendants, to their families and sometimes to victims and witnesses. There is also the potential for justice itself to be adversely affected ..' (The Magistrate, May 1991, p70). The campaign to reduce the number of adjournments was still live in 1993 when the Legal Committee of the Magistrates' Association issued a report in which it said, 'The bench must never forget that the granting of adjournments is a judicial decision. .. When a bench goes into court it expects some progress to be made in every case in its list and will only grant adjournments when both appropriate and fair .. the growing tendency of both the CPS and defence solicitors to believe they have an automatic right to an adjournment will be terminated' (The Magistrate, May, 1993, p69).

A particular matter of disquiet in the study area was the ineffective way in which the administration of trials proceed in the magistrates' courts system. Despite the introduction of pre-trial reviews, a device which among other things was designed to prevent trials from collapsing at the last minute thereby enabling the courts to make more effective use of their time, only one trial in every five trials listed after being the subject of a pre-trial review, proceeded as planned. This despite some cases having been adjourned up to eight times in order to allow the pre-trial review to take place. The reasons for trials not proceeding as planned are varied. Surveys carried out in the study area found that 25 per cent proceeded either as 'guilty pleas' or else the defendants agreed to be 'bound over to keep the peace'. [Probably as a result of the prosecution and the defence having reached 'an agreement']. Eleven per cent did proceed but took less time than that which had been allocated by the courts, 5 per cent were discontinued at the request of the Crown Prosecution Service, in 7 per cent of the cases the defendants did not attend at court on the day of their trials and warrants were issued for their arrests and 32 per cent, almost one third, of the cases were further

adjourned for numerous and different reasons (Discussion paper, The [ ] Magistrates AGM, 1995).

This was not only a local problem, indeed it had been the subject of research by Raine and Willson in 1993. They had concluded that, 'Local culture appears to be a crucial variable so far as scheduling performance is concerned, particularly with regard to the level of delay and collapsed trials. Courts which placed emphasis on the strategic negotiation with professional users appear to be more efficient in their use of court time, hear more trials in full and dispose of more trial cases on the day they are listed. .. In the research it was found that the clerkships which performed best were those where investment in strategic policy making had been made and where the courts exercised clear control over its work and the actions of users. In contrast those clerkships where the prevailing culture on the Bench and among court clerks was more one of resignation to the apparent inevitability of delay, inefficiency and inconvenience, and where the responsibility for scheduling was under valued or shared with other agencies, were the ones who performed least well' (Raine and Willson, 1993, p11). From my own observations in the courtroom and the fact that locally only one in five of trials proceed as planned , it would be difficult to argue with these conclusions. In suggesting a reason why the local figures were so worrying, a local solicitor said, 'It was difficult for the defendants to decide what their plea would be until the day of the trial' (Court User Group, March, 1995).

This indicates that concern was still being expressed locally well into 1995. The recently installed Justices' Clerk said that in his opinion adjournments were both too frequent and relatively easy to obtain, and if these were to be reduced then '...a stronger lead from the court would be necessary' (The Bench Meeting, Spring, 1995). Later in the year, plans were also announced for a one day training session to be held involving magistrates and representatives of other criminal justice agencies. The topic would be, 'Delays in the Criminal Justice Process and the granting of unnecessary adjournments' (MCC Training sub-Committee, August, 1995).

So why does there appear to be a reluctance on the part of lay magistrates to comply with the many requests and to deal with the problems and costs which are associated with many adjournments? From my observations and experience of the magistrates' courts there is little doubt that in dealing with applications for adjournments there are many magistrates who take the least line of resistance, some because it is the easy way out, particularly if a case is difficult or complicated. Others don't have the confidence 'to do battle' with the professional court users, and especially when it is a 'dual application' from both the prosecution and the defence, a ploy which is often used. Very few lay magistrates feel so strongly about adjournments that they are willing to see, 'blood on the floor'. There were also what I understood to be unwritten 'local agreements' about what was an acceptable length of adjournment for certain types of applications, for evidence to be served, for committal papers to be prepared, for print-outs of driving records to be obtained, to allow for personal service or warrants to be executed, or for Pre-Sentence Reports to be prepared. The length of these adjournments are very rarely challenged. (What I was not aware of, either as a practitioner or an

observer, and I doubt if many of my lay magistrate colleagues were either, was that during the early nineteen-nineties courtroom adjournments had been the subject of a national working group, a group set up by the Home Office, and their recommendations, which covered many of the types of adjournments which I have mentioned, had been set out and supposedly implemented as part of a document known as the Inter-Agency Agreement on Pre-trial Issues). Another reason why the magistrates fail to challenge 'the system' is that when they do attempt to apply pressure to the proceedings, the responses they receive often indicate that this matter can only be brought forward to the detriment of other cases in the lists. I have also observed occasions where the magistrates have been insistent on the adjournment period being less than that requested only to be told that there was no available time in the court listings. However I am convinced that the biggest single reason for lay magistrates granting adjournments as requested, and especially where these are requested by either the defendants or their representatives, is their concern that in refusing an adjournment and insisting that the matter should proceed on that day, this action might be interpreted as legislating against the interests of the defendant, and their concern is that justice must not only be done, it must also be seen to be done. On many occasions I have heard benches agree, 'to give the defendant one last opportunity to get his defence together and present it to court', or 'a further opportunity to seek the advice of a solicitor'.

#### **4.3.4 The problem of rising crime rates in the community and falling workloads in the magistrates' courts - The police's cautioning policy.**

Not only was it the number and the lengths of adjournments which were causing concern to the court managers and administrators. They had also seen a worrying decline in the number of criminal cases being dealt with by the magistrates' courts, a matter of concern because the size of the workload was now a key indicator in deciding what funding the court would receive in the coming years. Throughout the early years of the research programme the number of criminal cases dealt with by the court in the study area fell year by year, and this fall was particularly pronounced in 1992, when the decrease was 17.5 per cent. As the Justices' Clerk said, "I would be very pleased with the figures of people coming before the courts if the crime rate was going down". But the crime rates were not going down, to the contrary the town's crime rates were on the increase, by 13.5 per cent in 1990, 21 per cent in 1991, 12 per cent in 1992, 16 per cent in 1993 and 13 per cent in 1994 (Source: South Yorkshire Police). So why were the number of criminal matters being dealt with by the courts on the decrease? A number of reasons were put forward, these included falling detection rates, a reluctance by the CPS to proceed unless they were confident that they had a greater than 50 per cent chance of success. But by far the major single factor was the increase in the number of cases where the police cautioned the defendants rather than charging them. Statistics for the number of cautions administered by the South Yorkshire Police in 1992 showed an increase of 37 per cent over the previous year (The Star, February 5, 1993).

The police initially defended this policy by claiming that it was a highly effective weapon in combating crime and that 80 per cent of young first time offenders were dissuaded from committing further crimes. In 1990 the Home Office urged the police to extend its use from minor offences involving young people to more serious matters, a policy which was not universally welcomed. For example, Paul Firth, the Clerk to the Rotherham Magistrates interpreted it as a part of "...more and more moves to save expenditure by not bringing people to court". What concerned him and others was the way that this policy could be interpreted by offenders, and that the use of cautions for such offences as burglary and robbery could give the impression that these offences were no longer seen as serious. Offenders often believed that they 'had got away with it', while ordinary people felt let down by a system which was seen as 'failing to crack down on criminals'. Whilst accepting that a reduction in expenditure for the criminal justice system would inevitably be high on the Government's agenda, Firth did not consider that it could be dealt with in isolation. In his words, "You can't just cheapen the cost of the criminal justice system without looking at the quality of it" (Yorkshire Post, 1992). And it was not only the economic aspects of the police cautioning policy which were causing these concerns. It was the fact that these cautions were administered within the privacy of the police station, away from the public gaze and as part of a system which is rarely publicised. Unlike a court hearing, cautions are not subjected to public scrutiny.

In February 1993, the South Yorkshire Police announced that it had set up a working group to examine the force's policy on the cautioning of offenders because of 'misunderstanding and inconsistency in the way it is implemented across the county' (The Star, February 5, 1993).

#### **4.3.5 The problem of rising crime rates in the community and falling workloads in the magistrates' courts - Crown Prosecution Service policies.**

In April 1990, a report by the House of Commons, Home Affairs Committee reported that 'guilty defendants may be going free because of incompetences by Crown Prosecution lawyers... There were too many examples of ineffective prosecutions' (Daily Telegraph, April 27, 1990). Some three and a half years later the same paper reported that, '.. the Crown Prosecution Service is conducting an internal investigation into why some cases submitted to it by the police have to be abandoned'. In 1992 the CPS dropped 193,000 out of 1.5 million cases received, many of which the police expected to win. 'Yesterday's announcement follows criticisms from the police and criminal lawyers that the CPS were too willing to drop cases before they had completed the route through the courts' (Daily Telegraph, November 6, 1993).

It was not only the number of cases being dropped which was being criticised. In South Yorkshire there was criticism of the CPS by both the police and the magistrates' courts for 'watering down' some of the charges which were brought before the courts. Some police officers accused the CPS of deliberately reducing or axing charges in order to avoid costly hearings. The Head of the Rotherham CID said, "We are unhappy because this has a terrible

effect on police morale, especially with officers on the ground whom the public blame when a charge is dropped or substituted for a lesser offence". (This problem of discrepancies in the charging policy between the police and the CPS involving offences of violence was subsequently addressed at national level and once again it resulted in a set of guidelines being produced in an attempt to produce a more consistent and less contentious system of deciding the types of charges which should be proceeded with). The Clerk to the Rotherham Magistrates was also claiming during this same period that '...the CPS is running a secret policy aimed at avoiding costly court work. He said prosecutors routinely reduce charges of 'causing actual bodily harm' to 'common assault', the reduction means that the case cannot be sent to the Crown Court' (The Star, March 5, 1993). He said, "In Rotherham we had never heard of a case of common assault until the end of last year, since then we have been flooded with them". In reply Neill Franklin, the Branch Prosecutor for Sheffield and Rotherham maintained that the CPS 'were providing a good quality service .. and upholding the criminal justice system well'. "Our policy on assault cases is not something dreamed up by me in Sheffield, but is based on Government guidelines and judicial precedent" (The Advertiser, March 12, 1993).

Despite all of the debate it was reported at the 1994 AGM of the [ ] magistrates that, 'In spite of the rise in crime in the community, work in the courts was reducing. As funding is particularly dependent on the workload this could have serious consequences for the Bench' (The [ ] Magistrates AGM, October, 1994).

#### **4.3.6 A way to reduce the number of adjournments? Fixed rate Criminal Legal aid.**

An article in the Daily Telegraph in 1991 reported that lawyers in the Southampton area were quitting the Duty Solicitor Scheme in a direct challenge to the Lord Chancellor over proposals to slash fees for legal aid work. The Southampton Criminal Court Solicitors' Association said that their members wanted a minimum of £59 an hour for legal aid work in the magistrates' courts. The Lord Chancellor's proposals when introduced in April 1993 would give solicitors on criminal legal aid work £162 for each guilty plea, £226 for a not guilty plea and other standard rates for committal proceedings to the Crown Court. The fees were said to be roughly half of the averages paid under the current scheme (Daily Telegraph, November 30, 1991). Two years later the conflict was still running and legal action against the Lord Chancellor was being taken by the Law Society. In announcing the decision to proceed with the action the society's president said that the case was "...about ensuring that proper legal representation remains available to those who need criminal legal aid. This is not a dispute in which we are seeking more pay for solicitors" (Daily Telegraph, September 9, 1993).

In Rotherham, the local firms involved with criminal law practices petitioned their local Member of Parliament. They claimed that the proposed changes '.. have nothing to do with justice and everything to do with a Treasury inspired cost cutting exercise'. It was claimed that not only were solicitors deserting the legal aid system but those clients who were still entitled to legal aid would get less and many more would be denied it altogether, because of

guidelines issued to magistrates that it should only be granted in cases where there is a likelihood of the defendant receiving a custodial sentence, a requirement which would rule out the majority of cases tried or heard in the magistrates' courts. It was stated that, 'Solicitors will be penalised for doing their job properly and will be encouraged to cut corners, because they will receive the same payment no matter how much time they spend on each case. .. We are concerned that these proposals will hit some of the poorest and most vulnerable people in Rotherham .. only those on income support or equivalent low wages will be eligible for free legal aid' (The Advertiser, January 8, 1993).

Legal aid is not a subject which is discussed a great deal outside of the administrative areas of the magistrates' courts. The only time it is raised in the courtroom is either where Legal Aid has been requested and it has been refused by a member of the court staff and occasionally the advocate may decide to make a direct application to the sitting bench, or else where it is used as the reason for an application for an adjournment, and this is generally when a case is in court for the first time. The reaction around the Magistrates' Retiring and Assembly rooms to the principle of fixed rates for legal aid was not unwelcoming. Magistrates are sometimes suspicious that the reason some adjournments are requested is that there may be some financial benefit for the advocate who is making the application. The hope among certain magistrates was that fixed fees could be a way of assisting the courts to reduce the number of applications for matters to be adjourned.

#### **4.4 POWER AND INFLUENCE.**

##### **4.4.1 Control of the court and its proceedings.**

Who controls the proceedings in the magistrates' courts? Is it the court chairman, could it be the court clerk, some may even think that it is the court usher who organises the proceedings, or is it a combination of all these? Others may well ask, "Does it really matter who controls the courts providing that they operate within the rules, that fairness and justice are achieved and the dignity of the court is preserved"? It is obvious that to many people within the system it is an important consideration. In the opinion of the Judicial Studies Board (JSB), one of the primary skills required by a court chairman is the ability to demonstrate his or her control of the court. The JSB suggest that this 'competence' can be sub-divided into two main components, these being 'exercising authority' and 'maintaining the dignity of the court'. The Lord Chancellor has also made his views on this matter known. Addressing the Magistrates' Association in 1991 he said, 'In one survey a defendant indicated that he thought the Crown Prosecutor was running the court .. To avoid such impressions the chairman of the bench must ensure that he or she is seen to be in control ..' (The Magistrate, Dec. 1991/ Jan. 1992, p199). While I must admit that I have never left the courtroom with the same impression as this defendant, but then I am familiar with the system, I have on a number of occasions left the courtroom with the feeling that the court clerk, not the bench chairman, had been in charge of

the court, and especially where the court clerk was either very experienced or a senior member of the court staff. I also gained the impression that some court chairmen, despite the prominent position which they occupied in the court setting, appeared quite content to play a secondary role in the proceedings. Typical of the comments which I made during the course of my observations were, 'The clerk appeared to dominate the proceedings' and 'Throughout the morning the court appeared to be controlled by the court clerk'. I also saw numerous instances where it appeared to the onlooker that it was not only in controlling the court where the magistrates played a secondary role. I also witnessed many instances where procedural and adjournment decisions were in reality made by the other principle actors in the courtroom, the court clerks and the advocates. Quite often the magistrates did not appear to be consulted, their agreement to the decision appeared to be a formality and the major role of the court chairman in the process was to announce the decision. But of course this picture is not all embracing, it does not apply to all lay magistrate chairmen and from what I have observed it definitely does not apply to stipendiary magistrates. I even heard one lay chairman severely criticised by some of his colleagues for the 'over zealous and autocratic way with which he chaired the courts in which he presided'. This chairman had, in discussions with me, emphasised the importance of court chairmen being seen to be in complete control of the courtroom proceedings. Neither was there any doubt that the chairman who threatened to eject me and my 'friends' from the city court was in charge of the proceedings. Even one of my 'young friends' was heard to grudgingly admit, "She might be an old bitch, but she certainly knows her job". Praise indeed.

#### **4.4.2 The decision makers and the decision making process.**

From the outset of my research I have asked the question, 'Who are the real decision makers? I know who announces the decisions, but who actually makes the decision?' From all of the groups within the magistrates' courts I have received replies which have left me in no doubt that in judicial matters, it is the magistrates who make the decisions. In trials they consider the facts which are presented to them and they then decide on the innocence or guilt of the accused. Where the offender has been found guilty, or in the vast majority of cases heard by magistrates, where the offender has pleaded guilty to the offence or offences, the job of the magistrates is to decide the appropriate sentence. This sentence should not only reflect the seriousness of the crime, it also needs to take into consideration the circumstances of the offender, these might well include personal, family and financial factors, plus any relevant criminal antecedents. The sentencers are also required to decide on the objectives and aims of the sentence. Is it intended to punish the offender? To deter the offender and others from committing this type of offence? Is there a need to protect the public or to demonstrate the public's concern about this type of offending? Or is the aim of the sentence one of rehabilitation? The disposals which are available to the sentencers are numerous, but of course not all of the disposals can be used for all types of offences. The disposals available and



mainly used for offences at the lower end of the scale of seriousness are the discharges. Next, and the most common means of disposal used by the magistrates, is the financial penalty, the fine. Moving up the scale of seriousness there are the community sentences, the most common of these are probation, community service and combination orders, (the latter being a hybrid of the other two). At the top of the sentencing tariff is the custodial sentence. In addition to these sentences, and sometimes used as a sentence in its own right, the magistrates can, where appropriate, order the offender to pay compensation to his or her victim.

#### **4.4.2.1 Magistrates - 'free agents' or severely constrained by statute?**

Having been granted these very considerable sentencing powers, are the magistrates really 'free agents' in the way that they are allowed to use them? One magistrate writing about his colleagues claimed that, 'More than 30,000 people in England and Wales have the power to send you to prison. They do not need any legal qualifications .. and once appointed they have a job until they are 70 ..'. But is this a totally accurate statement or does it only tell part of the story? For a start and in terms of disposal, the very serious offences such as murder, manslaughter and rape, are not even within the jurisdiction of the magistrates' courts. Of those offences which can be dealt with by the magistrates to their conclusion, it is only those matters which are considered by society, or their representatives, to be high on the scale of seriousness which can be disposed of by means of custody, or even a community sentence. These include such offences as burglary, theft and associated crimes, drug related offences, crimes of violence, the more serious public order and criminal damage matters and the very serious motoring offences. It is therefore a fact that the offences where the magistrates can impose custodial and some community penalties are restricted by statute. Even on those offences where they are able to impose custodial sentences there are still important criteria which need to be met. As a result of the 1991 Criminal Justice Act, an Act which was implemented with a great deal of publicity and acrimony during the period of my research, the magistrates once again saw their sentencing powers being eroded by the need to satisfy specific requirements. As a result of this Act, the magistrates were instructed that they should only use their powers of imprisonment if one of two criteria were met. The first requirement was '.. if the offence or a combination of that offence and another associated with it is *so serious* that only such a sentence can be justified'. The second condition was ' .. in the case of a violent or a sexual offence, that only such a sentence is adequate to protect the public from serious harm from the offender'. Even when the sentencing magistrates were satisfied that these requirement had been met, they were still not allowed to proceed to an immediate sentence. They were then reminded that, ' A pre-sentence report must be obtained and considered before such a decision is made'. (Pronouncements in Court, The Magistrates' Association, 1992). One effect of this requirement was that the magistrates could not proceed to sentence on the day of the hearing. Matters had to be adjourned for a pre-sentence report to be produced, a report which is prepared by a probation officer and will rarely, if ever, contain a proposal which will support the

case for a custodial sentence. The adjournment of some three to four weeks almost inevitably meant that the lay bench who would make the final decision would be a different bench to the one who had presided at the original hearing. If after all this the magistrates still considered that only a custodial sentence was appropriate, then 'The court must explain how the statutory criteria for a custodial sentence are satisfied and in ordinary language why it is passing a custodial sentence' (Judicial Studies Board, 1992).

So what was the effect of this and other constraints, for example the introduction of Unit Fines, on the sentencers? According to the MP for Wentworth, Mr Peter Hardy, an increasing number of magistrates resigned from the bench between 1988 and 1992 as a direct result of new restraints in their sentencing powers. This situation had then been compounded by the new sentencing legislation which had been introduced as part of the 1991 Criminal Justice Act in October, 1992. Commenting on these aspects, the Rotherham Clerk to the Justices agreed that the new Criminal Justice Act had curbed some of the traditional powers exercised by magistrates. He confirmed that, "Magistrates are becoming more and more constrained and feel they are applying the law first and justice second" (The Advertiser, March 12, 1993).

The Criminal Justice Acts of 1993 and 1994 made changes to 1991 Act, particularly in that they abolished the system of Unit Fines and relaxed the requirements which had been placed on the courts to obtain pre-sentence reports in all cases where a custodial or a community sentence was being considered. In practice it is now possible, in the most exceptional circumstances, to send someone to prison without first obtaining a pre-sentence report, however the sentencers in the study area are still 'strongly encouraged' to obtain a report in all cases where custodial or community sentences are being considered. 'The Court ought normally to be in possession of a pre-sentence report in relation to custody and most forms of community penalty. Custody can only be used when the offence is 'so serious' that no other sentence is justified. Community penalties can only be used where the offence is 'serious enough' (Bench Handbook, Sentencing Guidelines, 1995).

#### **4.4.2.2 Sentencing Guidelines - an aid for sentencers or a sentencing tariff?**

The Magistrates' Association Sentencing Guidelines, whilst not a mandatory element of the magistrates' decision making process, are arguably an extremely influential factor in the magistrates' considerations. These guidelines, while not designed to replace the independent reasoning and common sense which magistrates undoubtedly bring to the system, they are designed to achieve a more consistent system of sentencing for both the individual magistrates and the different Benches to which they belong. The objective of the guidelines is to assist the magistrates in 'assessing the relative seriousness of each case' by prompting them to consider the aggravating or mitigating factors of the offence and 'enabling them to arrive at the commensurate penalties'. The guidelines recommend an 'Entry point, for the various types of offences, the entry point being aligned to 'an offence of average seriousness'. The 'Entry point'

can be custody, a community penalty or a fine. Where a fine is the proposed entry point, the level of the fine is also normally specified. The guidelines emphasise that the entry points are only recommendations and they need to be considered together with the aggravating and mitigating circumstances which surround the offence. 'The responsibility for the sentence is that of the justices and it is they who must assess each case judicially having regard to (a) the circumstances of the particular offence and (b) the circumstances of the particular offender' (The Magistrates' Association, 1993). Despite these clear instructions on how the guidelines should be used, my observations and experience have left me with the distinct impression that when imposing financial penalties, many magistrates use the 'Entry points' at their face value, and the entry point automatically becomes the penalty imposed. On countless occasions I have heard the entry point announced as the penalty, or the 'entry point minus one third' if a discount has been allowed for an early guilty plea.

A further constraint which prevents the magistrates from imposing a level of financial penalty which they consider would reflect the seriousness of the offence, is the offender's inability to pay a substantial financial penalty. This factor is a matter of considerable frustration among the sentencers in the study area, an area of high unemployment. The higher courts have stipulated that any financial penalty imposed on the non-wage earner should be capable of being completely paid within one year of the sentence having been imposed. In practice this means that magistrates can often only fine an offender who is drawing either unemployment or social security benefits a maximum of £150 - £200 irrespective of the seriousness of the offence committed or indeed the number of offences being dealt with at any one time.

#### **4.4.2.3 The Bench ethos can be an important influence on sentencing policy.**

Another key element which can often dictate the magistrates' sentencing decisions is the ethos of the Bench. The Bench on which my research was centred had a reputation for its low use of custodial sentences when compared to other Benches in the country. In 1986 the use of custody by magistrates' courts sentencing adult males ranged from 8 per cent in the study area to 39 per cent in Tower Bridge, London (Supervision in the Community, NAPO, 1988). However in the early nineteen-nineties and whilst the Bench still had a reputation of 'being soft on custody', a number of Bench resolutions were passed. It could be argued, although there is no direct evidence to support it, that someone was trying to instill some 'toughness' into the Bench's sentencing policies. At the Spring Bench meeting in 1991 it was resolved that, 'Offences of violence against people providing a public service, offences of violence against the very young, very old and otherwise frail victims, and offences of violence involving the use of weapons should normally attract a custodial sentence'. It may be coincidental that this resolution was adopted following an assault in which the offender received an 'embarrassingly' lenient sentence, having committed an unpleasant and violent attack upon a nurse while she was on duty at a local hospital. At the same meeting the Bench also adopted the policy, 'Where a defendant appeared before a Court charged with an offence alleged to

have been committed whilst on bail to the Court and where the second offence in time was of similar seriousness, then as a starting point the Court should give serious consideration to refusing bail to defendants' (May 1991). This resolution appears to have been a response to the concern which was being expressed by some Senior Police Officers that more than a third of crimes were being committed by people who were already on bail to the courts. Some two and a half years later it was further resolved that, 'Unless there are *genuinely exceptional circumstances*, this Bench will operate a sentencing practice of custody for the burglary (dwelling) offences in the future, and any mitigation should only be about the length of sentence' (AGM, October 1993). In effect this resolution implied that there was very little mitigation that could be put forward to allow the offender to escape a custodial sentence, it should have made custody an automatic disposal for this type of offence.

#### **4.4.2.4 The effect on sentencing of the 'human factor'.**

Despite these strongly worded resolutions my subsequent observations within the study area indicated that there was still a strong reluctance on the part of many of the justices to invoke the ultimate sanction of custody. The reason for this could well be the previously discussed statutory constraints which are placed on the sentencers, alternatively it could be what I would describe as the 'human factor'. I have reached this conclusion having attended a number of magistrates' training sessions, and especially those which included 'sentencing exercises'. At these sessions I have been regularly surprised at the severity of the penalties which have been suggested and which, on average, are far harsher than the penalties which are imposed in the real situation. This applies particularly in the liberal use that is made of custody in the 'unreal' situation. Neither do the magistrates appear to have much difficulty in justifying their reasons for these sentences. But of course what is missing in these artificial situations is the human factor. It appears that it is much easier to impose a harsh sentence when all the facts and background information are extracted from a piece of paper than it is to deal with a defendant who is present in the courtroom along with all the social factors which surround that person. This I often feel is the crucial factor when dealing with offenders. In the final analysis it appears that the personal and social factors of the defendant are frequently the considerations which take preference over the 'seriousness of the offence' and thereby temper the sentencers' decision.

#### **4.4.2.5 'Each member of the bench has an equal voice'.**

But of course decision making as far as the lay magistrates are concerned is not the domain of a single individual. It is a decision which is reached only after discussion and consideration by the three, (on some occasions, but not usually by design, two ), members who are adjudicating. Members who in theory have an equal say in the decision making process, but do they? Whilst observing from the well of the court, I have occasionally been prompted to record the apparent domination of the bench discussions by either one or two of the justices, or

conversely the very limited input of others. Neither, it would appear, is this lack of involvement necessarily one of choice. During the period of my research I was told of two occasions where specific magistrates had been so incensed by their exclusion from the decision making process that they had taken the extreme step of withdrawing from that bench and had refused to continue sitting with those specific colleagues who had taken little or no account of their presence. While the JSB strongly emphasises that chairmen should 'Ensure the full participation of wingers', it appears that this fundamental requirement cannot necessarily be taken for granted. Apart from the two instances quoted, the consultation with and participation of 'wingers' was an issue which was never far below the surface and was always likely to reappear. Writing to the members of the Bench in 1991, the Justices' Clerk stated, 'During recent training sessions it has often come to my attention that there is a misunderstanding of the relationship between the chairman of any court and the other magistrates sitting, .. the chairman has no casting vote, .. each member of the bench has an equal voice. .. The need to consult all members of the court cannot be over emphasised. I appreciate that much pressure is placed on the magistrates to despatch the work expeditiously. However speed should not be achieved at the cost of full consultation' (May, 1991). Again in 1993 and because of the concern expressed by some, 'less senior members of the Bench who do not feel that they are being consulted by some chairmen', the Chairman of the Bench felt the need to remind the magistrates that the chairmen should make full use of their wingers "because it is important that all three magistrates play a full part and that the newer magistrates, who are not asked an opinion, should volunteer an opinion" (AGM, October 1993).

#### **4.4.3 If the magistrates have the power in the decision making process, who exerts the influence?**

Having been convinced that the magistrates are the judicial decision makers, even if they do appear on occasions, to be severely constrained by either statutory or social factors, the next question to which I required an answer was, 'Which of the groups within the magistrates' courts have the ability to influence the decision makers and to what extent?' Is it their official advisers, the Justices' Clerks and their legal teams? Could it be the representatives of the Crown Prosecution Service or the other prosecuting agencies, the people who bring the cases to the courts and who decide what charges should be answered? Conversely might it be the defence advocates, the solicitors who argue the case on behalf of the defendants, who argue the facts in a trial and who put forward pleas of mitigation where the offence or offences have been admitted? Or is it the probation officer, the officer of the court, part of whose role has been described as 'assisting, advising and befriending the defendant'? As we have already seen the sentencers are instructed to consider the information which is submitted to the courts by these officers in the form of pre-sentence reports whenever they are considering the imposition of either custody or community sentences. Then of course there are

the unrepresented defendants. Do they influence the sentencers? Are the magistrates influenced by the defendant's attitude, appearance, dress or even background?

#### **4.4.4 The Clerks to the Justices, their legal teams, and the narrow line between advice and influence.**

'The Justices' Clerk should be able to provide, (and ensure that their legal teams provide), a high standard of professional and legal advice and support for magistrates, .. ensure that the advice to the magistrates is accurate, concise and clear. They should practice, and encourage court clerks to apply a positive and active approach' (Extract from a Job Description for a Justices' Clerk). These basic responsibilities were expanded upon by one Justices' Clerk in a letter to the Editor of The Magistrate, 'The Practice Direction of 1981, states that the clerk is responsible also for advising justices in mixed law and fact, practice and procedure .. justices frequently require assistance, not only in relation to legal matters but also in relation to other crucial considerations such as consistency, conformity to guidelines and the service of the overall interests of justice rather than the interests of any one party. A decision while being perfectly legal, may offend against one or more of these considerations without the steadying hand of the legal adviser ..' (The Magistrate, Oct. 1993, p159). All of which suggests that the Justices' Clerk and the court clerks have a considerable input in the decision making process.

From my many years of experience, I have no doubts that, in the main, the advice given by the clerks to 'their magistrates' is very professional and of the highest standard. I would also totally agree with the Justices' Clerk's opinion that the magistrates do frequently need assistance and advice not only on legal matters but on the other 'crucial considerations' which he has specified. Also from my experience and particularly during the period of my observations in the courtroom, I have also concluded that this advice can be used as a means for influencing the magistrates, and that it can be introduced in a number of different forms. It can be direct or indirect, it can be employed in the courtroom or the retiring room, or it may be introduced in a number of guises which are actually peripheral to the actual decision making process. Two examples of the peripheral activities are the magistrates' training programmes and court communications such as court circulars or newsletters. The Clerk has the opportunity to influence the magistrates without them realising it through their training. It is the Clerk who has the responsibility for training the magistrates and who decides the content of their training programmes, including the previously mentioned sentencing exercises, although in the study area it is true to say that this particular aspect of training has lately been undertaken by the stipendiary magistrate. With regards to influencing the Bench by means of court circulars, I quote three examples which occurred during the period of my research. The first two are extracts from the Court Newsletters, a circular written by the Justices' Clerk, 'In [the study area] court, a custodial sentence is four times as likely for burglary than it is for violence.. ' or even more pointedly, 'I find it impossible to reconcile a fine of £125 for using a car without insurance

with a fine of £50 for wounding with a glass'. It would appear to be too much of a coincidence that these two expressions of concern by the Clerk were soon followed by the Bench resolution calling for a tougher sentencing policy for certain types of violent crime. Although it has to be admitted that this resolution was also influenced by another factor which was referred to in a previous section. Another method of influencing sentencing could be put under the heading of 'The Dissemination of Information' or more specifically the distribution of the local crime statistics. As the Justices' Clerk observed, 'I believe that Magistrates should be kept informed, not at least for the purposes of ensuring that where there are significant increases in certain types of criminal activities, offenders appearing before the court charged with such offences should be dealt with accordingly' (April 1992).

While it is accepted that the court clerks by the very nature of their role cannot avoid being influential through the advice that they give, I have occasionally been drawn to the conclusion that the way in which they seek to influence can sometimes exceed their official mandate. Sometimes it is what is said, and that may not necessarily be a piece of advice, it could well be a rhetorical question. On other occasions it is not what is said but a poorly disguised expression of disapproval or the failure to disguise some element of body language, and all these are signals which can, and do, cause the decision makers to think again. Sometimes the influence can be direct. In its simplest form it is when the court clerk says to the magistrates, "With your agreement Sir..", and then goes on to announce some decision that he and possibly others have arrived at. Then there is the example of the court clerk who informed the magistrates without any prior consultation, "There is no way that a sentence can be made in this case without the aid of a report". That clerk had obviously decided that the offence should be dealt with by either a community or a custodial penalty. The magistrates on this occasion went along with the 'recommendation', perhaps they agreed, or perhaps they did not wish to embarrass their clerk in open court. On another occasion a bench were considering an application for a remand in custody for a very serious drugs related offence. It was obvious that the magistrates were undecided but were favouring 'conditional bail' providing that a place could be obtained for the defendant in a Bail Hostel. On asking this question of the clerk, they were informed that "If a place had been available in a Bail Hostel, you would have been told about it by the defendant's solicitor". The clerk also volunteered an opinion that if the defendant was convicted for these offences at the Crown Court, then "...he would be the subject of a long custodial sentence". It was quite obvious that the clerk was not in favour of the defendant being allowed bail. The magistrates arrived at their decision and remanded the defendant in custody. Possibly this was the correct decision. The point at issue is, who actually made the decision and did the advice which the magistrates received meet the criteria of being a 'high standard of professional and legal advice'?

Neither is the way in which the magistrates are influenced always as obvious and as direct as the examples quoted above. While observing in a Fines Enforcement court, it appeared to me that the questions being put to the defendants by the court clerk and the way in



which the questions were phrased was tending to channel the magistrates into a certain course of action. For example, "If the magistrates allow you your freedom this afternoon, what offer do you make to the court in order to pay off these fines"? I would suggest that once this question has been asked and an offer has been made, it leaves the magistrates with very little alternative but to accept the offer, unless of course the fines defaulter is silly enough to make some totally unacceptable or derisory offer to the court. Once the question has been asked and once an offer has been made, it is doubtful if the court are then in a position where they could find, if they wanted to, either 'culpable neglect' or 'wilful refusal'. I did ponder in my notes of the occasion, 'Whether the clerk's knowledge of that particular chairman actually enabled him to anticipate the bench's policy and thus allowed him to push through the afternoon's business at pace. Or whether the clerk was dictating the role of the decision makers and the bench were just content to acquiesce'. I have previously made reference to the situation where I was convinced that the aggressive attitude of the court clerk, which in turn evoked an aggressive response from the defendant, was the most influential factor in a mother of eight young children receiving a suspended committal to prison for the non-payment of a fine.

In some of my discussions with the court clerks, while it was always claimed that they never set out with the intention of influencing the magistrates in their decision making, it was conceded that on occasions this outcome would be inevitable, in fact it was expected. I also gained the impression that this was a situation accepted not only by the court clerks, but also by some of the other participants in the courtroom. As I heard one court clerk confiding to the chairman after a hearing, "They were saying earlier that I was in a bad mood and then after you had consulted me, you announced that you were imposing a custodial sentence. I don't know what they thought I had been telling you". I was reliably informed by that chairman that this particular decision had been made prior to the clerk having been consulted. But it might well be interpreted from what the clerk said, that some court users automatically assume that it is the court clerks' input which is the deciding factor in the decision making process. I also came to the conclusion having talked to the court clerks that they considered that the decisions made by the magistrates whom they were advising often reflects on them. After one defendant had been given a custodial sentence, a sentence which was obviously not considered appropriate by the court clerk, that same clerk confided that he welcomed the appeal against sentence which had been lodged on behalf of the defendant.

#### **4.4.5 The prosecutors - presentation and manipulation.**

According to Parker et al, the prosecutors occupy a somewhat different position from the other professional groups in the courtroom, in that they do not have any direct influence on sentencing, '...the prosecution was not mentioned by magistrates as an influential source of information'. Although in one court they did identify one chief prosecutor who 'was very adept at playing cases up and down ..' (Parker et al, 1989, p99). From my own observations and experience I found little reason to disagree with these observations, until one day ...



I had been aware for a long time that some prosecutors either emphasised or minimised certain aspects of the cases they were presenting, this being dependent upon their ultimate objective. I was particularly aware of the way that prosecutors often emphasised the aggravating factors when making applications for defendants to be remanded in custody. What I had not realised was that this tactic of playing things either up or down was not only used in individual offences, but these opposites could also be applied in their different forms to the same offence at different stages in the proceedings. To demonstrate the way in which this technique can be applied, I will use an example of a case in which I was personally involved, initially as a participant and then as an observer. The case involved the 'serious' charge of burglary. On the first occasion the prosecutor made a strong application for the defendant to be remanded in custody. The bases of the application were the seriousness of the offence, the considerable criminal antecedents of the defendant and a history of the defendant's failure to surrender to the courts on previous occasions when he had been granted bail. The magistrates were told that whilst the building was a public house, and therefore commercial premises, a part of the building did contain residential quarters and the building had been entered in the early hours of morning whilst the residents were asleep. All factors which were introduced to demonstrate the seriousness of the offence. The bench were also told that less than two weeks previously the defendant had attended at a neighbouring court charged with offences of dishonesty. It was also revealed that he had a considerable record of previous convictions, some of which had resulted in custodial sentences being imposed. The prosecutor even went as far as expressing an opinion that if convicted of this offence, the defendant might well be facing another custodial sentence. The defendant was remanded in custody, a decision which was repeated by another bench approximately one week later, although the defendant was later granted bail by a judge with the condition that he resided at a Bail Hostel. The second time I was involved in this matter was when, as an 'observer', I viewed the proceedings from the well of the court. On this occasion the hearing was before a totally different bench and the facts were presented by a different prosecutor, but I assume from the same prosecution file. The magistrates on this occasion were being asked to decide venue. Where should the case be heard? Was the offence so serious that it should proceed to the Crown Court or did the magistrates consider that it was a matter which could be dealt with to its conclusion in the magistrates' court and within their limited powers? To my surprise both the prosecution and the defence advocates indicated to the magistrates that in their opinions this offence did not figure very high on the scale of seriousness and it was therefore 'eminently suitable' to be dealt with summarily. The prosecutor then proceeded to present a case which was designed to both minimise the serious aspects of the offence and to justify the application which was being made. Neither at this stage of the proceedings can the defendant's previous record be produced to the court. In line with the facts which had been presented to them and the joint application made, the magistrates agreed that the matter was quite suitable to be dealt with in their courts. Having been in the courtroom on both occasions, admittedly in different roles, I did

leave the court on the second occasion wondering whether it was indeed the same offence that had been dealt with on both occasions. What is more I did not just feel that the magistrates had been influenced, I would have used the word manipulated. Neither am I certain whether on the first occasion the defendant was unnecessarily remanded in custody or whether on the second occasion he was treated leniently. However on both of these occasions 'justice' appeared to have been called into question. It did appear as though a game was being played.

In debating the role of the Crown Prosecution Service, the Justices' Clerk in the study area implied that it is not necessarily what the prosecutors say in the courtroom which influences the issues as much as the decisions which are taken outside of the actual hearings. "They decide what charges are eventually put. In most cases the evidence gathered by the police determines this, but not always, .. in most cases the CPS can bring what charge they want even if the effect, or even intention, of bringing a lesser charge is to deprive the defendant of any right to jury trial and/or to reduce the sentencing options of the court" (April 1993).

#### **4.4.6 The defence advocates - guiding the magistrates in the 'right direction'.**

Addressing a group of relatively inexperienced magistrates in the study area, a defence advocate told them, "You have a difficult job, we have a lot of respect for you, we try to guide you in the way we think you should go". My own impressions, gained both from my years as a magistrate and during the period of my research, have led me to believe that, by and large, the defence advocates do show respect for the magistrates, both lay and stipendiary. One might even argue that this demonstration of respect is an essential part of the advocates' strategy if indeed they wish to influence the magistrates in their decision making. It has certainly been argued that to show discourtesy to the bench could well be both foolish and counterproductive. As one stipendiary magistrate observed, 'Open impertinence in the face of the court is happily very unusual .. Impertinent advocates are generally also incompetent ones. .. My own policy is to point out that the last way to obtain a good result for a client is to irritate the court ..' (Bartle, 1995, p150).

So how does the defence advocate attempt to influence the magistrates, guide them in the way they think they should go and obtain the best result for the client? I am certain that if I put this question to my colleagues in the lay magistracy, they would say that advocates talk, talk and then talk some more. I am equally certain that the advocates would counter this claim by maintaining that it is important to address a lay bench on all of the possible options concerning a case because it is only very rarely that they receive any indication about what the lay bench may be thinking. This is hardly surprising, because it is doubtful if even the magistrates are aware of the consensus view until after they have deliberated on their decision. Observation has convinced me that some chairman do, either intentionally or even subconsciously, give indications of approval or disapproval to certain suggestions or proposals which are put to the bench. This indication may be as obvious as a nod of the head or just a

poorly concealed facial expression. But it is a practice that should be guarded against. It is a brave, or foolhardy, chairman who gives any indication to an advocate before he knows whether his colleagues will allow him to deliver.

But of course defence advocates do try to influence the magistrates into adopting the best achievable sentencing option for their client. A regular ploy which I have seen employed by defence solicitors is to pre-empt the magistrates' decision by telling them that, "My client is able to pay any fine imposed by the court at £'x' per week". This statement could be said to serve a dual purpose. Initially it indicates that the advocate considers that this offence is only serious enough to be deserving of a financial penalty. And secondly by making an offer of what the client can realistically be expected to pay each week, and the fact that it is expected that all fines should be capable of being paid off within the year, the advocate is also attempting to set the parameters for the level of any financial penalty imposed. Of course the level suggested does depend on the seriousness of the offence and the means of the defendant. While this technique is rarely challenged by a lay bench in the open court, I did observe an occasion where a stipendiary magistrate responded to such a suggestion with the comment, "A fine, I was thinking more of a custodial sentence for this offence". A comment which persuaded the advocate to quickly reassess his approach. Another method which I have occasionally witnessed, is the situation where the advocate is not only trying to convince the sentencers that the offence is not so serious but also that he or she has already taken the client to task in an attempt to prevent any repetition, and has therefore reduced the need of action by the court. An observed example of this technique is the comment, "I have told her, [the defendant] brutally and frankly, that if she continues behaving in this way, she will end up in serious trouble".

Of course not all offences are, or can be, mitigated into the lower levels of seriousness and advocates realise this as much as anyone. Neither are they interested in chasing lost causes just for the sake of it, wasting court time and thereby risking losing the credibility which they have with the magistrates. In such cases it is not unusual for advocates to concede that the offences are of a more serious nature with the type of comment, "I would suggest a pre-sentence report, I can't see you wanting to fine or discharge on these particular matters". Neither is it my experience that defence advocates generally challenge the proposals which are contained in these reports, unless they feel that there are practical reasons which could prevent their clients complying if such an order were made. Although I did witness one occasion where the advocate obviously considered that he had gauged the mood of the bench who were sitting rather better than had the probation officer who had prepared the report. The pre-sentence report obviously contained a proposal for a short probation order, a proposal which the advocate apparently felt would not find favour with the sentencers. In his address to the bench and in an obvious effort to keep his client out of prison, he said, "I am not in favour of short probation orders, I would suggest that a two year order should be imposed ..". This could be interpreted as a high risk strategy. It did not influence the bench on this occasion and it is also to be hoped for the sake of the advocate, and any future clients, that the next time this

advocate is in court arguing for a short probation order that he is fortunate enough to have a bench of different magistrates or a set of magistrates who have very short memory retention.

So how do the advocates retain their credibility with the magistrates while at the same time being seen to be doing their best for the clients, even if sometimes this might not be the case. I have observed and made notes of the way that defence advocates address the magistrates and I have concluded that they signal their level of, or lack of, commitment to the matter in hand within the first few words of their address. I will demonstrate this technique by using a few actual opening statements for bail applications which were made during the course of my research. Demonstrating a great deal of commitment the advocate stated that, "This is a strenuous application for bail". A less committed approach was introduced with the words, "If you are kind enough to grant the defendant bail ..". Finally there was the 'this is wasting my time and your time' approach, in which one advocate actually said, "I can see that my friend's application [the prosecution] has much merit. However I am instructed by my client to make an application for bail this morning". The advocate then sat down, his job done. Another method is to indicate to the magistrates that this is the story that has been communicated to them by their client, whether the bench believe it or not is very much up to them. "This is what really happened, this is what they have told me ...".

#### **4.4.7 The probation officer - an influential agent or the 'peddler of the soft option'.**

In the opinion of a number of people the role of the probation officer in the courtroom is epitomised by a perceived lack of involvement in the proceedings of the court. Some observers have also commented on the probation officer's apparent preoccupation with maintaining a low profile whenever they are inside the courtroom itself. Parker et al, observed that verbal contributions from the probation officers in the adult courts are relatively infrequent (Parker et al, 1989, p161). From my own observations, I certainly formed the impression that the probation officers in the courtroom only address the court when they are invited to do so, and this is not very often. This impression was confirmed to me when reading the minutes of a meeting held in the research area by the Probation Liaison, Court Team sub-committee, a committee which comprises of both magistrates and probation staff. During the meeting a question was asked about the probation officer's role in the courtroom. The minute read, ' [The stipendiary magistrate] ..was quite forthright in his response. He outlined that generally the role should be doing what he asks, answering questions etc., something he finds we, [the Probation Service], already do very well. The point was made that it is not always possible for them, [the probation officers], to be proactive in their role. Following a general discussion it was felt that the probation officer's role in court was of an appropriate level and that on any occasion that the officers felt the need to raise an issue then they could' (March 1991).

It could be assumed therefore that the probation officers exert very little influence on the decision makers, however my experience of the court system suggests that anyone who makes that assumption could very well misinterpret the reality of the situation. As I have

previously demonstrated, magistrates, when considering imposing sentences for the more serious offences which fall within their jurisdiction, and where they are considering disposals which fall within the community sentence or custodial sentence categories, are advised, or in some instances instructed that, 'A pre-sentence report must be obtained and considered before such a decision is made'. So what is a pre-sentence report and how influential is it in the sentencing process?

According to national standards, a pre-sentence report should, amongst other things, be impartial, balanced and factually accurate, drawing fairly on both the aggravating and mitigating factors in the case. It should assist the court in reaching a view of the seriousness of the offence. It should present to the court relevant information about the offender, including the offender's propensity to re-offend. Finally the report should have a conclusion with, 'whenever relevant, a proposal for the most suitable community sentence, under which, were the court to choose that course, the report writer considers the offender could most appropriately be supervised and the risk of future offending be reduced' (National Standards for the Supervision of Offenders in the Community, 1992). The pre-sentence report is a document which, whether by choice or statute, is requested with regular frequency by the magistrates in the study area. In 1994, some 9 per cent of cases were adjourned so that magistrates could 'have the benefit' of the additional information which the reports provide them with before they proceed to sentence. This resulted in a total of 835 requests for pre-sentence reports, an average of 16 per week, from either the magistrates or for those cases which had been committed to the Crown Court (The PSR, August 1994).

But how do the magistrates react to these reports? As Parker found out, 'Many magistrates were critical of recommendations .. and quite resentful of what they saw as a usurping of their power' (Parker et al, 1989, p91). I have not met many magistrates who have openly accused the probation officers of usurping their power. I would say that the feelings of many of the magistrates on my own Bench are possibly summarised by one colleague who told me, "I object to the Probation Service trying to channel us into the preferred recommendation rather than giving us a set of options, and the pros and cons of all the alternatives". Despite this during the period October 1993 to March 1994, the sentencers concordance rate with the proposals made in the reports was 64 per cent (The PSR, August 1994). I would suggest that this figure indicates a relatively high level of consensus, particularly when one considers that for certain offences and certain offenders the magistrates will be looking specifically at a custodial sentence, and this is a proposal which after twenty years as a magistrate I am still waiting to see contained in a pre-sentence report (or its predecessor the social inquiry report). At the other end of the scale there might be a proposal for either a discharge or a fine. In this case it also needs to be remembered that before requesting the report, the magistrates should already have considered both of these options and discounted them as being inappropriate for the matters with which they were dealing.

Of course there are also those magistrates who see the probation officers as the 'peddlars of the soft option', the 'do gooders', the 'social workers'. This was really brought home to me at a training session where the speaker was a visiting stipendiary magistrate, who has since been made a judge. I asked him for his opinion of the Parker quote, 'Whilst magistrates' justice is arguably cheap to administer, the end result is expensive .. The end product of local discretion when all the secure vans have delivered all the local custody decisions to the prison gates, is a penal crisis' (Parker et al, 1989, p173). His immediate response was, "Who wrote that a probation officer?". He then described the statement as 'bunkum and hoey'. The social worker aspect of the probation officer's role has once again been brought to the fore with the Home Secretary's proposal to review the current requirement for probation officers to have a social work qualification. A comment in *The Magistrate*, which apparently supports the Home Secretary's view, reads, 'It must be recognised that the social work qualification which is currently required compounds the image of the probation service as a branch of the social services, rather than a key agency in the criminal justice system. This in turn does nothing to counteract the public perception of community sentences as a soft option, leading to a disturbing level of dissatisfaction with the magistrates who sentence offenders to community penalties' (*The Magistrate*, July/ Aug. 1995, p127).

#### **4.4.8 The appearance and demeanour of the defendant.**

Are the magistrates influenced by the people, the defendants, who appear in front of them? I think that it has already been adequately demonstrated from the observations which were dealt with in previous chapters that the answer can be in the affirmative. I have already referred to the effect that the presence of the offender in the courtroom has in reducing the severity of some sentences. On the other hand, I have also detailed one matter in particular, although this was not an isolated instance, where the aggressive attitude of the defendant resulted in an unexpectedly harsh decision by the bench. What I am not certain about is whether these actions by the magistrates result from a cool and calculated look at the facts of the case or whether they are dictated more because of some other subconscious or emotional considerations. My experience of observing, talking to and working with magistrates, has led me to the opinion that the decision while determined by the former is often, and sometimes considerably, modified by the latter. Neither is this reaction necessarily the sole province of the magistrates. One example of this concerned a prosecutor who was giving the defendant a really 'rough time' during cross-examination. During the course of this questioning, it emerged that the defendant was about to enter the same University and college from which the prosecutor had graduated some years before. The tenor of the cross-examination changed dramatically, the prosecutor adopted a much softer approach and at the end of the case, he even wished the defendant well in his studies.

How is the magistrate influenced by the appearance of defendants in the courtroom? On the one hand there could be the well dressed or neatly attired defendant who appears to be

contrite and full of remorse, sometimes in tears. On the other it might be the young 'skin head', liberally tattooed, wearing an offensive 'T' shirt and attired in denim, who doesn't appear to be concerned about either the court or its proceedings. My belief is that magistrates learn to avoid making assumptions which can be created by the defendant's appearance and demeanour. It is surprising how often an 'illusion' can be shattered once the decision has been announced and the defendant is on his or her way out of the courtroom. It is also something which magistrates are warned against in the early part of their training. As one solicitor told a group of magistrates, "We lump groups of people together and class them as bad, for example gypsies. I might be able to get away with it, but you as a magistrate cannot".

But how much care do defendants take with their appearance when they are attending at court? My overall impression is that the vast majority do not take much care at all. It could be that many of those who attend at court in the study area are unemployed and therefore do not have a great deal of choice in the matter, particularly in respect of their dress. But of course some do try. There is for example the young defendant who attends at court in an ill fitting suit, which must have been borrowed, and in a collar and tie which is a constant source of irritation and something he obviously isn't in the habit of wearing. Neither do the efforts of the defendants always have the desired effect on the sentencers. I am certain that magistrates are not overly impressed by those Fine defaulters who arrive at court wearing apparently expensive clothing, displaying their 'gold' rings, chains and medallions, and then on being asked why they haven't paid their fines plead hard times and a lack of finance. I would also question the wisdom of the two defendants who appeared at court charged with the theft of a considerable amount of leisure wear from a local sports retailer. Both appeared in court wearing identical and 'new looking shell suits'. While accepting that it was highly unlikely that these were anything to do with the matter which was being dealt with, it did elicit some behind the scenes comments from the magistrates involved.

#### **4.5 INTER-GROUP INTERACTION.**

##### **4.5.1 A sense of common purpose.**

'For the system [criminal justice], to achieve its objectives efficiently, it is important that all the criminal justice services share a sense of common purpose ..' (Home Office Annual Report, 1991). This statement echoes the views which Sir Clive Whitmore, the then Permanent Under Secretary of State at the Home Office, made in The Magistrate approximately one year earlier, 'System implies a number of inter-related organisations contributing to a common purpose. Their common objectives should be expressed as preventing crime, protecting the public, maintaining the Queen's peace, punishing and (if possible) reforming the guilty, providing support for the victim and ensuring fairness and justice for all. For the most part each service pursues these objectives individually rather than collectively or with a sense of common strategy' (Whitmore, 1990, p4). Another member of the Home Office, David

Faulkner, reported that the 'search for a sense of common purpose' had been one of the major themes in the administration throughout the previous decade, and possibly even before that, but it had to be admitted that '..Effective cooperation is not easy to achieve' (Faulkner, 1991, p73). Reflecting on her earlier days in the Magistracy, Rosemary Thompson, the Chairman of the Magistrates' Association, recalls that many magistrates didn't even think of their courts as being part of the criminal justice system and accepts that there was a general ignorance among magistrates about how the other agencies worked, ' .. the importance of magisterial independence was emphasised as a basic element in the judicial approach. But too often proper independence tipped over into unhelpful isolation' (CJCC Newsletter, November 1995). The gap which existed between the agencies was again brought to the forefront of public attention by the findings of the Woolf Enquiry, the report of which was published in 1991. This enquiry which had been set up primarily to investigate the prison disturbances of the time, identified ' ..a 'geological fault' between the agencies that should have been involved with prisoners. ..Even those who were included in the 'criminal justice system' were seen not to work well with each other' (Raine and Willson, 1993a, p217). Commenting on the Woolf Report, His Honour Judge Tumim, Her Majesty's Chief Inspector of Prisons, wrote, 'At present I believe this country to be unique in Europe in the lack of understanding one part of the system has of the others. The sentencers tend to be ignorant of what lurks behind the walls of the prisons. The prison governors rarely sit in court. The probation service is often criticised but not much studied ..'. Emerging from this enquiry was a proposal for the setting up of a national forum '...where the most senior policy makers in criminal justice, other than Ministers, can meet at regular intervals and offer guidance'. This forum could also be replicated at a more local level where it was proposed that '...the judge, the probation chief, the prison governor, the police and CPS leaders, a representative magistrate, to meet at regular intervals to discuss common issues' (Tumim, 1991, p135). These proposals resulted in the setting up of the Criminal Justice Consultative Council (CJCC), along with a further 24 Area Liaison Committees throughout England and Wales, the latter being designed to build upon the work which was already being carried out at local level by the Court User Groups. The vehicle identified as the means of creating a greater understanding between the probation service and the magistrates was the Probation Liaison Committee. These were said to have a crucial role in the quest for better communication and understanding and 'should seek to promote a high level of awareness amongst the whole bench' about the fullest range of probation related matters. (The Magistrate, March 1990, p43).

#### **4.5.2 Four years after Woolf.**

The initial impression when looking at inter-agency relationships four years after the Woolf Report was published is that little, if any, headway has been achieved, and this applies in particular to the developments at national level. Lord Justice Rose, the Chairman of the CJCC, writing in the latter half of 1995 admitted that, ' The Criminal Justice Consultative



Council which I chair is 4 years old. .. Our 24 Area Liaison Committees..are only a little younger. But our existence and the work we do are not widely known ..'. At the same time a newly appointed member of the Council wrote, 'We have no criminal justice system. Instead a number of different agencies work to their own systems for their own ends..' (CJCC Newsletter, November 1995). A comment which sounded vaguely familiar. But what was the situation at the 'workface', at the local level? Inter-agency relationships were one of the areas which were being scrutinised by the newly formed Magistrates' Courts' Service Inspectorate. The early feedback from the inspectors was a little more encouraging. 'Inter-agency liaison is highly developed .. Inter-agency liaison on the whole were developed and working relationships are reported to be constructive and helpful .. Relationships were found to be generally good', were typical of the comments made. When commenting specifically about the Court User Groups their remarks were considerably more variable, '.. views on them were mixed, on the whole they are useful for information sharing, at a local level most professional users spoke positively about liaison both formal and informal .. Court User Groups were not all seen by staff or professional users to be effective for inter-agency communications or practical problem solving' (HM Magistrates' Courts' Service Inspectorate, executive summaries, April 1994 - April 1995). These comments were fairly representative of the comments which I received when making enquiries about the effectiveness of the Court User Groups, while some positive comments were received from one of the group's members in the study area, they were however, seen as being quite ineffective by one respondent who was a member of a group in one of the city areas.

#### **4.5.3 A more harmonious, more efficient and a more just local system.**

'Inter-agency work has the potential for improving mutual understanding between various personnel engaged in a local criminal justice system and thereby contributing to the development of a more harmonious, more efficient and indeed hopefully more just local system' (Cavadino and Wiles, 1994, p32).

It may already have been noted from some of the observations made in the earlier sections that relationships between the different agencies in the study area have not always been totally harmonious, and in the view of some, considering the adversarial nature of the courts and the criminal justice system, this should not have come as any surprise. Writing to the members of the Bench in 1992, the Justices' Clerk expressed an opinion that, 'We in [ ] have good working relationships between the various parties involved in the criminal justice system .. All of us I hope are concerned to make the system more just .. Working together should allow us all to come nearer to meeting our individual expectations most of the time. Conflict is unavoidable in an adversarial system. But if we all know what is expected of us and accept the underlying philosophy then the conflict can be greatly reduced' ( A Bench circular, May 1992). And of course conflict there was, I have already made reference to the well publicised clash between the court's 'chief administrator' and the Crown Prosecution Service

over the Service's alleged policy of downgrading certain charges which involved offences of violence. Concern was also expressed by the courts about the police's policy of cautioning more and more offenders rather than bringing them before the courts. Both policies, it was alleged had more to do with financial considerations than with the efficient and effective administration of justice. Neither were these areas of conflict confined to the courts. Even some of the agencies who might be perceived as being on the 'same side' found themselves in conflict, even though it was not always openly admitted. A report in the local press quoted the local Head of the CID as saying, ' Up to the end of last year we had an excellent relationship with the CPS, as far as two independent organisations could have, but suddenly their prosecution policy changed. Since then a number of decisions have been made that we don't agree with. We are unhappy ... '. These claims were however refuted by the Branch Prosecutor for Sheffield and Rotherham who insisted, 'We are hiding nothing and our relationships are first class'. (The Advertiser, March 12 1995). But efforts continue in an attempt to develop good and efficient working relationships within the local justice system. Even as I write, a one day training conference is being arranged in the study area, a conference designed to bring together the police, Crown Prosecution Service, the Probation Service, defence solicitors along with the magistrates and their clerks. Among a number of aims identified for the conference is one which is designed, 'To seek to identify ways in which the key organisations can better work together in order .. to enhance the efficiency and effectiveness of the criminal proceedings process' (Bench circular, January 1996).

One specific area of cooperation which appears to have developed over a period of years within the study area, has been the relationship between the sentencers and the Probation Service, a relationship which it could be argued has had a considerable influence on the sentencing philosophy of the Bench and its relatively low use, over quite a long period, of the custodial option. In 1989, the South Yorkshire Probation Service was developing an action plan which was designed to target the various participants in the magistrates' courts. 'The importance of a regular constructive dialogue with sentencers about the contribution of the service ..cannot be under-estimated ..an actual dialogue between the sentencers and the Service is crucial'. The court clerks were also identified because 'they advise magistrates and carry current local policies'. Solicitors and barristers were also considered to be 'key members of the system'. (Tackling Offending, June 1989). The importance of these relationships was still at the forefront of Probation Office thinking in 1993, 'Courts and Probation Service need to liaise. They may not always see eye to eye, but an understanding of one another and mutual respect is essential if working relationships are to be effective' (PSR newsletter, Autumn 1993). A year later in a policy document which had been jointly produced by the Magistrates' Court and the Probation Service it was agreed that, 'The courts and the Probation Service each face budget restraints, it is in the interests of both to work cooperatively together to ensure that best use is made of the resources of both. Performance standards set for criminal justice organisations can often only be met by mutual cooperation between those organisations'. One

area identified as being particularly suitable for this joint approach is training. The document suggests that, 'Training together offers the opportunity for making the best use of training resources and for fostering a mutual understanding and an appreciation of the perspectives of each organisation .. Joint approaches to training at all levels and for all personnel, create opportunities for developing understanding and coordinated working relationships' (Working Together for Justice in Rotherham, a draft document, September 1995). These strategies designed to develop a greater level of inter-agency cooperation and awareness must be welcomed in the interests of a 'more just local system', and as the previously mentioned joint document states, both of the parties concerned, '...support the principles of cooperation and coordination central to the recommendations of the Woolf Report'. But while accepting this, it can sometimes be difficult to ignore some of the phrases which are contained in the proposals, phrases which suggest that a number of the proposals which are put forward are really finance and resource driven. A not untypical example is the extract from the proposal which is quoted above and makes reference to 'budget constraints' and the need to work together 'to ensure that the best use is made of the resources of both organisations'. Another example which I noted from a Bench circular stated, 'Many of us have a strictly limited amount of public money entrusted to us to provide a service within the system. Others have a share of public money alongside the task of running a commercial business..', and once again it is this concern with the financial aspects of running the system which suggests to me that quite often it is these monetary considerations which are the real inducements for the various local agencies developing a 'sense of common strategy'.

#### **4.6 BUILDINGS AND FACILITIES.**

##### **4.6.1 The old courthouse - traditional splendour and modern squalor.**

The main court building, in which the bulk of my period of observation was spent, had been built in the late nineteen-twenties and appeared to be typical of the architecture of that period. From the outside it was a large and imposing structure and its very appearance indicated that it must be a building of some public importance. Inside, the two original courtrooms, whilst suffering from the wear and tear of some sixty five years, still provided hints of their past splendour. With their high ornate ceilings, arched windows, oak seating and furniture and the brass railing. (See appendix C). My first impression on entering these courtrooms was how much their design reminded me of the Methodist chapels which I had attended in my youth. The windows on the outside walls of the courtroom, whilst being fairly large, were set at such a height that not only did this prevent people on the outside looking in, it also discouraged people who were on the inside from looking out, or if they did all they could see were the roof tops of the nearby buildings or else the sky beyond. This design was possibly seen as a way of ensuring that the participants' minds were concentrated on the important matters which were before them. Much of the seating comprised of wooden benches, although

some of the major participants, the advocates, probation officers and the police sat on rows of leather upholstered tip-up seats. The magistrates were provided with quite ornate mahogany chairs with generously upholstered leather seats. There was even a difference between the chair used by the chairman of the bench and those used by the 'wingers', the difference being that the chairman's chair was slightly larger and also had arms. These chairs were replaced towards the end of my study period with modern fabric upholstered swivel type chairs, possibly another tangible sign that the courts were entering a different era, an era which may have been heralded by the building of the new courthouse. Not only was it the design and the standard of the seating which differed, but also the way that it was incorporated into the court layout, with the various participants all being arranged at differing heights and at various distances from the bench. Neither were people allowed to encroach into other people's territory. On one occasion while observing from the well of the court I was politely informed that the seat I was occupying was normally reserved for the use of the court custody sergeant. I did not sit there again. At floor level and nearest to the magistrates and their clerk were the advocates, the row behind and at a slightly higher level was occupied by representatives of the Probation Service, on the third row and higher still were the seats reserved for the police. The front row of the seats located down one side of the room were normally occupied by the press and the court usher, and the row behind was generally reserved for those visitors who were attending at court by prior arrangement, for example parties of students. These were the seats which I preferred to occupy when observing from the well of the court. The height of the seating described, varied between floor level and 30 centimetres. The bench was set 46 centimetres above the floor level which enabled the magistrates both to see and be seen. For some reason the chairman's chair was set on a plinth 10 centimetres higher than those of his or her colleagues and this did tend to suggest to me that these arrangements had not totally evolved through practical requirements and that there were also some hierarchical and symbolic considerations incorporated into the layout. This thinking also extended to the setting of the dock and the way in which it was symbolically embellished with its brass rails. The floor of the dock was set 35 centimetres above the floor level of the courtroom, this meant that when the defendants were in the sitting position they were in a prominent position but not as prominently positioned as were the magistrates, but when they stood for sentencing they were elevated to the most prominent position in the courtroom. However as I have already indicated, unlike some of the city courts which I attended, the practice of requiring all defendants to appear in the dock had been discontinued. The majority of defendants were directed to use the seats which were located in front of the dock, these seats were set at floor level and situated adjacent to the seats occupied by the defence advocates. This whole scene was overlooked by a large public gallery, and while no longer in use because of safety reasons, it did serve as a reminder of the days when the courtroom was obviously a greater public spectacle than it is today. It was interesting to note that the seating which was subsequently allocated to the general public, rather than being the 'best seats in the house', were the seats located at the very rear of the

courtroom and with a very restricted view of the proceedings. Whether by accident or design, these seats proved to be less popular with the spectator population and there was a marked decrease in the attendance of those people who, having 'signed on' at the nearby Employment Exchange, then came into the courtroom either to get out of the cold or else to occupy their time in what otherwise could well be a very boring day. The poor behaviour of these people was often a cause of concern and many is the time that the proceedings had to be halted and the miscreants rebuked by the bench chairmen. The public seating is now generally occupied by the family or friends of the defendants, and particularly those defendants who are being produced after a period of remand in prison, or else by other defendants who are filling in time while they wait for their own cases to be called into the court. This revised situation did appear to the observer to be representative of the demise of the general public's involvement in the proceedings of the magistrates' courts.

The third courtroom in this building had a much more informal atmosphere. Only the bench and the witness box were raised above floor level. This court had no dock and was only rarely used for those defendants who were produced from the cells. The advocates sat at a table facing both the bench and the court clerk. The seating for the defendants was located in front of the witness box and adjacent to that of the defence advocates. The seating in this court varied from the 'ornate' leather upholstered chairs used by the magistrates, to the more modest, but still leather upholstered, chairs of the other regular court users, including the defendants, and the more common everyday fabric upholstered seats which were provided for the general public. This courtroom, unlike those previously described, did overlook a very busy and very noisy thoroughfare. Secondary glazing had been installed in an attempt to reduce the noise levels which impinged on the proceedings. This courtroom was also subject to the extremes of temperature but in the periods when the temperatures were high the opening of these windows to allow for more air was not a practical option because of the noise levels. Therefore the two key areas of listening and concentration were occasionally put severely to the test by this particular courtroom. One thing which I also noted whilst studying the layout of this courtroom was the different ways in which the bench itself could be perceived. Viewed from the main body of the courtroom one observed a highly polished wood panelled frontage to the bench with its three 'antique' arched back chairs which were set in front of a wall adorned with a splendid and classically patterned wallpaper and overlooked by the royal crest, quite impressive and very appropriate for a court of law. However viewing the bench from the opposite direction, a view which the public never saw, the bench took on the form of a simple timber and hardboard structure, a very ordinary and functional 'work table'. To me this comparison seemed to exemplify the two parts of the courtroom proceedings, the traditions and the symbolism on the one hand and a practical hearing of the facts of the matters before the courts, deciding on those facts and hopefully dispensing justice on the other.

The waiting area in this building consisted of two long corridors which formed a 'T' shape. The seating comprised of a number of wooden benches set down the walls of the

corridors and some of these benches were positioned so that they were facing each other. Despite being cleaned on a daily basis the waiting area was a cause for continuing concern. More often than not by mid-morning the area was smoke filled, there was generally an assortment of litter on the floor and the wooden benches were awash with spilled tea and coffee. The daily scene therefore comprised of a whole variety of people, defendants, victims, prosecution witnesses, defence witnesses, families (including babes in arms and other young children) and friends of the various factions, herded together into a restricted, polluted and occasionally hostile environment. It must be conceded, however, that much of this pollution, in fact some would argue all of it, was created by those people who used the facility. Neither were the interview facilities seen as being much better. One thing on which the advocates and the probation officers seemed to be in complete agreement was that there were neither enough interview facilities and those that did exist were barely adequate.

In contrast to the squalor of the public waiting area was the Magistrates' Assembly and Retiring Room. This room had its fitted carpet, large mahogany boardroom table, a set of thirteen 'Chippendale style mahogany dining chairs', a 'glazed mahogany bookcase' and a 'reproduction mahogany drinks cabinet', although it must be admitted that during my many years of involvement I was not aware of any occasion when this latter piece of furniture was actually used for the purpose for which it was designed.

The second courthouse which was in use at this time has already been referred to in the introduction to this research. This building was only ever envisaged as an interim measure to be used between the demolition of an old town centre courthouse, an extremely ancient, decayed and inadequate building which had been demolished to accommodate a development of retail outlets, and the building of the new courthouse. This courthouse was created by converting part of an old comprehensive school into a court building with three courtrooms. As I have already related, the courtrooms had a relatively uncomplicated layout, everything with the exception of the bench and the witness box being on a single level. The courtrooms were carpeted and the furniture was both modern and functional. None of these courts had a dock, neither did the building contain the facilities to provide anything but the most rudimentary levels of security. And what facilities there were proved to be no match for the wrecking powers of some of the young defendants, those being produced from or waiting to be transported to youth custody establishments, who were sometimes locked in them. The waiting areas in this courthouse were, in the initial stages, far superior to those in the main court building, but these, and particularly the upholstered seating which they contained started to show both the ravages of time and the destruction inflicted by the knives and razors of some of the attenders at these courts. It may therefore come as no surprise to the reader to be told that these courts did not generally deal with the more serious types of criminal offences. This building contained the Youth courts, the Family proceedings, local authority matters and the lesser criminal matters such as motoring and TV license offences.

#### **4.6.2 A courthouse built for the 21st Century?**

The new courthouse was commissioned in 1987, the building was started in 1991 and completed in 1994. The first case was heard on the 3rd of May of that year, a date which was very near to the end of the period of my actual observations within the courtrooms. The new courthouse is a red brick building and accommodates ten courtrooms. One of its most impressive external features is the royal crest which is located above the main entrance, the crest is incorporated into the brickwork and comprises of 2,500 separate coloured bricks. The courthouse which was built at a cost of £6.5 million is designed to have a life span of 60 years.

The local press described it as an 'impressive building' which 'had a strong green theme'. A report continued, 'Inside, large towering windows have been designed to bring sunlight into the courtrooms, which have their own silent ventilation system drawing in fresh air to keep them at a constant temperature. .. There are five courtrooms designed to be informal. Each has its own distinctive colour scheme and furniture which can be moved round to suit different purposes. Even the witness box is on wheels'. All of the witness boxes are now equipped with seats and a practice has been adopted to allow witnesses the choice of presenting their evidence either sitting or standing. 'The remaining five "formal" courts all have separate docks which all feature the latest Home Office approved "dry moat" system along with security glass and alarm buttons to minimise the risk of prisoners escaping. Court Four .. has special facilities to allow children to give evidence at trials via a live video link from side rooms away from the pressures of the courtroom'. In all the courts the benches are raised, but only in the main courtroom, Court Ten, is there raised seating, and this is restricted to a single row of seats in front of the dock, seating which is normally reserved for use by the defendants, and in the public seating area where there are three rows of tiered seats.(See Appendix C)

Moving on to the other areas of the court building the report continues, '.. large open public waiting areas, all have glazed roofs and walls and are built around a central courtyard whose windows are designed to admit as much natural sunlight as possible... For the general public, staff and solicitors the new airy design will come as a welcome relief from the crowded and smoky corridors which characterised the old courthouse. .. The cramped corridors are replaced in the new courthouse with spacious waiting areas and all the necessary facilities including toilets, telephones and a modern canteen .. special attention has been paid to the needs of witnesses, children and the disabled. .."One of the biggest complaints we got at the old courthouse was that prosecution witnesses had to sit facing defendants whilst waiting outside. That will not happen here, because the trial courts have separate waiting rooms for witnesses only" .. The complex is linked to the Main Street police station by a tunnel 90 metres long .. the court itself has its own cells for forty prisoners, with additional holding rooms between the courts themselves' (The Advertiser, May 6, 1994).

It is apparent that a lot of lessons had been learnt over the years, and whilst the courts are no longer required to provide the setting for the degradation ceremony, neither, because the courts have to deal with a number of very violent and potentially dangerous

people, can they afford to ignore the safety and security aspects which are also an important part of daily life. An interesting aspect of the new courthouse is the way in which the public have responded to it. Although a high degree of anti-vandal elements were designed into the building and a no smoking policy enforced from the outset, the initial impression is that the building and its contents are being shown a great deal of respect by its users. The only exception to this being the cell area. Whether or not it has also resulted in a better standard of justice being dispensed, it is impossible to judge. That is still dependent on the human element. As one senior court official commented when we were discussing the benefits of the new courthouse, "But that only gives you a better construction and better facilities, it doesn't necessarily improve the justice. It should assist, but it isn't an end in itself".

#### **4.6.3 Substitute 'requires paintings' for 'needs painting' - 'the punters' move up market.**

What do the non-professional court users, the defendants, 'the punters', think to the changes which have taken place? Surveys carried out in the old courthouse indicated that two thirds of those asked, considered the comfort of the waiting areas to be 'poor'. When asked about the standard of privacy in these areas the level of dissatisfaction rose even further and four out of five were unhappy with the situation which existed and described the level of privacy as 'poor'. The availability of public telephones was another area which was also severely criticised by those who took part in the survey. The question about the standard of toilet facilities received a very mixed response, 45 per cent considered them to be 'satisfactory', in fact some 5 per cent of those who responded even described them as 'very good', while at the same time 42 per cent described them as 'poor'. The refreshment facilities, the 'snack bar' provided in the main courthouse by the WRVS, were considered to be 'very good' by 18 per cent, 'satisfactory' by 42 per cent and 'poor' by 19 per cent.

So what were the responses when an identical type of survey was taken some twelve months after the opening the new courthouse? Responding to the question on the comfort of the waiting areas, three out of five of the respondents now described this facility as 'satisfactory', and one in five as 'very good'. While the response to the privacy aspect also received a more positive response with more than half now describing the situation as 'satisfactory', there were still 40 per cent who indicated that they were less than happy with level of privacy which was available to them. Criticisms about the provision of telephones made by almost two thirds of the respondents in the first survey had reduced to one in five in the new courthouse. The responses to the provision of refreshment facilities were somewhat surprising. The new canteen 'with its panoramic view of the town centre' and operated by a professional catering company, was viewed as being only slightly better than the very basic facilities which had been provided in the old courthouse.

Also of interest were the comments and suggestions made by some of the respondents and particularly the way in which user expectations appeared to increase in line



with the improvements which were introduced in the building of the new courts. In the old courthouse most of the comments were concerned with the squalor which prevailed and suggested that there was a need for painting and decorating, for more comfortable seating as well as improvements to the waiting areas in general. One respondent did ask "Why bother it will only get vandalised?", and another possibly more prophetic respondent even suggested that the only solution to the problems was simply to "Demolish the building". It was therefore interesting to note that the suggestions which were forthcoming from the survey which was carried out in the new courts, and recognising that many of the original concerns had now been satisfied, took on a new meaning. The suggestions for the waiting rooms were no longer concerned only with the basic comforts. The call for painting and decorating had been overtaken by a request for paintings to be displayed, and neither did the suggestions stop there, the provision of more plants, newspapers and magazines, and music were all proposed. One optimist even suggested that a licensed bar should be provided. A baby changing room having been provided, the demand was then made for creche facilities. Proposals for better refreshment facilities were overtaken by suggestions for cheaper refreshments and vending machines. In the old courthouse one of the main 'bones of contention' was the lack of non-smoking areas, with the introduction in the new court building of a no-smoking policy it was perhaps not too surprising to see this emphasis change and by far the most contentious issue became the lack of 'smoking rooms'. Of course the longer that people have to spend in the courts the more important these issues become, a fact which is recognised not only by the court administrators but also by those who are summoned to attend at the courts. In the surveys the importance of reduced waiting times and even the introduction of an appointment system were matters that came more and more to the fore. As indicated, neither was this important issue ignored by those who were running the courts. In practice the number of people seen within one hour of their scheduled arrival time, or their actual arrival time if they were late, had improved from 40 per cent in 1993, to 67 per cent in 1994 and 87 per cent in 1995 (Source; Quality of Service Surveys - User Reaction (Non-professional court users), 1992, 1993, 1994, 1995). Much of the evidence obtained from these surveys suggests that many of the problems which were being experienced in the study area were overcome with the building of the new courthouse. At the same time it also appears that as the basic problems are overcome then the non-professional court users become more 'sophisticated' in their demands, and expect to be treated in a dignified and professional manner when they attend at court.

## **CHAPTER 5 THE CONCLUSION.**

### **5.1 POWER, INFLUENCE AND STATE INTERVENTION.**

#### **5.1.1 The criminal justice system and state intervention.**

One of the recurring themes throughout my research has been the high level of state intervention within the criminal justice system. While it is neither my intention to debate in detail the 'conflict' or 'consensus' theories of law and order, or to discuss the merits or otherwise of the conservative, liberal or radical views of sentencing and punishment, I do consider that it would be remiss of me if I did not record some of my observations and concerns about the ever increasing involvement of both government ministers and their departments in the criminal courts and the associated agencies. Neither am I on my own in expressing these concerns, this 'interference' has certainly not been universally welcomed. It has variously been described as inconsistent, contradictory and ill-thought out. In the words of no less a person than the Lord Chief Justice, Lord Taylor of Gosforth, "We have had more Criminal Justice Acts in the past six years than in the preceding sixty. Indeed major legislation on criminal justice is threatening to become an annual event in our constitution. Like the budget, we are no longer surprised by its happening, we are merely curious to know what is going to be changed this year ... Sentencing policy has in four years swung from one extreme to the other. ..." (An address to King's College, London, March 16 1996 reported in Justice of the Peace).

#### **5.1.2 The state has an obligation to protect the public.**

It should be accepted that law is an essential part of politics. 'It is the existence of law which distinguishes a stable state from a situation of anarchy' (Drewery 1981, p1). But to prevent a concentration of power into any one centralised function of the state there needs to be safeguards, and '...a key principle of the English 'constitution', enshrined in official discourse, demands the separation of the legislative and executive, the political and the judicial processes' (Parker et al 1989, p2).

While there are a number of theories concerning the need for and effect of law in society, the two main and most commonly expressed views emanate from either the 'conflict' or the 'consensus' theorists. The views of many of the conflict theorists often reflect the writings of Pashukanis and express the opinion that, 'Criminal law is like all law, an instrument of class domination and occasionally 'class terror'. Pashukanis saw the criminal court as 'a weapon in the immediate class struggle' (Pashukanis cited in Garland 1990, p113). Perhaps not surprisingly, this is not a view which was generally shared by those people whom I observed, interviewed, had informal discussions with or interacted with in my role as a magistrate. Neither would those colleagues with whom I sit on the Bench necessarily agree with Carlen that one of the prime tasks of the magistrate is to protect 'the institution of private property and the prevailing modes of capitalist production' (Carlen 1976, p12). Although there must have been some who questioned their role in those courts which dealt with the poll tax defaulters in the early nineties and particularly in their treatment of the striking miners in the mid-nineteen

eighties, treatment which it is claimed 'tore away the veneer of impartiality from the magistrates' courts' (Mansfield, 1994, p210). Although it is true to say that in the study area, an area which had a large involvement in the coal mining industry, the lay magistrates were protected from this controversy, the majority of cases involving the striking miners were dealt with by visiting stipendiary magistrates. To the contrary, I am strongly of the opinion that most magistrates would readily subscribe to the consensus theories, in which the law is seen as an institution for the furtherance and protection of the welfare of everyone, a system of rules which, by and large, expresses the popular will and protects the rights and liberties of the citizen, a system which also contains a contractual obligation by the state to punish those who transgress the rules.

It is this requirement to safeguard the rights and liberties of the citizen, that is to 'protect the public', coupled with the fact that the state was seen to be failing in its law and order obligations, which was seized upon by the Conservatives in the late nineteen-seventies and placed high on their political agenda. Throughout the seventies there had been growing public concern with increasing levels of crime and an apparent decline in law and order. 'The mugger on the street became symbolic of the general moral and economic decline of the nation' (Brake and Hale, eds Brown and Sparks 1989, p137). In the words of Margaret Thatcher, "We will not make law and order an election issue, the British people will". And there it has remained on the government's agenda ever since, always high on rhetoric and allegedly targeted at the serious offender, but its direction and effectiveness often appears, in reality, to have been more influenced by the size of the prison population and the cost of keeping people there. During the course of my research there appeared to be a continuing and hardening campaign against the serious and persistent offender. In 1993, Prime Minister Major, was asking the public to 'change their attitude from being forgiving on crime to being considerate to the victim' (The Mail on Sunday, Feb. 21 1993). Later that year at the Conservative Party Conference, the Home Secretary, Michael Howard, was telling the party faithful, "In the last thirty years the balance in the criminal justice system has been tilted too far in favour of the criminal and against the protection of the public. The time has come to put that right. .. It is time that the criminals are frightened, not law abiding members of the public .." (CPC, October 6 1993). Over two years later the rhetoric was still the same. When introducing the government White Paper entitled 'Protecting the Public', in the House of Commons, a paper which contained a number of proposals for not only increasing the lengths of certain specific custodial sentences, but also proposing mandatory minimum sentences for certain categories of persistent offending, as well as the discontinuation of the automatic right to parole after part of a custodial sentence has been served, the Home Secretary stated, "The first duty of government is to maintain law and order, to protect peoples' freedom to walk safely on the streets and sleep safely in their houses. .. These proposals are tough and they should be. They are needed to protect the public and build a safer Britain" (House of Commons, April 3 1996). Although these policies were not aggressively opposed by the other political parties, in fact

certain aspects were welcomed, they were seen by many within the judiciary as both 'short-sighted and irresponsible' and as a further unwarranted intrusion by the politicians into the judicial process, 'a fettering of the judge's discretion'. Others see them as a further step down the road from the policies of the sixties based on rehabilitation to policies where, on the surface, the emphasis is concerned solely with the punishment of the offender.

### **5.1.3 Rehabilitation or 'just deserts'.**

Cohen wrote in 1985, 'There have recently been some startling changes of tactics, alliances and battlefields, but the basic conflicts in the politics of crime control are still expressed in traditional terms, soft versus hard, liberal versus conservative, treatment versus punishment or more recently, 'doing good' versus 'doing justice'. (Cohen, 1985, p245).

The strategy of rehabilitation, that is fitting the treatment to the offender, reached its peak in the 'liberal age' of the nineteen sixties and then went into a rapid decline during the nineteen seventies. This decline was promoted by a whole range of disparate groups who were all critical of rehabilitation policies even if quite often for different reasons. But among these groups there was a growing consensus 'that the state's role in the punishment of offenders should be more concerned with doing justice rather than doing good' (Carlen and Cook, 1989, p15). The critics from the right, the conservatives, felt that rehabilitation, with its emphasis on reform rather than punishment, simply let the offender off. They saw the rising crime rates and the potential collapse of law and order as tangible signs that the liberal soft options had failed. They called for a return to the justice model, to a system of just deserts where the emphasis was on 'deterrence, incapacitation and retribution', a situation which could best be achieved by inflicting harsher punishments on the offenders. Even the liberals, the proponents of the rehabilitation policies, were now having second thoughts. Not only were they beginning to question the state's right to impose 'treatment' on its citizens, they were also questioning a system which in practice appeared to punish offenders for who they were rather than for the crimes which they had committed. Those on the left also saw a system which, because of its individualised style of sentencing, discriminated against those groups who were already marginalised by being either socially or economically disadvantaged. The sentencers themselves were also expressing concern. By dealing with those people with limited incomes and in recognising this, imposing fines at the lower end of the 'financial sentencing tariff', fines being the magistrates' most common form of punishment, they feared that they were unwittingly implying that poverty was a license to commit crimes. Lawyers were also critical of individualised sentencing, [as were many academics], because they saw it as a system which resulted in a lack of sentencing consistency which ultimately brought the courts into disrepute. The pragmatists attacked a system which they saw as ineffective, inefficient, subject to unnecessary delays, clogged up with minor offences, a system which demonstrated bureaucracy at its worst. As for the practitioners in the system, they were either prevented or incapable of using discretion in any way. These failings according to some critics had resulted

in justice and the very legitimacy of government itself becoming discredited. As far as these critics were concerned the solution lay in *bifurcation*, the soft cases which were responsible for jamming the system should be filtered away into forms of control outside of the main apparatus. Valuable resources could then be targeted 'on the real business of crime control' (Cohen, 1985, pp 128-140; Carlen and Cook, 1989, pp13-15).

So by the time of the 1979 General Election, the scene was set for the return of a government who had set law and order high on its agenda, a government who had promised to be 'hard on crime'. This was an era which demanded a return to the justice model, an end to individualised sentencing and for constraints to be placed on local discretion. Politically there were no benefits to be gained by a government committed to the humanitarian aspects of punishment. Those who had mistrusted the state to administer rehabilitation policies were now placing total faith in the state to punish justly. But if people were looking for minimal state involvement and a policy which allowed the agencies within the system to implement and carry out the policies as they saw them, then they were to be disappointed. What the transition to the justice model actually did was to create a system where the whims of the administrators were exchanged 'for an enormously powerful, simple and centralised system of state control' (Christie, 1981, p52; Cohen, 1985, p137).

But of course it might be argued that all can be forgiven if the end justifies the means. But has it? According to Cohen, 'The whole onslaught on rehabilitation and its supposed replacement by the justice model has turned out to be a terrible mistake. ... In practice the justice model has turned out to be a masterpiece of unintended consequences. It has been totally coopted into right wing law and order politics and its visible success in changing the sentencing systems, (making them fixed, mandatory, flat, presumptive etc.), has only led to sentences which are longer, harsher and more unjust. In the process, prisons have become even more overcrowded and brutal than they were before ..' (Cohen 1985, p246). Cullen and Gilbert criticised the attack on discretionary decision making because, '...this was precisely the way in which citizens could be protected from the hard edge of the state. When discretion goes, so does fairness, compassion and individuation, and in its place comes an abstract machine-like dispensation of fixed amounts of punishment' (Cullen and Gilbert, 1982 cited in Cohen 1985, p246).

As a sentencer of long standing, adjudicating on what is generally accepted as being a 'soft' Bench, a Bench which, when compared to many others, sends relatively few of its even more serious offenders to prison, and a Bench which makes a great deal of use of the community penalties which are available to it, and also as a student of the magistrates' courts for much of the first half of the nineteen nineties, I find very little in these statements by Cohen and Cullen and Gilbert with which to disagree, in fact I would suggest that they are even more pertinent today than they were when they were written a decade or more ago.

#### **5.1.4 The dilemma of funding a punitive justice system while at the same time trying to reduce the overall costs of the criminal justice system.**

When the Conservatives returned to power in 1979 the prison population already exceeded 42,000 inmates, and this was a level which would continue to rise. In fact within a year it had peaked at just under 45,000 and in the years between 1983 and 1987 would continue to increase at an average annual level of 8 per cent. This rise occurred despite attempts in the 1982 Criminal Justice Act to restrict the imposition of custodial sentences to those offences which were considered to be either very serious, or where there was a need to protect the public, or where the offender had failed to respond to previous non-custodial sentences. By 1986 it had become obvious that the transition to the justice model, that is making the punishment fit the crime, had not only resulted in vastly overcrowded prisons, so overcrowded that local police stations and courts were having to use their cells to accommodate the overspill of prisoners, but the crime rates were also increasing at an alarming rate and the inequalities which had been identified by some as a weakness of the rehabilitation model were still very much in evidence. Not only were the government concerned about these trends but also by the spiralling costs of keeping these people in prison and the financial burden of an ever expanding prison building programme, which by 1988 and with a prison population in excess of 50,000, had already cost around £1 billion. It was no coincidence, therefore, that in that same year the government put forward proposals which would 'stiffen' the community penalties and therefore enable the aims of punishment to be achieved by dealing with offenders within the community. Punishments which would allow the government 'to maintain a punitive law and order rhetoric while cutting a costly prison population' (Carlen and Cook, 1989, p15). But the proposals to make community penalties more onerous were not welcomed by all, and among these opponents were the probation officers who rejected the notion that punishments should necessarily be designed 'to make the offenders life, gratuitously difficult and unpleasant' (NAPO News, October 1988). It might be claimed that in the short term the probation officers won their argument, but it might also be said that in the longer term they didn't. It is quite possible, that as a result of this type of stand, today's government has and is making proposals which if successfully implemented will change this 'social worker attitude' of the Probation Service.

This need to reduce the prison population also appeared to be a key theme in the government's White Paper, 'Crime, Justice and Protecting the Public', which was published in 1990 and which formed the basis for the ill-fated 1991 Criminal Justice Act, although the government were at pains to stress that a reduction in the prison population was not the central objective of the Bill. The White Paper explained that the criminal courts in England and Wales imprison more offenders, and a greater proportion per head of population, than any other European country. The paper also emphasised that the use of custody should be confined to serious cases only, and which in any case '...was in line with declared government policy, which has been to stress 'bifurcation', dealing with less serious offences within the community

wherever possible, while imposing custodial sentences on those convicted of more serious crimes (Wasik and Taylor 1991, pp 2-3). This was the White Paper which also proposed the introduction of Unit Fines into the lower courts, a system whereby offenders were ordered to pay a certain proportion of their disposable income rather than a flat rate tariff amount which is decided at the discretion of the magistrates. A greater fairness in sentencing was said to be the guiding principle behind this move to Unit Fines. These changes when they were implemented in the 1991 CJA, while undoubtedly being successful in reducing the prison population, were not well received by the members of the judiciary. As Rozenberg observed, 'It was not surprising that judges and magistrates resented the loss of their discretion. They would hardly welcome artificial restrictions on their ability to send offenders to prison, just as magistrates did not want to lose their power to decide how much an offender should be fined' (Rozenberg 1994, p298). The judiciary did rebel, some lay magistrates did resign because of what they saw as an erosion of their judicial powers. Such was the scale of the opposition that the government was forced to concede and amended certain sections of the Act. The restriction on the number of offences which could be considered when deciding sentence was removed, as was the part of the Act which prevented the offender's antecedents being taken into consideration when arriving at the type and the length of sentence to be imposed. The system of Unit Fines, whilst in principle being accepted by many as an important step forward, but in need of some adjustment was, quite surprisingly, completely withdrawn from the legislation. These major amendments to the Act were made within 9 months of its implementation. Whilst this about face may have satisfied the judiciary, it had a devastating effect on the government's prisons policy, the prison population increased from 41,000 in the early months of 1993 to more than 47,000 in the November of that year. It appeared therefore, that the government's attempt at a compromise, that is to reduce the excessive use of imprisonment by the judiciary whilst still enabling them to be seen to be maintaining their judicial independence had failed. Or had it?

While accepting that the government's aim to reduce the prison population and therefore the costs within the prison service has been a dismal failure, I would suggest that there are certain other of their targets within the criminal justice system which have undoubtedly been achieved. They have succeeded in introducing a system of bifurcation, designed to keep the lesser offences either out of the 'due process' system altogether, confining these cases to the lower courts, or else restricting the amount of time that these courts spend dealing with the 'soft cases' and thereby enabling them to concentrate their valuable financial resources 'on the real business of crime control'. I would also suggest that during the years since this government came to power there has been considerable movement made, admittedly with only partial success, to restrict the powers of the judiciary. As Garland observed, 'Increasingly, in the 1980's, correctional executives are using sophisticated modelling procedures which depict the penal process as an input-output system with limited resources .. Their conclusions about the capacity of the system and resource implications of particular levels of sentencing, or of specific legislative reforms, are then fed back to the judiciaries and

state legislatures in an attempt to 'rationalise' judicial or political actions in accordance with good systems of management..' (Garland, 1990, p188). The next two sections demonstrate how these policies have impinged on the procedures within the study area.

#### **5.1.5 An erosion of the due process?**

Not all detected or admitted crimes are dealt with by the magistrates, and when they are, the sentencing or decision making powers of the justices can be restricted by the type and nature of the offence with which the defendant is charged, charges which even people within the criminal justice system would say do not always reflect the gravity of the offences.

Some of the offences which I regularly dealt with when I was first appointed to the Bench, and specifically the lesser motoring offences, can now be dealt with on the spot by the use of financial and endorsement penalties, the Fixed Penalty system. This is a system which was enacted in 1982 and which first came into force in England and Wales in 1986. It was extended to speeding and traffic light offences in 1992, and there is still considerable scope for its expansion into other areas, for example the continuing and apparently growing problem of television license evasion. The police's discretion on whether or not to prosecute on matters concerning defective motor vehicles has also been officially endorsed with the introduction of the Vehicle Rectification scheme. This scheme has been operational in South Yorkshire since 1988, and allows the offender a period of time in which to rectify the defect, and providing that the offender complies within a specified time scale, then no further action is taken. In more recent times it has also been observed by those people who participate in the criminal justice system that there has been a significant growth in the police's cautioning policy. This has not only been reflected by an increase in the number of cautions, a rise of 37 per cent in South Yorkshire in 1992, but also in the range of offences to which it is now applied. At the instigation of the Home Office, the cautioning policy is no longer reserved for those 'minor offences involving young people'.

During the course of my research, the Crown Prosecution Service also came under a great deal of criticism for the way in which it applied, or indeed didn't apply, some of its charging policies. Initially they were criticised for the large number of cases which they dropped before they had completed or even started their route through the courts. In many of these instances it was claimed that these were cases 'which the police expected to win'. The second criticism aimed at the CPS accused them of 'watering down' some of the charges which they brought before the magistrates. They were accused of accepting pleas of guilty to lesser offences because it was seen as more cost effective than allowing the matter to proceed to trial with all the increased costs which that entails. A further allegation was that, on occasions, they tailored the charges in order to prevent the magistrates from sending the cases to the more expensive Crown Court. This they achieved by ensuring that the charges laid were of the less serious categories and could therefore only be tried summarily in the magistrates' court.



These were all policies which I have no doubt placed the decision making process for these offences firmly with the enforcement agencies and which either avoided completely, or else restricted the power of those involved in the judicial decision making process. I would further suggest that it explodes the myth that 'Plea bargaining has no place in the English criminal justice system'. Some observers of, and participants in, the criminal justice system may well argue that these policies are fully justified on the grounds of increased efficiency and cost effectiveness. Others with whom I spoke argued that whilst on the majority of occasions these decisions do favour the defendant, they quite often have little to do with the dispensing of justice. In the opinion of one Justices' Clerk they not only disadvantage the criminal justice system they can also succeed in disadvantaging the 'general public'. I have little doubt that even the 'notion of due process' is being gradually eroded in the interests of cost effectiveness, or to be more precise the imposition on the various criminal justice agencies of performance indicators and cash limiting.

#### **5.1.6 The tightening of the leash on local discretion.**

It is almost twenty years since Baldwin and Bottomley called for the powers of the magistrates to be subjected to a greater level of scrutiny and suggested that they should be made to explain their powers and the extent of their discretion at all stages of the process. Three years ago we were being told that an increasing number of magistrates were resigning from the magistracy because of restraints which were being placed on their traditional sentencing powers, restrictions which they saw as obstacles to carrying out their duties, that is the dispensing of justice. So to what extent have the demands of Baldwin and Bottomley been met?

When I was appointed to the magistracy in the mid nineteen seventies, all that the magistrates needed on entering the courtroom was the court list for that day. This list contained all the basic information which they needed to carry out their magisterial duties. It told them who the defendants were, what the offence(s) was that each defendant was charged with and what the maximum penalties were for each of the offences. Any other information concerning the offence or the offender would be revealed during the course of the hearings. I would claim that it is not an over simplification to say that the sentencing powers of the magistrates were only restricted by the maximum sentences which were stipulated by statute, the sentencing practices developed within each particular local Bench, and the combined views and discretion of the three magistrates who were adjudicating. The sentencing options, in retrospect, seemed to be somewhat restricted, for example, community service was only in its infancy and probation was seen not so much as a punishment but more as a way of providing support and assistance to the offender. So if the magistrates wanted to send the defendant to prison and if that offence carried a custodial sentence then they did, on the spot, and without the need for explanation. They did not consider that there was a requirement to consult with any other agency when arriving at that decision. If they decided a fine was appropriate then they fined,

the level of the fine being set primarily to reflect the seriousness of the offence, the defendants means always appeared to me as being of secondary importance.

Attempts to achieve a greater consistency of sentencing started in the early nineteen eighties. In 1981 the South Yorkshire Sentencing Liaison Committee, which had been set up at the expressed desire of The Magistrates' Association, issued a set of sentencing guidelines. In 1989 The Magistrates' Association published its first set of national sentencing guidelines. During this period a greater emphasis was also put on the fact that when imposing financial penalties 'the court must consider the means of the individual offender, and local conditions'. As I have already stated legislation, and particularly the 1982 and 1991 Criminal Justice Acts, contained sections which had been specifically designed to severely restrict the 'discretionary powers' of the sentencers. The 1982 Act laid the ground rules which needed to be satisfied before a custodial sentence could be imposed. The 1991 Act not only placed further constraints on sentencers who were considering custodial sentences, including the obligatory requirement for a pre-sentence report to be obtained before a custodial sentence could be imposed, but also introduced the system of Unit Fines, which was to be used when imposing financial penalties. However the major constraints imposed by the 1991 Act were removed either in part or in full by the Criminal Justice Acts of 1993 and 1994.

When the lay magistrates in the study area walk into the courtroom today, they take with them their own personal copy of the Bench Handbook, and it is essential that they do because without it they would find life in the courtroom very difficult, in fact the bench chairmen might even find it impossible to fulfil the requirements of their role. The handbook contains detailed information, including flowcharts, explaining the various 'steps' which need to be taken as part of the sentencing process. Having decided the type of sentence that is appropriate, the magistrates are then supplied with the 'suggested entry points' for some forty two non-motoring offences, which range from such offences as grievous bodily harm to depositing litter, and fifty three motoring offences which include offences as diverse as driving whilst disqualified, overloading a vehicle and walking on the motorway. These entry points indicate the penalties which are considered appropriate for an offence of 'average seriousness'. A number of features which might aggravate or mitigate the offence are then listed for the sentencers consideration. The sentencers are then told that it is normal practice to allow a reduction in the sentence for an early guilty plea. If the sentencers have decided that a financial penalty is appropriate, they are then instructed that they must take the offender's means into consideration and if these are 'below average means', the fine imposed should be reduced to a level 'which the offender can realistically be expected to pay'. If they are considering either a community or a custodial sentence they are then reminded that they 'ought normally to be in possession of a pre-sentence report' before actually proceeding to sentence. They are left in no doubt that they can only impose a custodial sentence if the offence is 'so serious that no other sentence is justified' and that community sentences should be used only for those offences which are considered 'serious enough'.

Having finally arrived at their decision, the bench chairman is then asked to explain that decision and the reasons for it in open court. The Bench Handbook also contains a list of thirty three different pronouncements which are appropriate to the Adult courts and cover the whole range of decision making and sentencing options. The information includes the requirements upon which the pronouncement is constructed and a 'sample form of words' which should be used when announcing it. In a preface written by The Magistrates' Association, the sentencers are told, 'Skill in making pronouncements is a competence court chairman are expected to achieve'. At the same time they are warned that, 'Some pronouncements are complex to construct and deliver and not without legal pitfalls'. I have little doubt that many of these elements have been introduced into the system in order to assist the magistrates to arrive at 'more just' decisions and to achieve greater levels of consistency in their sentencing. But my observations and experience also tell me that the end result is not always that which was intended. Certain elements, i.e., 'structured decision making', tend to be used very sparingly by magistrates, while others, for example, 'the sentencing guidelines' and particularly the entry points for financial penalties, often appear to be applied slavishly and without much consideration to other related parameters. While this method does provide a fair level of consistency and similar sentences for similar types of offences, I am of the opinion that this type of 'consistency in sentencing' does not necessarily equate to justice for the individual.

In 1978, the year before the Conservative party were voted back into power, Baldwin and Bottomley called for the magistrates' power and discretion to be subjected to a greater measure of control. In the intervening years I have no doubt that some important steps have been taken in this direction, and rightly so. As a practitioner I cannot say that I yearn for the 'good old days'. However I am also certain that there are also occasions when the sentencers, in complying with all the do's and don't's, the musts and the maybes, the cans and the can'ts, become a little confused as to whether they are dispensing justice or trying to build a 'self-assembly wardrobe', and sometimes with the same frustrating results. But whatever actions have been taken, in the opinion of some, they still fall well short of what is actually required. Speaking in the House of Commons, the Shadow Home Secretary, Jack Straw said, "Lack of consistency and progression in sentencing plays far too great a role at present .. How can anyone explain to the public that the chance of receiving a custodial sentence can vary from one case in six in [one specified area] to one in sixty six in [another specified area] .. The current sentencing system makes a farce and mockery of the courts .." (House of Commons, April 3 1996).

#### **5.1.7 The power of the decision makers - The view from the inside.**

Despite the introduction of these constraints, there still appeared to be little doubt in the minds of the people who participated in my research project that the decision makers in the magistrates' courts system are the magistrates themselves. They are seen to wield a great deal of power, power which is not necessarily restricted just to the decision making process. They

are also seen by many of the court users as possessing considerable inter-personal power. As we saw in the earlier chapters one of the professional practitioners saw them as being 'untouchable', a description which I would describe as somewhat exaggerated, but one which does tend to demonstrate the power which the magistrates are seen to hold at the local level. It is obviously a power which the professionals, especially the advocates and the probation officers, hesitate to challenge and which makes retaining credibility with the Bench such an important part of everyday court life. It is a power which the defendant would also be foolhardy to challenge.

But it is in the judicial decision making process where the magistrates are really seen as the people with the power. As one of the participants spelled it out, probation officers make proposals, advocates present the facts and put forward mitigation, the court clerks give advice, but at the end of all this it is the magistrates who make the decisions, the other people are only there to provide information. Whilst I would suggest that this is something of an oversimplification of what happens in reality, it is a fact that it is the magistrates 'who get the last word' whatever anybody says to them. There is no doubt that they have the power because they have the power to impose a sentence on the defendant, and ultimately they do have the power to send someone to prison.

#### **5.1.8 Magistrates may have the power but influence also plays a major part in the decision making process.**

But if the magistrates have the power there is also little doubt that there are other participants within the local court structure who exert a great deal of influence on them, and this applies in particular to the lay justices. From my research I concluded that the people at the top of this list were the court clerks and in particular the Justices' Clerk. No one tried to conceal the fact that the clerks have a 'massive potential' to influence the magistrates in the decision making process. In the words of one very senior clerk, "I know clerks who have and probably still do". But what appears to be a matter for concern among some of the court users with whom I spoke, is the ulterior way in which this influence is used. Whilst much of what happens can be seen, although not always heard, taking place in the front stage area of the courtroom, some disquiet, even suspicion was expressed about that part of the process which involves the magistrates and their clerks and takes place in the 'behind the scenes area', the Magistrates' Retiring room, or as it was described in an earlier chapter, 'behind closed doors'.

The court clerks themselves agreed that it is almost inevitable that they will influence the lay benches, and on occasions even the 'stipes', through the simple act of carrying out their basic role, that of giving advice to the magistrates. But they also conceded that their influence can sometimes extend beyond this, lay benches are on occasions, directly challenged by their clerks about the factors which they have considered in reaching a decision. Neither is it only the questions which are asked which can bring about a rethink, it is often the way in which some of the questions are phrased. As we have already seen a court clerk's disapproval can

also be conveyed by either a poorly disguised facial expression or by some other form of body language. The clerks with whom I spoke claimed that the failure to conceal their disapproval in this way was unintentional, however, observation and experience did not necessarily convince me that this was always the case. What I am convinced of is that the clerks do exert a considerable influence on the magistrates in the decision making process and, whether the clerk's contribution is verbal or non-verbal, intentional or otherwise, many are the times that the sentencers have felt the need to either reassess the direction of their deliberations or on occasions to totally rethink their original decision because of the input of the clerk.

Next we consider the influence of the advocates. I was informed by one solicitor of considerable experience that "Advocacy is all about the power of persuasion". But it still begs the question, 'How persuasive are the advocates in the decision making process in the magistrates' courts'? A great deal has been written in the earlier chapters about 'the importance of credibility', a tool by which some advocates may seek favour with the magistrates or alternatively a method which can be used 'to pull the wool over the eyes' of the lay magistrate. I was even told how essential it is commercially for the advocate to obtain and retain the confidence of the magistrates. The greater the success an advocate achieves in the courtroom, the greater the number of clients who seek his or her representation and the more commercially successful that business is.

From my own observations I have concluded that the greatest influence which the advocate exerts is not necessarily contained in what is obvious to the sentencers, or even what happens in the courtroom, there are more covert ways in which influence can be imposed on the court and without the bench necessarily being aware that it is being influenced. I agree with the view of Carson, that the advocate as the questioner can also act in the role of the censor and can, in many instances, be the determining factor in what the court hears, or more importantly what it doesn't hear. We have also seen how the prosecutor, sometimes in alliance with the defence advocate, determines the actual charges which are brought before the court and thereby determines the types of sentence which can be imposed. Additionally they can also restrict the options of where a case can be heard, in some instances effectively depriving the defendant of his or her right to jury trial. My own experience as a practitioner and an observer has also convinced me that the advocates have not only the means to influence the magistrates, but they also have the means and the skills, which they use, to manipulate the magistrates.

The probation officers with whom I spoke, saw themselves as the 'least powerful' of the professional court users in the magistrates' courts system. They consider that they are marginalised by the other professional groups, treated with suspicion and even ignored on occasions. They claim that they are excluded from the 'arena of power and influence' which they see as being generally dominated by the 'professional lawyer network', that is the advocates and the court clerks. After talking to the other groups within the courts, I could well understand why the probation officers had arrived at the conclusions they had. Magistrates

were concerned because they saw an emphasis within the Probation Service which they associated more with the 'social worker' role of the officers, a role which was sometimes seen to be in conflict with their responsibilities as officers of the court, a concern which has also found its way on to the Home Office agenda with the recent questioning about the need for probation officers to hold a social work qualification, the DipSW. The Probation Service's undisguised opposition to the custodial sentence is also seen as part of their propensity for the 'soft option'. Other groups within the criminal justice system described the probation officers as being 'ideologically motivated', 'well meaning', 'do gooders', 'naive' or just plain 'gullible'.

However I would suggest that if we accept this perception of the probation officer as being accurate, then we could well be deluding ourselves. It also has to be remembered that the probation officer is the author of the pre-sentence report, and that the PSR, or the social inquiry report as it used to be called, was the document which Parker found to be the most frequently mentioned influence on sentencing in all of the courts included in the study (Parker et al, 1989, p 87). In my study area the pre-sentence report was viewed in a number of ways. Some considered that it was an important aid to sentencing, others saw it as an attempt by the Probation Service to usurp the bench's prerogative on sentencing. As we have seen some saw the document as being influential while others expressed strong reservations about how much notice is really taken by magistrates of the recommendations which are contained in these reports. Others criticised the reports because they lacked balance, or else there was a need to disentangle the reports for 'political attitudes and correctness'. Despite all these reservations, statistics for the study court show that there is a high level of concordance by magistrates with the recommendations which are put forward for their consideration, in fact almost two out of every three of the recommendations contained in pre-sentence reports are accepted and imposed by the sentencers. Considering that pre-sentence reports are only requested for those offences which are towards the top end of the magistrates' sentencing tariff, I would suggest that through the PSR the probation officer exerts a great deal of influence on the decision making process and particularly on the sentencing decisions for the more serious offences which are dealt with to their conclusion in the magistrates' courts.

#### **5.1.9 Do lay magistrates have 'the capacity to deliver justice in the modern age'?**

It now appears that the judicial process has become so complex and riddled with 'legal pitfalls' that the lay magistrates need a 'guide book to lead them through each step of the decision making process, 'guidelines' to enable them to achieve a reasonable level of consistency in their sentencing, 'prompt cards' to ensure that they do not mess up their lines when addressing the court and the defendants and a legal adviser to prevent them from 'getting it wrong in public'. Coupled with this are the claims of certain of the court professionals, particularly some advocates and court clerks, that the lay magistracy is getting out of its depth and no longer has the capacity to deliver justice in the modern age (Raine and Willson, 1993a, p46). If this is the case, is there not a very strong argument for having a total review of the

'ancient and honourable' office of the lay magistrate, a system of justice which has been in existence for about 700 years? There are those who would argue that now is the time, not only to supplement the magistrates' court system with full time, legally qualified and trained, professional magistrates, but to completely replace the lay magistracy with professional magistrates. 'If we were starting again from scratch there is little chance that anybody would design a system in which nine out of ten cases were tried by unpaid, unqualified people' (Rozenberg 1994, p275).

At the local level, as we have already seen, the lay magistrates were seen by the professional court users as possessing various levels of ability, their decision making was described as 'unpredictable'. When comparing the courts in which the professional magistrate presided with those in which the lay magistrates adjudicated I also found that there were considerable areas of agreement among those with whom I spoke. Generally the stipendiary magistrates were seen as being more professional, more efficient with their use of court time and in the way that they disposed of their workloads. They are seen, not surprisingly, as being better at dealing with those cases which involve complicated legal argument. The courts over which the 'stipes' presided were described as being much 'sharper', they were even described by one advocate as 'daunting'. There is no doubt that the professional magistrates demand a higher level of preparation by the court professionals and the 'stipes' were also considered to be better communicators than are the majority of their lay magistrate colleagues. Their sentencing policies were considered to be generally harsher. This professionalism which the stipendiaries display had also evidently impressed a young man with whom I had a short discussion, having previously appeared at court on two occasions before the lay magistrates, he then told me that on the third occasion he appeared before a 'real judge', the stipendiary magistrate.

It would therefore appear that on the surface there is a *prima facie* case for supporting a change to a fully professional magistracy. But could it prove to be too expensive to finance? Some argue that it would, while others argue that it might also be difficult to find enough lawyers to do the work. I have not carried out a detailed study of the relative costs of the two systems, but I would suggest that many of the increased costs of a fully professional magistracy could well be off-set by the savings which could also be made. I submit the following thoughts for consideration in the debate. The first point is that 30,000 lay magistrates sitting in benches of three and attending at court for approximately 35 sittings each year could conceivably be replaced by approximately 1000 stipendiary magistrates sitting as individuals in up to ten courts each week, (a sitting being seen as a half-day). There appears to be little doubt that with the improved throughput of workload which would be achieved by a move to an all professional magistracy, the number of court sittings would be quite considerably reduced from what is now seen as the current norm. One might not unreasonably expect that these improved efficiencies would result in cost reductions, these could come from a rationalisation of resources and even from the possible closure and sale of some of those courthouses in areas

where even now they are not fully utilised. It might also be argued that the increases in the salary bill could be largely offset by a number of different factors, initially there are the magistrates' subsistence allowances and other expenses. There would be a massive reduction in the costs which are currently incurred in the training of magistrates, an expense which continues to increase in order to enable the lay magistrates to cope with the frequent and often complex changes to the legislation. In addition there are also all of the administrative costs which are required to support and keep informed the current 'large army' of lay magistrates. I would also suggest that the change to a fully professional and legally qualified magistracy would make obsolete the need for the legally qualified and trained 'legal advisers', the court clerks. This role could arguably be 'de-skilled' to that of an 'administrative clerk', and with the relevant reduction in the salary bill. I have no doubt that many of these suggestions will pose a great many logistical, organisational and administrative problems, but I would still submit that they are worthy of further study and consideration. And neither does everyone accept that even in its present format that magistrates' justice is necessarily cheap. Parker expressed the opinion that, ' While magistrates' justice is arguably cheap to administer, the end result is expensive. Nor is the price inflation-proofed. It is rising continuously and, in our opinion unnecessarily' (Parker et al, 1989, p172). Of course what Parker was specifically referring to was the fact that local discretion is too often used in a punitive way, a policy which can and does result in penal crises. However my own research suggests that in the study area at least, the change to a professional magistracy is not necessarily a guaranteed way of reducing the prison population.

But of course every debate must have two sides, and the lay magistrate - stipendiary magistrate debate is no exception. During the course of my research I also heard the lay magistrate described as 'a positive good', as the 'generalist with a non-invested interest' who introduces 'a whole dose of common sense' to the judicial system as it operates in the magistrates' courts. It is also said that they can bring an additional perception to the proceedings which is sometimes lacking in those professionals who attend at court daily and see their role very much as just a job and who 'can become cut off from everyday people'. There are others who argue that verdicts depend on facts as well as law and there are many who still believe that magistrates are more accurate fact diviners than are lawyers (Jackson, 1993 pp148-149). Others criticised the stipendiaries for being too preoccupied with the speed with which they deal with their workloads, even to the extent of giving the impression on occasions, that they have reached their decisions before all the facts or mitigation have actually been placed before them. I also heard other comments which gave me cause for concern such as, "You know what a stipendiary likes to hear, what he likes to be told". This type of comment can so easily be interpreted as suggesting that if there was a totally professional magistracy, then the submissions and reports might well be tailored to reflect the requirements of the tribunal rather than addressing all of the aspects which may need to be considered during the hearing.



I have no doubts at all that an all professional magistracy would be more efficient. But of course no decision can be made without first considering the underpinning principle of the whole system, the 'right to judgement by one's peers', although I would suggest that even this basic concept has been blurred by the mists of time. But despite this, what is still important at the end of the day is how the defendant sees it. As one lay magistrate explained it, "I think from the defendant's point of view, they don't necessarily want to see a professional and efficient court as long as they feel they're getting justice .. the person in the chair might not be as articulate, but he's talking the same language as the people who are standing in front of him". One could argue that this sentiment alone, expressed in the support of local justice, is sufficient reason for retaining the current system of lay magistrates. But of course in preserving the lay magistracy and their application of 'common sense and local knowledge', there is also a very real danger that you must also retain 'local discretion' in decision making and a 'lack of consistency in sentencing'. Is this an acceptable price to pay?

## **5.2 JUSTICE AND EFFICIENCY.**

### **5.2.1 In the age of high efficiency and low costs? It appears that due process is considered to be both inefficient and too expensive.**

On combining my duties as a magistrate with my role as a manager in industry, I found that one of my first and enduring impressions of the magistrates' courts was the apparent level of inefficiency which pervaded these courts. This was demonstrated in particular by the under-utilisation of both resources and time and the failure to regularly achieve what I would have considered to be a reasonable level of progress. I overcame my frustrations about these matters by regularly reminding myself that this was a court of law, it was not a production line, we were not manufacturing 'widgets', neither were we concerned with operating at a profit. What we were dealing with was people, we were concerned with making decisions, some of which could seriously affect the lives of those people, we were there to dispense justice, and justice, so I had been told, 'should not only be done, but should manifestly be seen to be done'. Therefore the prime aim of my role as a magistrate, as I saw it, was to arrive at a just decision, the time taken to arrive at that decision, I argued, was of secondary importance.

Therefore as a researcher, I was somewhat taken aback, and even a little disappointed, when I read some of the criticisms of my 'predecessors' who, in the late nineteen-seventies and early eighties, had described the system in the magistrates' courts as more to do with economic than with legal considerations and that the system too often sacrificed individual needs to those of bureaucratic efficiency (Baldwin and McConville, 1977; McBarnet, 1981). My research among the regular court users in the study area also indicated that my own 'cosy' view of the situation was not widely shared, especially among the probation officers and the defence advocates whom I interviewed. Despite my view to the contrary, some of the people whom I interviewed did compare the procedures in the courtroom with a 'factory production

line'. I was told of the increasing pressures to restrict the number and the lengths of adjournments, pressure to proceed on the day irrespective of whether the relevant persons had been presented with the appropriate information to which they were entitled or indeed whether they had been allowed the time to be adequately prepared. There was often an impression that, on occasions, the court appeared to proceed almost in spite of the defendant and that this preoccupation with speed and efficiency is often satisfied at the expense of appropriate and meaningful communication. A number of my respondents had little doubt that this drive for improved efficiency in the courts had far more to do with reducing costs than it had with dispensing justice, a policy which was firmly placed at the door of central government.

My views about the inefficiencies within the magistrates' courts were, however, shared by other members of the judiciary and in particular by the Magistrates' Association, but my reasoning that a degree of inefficiency was acceptable in the interests of justice did not appear to be so readily accepted. Through the pages of the Association's journal, *The Magistrate*, they and their contributors, criticised both the procedures and particularly those magistrates who contributed to the delays. As we have already seen in some detail, certain aspects of the administration in the courts were described as 'little short of scandalous', many delays were said to be unacceptable, the costs incurred were seen as being excessive and in order to gain control of the situation the magistrates were urged to take command. They were told that rather than safeguarding justice by always conceding to requests for adjournments they could in fact be creating a situation where justice could actually be adversely affected. The maxim often used in these arguments being that 'Justice delayed is justice denied'. I do not know how successful this campaign has been country wide, my view is that within the study area little has changed, and the problem of the number and length of adjournments remains high on the court administrators' agenda. But now there has been a change of emphasis, instead of appealing to the decision makers to control the granting of adjournments, the strategy is now to obtain inter-agency agreement on what constitutes an acceptable length of adjournment for each specific type of application. If successful, and the signs are that it will be, this strategy will in reality take the decision away from the magistrates, who will simply be presented with a fait accompli by the parties who will in effect be presenting an 'agreed' application, an application in which the time scales will also have been approved in principle by the court administrators.

Another recent initiative in the study area has been to change the format of the Pre-trial Review courts. These, as a general rule, will no longer be conducted before a bench of magistrates but before a senior court clerk who will have been delegated the appropriate administrative powers. While these court clerks are not empowered to usurp the judicial functions of the magistrates, they will 'conduct PTR hearings, question and challenge advocates in a way that is not possible in the presence of members of the judiciary'. This move has been welcomed by the local magistrates who 'perceived themselves and are perceived by others as being 'rubber stamps' in the PTR courts' (Briefing Paper No 3, September, 1995). But

one is bound to ask whether this is a further erosion of the due process and if it is indeed in the interests of justice and the defendant? Commenting on the PTR system, Saunders and Young expressed the view that it is a system which encourages plea bargaining and while, 'From a crime control perspective, it is possible to argue that prosecution and defence lawyers are simply acting in a realistic and pragmatic fashion and doing the public a service in helping to maintain a high rate of conviction at relatively low cost .. From a due process point of view, however, one might argue that it is incumbent on defence lawyers to take seriously such ideals as the presumption of innocence and the right of silence. These are important protections .. against the entrenchment of practices that encourage the state to exercise prosecutorial power in an unconstrained manner. Any form of pre-trial bargaining aimed at short circuiting the court process results in an undermining of these protections' (Saunders and Young, 1994, p280).

What was not in doubt in the minds of almost all of the people with whom I spoke is the fact that the administrators, not only in the magistrates' courts, but also in the other criminal justice agencies are under considerable pressure to manage the funds and resources which they are allocated more efficiently. Some would even claim that cost effectiveness and the saving of money has now taken precedence over all other matters. Even the Lord Chief Justice was moved to comment that, "If you walk into a Crown Court, you are as likely to meet a management consultant as a Judge" (The Lord Chief Justice, Lord Taylor of Gosforth, March 6 1996). Others claim that there has been '.. constant pressure to move legal cases down the system, to have them heard in the cheapest available way and with as few lawyers involved as possible' (Rozenberg 1994, p123). Claims which the findings of my own research would largely support, particularly in respect of the first part of the statement. I have also little doubt that some court procedures have been streamlined and in many instances have resulted in the greater level of administrative efficiency which they were implemented to achieve. But the important question is whether in achieving this level of efficiency, some of the safeguards which were designed into the due process model to protect the rights of the individual are being eroded and will continue to be while ever the due process is considered by the policy makers to be 'too expensive, too inefficient and too ineffective' (Jones, 1993, p200).

I have no doubts that the magistrates' courts, along with the other agencies in the criminal justice system, are being increasingly subjected to performance indicators and to cash limiting. I also agree that when justice does become cash limited then there is a great danger that it will not be justice anymore. As one of my respondents said, "You can't just cheapen the cost of the criminal justice system without looking at the quality of it".

### **5.3 ORGANISATION AND DEGRADATION.**

#### **5.3.1 The criminal trial, a 'barbarous ceremony'.**

'Courtroom ceremony is characteristically organised to degrade and humiliate the delinquent involved. Such personal degradation is not some accidental or peripheral quality of

the courtroom scene, but often an inevitable consequence of the court event' (Emerson, 1969, p174). Emerson, and other researchers who have studied interaction in the courtroom, have widely cited the theories of Erving Goffman in support of some of their conclusions that the organisation and many of the procedures which are employed within the courtrooms are in fact the basic elements of a degradation ceremony.

Goffman portrays people in a 'natural setting' as being very much in control of their behaviour, and acting, within limits, under their own direction. Whilst there is a requirement to recognise the 'definition of the situation', they are in a position where they can, to a large degree, control and influence the impression which others gain about them. An important factor in the way in which people present the 'self' to others, is the control of information, both verbal and non-verbal, which is transmitted by the sender. This control enables the individual to ensure that the audience do not 'acquire destructive information about the situation which is being defined for them' (Goffman, 1959, p141). Interaction in these settings also allows for the employment of 'corrective practices', both defensive and protective, which when invoked can protect the participants from embarrassment and humiliation. This is achieved by the participants cooperating to protect both the encounter and the claims advanced by the other, and therefore compensating for any discrediting occurrences that have not been successfully avoided (Goffman, 1959, p24).

But the courtroom was not seen by Goffman as a 'natural setting', to the contrary he describes the criminal trial as a 'barbarous ceremony' which is expressly designed to prevent the mark, [the defendant], from saving his face' (Goffman, 1952, cited in Rose (ed) 1962, p503). The defendant in the courtroom is not allowed to control the way that the 'self' is presented. The ceremonial rules of the court demand that the defendant adopts a 'deferential and remorseful attitude', a state which emphasizes the defendant's subordinate position (Goffman, 1967, p497). In his opinion the court ceremony generally attempts to 'shake up' the delinquent, denying access to those face saving and role distancing devices which can often be utilised to stave off degradation (Goffman 1952, cited in Emerson 1969, p210). Rather than employing those 'corrective practices' which protect the individual from embarrassment, the courtroom procedures, and particularly its powers of interrogation, can be claimed to encourage those inquiring into the facts and circumstances of the case to breach the 'normal rules' of interaction by allowing them, in open court, to probe into intimate, embarrassing and humiliating areas of the defendant's life (Emerson, 1969, p202). Court hearings are therefore conducted on the basis of 'transformation rules', which allow officials to act in ways that constitute clear violations of the appropriate rules of behaviour (Goffman, 1961, cited in Emerson 1969, p202).

### **5.3.2 Courtroom procedures are fundamentally disrespectful. Or are they?**

As we have already seen, the major criticisms which have been directed at the criminal courts by a number of eminent researchers focus on the way they are organised and the way in which the defendants are treated. For example, we are told that criminal trials are intrinsically structured 'to isolate and degrade accused criminals' (Emerson, 1969, p215), or that the process is no more than 'the ceremonial stripping of a man of his dignity' (Garfinkel, 1956, pp 420-4). Carlen argues that the strategy of magistrates' justice in itself infuses the proceedings with a surreality 'which atrophies the defendant's ability to participate in them'. She compares the proceedings in the courtroom with a game, a game in which the defendant stands as the 'dummy player', powerless to do anything other than absorb the gains and losses of all the other players in the game (Carlen, 1976, pp18-42). Researchers have variously described the defendant as baffled, bullied, thwarted, misunderstood, coerced, oppressed and manipulated (Atkinson and Drew, 1979, p11). Even in more recent times we find that the criminal justice system is still under attack as being 'fundamentally disrespectful' (Zehr, *The Magistrate*, April 1992, p53). If these criticisms are accepted as a true reflection of actuality, then it is also true to say that what happens in the courtroom has little to do with either the propriety of legal procedures or with the abstract ideals of justice.

That problems do exist is also readily accepted by those who operate within the system. How these problems can be overcome appears to be more difficult to determine. I have already written in some detail about the efforts which are being made in order to improve the quality of service to those who use the courts by those who administer them. Court Charters, Quality of Service surveys, monitoring and inspections by the Magistrates' Courts' Service Inspectorate being just a few examples. Neither have I any doubts that in many areas a great deal of effort is also ongoing to improve the physical environment. The new courthouse in the study area itself is an outstanding example of replacing a traditional, outdated and totally inadequate and squalid building with a new, 'state-of-the-art' building, with its excellent facilities, a building which was obviously designed with all of the users in mind, the non-professional occasional attenders as well as the regular professional court users. But as one senior court official conceded, "Whether or not it has resulted in a better standard of justice being dispensed it is impossible to judge". And when all is said and done, the final acts in the judicial process do not take place in the reception and waiting areas in the presence of the court's administrative staff, but in the courtroom in front of the magistrates, court clerks, advocates and the representatives of other agencies involved in the criminal justice system. But neither has this area been neglected. Both the magistrates and their clerks have been urged in their more recent training to demonstrate both 'patience and courtesy' to all court users. Magistrates, and specifically the court chairmen, have been reminded that every person whatever he or she has done 'deserves to be treated with the dignity that is due to him [or her] as a person' (Young and Clark, 1980, p22). As has already been stated, the competences, which are now an essential part of the training and appraisal of the court chairmen, lay great

emphasis on the skills of dealing with people. Showing courtesy, demonstrating an unbiased approach, addressing the defendant in the appropriate manner, showing an appropriate concern for distressed parties and witnesses, and ensuring that all who are in the courtroom understand what is happening, all form part of this new competence based approach. Of course there are those who would argue that all of this is superficial and does very little to address the real inequalities within the system. Yet again there are those who claim that the changes which have already occurred have gone too far.

One criticism which has been made is that the 'obsession with fairness to the accused' has been at the expense of either the victim or the witness (Ronald Hatfield, Chief Constable of West Midlands; Daily Telegraph, Feb.19 1993), others claim that it is even at the expense of society as a whole. Others, and particularly those magistrates who felt the need to resign in protest and frustration after the introduction of the 1991 Criminal Justice Act, considered that the liberalisation of the courts and the erosion of the justices' sentencing powers were detrimental to the process of justice. One expressed the view that "... the law has become too soft and lenient .. they, [the defendants], are laughing at the legal system" (Daily Telegraph, Feb. 24 1993). Another was of the opinion that, "They, [the defendants], see the whole court with its army of officials, probation officers, lawyers and voluntary staff as being there to help and guide them. They feel heroes in that situation". This magistrate even posed the question whether the prime concern of the courts is now to punish or whether it is to "...understand the offender and remove any stigma or blame for his behaviour" (Daily Telegraph, Feb. 15 1993).

When delivering the annual Lord Denning lecture, the Attorney General, Sir Nicholas Lyall Q.C., called for reforms to the criminal justice system in order to achieve a fairer and more effective balance between the interests of society and those of the defendants. He stressed that the goal of the system should be truth and justice, but somehow, "It had become an over-formalised game in which frustrated players were often tempted to break the rules. We should try to achieve a system which is rather less of a game and more a search for the truth" (Daily Telegraph, March 24, 1994).

### **5.3.3 Is there a better way? The need to review procedures. The local view.**

The people in the study area with whom I discussed some of the criticisms, were in general agreement on quite a large number of the issues. But it should be remembered that these are all people who work within the criminal justice system and in the magistrates' courts. There was from the outset a total consensus on the need for rules. There were strong views that rules are required to emphasise the solemnity and the seriousness of the occasion and to uphold the dignity of the court. Rules are also required in order to safeguard both the authority of the law and the authority of those who have been invested with the task of administering it. If there were no rules it was generally agreed that certain people would quickly take advantage of

the situation and the courts would find it difficult, if not impossible, to carry out their task of getting to the truth of the matters which they were being asked to consider.

Contrary to the views of many researchers, there was also a fair level of agreement that the courtroom procedures in themselves are not designed to degrade and humiliate the defendants, although one probation officer did compare the occasion with the parading of the beast at a cattle-market. However it was accepted that too often the procedures are applied in an unsympathetic manner which can result in the embarrassment and the humiliation of the defendants, and indeed other people who attend at the courts. This act of demeaning was condemned on a number of grounds. It was seen as a relic of past traditions which no longer had a place in the justice system, it was considered to be an abuse of power by those who had been invested with authority, and it was also seen as being counter productive to the aims and ideals of justice as well as a practice which may well breed resentment against the courts and the rule of law in society as a whole.

It was agreed by the majority with whom I spoke that there is a need for the courts to review some of their practices in an attempt to liberalise the procedures and to bring them more in line with the requirements of the modern age. The language, for example, was a source of constant confusion for many and the forms of address used by the court professionals came in for particular criticism, it was considered by some to be archaic and to be totally inappropriate for today's requirements, although this was not a view which was necessarily shared by the advocates in the study. It was, however, agreed by all that any changes should not be allowed to diminish the respect and recognition of authority which is currently demonstrated in the courts. A number of the suggestions which were put forward did appear to reflect the perspectives and the involvement of those making the suggestion. For example, some of the probation officers were in favour of more informal courts with all of the participants seated round a table and the defendants being addressed by their first names, but others were less certain. The court clerks and some magistrates felt that an informal court left them vulnerable to possibility of physical abuse. Others considered that the use of first names when addressing defendants only succeeded in detracting from the seriousness of the occasion, although almost everyone agreed that all defendants should be addressed using their appropriate titles. Other areas of agreement included the fact that all defendants, without exception, should be accorded the presumption of innocence, until it has been determined otherwise. This may seem like stating the obvious, but in the opinion of some it is not always applied. It was also suggested that there is a need for the courts to recognise that there is no such thing as a stereotype defendant, and there is sometimes a need for the court to identify any difficulties which the defendant may have, for example, social problems, educational difficulties, physical disabilities, and where possible adapt the needs of the court to that defendant rather than expecting the defendant to adapt to the procedures of the court, which he or she may find very difficult. Magistrates also need to be able to differentiate between those defendants who are being intentionally disrespectful to the courts from those who aren't. Again

there was total agreement that whatever changes were made the authority and the dignity of the court and the seriousness of the occasion must be maintained and in no way should a 'visit' to the court be allowed to be viewed by a defendant in the same context as a trip to the 'local supermarket'. If the defendant does show intentional disrespect to the court or to its authority, then the court has the right, and should impose the appropriate sanctions upon the transgressor even if this does result in the humiliation of the wrongdoer.

But while ever we have an adversarial system very little will change. Questions will still be asked, embarrassing areas of the defendants' and the witnesses' lives will still be probed, their word will still be doubted and efforts may well be made to discredit both the witness and their evidence, and all in open court. Even where efforts have been made to reduce the level of humiliation, for example, where the defendants can give written information about their finances to the court by way of a 'Means Enquiry' form, for whatever reasons the vast majority, at least in the study area, choose not to take advantage of this facility. The courts frequently need to know this type of information in order to arrive at a realistic and appropriate financial penalty. The questioning starts. Are you working? What is your job? What is your take home pay? Are you unemployed? How much benefit do you get? Are you married? Do you live alone? Do you live with your partner? Is your partner working? Does your partner claim benefit? How many children are there? How much child benefit do you receive? How much do you spend each week? How much on gas, electric, rent, mortgage, council tax, water rates? Have you any loans? Do you pay to any clubs? How much is still owed? Are there any other outgoings or debts you would *like* to tell the court about? The questions often appear endless even to those who are listening, the embarrassment is often very apparent for those being questioned. And yet much of this major source of humiliation in the courtroom could so easily be avoided, if the defendant chose to provide the information, as requested, and in advance. But as one of my respondents told me, having to reveal this type of information is no longer a cause of humiliation to the large majority of people who attend at court in the study area. Being either unemployed or receiving social security benefits, in an area where unemployment is high, is no longer considered a cause of acute embarrassment. Many of these people are used to their means being regularly assessed by various organisations. It could even be argued that the greater they are able to present their financial plight to the courts, the less they are likely to be asked to pay in either fines, costs or compensation when being dealt with for the offences which they have committed. But to many, and in particular to those who are not 'regular attenders', the appearance in court must still be a very daunting, even an awesome and often confusing experience filled with a large degree of uncertainty and apprehension.



## **5.4 THE MAGISTRATES' COURT - A SUMMING UP.**

### **5.4.1 The arena for a bureaucratic degradation ceremony, or a venue where the ordinary person can see the law being administered by people like themselves.**

So in conclusion how does, in the opinion of the researcher, the reality of the courtroom interaction in the magistrates' courts conform to the abstract ideals of justice? Are the courts really organised as part of the degradation ceremony, designed to humiliate the defendant, to emphasise the wrong doing and to inflict public retribution on the individuals who have violated the rules of society? Are the courtroom procedures more concerned with achieving the requirements of bureaucratic efficiency than they are in dealing with the needs of the individual or their basic task of dispensing justice? How effective in this day and age is the lay justice system and does it really satisfy the age old ideals for which it was implemented, that is trial by one's peers, a system by which the ordinary citizens can see the law as the law of the people being administered by men and women like themselves? And finally how are these amateur justices, the stipulated decision makers, viewed by the professional court users who operate and control much of what goes on within the environment of the courtroom? These were the questions which dominated my thinking as I embarked upon my research and particularly after I had read much of the pertinent literature.

### **5.4.2 A need to liberalise the courts without sacrificing the importance and dignity of the occasion.**

Very few of the people whom I met during the course of my research shared the views which had been expressed in some of the literature that the procedures in the magistrates' courts were designed in order to degrade the defendant. However a number of people were willing to concede that many of the procedures which were employed in the courtroom were relics of the past and representative of an age when defendants were required to demonstrate a public penance for their misdeeds. It was also conceded that although the procedures were not designed to humiliate and embarrass, the way that they were sometimes applied by both the court professionals and the magistrates did have this unfortunate affect.

I found, having researched the situation, that I could not necessarily agree totally with this view, but neither did I contribute to the theory that a trial in the magistrates' court could be accurately described as a 'barbarous ceremony'. However during my research I was often reminded of a view which was expressed by Zher, that is, that while the system appears to have been based on the most bizarre and serious cases, it then appears to adapt these same procedures for the more mundane and petty ones. I have been to city courts where the majority of defendants were made to appear in the dock even though quite often their misdemeanour was of a relatively minor nature. I have regularly seen defendants, and particularly unrepresented defendants, trying to grapple with very complicated procedures and an equally

confusing legalistic language which left them totally confused about what had happened during the proceedings and just about able to grasp the basics of the penalty which had been imposed on them. I have even seen represented defendants obeying the instructions of their advocates, and pleading guilty, when the confusion in their eyes and the look on their faces, indicated their obvious belief in their innocence. I have, as I have previously described, also witnessed, and even participated in, events where defendants have been treated with anything but the respect which allowed them to retain the dignity to which they were entitled as human beings. All of these things I would claim could well be interpreted as examples of where the position of the defendant had been unfairly undermined and with the attendant emotional consequences. But I have also, as I have demonstrated, witnessed many occasions when the courts have gone out of their way to show understanding and consideration towards the non-regular court user.

During the period of my research I have been aware that some very positive initiatives have been implemented, initiatives designed to improve the way in which defendants and witnesses are treated. However I do feel that to date, most of these initiatives have been more concerned with how the non-professional court users are treated outside of the courtroom and only with matters of basic courtesy within. The problems of complicated procedures remain, as does the often archaic and legalistic elements of the language. What efforts have been made to 'simplify' the magistrates pronouncements which are still in, my opinion, both complicated and overlong. The forms of address which Carlen described as being used by the regular court users to produce 'verbally embellished images of each other' are still in use and continue to project an image of an institution steeped in the past and of a time when humiliation and embarrassment were an integral part of the judicial process. I agree with one of my magistrate colleagues who expressed an opinion that there are many instances when the courts could operate with a little more 'common sense' so that the defendants are allowed to say what they want to say and in the way they wish to say it without being too constrained by the rules of the court.

However before the wrong impression is gained, and whilst I fully support the need to liberalise some of the courts, and particularly those dealing with the more regulatory type of offences, I also agree totally with those who emphasise that whatever changes are made, there is a need to retain the dignity of the court, the importance of the occasion and respect for both the law and the authority of the courts. I also accept that not all courtroom procedures and layouts are necessarily just symbolic and that much has evolved over time and for good practical reasons, factors which continue to be incorporated into the designs of modern courthouses. For example, I accept that there are good reasons for the magistrates to be separated from the rest of the court in order that they are able to both apply and demonstrate their impartiality as the decision makers. I also see the wisdom of setting them at an elevated level so that they can see and be seen. I still see the need for people to take the oath, even though I suspect that to many people it does not preclude them from telling lies. I also see the need for the dock, albeit without the symbolism of the brass rails or the spikes, but as

previously inferred, only in those courts and for those defendants where there is either a safety or a security risk.

While I agree that courtesy must be shown to all court users, I also accept that courtesy is a two way matter. As such I also support the view that those who *intentionally* step out of line and show disrespect to the court are the 'authors of their own misfortune' and must be dealt with in an appropriate manner, if this involves a degree of humiliation or embarrassment for the miscreant then so be it.

#### **5.4.3 A judicial system which is dominated by monetary considerations.**

In the earliest stage of my research, I read an article in which Carlen expressed the view that the organisation of the courtroom system had more to do with maximising the processing of people than it had with dispensing real justice. While I was somewhat surprised by this observation, I did record at the time that while I would like to reject this view out of hand, I did consider that there were a number of factors which might make this difficult to do. I was aware of a number of aspects which were present in the court procedures which could well leave an onlooker with this impression. The rapid processing of those cases where the non-attenders had pleaded guilty by letter. The way in which hundreds of liability orders can be issued in the space of a few minutes in respect of council tax offences once the magistrates have been satisfied that the necessary procedures have been carried out. The rapidity with which those charged with television license offences are dealt with once that 'tariff' for the afternoon has been agreed by the three sitting magistrates, tariffs which are applied often irrespective of the personal circumstances of the offenders. This is a practice which is also extended by some benches to a much greater range of offences, and it soon becomes obvious to the observer that the penalties for each offence are being dictated, and with relatively little modification, by the entry points as specified in the Sentencing Guidelines. Neither have I any doubts that many non-judicial and even some decisions which could be described as 'quasi-judicial' are made or agreed by the court professionals in order that the business of the court can proceed with a minimum of disruption and delay. I have also observed that there are occasions when some lay benches appear only too willing in agreeing to cases being adjourned to other courts, and especially if this course of action has enabled them to avoid having to make extremely difficult, complicated and possible lengthy judicial decisions. But this latter example is very much the exception and I have not generally observed or been aware of magistrates trying to dispose of their workload at the expense of what they see as dispensing justice.

But what has come very much to the fore during the period of my research has been the increasing preoccupation with costs. Performance indicators, cash limiting, cost effectiveness, amendments to the legal aid legislation and increasing commercial pressures, are all factors which have greatly occupied the time and the thinking of many of the administrators and participants within the criminal justice system. One thing on which there is

unanimity of thought is that the system is now largely dictated by monetary considerations. Pressure to reduce delays are encouraged, in fact those courts and magistrates who do not challenge requests for adjournments are openly criticised. But what I find to be matter of even greater concern is the pressure which appears to be aimed at restricting the proceedings to the most cost effective end of the criminal justice system. As I have already discussed at length these pressures have resulted in an increase in the process of cautioning by the police, of cases either not being proceeded with by the Crown Prosecution Service or alternatively being 'watered down' so as to ensure that they are dealt with at the low cost end of the judicial process, i.e. the magistrates' courts. My concern is that these ploys are taking many of the decisions away from the judiciary, the 'due process', and public accountability and transferring them to the enforcement agencies and the 'criminal' and 'bureaucratic' process machinery. While it is accepted that these policies can quite often be seen as benefiting the offender, it can also be argued that justice is not only about the defendants, it is also about victims and society as a whole, and in short circuiting the system, it can also be claimed to be 'selling these people short'.

And not only is it in these areas where the government is becoming involved. There is now growing evidence that they are becoming more and more involved in the sentencing process and even threatening judicial independence. As I have already discussed at some length the government is continually attempting, and in many cases succeeding, in eroding the power and discretion of the local decision makers. What is more I am also of the opinion that this policy is not only being aided and abetted by the main opposition party but also in a number of instances by the magistrates' own Association.

#### **5.4.4 'Trial by one's peers is priceless'.**

In my conversations with the professional court users I gained a definite impression that the lay magistrates were, by and large, seen as a 'positive good' within the judicial system. They were variously described as a 'good dose of common sense', and as bringing certain qualities to the bench which are sometimes lacking in the court professionals and in particular they were valued for their local knowledge. Their performances on the bench were described as being anything between very good and appalling, and there were also some criticisms of their sentencing which was described by one advocate as 'a lottery'. The literature was also quite variable in the assessment of the lay magistrate. On the one hand they were seen as progressively getting out of their depth as they struggled with the complexities of the continually changing law. Lord Denning argued that 'a good laymen was better at trying fact than a middling lawyer. We must keep them' (The Magistrate, October 1991, p168). Badge, a stipendiary magistrate, argued that the retention of the lay magistracy was essential 'because a trial before a lay bench is a trial by one's peers' and as such is priceless (The Magistrate, November 1989, p196). But is a trial in front of the lay magistrates really a trial by one's peers or has this principle really become blurred by the mists of time? I expect on the one hand it can

be argued that it is possibly truer today than it was a century ago when the magistrate was also likely to be the local squire. But neither do I accept that the magistracy is truly representative of the society from which it is drawn. Nor do I have any doubts that an extremely large majority of magistrates emanate from a totally different world to the bulk of the defendants on whom they sit in judgement.

A few comparisons show that the majority of defendants in the study area who appear in the adult crime courts are young males aged between eighteen and twenty five, they are normally unemployed, socially deprived, of below average intelligence and live in the worst housing areas of the borough. Conversely the majority of magistrates are seen as being middle aged, middle class, or alternatively possessing middle class values, and even though the majority of magistrates possess a great deal of local knowledge they do not generally inhabit the same neighbourhoods or frequent the same areas as do their 'clients'. The appointment of magistrates is seen as being restricted to a relatively narrow band of society. While attempts have been made to widen this band, this has only met with very limited success in the area in which I carried out my research. This I consider is due to a number of factors. The qualities which are specified as being required by a magistrate tend to target the more mature, reasonably well educated and well balanced individual. The ability of magistrates to fulfil both the sitting and training commitments which are demanded on appointment, especially in an area of high unemployment, restricts the choice to those individuals who either have the flexibility of employment or who are in occupational positions where they can negotiate the necessary time away from their work. This often restricts the choice to those who are in either the professional and managerial grades or to those who are self-employed. It is also a fact that many of the candidates who are seen to possess the necessary qualities required by a magistrate are put forward by existing magistrates, a practice which can result in the Bench becoming self-perpetuating, a situation which is often re-inforced by an 'unwritten requirement' that the successful candidate must also be seen as being able to fit in with the present culture and ethos of the Bench. Therefore in comparing the quite often marked differences between the magistrates and those whom they judge, I would suggest that the retention of the lay magistracy on the grounds of 'trial by one's peers' is now totally outmoded and no longer appropriate. So on what grounds should the lay magistracy be retained? I have discussed the advantages and disadvantages of an all professional magistracy at some length in a previous section. While I have no doubts that in terms of absolute efficiency, an all professional magistracy could be totally justified. I am also convinced that the combined knowledge, both general and local, of a lay magistracy sitting in benches of three and supported by the legal knowledge of their clerks does bring an additional and essential dimension to the criminal justice system which would be sorely missed if a change was made to a totally professional magistracy.

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THE INTERVIEW QUESTIONS.

Listed below are some of the questions which were asked, or some of the statements which participants were invited to comment upon and which formed the basis of the interview phase. Some of these statements may appear to certain observers as being somewhat contentious. However, because most of the statements were based on the literature review, I was able to place these opinions at someone else's door and this did enable me, as an insider, to explore vital issues of the research without necessarily being associated with the views expressed and to retain my desired position of impartiality and objectivity and yet not to be seen by the interviewees as just an 'investigating magistrate'.

Many of the statements were of a 'general' nature and were used extensively throughout the interviews, others were more specific to a particular group or role and were therefore only employed where appropriate.

General.

'Justice is subjugated to organisational efficiency'. Are the magistrates' courts more interested in organisation than they are in dispensing justice?

Courtroom ceremony is maintained partly to facilitate the physical control of defendants and others who may step out of line, it is organised to degrade and humiliate the defendants. 'Bewilderment and embarrassment are openly fostered and aggravated, uncertainty is callously observed and manipulated'.

Defendants are escorted into the courtroom, told when to stand up, when to sit down, when to speak, when to be quiet. During the hearing he can be told to take his hands out of his pockets, chewing gum out of his mouth, the hat off his head and the smile off his face. 'Once he, the defendant, is in a distraught state where he just wants to get it over, judicial fears that the defendant might slow down the proceedings by being awkward are diminished'.

Defendants are set up in a guarded dock at a distance artificially stretched beyond the familiar boundaries of face to face communication and are asked to describe or comment on intimate details of their lives.

'Once the defendant challenges the absolutism of the legal rules on the grounds of an overt appeal to common sense, the defendant's challenge can be portrayed as either out of place, out of time, out of mind or out of order'. It has been suggested that justice is often dispensed in spite of the defendant's presence.

Some defendants, admittedly in the Crown Court, had difficulty in deciding whose side their advocates were on.

Defendants feel an acute sense of frustration and alienation. In relation to the due process the defendant stands as the 'dummy player' absorbing both the gains and losses of all the contestants. What is your view of the defendant as the 'dummy player'?

In contrast to their unceremonious and coercive presentation of the defendant, magistrates, police and other court users all project visual images of themselves and verbally embellished images of each other, 'Your worship', 'the learned clerk', etc.

Do you feel that the defendant is disadvantaged?

Is there a hidden agenda. A language or a signalling code by which all the regulars can communicate with each other but which excludes the defendant and on occasions even the magistrates?

Carlen asked thirty probation officers, When a defendant has appeared in court for the first time. What impression did they get of quality of the defendants' understanding of what had happened? 57 per cent of those asked didn't think that there had been any understanding whatsoever, 37 per cent thought they'd understood very little. From your own experience, what do you think?

Magistrates and clerks can go to elaborate lengths to explain the meaning of legal phraseology to defendants who either do not hear them or who nod in a dazed blank way.

How good are court chairmen at communicating?

To quote one researcher, 'There is a stark contrast between the courtroom and the squalor of its environs'. What do you feel about that contrast in our own courts?

The court experience is said to be characterised by waiting. Defendants becoming more and more nervous, increasingly harbouring fears that they will be sent to prison. How many people come to court these days thinking that they will go to prison?

If the magistrates do hold the power and they do make the decisions. Who or what in the courtroom has the greatest influence on these decisions?

The most frequently mentioned influence in all courts was the PSR. How influential do you think the Pre-Sentence Reports are?

Most of the courtworkers are said to be concerned with maintaining credibility with the magistrates. How important is credibility?

Magistrates are mainly middle-aged, middle-class, not very streetwise and often lacking insight into the social world of those they judge.

You can appoint 'working-class' people to the Bench but after a period of time they begin to display middle class values.

Is justice in the magistrates' courts a lottery?

The courts run by the stipendiary magistrates are said to be more professional and more efficient. Have you any views on that?

Is there a better way of organising and arranging the courts, a better way of doing it?

### **Magistrates.**

Do you feel that as a stipendiary magistrate, you not only direct the court, but if you want, you can also manipulate the court?

Some lay benches will do anything that is asked of them and often without questioning. Would you agree with that view?

Do you feel that magistrates are manipulated without knowing that they are?

### **Non-magistrates.**

Everyone in the courtroom are professionals with the exception of the three people who are sat on the bench and who make the decisions. How do you view that as professionals.

There are so many vested interests in court, police, magistrates, probation officers, it is a matter of them all fighting over one carcass. The pervading mode of interaction between the different legal teams is said to be one of uneasy compromise.

There is a feeling among magistrates that defendants quite often leave the courtroom laughing at them.

### **Court staff.**

Objectivity is traditionally the requirement of the clerk who is there to provide legal advice but not to influence. The dividing line between offering advice and having an influence on sentencing is rather a thin and unclear one. Do you feel that you influence when giving 'advice'?

The daily parade through the courts of recidivist drunks, alcoholics and kindred spirits is seen as a degradation ceremony which provides the audience, including the magistrates, with a series of spurious comedy turns. Do you reduce the diversity of defendants into manageable proportions by categorising them into 'types'?

### **Magistrates and court staff.**

For new magistrates, the message of the other court users is clear, the system works very well thank you, please leave it alone. Did you receive this type of message?

### **Advocates.**

Technically, the solicitor is supposed to represent the interests of the client. This supposition is mythical. Many defendants who are directed to apply for legal aid find that they are subjected to an outside court training on what they have to do inside, such training often being in the last ten minutes before the case is heard and often by a young solicitor whom they have never seen before.

The solicitor who works regularly in one court is often more prepared to accept the police version of events rather than their clients and the best the solicitor is prepared to do in court, is not to represent the client's views, but instead to present them as characters worthy of clemency, treatment or a second chance.

While it is the job of the defence advocate to try everything within the rules to get his client off, it is not necessarily the job of the prosecutor to get a person convicted. If that is true, does this not put the prosecution at a disadvantage?

### **Magistrates and advocates.**

Defence lawyers were generally perceived as inhibiting the magistrates' search for the truth of the case. At least they distort it by presenting the defendant's side, or by their mere presence they obstruct the possibility of direct communication with defendant.

### **Probation officers.**

Is there a conflict between being an officer of the court and a person who is there to 'assist, advise and befriend' the defendant?

A quote from a magistrate, "I don't know what side the probation officers are on, our's or the defendant's. They are supposed to be objective but I think they are on the side of leniency".

The role of the probation officer in the courtroom has been described as passive, apart from actually providing the PSRs they keep a low profile. Would you agree with that perception?

Many magistrates were quite critical of the recommendations in the PSRs and quite resentful of what they saw as a usurping of their power. I'd like your views on this.

THE INTERVIEWS - a detailed account.

B1. THE MAGISTRATES' PERCEPTION.

B1.1 The role of the magistrate.

*"But the power does ultimately reside with the magistrates, because they can 'pot' somebody, they can send somebody away. They have the power to do just that".*

(a stipendiary magistrate)

B1.1.1 The magistrates are the decision makers and as such they must set themselves apart from the rest of the court.

There was no doubt in the minds of the magistrates whom I interviewed, both amateur and professional, that ultimately the power and the decision making in the magistrates' courts rests with the magistrates. As I was told by the stipendiary magistrate, *"..you've got to be at arms length, .. you're deciding in the end .. you can't enjoy the privilege of the jokes and the nonsense".* The stipendiary also described the considerable power which is vested in and can be wielded by the magistrates, *"I think from my point of view, yes I have the power to send somebody to prison for twelve months, I suppose technically for longer if they are on a suspended sentence. I also have the power from knowing what the advocates are up to, .. not only that but they know that I know, so that gives me an edge".* This latter point demonstrates the magistrates' power and influence not only in sentencing terms but also in the control of the court and their potential to manipulate the proceedings, a matter in which the professional magistrate may well have the advantage over the lay magistrate. This latter issue will be dealt with in a later section.

B1.1.2 There is a need to improve the overall standard of behaviour in the courtrooms, this is the responsibility of the court chairman.

The standard of behaviour in the court rooms was often considered by the magistrates whom I interviewed as being of an unacceptable level. Neither was this problem seen as only appertaining to the defendant's behaviour. As I was told by one lay magistrate, *"I sometimes feel a bit annoyed when solicitors are chatting to each other when the clerk is presenting the case .. "*. Another lay magistrate was of the opinion, *".. if any improvement could be made in court, it is general courtroom behaviour, .. this is where the magistrates have to grip the court and to my mind there is all the difference between a weak chairman and a strong one in this case, .. and I've certainly stopped the court on half a dozen occasions when solicitors are having chats among themselves".*

B1.1.2.1 - the court chairman has much in common with a circus ringmaster.

One lay magistrate used the analogy to compare the court chairman's role with that of a circus ringmaster, *".. and while he is the kingpin, you've certainly got professionals all the way*

*round all wanting to do their act, sometimes at the same time". But I asked, "Has the magistrate not only the power to control the proceedings but also the potential to manipulate the court"? It was agreed that the court chairmen or the stipendiary magistrates do have the capability to do this on occasions, but I was also reminded by one magistrate that it is also possible to, "... lose control very rapidly, ... and I've seen it nearly go". I was told that part of being a successful chairman is not only knowing the right time to interject but also when it is the right time, "... to bite his tongue". The job of the court is to get at the truth and it is the job of the chairman in the courtroom to ensure that this aim is achieved, or as near as it is possible to do so. In order to attain this end it was admitted that it may fall to the court chairman to impose some control on the defendants, but the consensus view amongst the magistrates with whom I spoke was that in doing this, "... it is also part of the chairman's skill to see that the defendant is not embarrassed".*

#### **B1.1.3 New magistrates are welcomed to the bench and so is the knowledge which they bring with them, providing it does not herald change.**

*'Certainly for new magistrates and those becoming senior magistrates, the message from other court workers is clear, the system works very well thank you, please leave it alone', (Parker, Casburn and Turnbull, 1981). I asked a relatively newly appointed magistrate for her views on this particular observation. She told me, "No, not from most of the people I have worked with. In fact Mrs [ ] said to me on one of my first occasions sitting on the bench with her, 'Oh good, I was really pleased when I saw your name on the list, (The Allocation of Magistrates to Courts), I thought good, I'm going to learn something today'. What she was saying was, 'You are fresh from training, I might learn something from you'. I'm not saying they all have that attitude, but thankfully I do not think I've met up with many, although there are exceptions, who felt, 'Here's a newcomer who thinks she knows it all', and in a way that's very encouraging ...". Whilst the personal experience of this particular magistrate indicates that new magistrates, their experience and newly acquired knowledge are welcomed by the majority, it should not be taken as an indication that change is necessarily welcomed. A second magistrate informed me, "I think everybody has got a vested interest in keeping things as they are. Solicitors on both sides, the usher, the clerk, his or her assistants and ourselves. We know the rules and everybody is by nature a conservative, they don't want change". Another magistrate suggested that some magistrates might even have an ulterior motive for retaining the familiar rules and procedures, "People who are not very good at being magistrates might hide behind procedures as a way of preserving their own dignity because they are not certain what is happening either".*

#### **B1.1.4 The professional magistrate is qualified, trained and experienced, but how streetwise?**

It has been argued in the main text by many of the regular court users that the courts in which the stipendiary magistrates adjudicate are generally seen as being more efficient in terms of time and procedural organisation, although it was queried whether or not these are the criteria by which defendants actually assess their appearances at, and their treatment by the



courts. The stipendiary magistrates do see their knowledge, training and experience as giving them certain advantages when compared with the lay justices. As one professional magistrate told me, *"I also have the power from knowing what the advocates are up to, rather more, and I don't say I've got exclusive knowledge of that, than the lay magistrates have, having been one for twenty three, twenty four years. So I know what's involved out there, not only that but they know I know, so that gives me the edge. So they are going to treat me more with 'kid gloves' than they would a lay bench. So I have the edge there"*. Because of this superior knowledge and experience and also because of his professional standing within the magistracy, the stipendiary also considers that he has special responsibilities to fulfil. I was told, *"I'm conscious that I'm a 'pro' and I feel that I have to set certain standards and encourage the lay bench, .. to maintain good standards and get into good habits"*. This stipendiary also considered that because the 'stipes' send more people into custody than the lay benches do, then they are seen as being much harder in sentencing terms. This is, in the main, due to the simple fact of, *".. sitting everyday, and the law of averages"*. Whilst not disputing the stipendiary's superior knowledge of the law, court procedures and a more detailed knowledge of many of the major players, one lay magistrate did query whether this necessarily made for a better quality of justice? This magistrate argued, *".. if you are trained in law and if you are there everyday, then you can become cut-off from everyday people and cut-off from how they feel and their way of life and it tends to become a job to you and that happens in any profession"*. This particular magistrate also went on to say, *"So I'm very wary of anyone who thinks that this should be a profession, that people should do it everyday, that therefore they can do it better than we can. I'm sure that the stipendiary does a good job, but nevertheless I think he can possibly become a little bit 'un-streetwise', for the want of a better term, because it is his job and he's doing it and he might become a little bit anaesthetized"*. This magistrate conceded that a system which uses lay magistrates could be, *".. a lottery, and that's what the lay magistracy is and that's what we get"*. But what, I asked this magistrate, is the alternative? *"The only alternative is to have professional stipendiary magistrates and I don't think that would be as, not effective, but as fair in the long run"*.

#### **B1.2 Justice and organisational efficiency.**

*"Now I don't feel that I've ever been hurried.  
In spite of all that has been said, I still feel  
that no one, whether it be the clerk, the usher,  
the CPS, has ever attempted unduly to influence  
us to get on with it and get things out of the way".  
(a lay magistrate)*

##### **B1.2.1 Is justice subjugated to organisational efficiency?**

When I put this question to the magistrates whom I interviewed the replies which were given appeared on the surface to be somewhat guarded. As one magistrate told me it was possibly truer when the claims were made than it is now. I was told about times past when the courts used to sit until seven or eight o' clock in the evening in order to prevent part heard cases having to be adjourned and defendants, witnesses and everybody else having to be

brought back to court on future occasions. But at what price? What quality of justice is dispensed by magistrates who have been sitting all day, or since the early hours of the afternoon, and are then asked to make important decisions so late in the day? Now I was told, *".. very very seldom do we sit after half past three, four o' clock"*. The stipendiary magistrate insisted that both organisation and efficiency are fundamental to the running of the courts, *"Yes, I think you have to make sure that the business is despatched with a measure of efficiency because if there was no formalisation and everybody threw in their two-pennyworth in any order .. it would ramble on for ages. The structure of it, I suppose has to meet certain criteria in terms of efficiency, but I don't think that's why it's designed that way, I think that is purely a product of it"*. However one magistrate did express a concern that perhaps the procedures which are in place are too rigid. *"Perhaps if the procedures were relaxed so that we didn't all have to remember what comes next and we could operate a little more common sense and we could let the defendants say what they want to say. Because you can sometimes see that they are bursting at the seams to speak out, because they feel, ' .. this is not fair, this is what is being said about me' .."*. It was accepted by some that there has been a tendency in recent times to quicken up the proceedings but it was maintained that this policy has not been to the detriment of the defendant. This point was emphasised by one of the magistrates who told me, *"I've seen a tendency in recent months to quicken things up, but again if you think of the main criteria as justice with the defendant, that has not been subjugated at all. What changes have been made, I think are all to the good from everybody's point of view .."*.

**B1.2.2 The combined efforts of the Legal Aid system and the magistrates have succeeded in minimizing both the number and the lengths of adjournments.**

*"I still feel the system could be improved and I often feel that they don't get justice because they have to wait too long .. and have to come back time and time again to court"*. This view was expressed by one magistrate and was concerned with the problems of adjourned cases and the concept of 'justice delayed is justice denied', a concern which was shared by other colleagues. Another magistrate, however, did feel that recent amendments to the Legal Aid system, the changes to the payment rates, could possibly result in restricting both the number and lengths of these adjournments. As I was told, *"There were some solicitors who were unscrupulous, no question about that, and on occasions I've had to say 'No , with colleagues of course on this, ' ..that we see no reason why an adjournment should be made'. When they argue very strongly then the adjournments we used to think of in terms of six weeks, eight weeks, they are now a fortnight and we say, 'Can you manage a week Mister So and So'. So the message is there"*. This action to reduce the number and lengths of adjournments whilst not adopted as a specific Bench policy was, I am told, instigated and encouraged by the two senior professionals of the 'court team', *" .. it's only the hints that have been given to us by [the Clerk to the Justices] and also [the stipendiary magistrate], just in the little hints and tips over the Retiring Room table"*.

### **B1.3 Courtroom organisation and the degradation ceremony.**

*"I hate that when they're asked to give details of their finances. ...They're stripped of their dignity aren't they and they stand there and talk about how much they owe the rent man and the milkman..".*

*(a lay magistrate)*

#### **B1.3.1 If the courts are to function efficiently then the people who appear before them must have respect for their authority.**

All of the magistrates with whom I spoke were unanimous in their views that the people who appear in the courts should show respect for those courts and for the authority which the magistrates represent. On the other hand it was also felt that the courts should demonstrate the qualities which were deserving of this respect. In the opinion of one lay magistrate, *"I think that if someone is having to come to court to be judged by their peers then they have to have a certain respect"*. This magistrate was also of the opinion that if the courts are to demand respect, then the structure of the court and the dignity of the proceedings has to be such that the respect of the participants is both earned and retained. I was told, *"I think the structure of the court and the way the defendant views the bench and what these magistrates are representing is important, I think we have to keep a sense of status and dignity so that it is respected"*. This magistrate even went as far as saying, *"... and I think that if people don't have that certain amount of respect for the Bench and the authority it represents then the system would collapse"*. Another magistrate emphasised the fact that, *"We are there to represent the law, the Queen ..."*. This point was expanded upon by the first magistrate who told me, *"We are representing a position and that is the important part of being a magistrate, that you are representing a position of authority. Why are we there? Why are we sitting up there and why do we have to go through all the business of swearing in and everything if our position is not given respect?"* This magistrate was keen to spell out to me the extent to which this authority should be interpreted by the magistrates themselves, *"We are the guardians of that position and we ought to be very much aware of that ourselves. I never feel when I'm sitting up there on the bench, ... that I'm personally being given that respect. I don't expect to be respected as a person but I do expect that the position I represent is respected"*. The magistrates with whom I spoke were also in agreement that quite often the courts are not strict enough in ensuring that the general standard of courtroom behaviour which recognises the status of the court is demonstrated, neither was this criticism only directed at the behaviour of the defendants. It was also considered that the behaviour of some of the advocates could be improved. As one magistrate told me, *"I sometimes feel a bit annoyed when solicitors are chatting to each other .. when the court clerk is presenting the case"*.

### **B1.3.2 There is a need for symbolism because it identifies the authority of the court.**

The court has a duty to emphasise to the participants the importance of the occasion and it is considered that the rules and procedures which form a major part of the ceremony of the court fulfil this requirement. As I was told by one of the lay magistrates when I suggested that the reasoning behind the ceremony was 'partly to facilitate physical control of defendants and any others who step out of place', (Carlen, 1976, p25). *"Yes ceremony, not for ceremony's sake, but to establish the setting and the rules and the procedure"*. In saying this, the magistrate did concede that there were occasions when certain procedures were invoked in order to control and constrain the defendants, but his view was, *"The need for constraint, yes, on what are we talking about, one in a hundred, one in two hundred who need to be constrained"*. The view of another magistrate was, *"I feel it should be very strict, very awe inspiring. I really feel that, because then people recognise that this is the law and this is what will happen to us ... I think it has to be like that. If the courtroom wasn't given some symbol of authority then how much would they take notice of coming to court. .. So what is the alternative, surely if you're going to court you have to be slightly in awe of that"*. The stipendiary magistrate was also convinced of the requirement for the courts to be conducted in an orderly way. He told me, *"Well you have to have order in these matters. I mean you can't just have somebody shuffle in and please yourself who talks to the court and please yourself what sort of questions are asked"*. If the courts were made more informal then it was suggested that this could have the effect of diluting the way in which the authority of the court was perceived by those on whom it sits in judgement. As one magistrate explained, *"It depends how we want people to view the Bench doesn't it. If they are thinking of it as something that is on a higher level to them, 'these are my peers but they have been given the right to sit in judgement on me', then don't we have to symbolise that in some way, isn't that how it's structured. It's structured in order to be symbolic of the higher authority"*.

### **B1.3.3 Much of the courtroom ritual and symbolism is based on tradition.**

*"What I do see is a certain amount of ritual. I like to see that because I think it adds dignity, not to put the defendant at a disadvantage, but basically because in the courtroom we are playing by the old rules of the game, .. there is courtesy and firmness, a tradition of a prosecution, summary, witness, defence opening, the summary, cross examination and so on"*. This view, that much of what happens in the magistrates' courts is based on its traditions and on the adversarial system which underpins it, was also shared by the stipendiary magistrate. He told me, *"There is a structure and a way of doing things which has evolved, it isn't something that I or anyone else has made up. But there has to be, in the way that our criminal justice system has developed, somebody to point the finger, somebody to represent the defendant and somebody to make the decision, and so you can't just have a general free for all. In my view that would be unedifying to say the least. So to marshal the arguments and to get the facts before the decision makers, whether it be one or three, there are rules which have been laid*

down and which are followed and that is to give the tribunal the information on which they can make a decision. Now I'm sorry that's formalised but I don't know any other way of doing it". Referring to the layout of the courts the stipendiary magistrate did agree that in part much of this was symbolic, *"I suppose the set up or layout of the criminal court is to symbolise that the justices, or the magistrates, or the judge is above the rest, well the fact is they are. They have been set up to make decisions and I suppose it is symbolic that they are ranged a little higher"*.

#### **B1.3.4 Poor behaviour by the defendants can inhibit the court's function of getting at the truth.**

The main aim of the magistrates' courts is to get at the truth in order that a correct decision can be arrived at and the appropriate justice dispensed. It was considered that there are some occasions when the poor standard of behaviour displayed by defendants can frustrate this ideal. The stipendiary magistrate explained that, *"The business of the court is to get on with it and to dispense justice as best it can without being distracted either physically or verbally"*. He then went on to say, *"Certain basic common standards of decency are required and if you expect a defendant to shamle in and not to talk to you and not to stand up when he is talking to you or just to behave as he would in a pub or anywhere else, I honestly don't think that is appropriate. One doesn't behave that way in other public arenas, why should we put up with 'tap room' behaviour in court .. "*. It was considered that where this type of behaviour is inflicted on the courts then corrective action by the courts is justified. In the words of one lay magistrate, *"If they behave badly they have to be told. If someone comes in wearing the slogan, 'KILL THE MAGISTRATES', or 'KILL THE PIGS', and they are chewing gum and they've got their hands in their pockets and they're deliberately showing that they've got no respect whatsoever for this court of law, then something has to be done about it"*. The responsibility for taking this action lays, in the opinion of the magistrates whom I interviewed, with the magistrates and where a lay bench is involved, specifically with the court chairman. *"This is where the chairman has to take command, ..There are things which are done deliberately which are showing contempt for the court. ...They should be jumped on"*.

##### **B1.3.4.1 - the magistrates need to be able to distinguish those defendants who are being intentionally disrespectful from those who are not.**

'But is there not a danger that those who are being disrespectful to the court in an unintentional manner, either through nervousness or just because they do not know any better, may be treated in the same way as those defendants who are being intentionally disrespectful?' The magistrate with whom I discussed this possibility agreed that these differences did exist and that there was a need to identify which was which and treat them in different ways. As he told me, *"If someone came into court and was not showing respect for the court it would soon become pretty obvious and that has to be checked immediately, ..obviously some people are really nervous when they come in and they don't know what to do with their hands and we have*

to recognise peoples body language and make allowances for it". It was also recognised that in contrast to those people who are intent on being disrespectful to the court there are the first time attenders, *".. and surely we get to recognise if this is someone's first appearance in court .. They don't know where to go, they don't know where to stand and you know if we're sensitive to that we ought to be able to appreciate that this is that person's first time in court and just help them through it"*. But in the instances where the defendant is showing disrespect, how does the magistrate deal with the situation? A lay magistrate who is experienced in taking the chair in the Adult Crime courts told me that there would be, *".. a word of advice given by the chairman to the defendant and if that doesn't bring results then I feel that it's got to be pointed out more strongly, and then the final warning"*. On occasions the assistance of the defendant's solicitor may have to be sought, *"... I've put a case back and sent the defendant out of court with his solicitor for a word of advice although I haven't told his solicitor what to tell him"*. The stipendiary magistrate told me that on occasions he has threatened to exclude wayward defendants from the proceedings. He told me, *"I've said to people when they have misbehaved, 'Look we have a certain way of behaving in this court and if you do you are welcome to stay, but if you don't, you know, keep quiet when people are talking, then I'll order you out"*. But it was emphasised by all the magistrates with whom I spoke that it is important to recognise the behaviour which is intentional and that which is not. In the words of one magistrate, *"Again this is where the experience of the chairman and the two wingers comes in, to see and spot the behaviour which is unintentional as against the defendant who is putting 'two fingers up' at the court"*.

#### **B1.3.5 The degradation of the defendants is both a relic of the past and counter productive to the aims of justice.**

In commenting upon the claim that the treatment of the defendant in court is often designed to put them in a 'distraught state of mind where he just wants to get it over', (Carlen, 1976, p29), one lay-magistrate admitted, *"Oh there's so much in there that is true, but that again I would put in the minority of cases"*. Also commenting on the Carlen quote the stipendiary magistrate maintained that in his opinion the situation had not been accurately interpreted and that the actual treatment of the defendants was, *".. not all as oppressive as the quotations you are saying are made out. .. I think that is an overstatement, very much so"*. The stipendiary magistrate continued, *"I'm sure it is not intended in this day and age to degrade, I think at one stage the courtroom was certainly there designed, particularly in the Victorian period and we have a bit of an hangover of that .."*. The reason for this 'hangover' was blamed, in part, on the age and the design of the courtrooms of that era, some of which are still in regular use today, a factor which was relevant to the study area during the main period of the research. As the stipendiary magistrate admitted, *"Some of the grandiose courtrooms may have that effect but there's very much a move away from that style of courtroom in the new buildings. So I think there might be a 'rizzum' of truth, injecting a measure of awe into the thing."*

*But I think to degrade, that's far overstated". In fact I found all of the magistrates whom I interviewed to be very much of one mind on this topic, they all viewed the degradation of the defendant as not only undesirable but also counter-productive. In the words of one magistrate, " .. if we embarrass a defendant or a witness, .. we are not going to get at the truth". Another magistrate discussing the problems of demeaning the defendants felt very strongly that there was no place for it on the courtroom agenda and told me, "That is not my perception of courtroom ceremony. If I thought it was what we were there for, I would not want to be a magistrate". But even though there appears to be this general rejection of the degradation ceremony as such, it was admitted that where the defendant is seen to be intentionally disrespectful to the court then some sanctions will be invoked. As one magistrate put it, "If you've got a 'bolshie' defendant he must be made to realise that he's doing himself the biggest disservice of all". But this magistrate concluded, "But humiliation and embarrassment don't sit easy".*

#### **B1.3.6 Magistrates who humiliate defendants should not be magistrates.**

Whilst it was generally agreed by the magistrates that the procedures in the magistrates' courts were not specifically designed to humiliate and embarrass the defendants, unless, as has been stated, they step out of line, it does appear that in certain situations and with certain groups the application of the courtroom procedures by some magistrates is intended to do precisely that. As one magistrate said, *"I object very strongly to magistrates picking on certain types of people because they feel they can get away with it, .. I would object really strongly if I saw someone being treated like that and people do do it, magistrates do do it, particularly if they feel they can pick on someone because they're younger, a young lad, a youth who might have longer hair than he should have".* This magistrate expressed the view that this sort of behaviour from magistrates identifies, *" ..the wrong type of magistrate".* But even these strongly worded views were somewhat tempered by a rider about defendant behaviour, *" .. sometimes they dont deserve it, but an awful lot of the time they do".* This magistrate was also of the opinion that the attitude of individual courts towards the defendants is quite often governed by the approach of one or two of its principal actors, *" .. the person who is sitting in the chair and the court clerk".*

#### **B1.3.6.1 - in the Fines Enforcement courts humiliation and embarrassment can be tools of the trade.**

During my interviews with the magistrates, I again mentioned both my observations of, and my own experience in the Fines Enforcement courts where it appeared that the demeaning of the defendants was a tactic which was regularly employed by the magistrates. This point was conceded by at least one magistrate who told me, *"You' ve picked there the exception that proves the rule. That is, we are trying to embarrass them in a Fines court, in general that is a fact".* In an attempt to justify this procedure, I was told, *"Yes, are you trying to*

*humiliate them? Are you trying to embarrass them ..? I think that those two are by-products of what you want and that is to try and get money out of them. You want to tell them effectively, you're not believing what they've said, .. they're working the system, you know that and what you want to do is to get over to them .. that you know that they're doing that". But whilst admitting that embarrassment and humiliation are a part of the procedure in the Fines Enforcement courts, this magistrate was also keen to assure me that, "... Fines courts are the exception. I can't think of any other where you really want to come down on the defendant, unless they are misbehaving".*

#### **B1.3.7 Respect needs to be a two way street.**

There was also a consensus amongst the magistrates to whom I spoke that in expecting the defendants and the witnesses to demonstrate their respect for the courts then there was also a requirement for the courts to extend some courtesies in return. As one of the lay magistrates said, *"I think we ought to be giving them a little bit more dignity when they come into court. ..I think that everybody has to be given their own dignity, so I think magistrates should conduct themselves with dignity and they should allow the defendants to be able to conduct themselves with dignity".* This magistrate felt that there was also a need for the regular court professionals to appreciate the situation in which many defendants, *"..ordinary people",* find themselves and to realise that they can, *".. feel very threatened by the professionals and the law and by authority".* This magistrate was critical of some regular court users who seemed to have lost sight of the presumption of innocence on which the English justice system is based. I was told, *"When we walk into court we might not be guilty. ..a lot of the time we have people coming in and really they just come to court to make a protest, because they've had this letter, '.. it arrived on my birthday and I have paid my tax and I have paid my insurance', and they've come to court to make some type of protest and we have to be careful with peoples' dignity".* Another lay magistrate maintained that one of the simplest ways in which the courts can assist people to retain their dignity is to ask people to do things rather than telling them. By saying please, *"..Please, it's a request with a 'please' ..".*

#### **B1.3.7.1 - the non-use of titles, a means of humiliating the defendant or a harmless tradition used by the legal professionals.**

The two areas which seemed to attract most comment in the 'dignity discussion' which I had with the magistrates, were the insistence that the defendants must always stand when they are either being addressed by the court or when they are addressing the court, and the fact that some magistrates address the defendants by their surnames only and do not prefix it with the title Mr., Mrs., Miss or whatever. Concerning the former, one magistrate told me, *"I hate this business of telling people to sit down and stand up and sit down and stand up. If I were a defendant I'd rather stand up until it is over with and then go out, and it's ridiculous this business of, 'May he sit down Sir?', 'Right sit down', and then ten seconds later 'stand up*



again', 'Right, now sit down again. There's no point to it, why have we got them jumping up and down like that'? With regard to this latter area of contention I was told, " And these people should also be addressed as 'Mr.' or whatever they want to be addressed". This was seen as another way in which people could be allowed to retain their dignity whilst appearing at court. Another magistrate assured me, "I would never call the defendant by his surname only", but admitted, "I've seen it done". It was however interesting to see that this was seen to be more of a problem by the lay magistrates than it was by the stipendiary, who saw the addressing of defendants by their surnames only as no more than a part of courtroom tradition, a practice which is very common between the members of the Bar. The stipendiary magistrate assured me that, in his opinion, this practice was definitely not designed to demean the defendant. He told me, "It's very much a Bar thing, in that members of the Bar will address each other by their surnames .. until they get to know each other and then they will address you by your first name or call you Mr So and So. But it is a strange habit that the Bar have and which has caught on in a sense... But I don't think there's any side to it, I mean I vary enormously, I call some people Smith, I call some people Mr Smith, it just depends how it comes out and I don't think anything about it. So I think it's a load of nonsense, I don't think there's anything in that at all". This magistrate did disapprove of the practice which had been outlined to me by another court user whereby the defendant was referred to by using their title before conviction but by surname only after either being convicted or an admission of guilt. As he told me, "Oh, no, no, no, that is demeaning somebody, it is really"

#### **B1.3.8 Organisation and procedure can have the effect of humiliating the defendants, but ..**

During my interviews with the magistrates, I asked them to express their views on the statement, 'Defendants are set up in a guarded dock .. at a distance artificially stretched beyond the familiar boundaries of face to face communication and are asked to comment on intimate details of their life', (Carlen, 1976, p23). Whilst it was acknowledged that the dock in the study area was only used for those defendants who are produced from the cells, it was also agreed that much of the statement had a familiar ring. As one magistrate told me, "Yes and that's really humiliating, I hate that, when they are asked to give details of their finances and they do .. They're stripped of their dignity aren't they, and they stand there and talk about how much they owe the rent man and the milkman and how much insurance and how much tax. It's really wrong that they should do that to people, I really dislike that side of it. I do hate that side of it, it's something that's been worrying me for a long time actually. I mean someone might come in for a really trivial offence, something that's been overlooked. .. But it's the clerks who do this .. I often want to lean over and say to the clerk, 'Why did you make him go through all that. Why can't they simply say, 'How much could you afford to pay' and then if there's a problem let's go through it. But there again they are able to hand in their finances on a form now aren't they'? A second magistrate did not view this inquiry into the defendants' means with

quite the same degree of dismay. While admitting that some defendants do occasionally query why they need to divulge their finances to the court, once the reason is explained to them, that the information is required because, " .. *'it would help us to come to a fine which we hope will be in accordance with the severity of the offence and your means to pay any fine'*, I've never had anything but cooperation from a defendant". Another view expressed by both the professional and the lay magistrates was that there is enough information contained in the correspondence which is sent to the defendants prior to their court hearings to give them a strong indication of the type of information which they will be asked to give to the court. Where the defendant is represented by an advocate then it is the job of that advocate to prepare the defendant for what to expect.

**B1.3.9 Not all of the courtroom ceremony is for ceremony's sake, there are some practical reasons.**

While much of the ceremony and ritual which plays a part in the courtroom drama is claimed to have evolved over time, not all of the symbolism which is witnessed in the magistrates' courts should be viewed as ceremony for ceremony's sake. As has already been stated, some of the symbolism is seen by magistrates and others as demonstrating both the status of the magistrates as well as their impartiality in their role as the decision makers. In addition to this, the tiered seating arrangement and the distancing of the magistrates from the other court users and in particular the defendants and the general public also has, according to the stipendiary magistrate, considerable justification. He related to me a specific instance where he saw magistrates actually put in fear by the behaviour of some attenders in the public areas of the courts. In his words, *"I've known magistrates to feel intimidated by the presence of numbers in court. I can remember once being in a court where there was a demonstration, it was an industrial dispute and the court was packed with people and every point they cheered. The magistrates, I could see they were trembling, they were extremely concerned as to how, or whether, they would get out of the courtroom safe"*. This magistrate also put forward his views as to why the docks need to be retained in the courtrooms where dangerous defendants are dealt with, *"Well there are purposes in having a dock and having somebody a measure of a distance away from you. It wouldn't do .. to be as close as I am to you, across a desk, dealing with someone who has been indicted for murder, or rape, or violence. One has to observe some security"*.

**B1.3.9 1 - in liberalising the courtroom proceedings, care must be taken to preserve the authority and the dignity of the courts.**

While there was a fair degree of consensus among the magistrates with whom I spoke that some of the courts could be conducted in a more liberalised atmosphere and a more informal setting, they were eager to point out that there are a number of different types of courts which are designed and organised to fulfil totally different functions. The Family courts,

which have been previously mentioned, being a prime example of a court which can be held in a quite informal setting. But some Crime courts have also been held in a more informal setting, albeit due to unusual circumstances, the courts being additional to the normal courts and located in the Magistrates' Retiring room. One magistrate related his experiences of this type of court. *"I've sat round a table in the Retiring room and used that as a court, .. and I don't think we suffered any lack of dignity. We were at the end of a very big table and the clerk on one side and the defendant on the other. The answer is Yes, we could all sit round a table, apart from dangerous defendants".* The main area of concern expressed to me by the magistrates centred on the problem of being able to create a less formal courtroom environment whilst at the same time ensuring that the authority and the dignity of the courts are preserved. One magistrate spoke to me quite extensively on this topic and the dilemma which it generated. *"I'm not altogether sure whether we should change the structure or how we should change it. But yes certain procedures should be changed and certain language and attitudes. .. I think some of the language could be changed, it's archaic and I would hate to be referred to as 'Your worship' or even 'Ma'm'. Language in court can be very pompous, ... the language is stupid. But I still think we should have a certain structure .. I think the structure of the court and the way the defendants view the Bench and what these magistrates are representing is important. I think we have to keep that sense of status and dignity so that it is respected. .. But I think the procedure of the court could be changed and the language could be changed as long as we are all aware that we are there to guard our own rights and everybody else's rights".* This magistrate also warned against de-formalising the proceedings too far, *"I just feel that if it was structured differently so that everyone was at the same level, .. Would we still have the same respect? .. If we haven't got something to look up to, don't we construct something that we can look up to and respect and surely we ought to be looking up to law and order, surely that ought to be part of the system. If going to court mean't going and sitting in a nice cosy office and just having a chat with someone across a desk and being handed a cup of coffee while it was sorted out, nobody's going to pay a great deal of attention to that kind of procedure".*

**B1.3.10 In being concerned for the dignity of the defendants, the problems experienced by the other court users, and the victims in particular, should not be ignored.**

My approach to the interviews with the magistrates was in some areas focused on the plight and the treatment of the defendants. I was reminded by some of the magistrates with whom I spoke that there are also a number of other people who may feel that they have received adverse treatment from the justice system as practised in the magistrates' courts. As one magistrate told me, *" .. and not all people with authority in court come off all that well, I often see policemen and women embarrassed and humiliated, you know the solicitors can sometimes tear them to shreds if they haven't got their evidence together. So I think we are all there, potentially we can all make fools of ourselves or be made fools of can't we".* Another

magistrate expressed his concern for the dignity and respect of the witnesses. As he explained, *"I think one of the greatest sins that a solicitor can impose on the court .. is that he abuses the witness, .. So I think in the terms of the attitude of the court, solicitors must be brought up so that there is no intentional embarrassment, if there is embarrassment then it should be redressed as quickly as possible"*. The reasoning behind this particular magistrate's thinking is that, *".. we've got witnesses coming to court now in spite of, in many cases, great provocation, nobbling, they still come, they're doing a service. Is it right they should be abused, verbally lashed, told they are lying, told what they are saying is a pack of lies?"*. This magistrate was concerned that unless witnesses are treated with due respect by the courts and protected against humiliation and abuse, *".. Will they consider ever coming to court as a witness again, and the answer is no. Who suffers there? It's justice"*. This magistrate not only saw it as the court chairman's job to offer some protection against the abuse of witnesses, but he also had a 'golden rule', *"That any witness, whether you feel he's told a pack of lies or not, is to be thanked for coming to court and for his evidence"*. Another magistrate expressed concern for the victim, especially in the cases where the defendant has pleaded guilty. In this magistrate's own words, *"I mean most of us, I'm sure, recognise the fact that the solicitor is there, on behalf of his client, to tell a very one sided story and there are problems inherent with that, because for example, and this is something that really bothers me, the victim, in a lot of cases where the defendant pleads guilty, can have their reputations sullied because there is no one to speak for them. The solicitor is able to give his or her side of the story, [the defendant's], and tear to pieces the victim because the victim is not there. They don't even know that that person is in court on that day, because nobody bothers to tell them. We also have to recognise that the CPS is being very objective, .... he's there to represent the case for the police, he doesn't particularly care about the victim, because he's probably never seen the victim"*.

#### **B1.3.11 Some of the regular defendants at court can be more experienced than the magistrates.**

During my interviews with the magistrates. I asked them for their views on Carlen's, description of the defendant as the 'dummy player', (Carlen, 1976, p42). The reaction from one of the lay magistrates was spontaneous and drew a very strong response. Prior to this, this particular magistrate had expressed considerable concern for the defendant's plight. *"But come on Gordon, a lot of the defendants that we see in court have been there before many times. Some of them know exactly how to play the system, ..an awful lot of our clients have been before many times, they know the system better than we do. I bet there are some people who go to the magistrates' courts who've been there more times than I have .."*. Once again though all of the magistrates were concerned that the members of the Bench are able to , *".. recognise if this is someone's first appearance in court and .. just help them through it"*. Another magistrate was of the opinion, *".. that if the defendant needs help then it should be given, especially an unrepresented one, and here I can pay tribute to the clerks and to the majority of*

*the prosecution in that they don't seem to take advantage of the unrepresented client, ..they in turn seem to help out". The stipendiary magistrate was somewhat critical of Carlen's analogy of comparing the courtroom procedure with a game. He told me, "It can be that, I've seen it degenerate to that on occasions, But I think she's overstating the situation to make a point. The one thing you can't do is generalise with these things, you know it's alright making these sweeping assertions but you can never generalise in relation to these situations".*

#### **B1.4 Power and influence.**

*".. unfortunately there are some magistrates who do take too seriously what the solicitors say and that's the older ones really .. "*  
(a lay-magistrate)

##### **B1.4.1 The magistrates have the power, but how they arrive at their decisions is by all sorts of devious methods.**

*"But the power does ultimately reside with the magistrate .. because they can send somebody away. They have the power to do just that. .. I have the power to send somebody away for twelve months. .. So I have the power".* There is no doubt from this example quoted by the stipendiary magistrate that the magistrates have been given quite considerable sentencing powers. I also asked the question whether or not the magistrates also have wider powers, for example, the power not only to direct the court but also the power, if they so wish, to manipulate it? The stipendiary magistrate replied, *"Yes I would say that I have the power to do it, or I can do it up to a point"*. He also told me that because of his experience both as a solicitor and as a magistrate, experience which is not common to the majority of lay magistrates, *"I also have the power from knowing what the advocates are up to, not only that, but they know that I know, so that gives me the edge"*. But what I was interested in was how, having been given the power, the magistrates actually arrived at their decisions. On this particular point I found the stipendiary magistrate both vague and definitely noncommittal. He told me *"How they arrive at that decision? To do it might be all sorts of devious ways and I don't know"*. A lay magistrate told me, *"You have to listen to what's being said and forget what's being inferred and forget what's between the lines and you just have to make your own mind up. That's what we are here for anyway, isn't it?"* I asked this magistrate whether or not being amateurs, the lay magistrates are manipulated by the professionals without realising it? I was told, *"It sometimes works against them, [the professionals], ..Because sometimes you get into the Retiring Room and you've listened to what's been said and you just know what is right and you've got the power at the end of the day to override what they are saying. At the end of it you can just say, 'Right, well this is our decision. This is what we feel about it', and you can sometimes let your instincts come in, because instinct has got a part to play in this, otherwise why bother having us, why not just train professionals"*.

#### **B1.4.2 Some magistrates are too easily influenced by solicitors.**

But if the magistrates are the decision makers, who are the people who have the greatest influence on their decisions? In the words of the stipendiary magistrate, *"It is said that, 'A trial in England is to decide who's got the best lawyer' .."*. But in practice, how influential are the advocates in actually persuading the magistrates? The stipendiary continued, *"I don't know, it depends on the day doesn't it, how it strikes you, as to how much you listen and how much you take in. I've sometimes thought, 'Yes, he's got a good point', I've had my mind changed, not very often, but occasionally by a good advocate"*. That was one professional's view of other professionals, but what about the advocate's ability to influence the lay bench? The stipendiary told me that in his opinion, magistrates appeared to be influenced too easily. *"I think some magistrates appear, it would be wrong to say they do, but appear not necessarily to think about what they are actually asked to decide... "*. This happens particularly on those occasions when the prosecution and the defence are in agreement as to some course of action, and the magistrates appear too eager to concur rather than standing away from it and asking themselves, *"What are we being asked to do?"*. One of the lay magistrates was even more critical of the way that some colleagues allow themselves to be influenced by certain advocates, this is not always by the power of their arguments either, but sometimes because of the esteem in which those advocates are held. I was told, *" .. unfortunately there are some magistrates who do take too seriously what the solicitors say and that's the older ones mainly, ... They sit there and are very impressed by solicitors because they are very rich people"*.

##### **B1.4.2.1 - the CPS presentations are mainly factual whilst many of the defence advocates' presentations are clouded by subjectivity.**

*"The CPS presentations are very factual, so I listen to what they say, but you sometimes get an impression that they are not telling you as much as they ought to be telling you, or that they don't know the case very well"*. I found this opinion as voiced by one lay magistrate to be quite representative of the views of a number of magistrates. Conversely this same magistrate's perception of the defence advocates was, *"The defence solicitor, I filter what he is saying, I try to filter the facts from the subjectivity that clouds them. I switch off when they start telling me what a wonderful person this is and how they have lived an unblemished life. Besides I'm not absolutely sure a lot of the time whether that is relevant to what is being said to us"*. This magistrate continued, *"You learn to read certain solicitors as well, because if the solicitor is very effusive about his clients, like certain of our solicitors are, then you learn to read when he is not being effusive, so you get certain clues from that"*. I did ask how important the performance of the advocate was in the court room and I was told by the professional magistrate, *"I wouldn't take it out of a defendant because he had got a bad solicitor. .. In terms of his own career, well the better he is the more customers he'll get, it's as simple as that"*. From this comment therefore it would appear that the advocate's performance is more relevant to commercial success than it is to whether or not a person obtains or is denied justice.

**B1.4.3 The probation report, the professional and the amateur interpretations - a conflict of opinion.**

In the opinion of one stipendiary magistrate, the Probation Service are useful as a source of background information pertaining to a particular defendant but he had very serious doubts about their ability to influence the magistrates in their decision making role. As he explained, *"I don't think the Probation Service have a great deal of influence. I have to say, I think they have minimal input in relation to matters. .. I think they're very good at doing the solicitor's job and providing you with background information but in respect of the force of recommendations, I have strong reservations about how much notice is taken of these"*. He went on to explain the reasoning behind his statement, *"I accept that they, [the Probation Service], are not there to recommend custody, they are there to recommend anything but and that's the basis on which I look at a probation report .. they provide a range of options, some which I may accept, some of which I don't. But they are not there to send anybody down and you have to weed through and say well this is serious .."*. I developed this professional magistrate's view of probation reports, (Pre-Sentence Reports), in my discussions with the lay magistrates whom I interviewed. I was told that in a number of areas there are reports which are seen to achieve an acceptable standard and there are those which are considered to be very poor. In expressing a personal view one lay magistrate told me, *"I'm certainly worried about the wide variety of standards. On the one hand they are poorly constructed and presented. Reports where the verbage that is used, the bad construction, the poor techniques used, tend to say, ' .. what on earth have we got here', and you go ahead and sentence and you tend to push it on to one side"*. But on other occasions, *"You have a report and it's a clincher because you feel it summarises so well, so accurately all that has been said by the prosecution and the defence and the defendants and really the options that are stated for sentencing are good"*. It was also claimed that a good report can bring out the really important matters which are not immediately evident even to an experienced bench who may see the defendant in the courtroom for no more than a few minutes, *"..family problems, ..educational problems, ..mental illness, ..mental disabilities.."* So in general this lay magistrate did see the probation report as, *".. important, certainly on sentencing, .. it gives you the relevant features"*. But the Pre-Sentence Reports are also seen by magistrates to be susceptible not only to the prejudices of the writer but also to those of the readers. As one magistrate commented, *"It is written by humans for humans, so take it for what it is. Look at it, look through it. ..Now in that respect, we're putting them on trust, we're trusting their judgement, because they are giving us a filtered version through their eyes"*. This magistrate did conclude on a cautionary note, *"Now what degree of trust can you place in every report? It varies"*.

#### **B1.4.4 The clerks can manipulate benches, unquestionably.**

*"I think clerks can manipulate benches, unquestionably, and it depends on the communication skills of the clerk and how determined that clerk is to influence, and they can make a significant difference".* This was the view of one very experienced magistrate. Another magistrate told me, *"If I'm not absolutely sure then I would take into consideration what the clerk has to say"*. But again it appears that this could well depend upon who the clerk is and what level of credibility he or she has with those particular magistrates. This magistrate continued, *"There are some clerks who might come in and have certain attitudes and I might not take much notice of that"*. The practice in the study area when the magistrates retire to consider either their verdict or their sentence, is that they will send for the clerk only when they feel the need to consult and seek advice on either the legal aspects of the case or on sentencing practice. This, I was told, is not always the practice which is necessarily adopted by all of the English courts. I was told of a court where, *".. the chairman stood and said, 'The bench will retire and we will ask our clerk to accompany us'. We were under instruction that this would happen. .. Sometimes we asked guidance on our powers of sentencing whilst the clerks were in, .. Some left us to get on with it .. One or two clerks .. would stay in whilst we discussed innocence and guilt and indeed sentencing. Some stayed with us all the time and some older and not necessarily highly qualified clerks, they would tend to be very forthright in their views and they would, if not tell us what to do, certainly point us very much into the direction of what they felt the penalty should be and indeed guilt and innocence, although that was quite rare"*. In answer to my question on whether or not magistrates are influenced by the 'hard to conceal' non-verbal reactions which the court clerks sometimes exhibit when they are informed about decisions with which they do not agree. I was told by one magistrate, *"I'm concerned, yes, I don't know whether it influences me, it concerns me, and then I feel, perhaps we should spend a little bit more time and have a little bit more discussion in the light of what the clerk had to say"*.

#### **B1.5 The magistrates' perception of the defendant.**

*"So I think from the defendant's point of view, they don't necessarily want to see a professional and efficient court as long as they feel they're getting justice"*

(a lay magistrate)

#### **B1.5.1 There should be a presumption of innocence, unless there are telltale signs.**

I was told by one lay magistrate that, *"We have to remember that when they, [the defendants], walk through the door, these people have been accused of something but we don't know whether it is true or not"*. The presumption of innocence was seen by this magistrate to be the basic requirement that must be acknowledged by the courts and because of this the defendants should be given every opportunity to put their cases to the court in the best possible light. As this magistrate put it, *".. we can't expect someone to walk into a court and stand there*



*and have to defend themselves. They might be inarticulate, they might be frightened, they might be nervous, they might have some sort of problem. We couldn't possibly inflict that on them". If this magistrate demonstrated one view of how defendants are perceived by magistrates, during the course of my interviews I also became aware that not all magistrates necessarily start off from this presumption all of the time. Another magistrate, during our conversation, did give an indication that magistrates may also have some pre-conceptions about certain types of defendants who appear before them. I was told how there are clues which can give an indication as to a defendant's background. An example quoted was, " .. where you see somebody come into court, either in the dock or in front of the dock, and stand with their hands behind them". I was told that this shows, " .. straightaway to an observant magistrate that is the product of a Young Offenders Institution. I mean we don't have to have a criminal record, we know that it is there and we know that he's already been through a caution, fine ....."*

#### **B1.5.2 An efficiently run court or justice, a matter of priorities.**

During my observations from the well of the court I did gain the impression that those courts in which the stipendiary magistrates adjudicated were, by and large, conducted in a more efficient manner than those courts chaired by a lay magistrate. I expressed this view to the lay magistrates whom I interviewed. This did cause one lay magistrate to query how important being dealt with by an efficient court really mattered to the defendant. From this magistrate's point of view, *"I don't know whether if I were a defendant, and I wasn't very articulate and I wasn't very intelligent, or if I was a little bit frightened of authority. Then I might feel better if I went to court and saw people like me sitting up there. I might not feel that I'm going to get away with what I've done, but at least I will be feeling that I'm being judged by my peers ... So in a way the court might not be running as smoothly as a stipendiary might run it. The person in the chair might not be as articulate, but he's talking the same language, or she is talking the same language as the people who are standing in front of him. .. Because sometimes people are very frightened when they come into court and they're frightened very often because of that kind of professional middle class accent that sometimes sits up there. .. So I think from the defendants point of view, they don't necessarily want to see a professional and efficient court as long as they feel they're getting justice"*.

#### **B1.5.3 The language of the courtroom, a conspiracy against the defendant.**

Claims have been made that many of the defendants who attend at court fail to understand either the proceedings to which they have been a party or even the decisions that have been reached and how it affects them, (Carlen, 1976, p22). This claim was not strongly disputed by any of the magistrates whom I interviewed, although as has been previously discussed it is not always considered prudent to generalise on this matter. But it was admitted that among the less experienced attenders at the courts then these claims were not without some justification. In conversation some suggestions were even proffered as to the reasons for

these failings. According to one magistrate there were a number of contributing factors, "*.. the strange surroundings. They're anxious, the majority must be anxious if it's their first appearance. .. They know where to go, they appear, they don't know what to expect, they've got certain ideas, they may appear to be streetwise but really they don't know what's going on.*". Another confusing factor was claimed to be the legal jargon which is extensively used in the courtrooms. In the words of one of the lay magistrates, "*..and the language. I mean the prosecutor, you need a law degree, he speaks in a 'pseudo-legalised dialect'. The defending solicitor is his only friend, but he speaks the other language as well. .. In that respect there is a conspiracy against the defendant*". This magistrate maintained that the onus is on the magistrates, not only to meet the legal requirements when making the pronouncements to the court, but also to ensure that the defendant understands by translating the meaning of that pronouncement into a language that the defendant cannot fail but understand.

#### **B1.6 The magistrates' perception of themselves and other court users.**

*"We are there to look at people who are there from ordinary backgrounds, or whatever backgrounds, and we are there to make judgements on them, .. If we are going to do that we have to understand what their life is like and if we don't do that, if we are cut off from that, then we shouldn't be doing the job".*  
(a lay magistrate).

##### **B1.6.1 The public perception is that magistrates are middle aged, middle class and not very streetwise.**

In their study of the magistrates' courts, Parker, Sumner and Jarvis asked, 'Quite how streetwise a largely middle aged, middle class magistracy is remains a matter for some speculation', (Parker et al, 1989, p60). During the course of my interviews with the lay magistrates I asked for their reaction to this statement. The first magistrate I interviewed told me, "*I'd agree with that*", but then went on to qualify the response by telling me that the statement is not as true as it would have been some fifteen years or so ago. This was in part due to the efforts of recent Lord Chancellors to attract and appoint people from both a wider social base as well as from younger age groups. A second magistrate told me that the statement was also an accurate reflection of the general public's perception of the magistracy. When first approached to see if she would be interested in putting her name forward for consideration for the magistracy, this magistrate had been rather reluctant, "*.. because I thought, 'Oh no, I don't want to join that brigade of be-hatted and be-spectacled people', and so I have to say that I was pleasantly surprised because they are not all middle aged, middle class .. and not very streetwise, although I think a few of the older ones are like that*". But it was the view of both lay magistrates whom I interviewed that the Benches do remain predominantly middle aged and middle class and that there is a need to broaden the social strata from that which the majority of magistrates are currently appointed.

#### **B1.6.1.1- the Daily Mirror, the gateway to the magistracy for the working classes ?**

Traditionally the majority of magistrates appear to have been recruited through a restricted network, either from organisations mainly of political, trade or business affiliation, or more commonly by the personal recommendation of someone who was already part of the magisterial system. As one magistrate recalled, *"How did we get appointed? Who were our points of contact? Very, very few indeed had sought appointment, it had all been done by recommendations, the network. Middle aged, yes. Middle class, yes, but I see a change, a broadening of the net without question"*. This broadening of the net to which this particular magistrate referred was the policy of , *" .. various Lord Chancellors .. in trying to extend the base, even to the extent of advertising in the Daily Mirror"*. In the opinion of this particular magistrate, *".. now if that doesn't catch one end of the spectrum, then I don't know what will"*. But is getting the required message to the 'working classes' all that is required in order to ensure that the magistracy becomes more representative of the society from which it is drawn? According to another magistrate this is a problem which has got much wider implications because, *" .. people from the working class, if they are lucky enough to have a job, can't get the time off to be magistrates, can't afford to be a magistrate and .. if they've got a job it might work against them if they're on the Bench and they are asking for time off, or they might work for a particular company, or whatever, who won't give them time off"*. This magistrate expressed concern about the barriers which prevent these people from putting themselves forward for selection. Their non-availability was seen to be very much to the detriment of the magistracy as a whole because, *"There's an awful lot of bright people out there"*.

#### **B1.6.1.2 - magistrates, of whatever background, are just one part of the magistrates' courts system and as such are expected to conform to it's culture.**

During the course of these interviews, I did express an opinion that after magistrates have spent a period of time as members of the Bench, it is often difficult to tell those magistrates who had been appointed from working class backgrounds from those who had not. I asked whether over time it was thought that magistrates do adopt 'middle class values'? One of the magistrates interviewed agreed with my assessment, *"Yes very often they do, they start talking differently and become very pretentious. I'm being very general because not every one is like this, but I've noticed an awful lot of people who talk with peculiar accents from the 'working class' who are on the Bench"*. A second magistrate saw it more as an overall levelling process which takes place within the Bench. I was told, *"I think they mostly modify through contact and it is very much a levelling up or a levelling down, depends where you start"*. This magistrate saw this levelling process as being, *".. all to the good of the Bench I think"*. I then queried, if this theory was correct, was there not a danger that magistrates, both as individuals and as a Bench, could become stereotyped? This magistrate did concede that there was a danger that some of the individuality and common sense for which the magistrates are appointed may be stifled but insisted that there was also a requirement for magistrates to, *"..fall into the ethos of*

*the court, its traditions of centuries. We are just one part of the court". This point of view was not however necessarily shared by all the members of the Bench. In the opinion of another magistrate, the whole essence of the lay magistracy is that people should be selected for their independence of thought and the ability to express their views. In support of this argument I was told, " Surely the whole concept of the magistracy is that we bring in people who are not doing the job everyday, who bring their everyday experience to the Bench, ..and they're hopefully revitalising the system by bringing everyday life, because that's what we're there for really".*

#### **B1.6.1.3 - the need for local knowledge, the amateur and the professional views.**

The Lord Chancellor will not normally appoint any lay magistrate, ' ..who does not reside in the area of the commission or within 15 miles of it's boundaries'. One magistrate was in total agreement with this instruction which is part of the guidelines issued for the Lord Chancellor's Local Advisory Committees. The thinking behind this instruction is to try and ensure that the magistrates who are appointed have, "*.. a feel for what the local area is feeling*". This theme was also taken up by a second magistrate who told me, "*We are there to look at people who are from ordinary backgrounds, or from whatever backgrounds, and we are there to make judgements on them and if we are going to do that, we have to understand what their life is like and if we don't do that, if we are cut off from that, then we should not be doing the job*". The stipendiary magistrate, whilst not disputing the benefits which local knowledge brings to the Bench, did highlight the difficulties of living locally for the professional magistrate who is sitting everyday and is well known to a certain 'clientele'. He told me, "*I don't live in the area and that is a good thing and a bad thing. I think it is a good thing on the basis that I can live a normal life. I don't think I would if I lived in the middle of [ ], I think I'd be looking over my shoulder all the time. But by the same token, when you don't live somewhere you're not quite as 'au fait' with local demands and needs*".

#### **B1.6.2 Advocates are seen as pompous, arrogant and disrespectful.**

In the words of one lay magistrate, "*.. and the solicitors are so laid back and some solicitors are so pompous and arrogant a lot of the time and alright they are there for the defendants' rights but I think there's an awful lot of those solicitors I wouldn't choose to represent me*". One of the professional magistrates also expressed an opinion about the behaviour and attitudes of certain solicitors towards the Bench. I was told, "*I'm not happy in the way that some advocates treat magistrates at all. They don't behave like that with me, they know they wouldn't get away with it if they did*". He then went on to elaborate on this point, "*.. a number of them are fairly disrespectful to the lay justices, which I don't like at all. They wouldn't say it to the lay justices, but I've heard advocates refer to the Bench as, ' .. those wooden tops' and things like that, and at times there is a measure of disrespect bordering on .. a little dumb insolence which I think is deplorable*". During the course of my interviews with these

magistrates, I was also told about the the way that advocates brief colleagues on the qualities and traits of individual justices, "*.. avoid that one, adjourn if you get in front of so and so ..*". There seems little doubt therefore that advocates do attempt and quite often succeed in manipulating the system to the benefit of both themselves and their clients. Neither are these ploys reserved solely for use in the courts adjudicated by the lay magistrates. This stipendiary magistrate admitted, "*I can see people manipulating cases out of my clutches now when they see there is any risk ..*".

#### **B1.6.2.1 - advocates are seen to come between the magistrates and the truth.**

During my interviews I also broached the subject raised as a result of the Parker study of the late nineteen-eighties that, 'Defence lawyers were therefore perceived as inhibiting magistrates' search for the truth of the case', (Parker et al, 1989, p98). One magistrate told me, "*I agree in every respect ..*", and in particular when, "*.. the defence is so weak and by adopting a smoke screen they do come between the truth, us and the defendant*". This particular magistrate did not see this particular tactic as presenting too much of a problem to the more experienced magistrates. As he said, "*This is where I think the skill of perception which is gradually enhanced over the years is useful, .. you can soon pick out the smoke screen*". But neither did this magistrate look upon this type of ploy favourably. In his opinion, "*They're really doing nothing for their client at all .. you know the one I mean, who almost brings tears to your eyes. Does he do his client a service? If his case is so weak, it will be shown and he will regret it ..*". Despite these reservations, a second lay magistrate insisted that the defence advocate is an essential part of the adversarial system in the magistrates' courts and especially in respect of trials. This magistrate recognised that the defence advocate is there to do a specific job and it is up to the magistrates to be aware of what these aims and objectives are. "*I mean most of us, I'm sure, recognise the fact that the solicitor is there on behalf of his client to tell a very one sided story. .. So yes, I feel that the solicitor has to be there and I feel that the magistrates have to be properly trained to be aware of the fact that what they are telling us is very subjective*".

#### **B1.6.2.2 - defence advocates, but whose side are they on?**

I put to some of the magistrates whom I interviewed the claims made by some of the defendants in the Baldwin and McConville study that, '*..they had found it difficult to decide whose side their barrister was on so closely involved did he appear to be with the prosecutor*', (Baldwin and McConville, 1977, p85). One of the lay magistrates agreed that it is not difficult to see why defendants could get that impression and that defence solicitors need to take care that their clients are not sent messages which are capable of being misinterpreted. I was told, "*I think solicitors ought to remember when they are in court and they are defending somebody, that person may feel offended if they see him chatting to the CPS. I mean I would be offended .. if the CPS was presenting the case in an unfavourable way and making me out as bad and foolish or evil, or whatever, and then I saw my solicitor having a chat or a coffee with him*".

afterwards". The stipendiary magistrate was also aware of these dangers but was very much of the opinion that it was more likely to occur in the Crown court than it was in the magistrates' courts. The reason that this situation was more likely to occur amongst barristers was, " .. *simply because they may be in the same chambers, they may share a room, .. the people who are on opposite sides, .. may be very good friends. But that doesn't stop them being beastly to each other in court*". This magistrate conceded that it could all be criticised as, " .. *a bit of a game*". A game or not, I was also told of instances where advantage is gained by some experienced advocates at the expense of new and inexperienced prosecutors. In the words of the stipendiary, "*Some very weak prosecutors who come in very young, 'wet behind the ears prosecutors', and I've seen them manipulated by very experienced defence advocates into taking lines that somebody far more experienced in prosecuting would never take, I've seen them leaned on quite substantially*".

#### **B1.6.2.3 - credibility is important if only for the commercial benefits it brings.**

I discussed at some length with one of the magistrates the importance that the advocate attaches to maintaining credibility with the Bench. In the course of this discussion it became apparent that in the opinion of this magistrate, credibility with the Bench is vital because, "*.. he's appearing daily in front of you, his bread and butter depends on you and how much and how reasonably you appreciate him and his credibility*". But I was told that credibility is not only important to the solicitor-magistrate relationship, it also applies to the solicitor-client relationship. The solicitors have also to be seen by the clients to be representing their interests. This only becomes a problem when the client instructs the advocate to present the case in a way which either conflicts with the advice of the advocate, or alternatively might be seen to insult the intelligence of the court. This situation can create something of a dilemma for the solicitor, "*..because the client says, 'Look you tell them this is the situation or I'll clear off and see somebody else'. So he's got to get round the problem, .. He has to maintain certain standards otherwise he would lose everything and therefore he'd start losing clients on that basis. So he's got to signal to you in some ways, ' .. that these are not my ideas but I'm asked to put forward the argument on behalf of my client, take it for what it is'. Where a solicitor says, 'I'm specifically instructed to say such and such', he clearly is representing his client by putting forward the argument, ..but he's trying to preserve at least something of a relationship with the bench ..*". But in the opinion of this magistrate it is not an easy course of action to take, "*It's dangerous, it's dangerous*".

#### **B1.6.3 A non-custodial policy, an edifice built by the Probation Service?**

"*So I suppose it must be very difficult for a probation officer to actually say, 'I can't help this person, this person should be locked away'. I think it is a difficulty, .. So they're treading a thin line between us and them aren't they*". This was an opinion expressed by one magistrate during a discussion which centred on the role of the probation officer as an 'officer

of the court' or a 'friend of the defendant'. A second magistrate was more forceful in his views on the probation officer role. In expressing his opinion on the subject he said, *"I think the first thing that ought to be uppermost in their minds and it never is, .. a probation officer is an officer of the court, one of the functions of the court is to protect the public and to have the public's interests at heart. That, I see is conspicuously absent in each and every probation report and in that respect they are never balanced"*. I did venture to suggest to this magistrate that perhaps the probation officer's job these days is to keep people out of prison. In reply to this suggestion I was told, *"I would pose the question, who has said it is their job? Their Association gives these guidelines out. By whom are they approved? Are they agreed by other court users or not? This is an edifice that is built by the Probation Service and it is one of the factors that's bringing the Probation Service into disrepute"*. Both of the lay magistrates whom I interviewed queried the objectivity of the probation officers and both agreed that the officers could be accused of having leanings towards leniency in sentencing terms. One of the magistrates very much resented what he described as, *".. the misuse, the abuse of terms like 'society' which litter some reports .."*. On hearing this comment, I was prompted to ask this particular magistrate if he considered the probation officer to be more a social worker than an officer of the court? I was told, *"Yes very much so, I'm very strongly of that opinion. .. The pendulum has swung very much the wrong way. ..A very significant minority of the probation officers that I came across first in my career as a magistrate, they had ex-service backgrounds, either as regulars or as National Servicemen and they had an entirely different attitude to what we see now"*. But it was emphasised by this magistrate that, *"Their job is not to sentence, it is their job to advise upon the options that are available to us with the client's suitability"*. But this magistrate concluded, *"But it really is a job for us to disentangle the contents of the reports for political attitudes and correctness"*.

#### **B1.6.3.1- probation officers cannot anticipate who the sentencers are going to be.**

I did pose the question during my discussions with the magistrates whether or not it was considered feasible that the probation officers could 'tailor make' their probation reports, (PSRs), for specific magistrates or benches? In answering my question, the stipendiary magistrate first dealt with the lay bench, *"Well no, they have National Standards now. I mean they don't know who they are going to come in front of, they have no idea, no idea"*. But what about the stipendiary magistrate I asked. I was told, *"Well you might have some idea who might deal with it. But no, ..they haven't a clue who's sitting and I get switched so frequently anyway that I could be anywhere, so they couldn't .."*.

#### **B1.6.4 Some inter-group relationships can produce pecuniary benefits?**

In discussing inter-group relationships, the topic of certain individuals gaining financial advantage was again raised. I was once again told of certain suspicions, but suspicions that could not be substantiated. I was told, *"That I think is curious and it was something that bugged*

*me .. was that the people, (the advocates), who got the most work were the people who got on best with the police and I could never understand that. But there it was, they were playing the system somewhere along the line, the advocates obviously, or the police, who seemed to feel that these advocates would go so far but perhaps no further ..... But it's an area that has existed, let's say no more than that, and the individual solicitor who was 'spikey' wouldn't necessarily get recommendations because he was known to be an awkward devil ..".*



## **B2 THE COURT STAFFS' PERCEPTION.**

### **B2.1 The roles of the court clerk and the court usher.**

#### **B2.1.1 The role of the court clerk.**

The role of the court clerks in the magistrates' court is multi-faceted in that they are the legal advisers to the magistrates, they are the administrators with the task of ensuring the continuity of business through the courts and they are also frequently called upon to be the arbiters and decision makers in the inter-personal and inter-group conflicts which occur within the day to day operation of the magistrates' courts. The extent to which any of these duties is carried out depends on a number of factors. For example, whether the court in which they are working is presided over by a stipendiary magistrate or a bench of lay magistrates? If it is a lay bench, whether or not the chairman of that specific bench is seen as competent or otherwise? Finally, whether the prosecution and defence advocates are well enough prepared when they come into court on the day so that the business can proceed and the court's workload dealt with in an efficient and judicious manner? I was told by the Justices' Clerk, that whilst the court clerk's role as the legal advisor to the lay magistrates is a vital function, *"..if you're looking at the clerk as a legal advisor, you could almost always say that the 'stipes' will not want him, but not always even then"*. Again, as an administrator, the court clerk has a much greater role to play in the court where a lay bench is sitting than when the court is being controlled by the stipendiary magistrate, *"..and much of that is to do with the 'stipes' experience, ..because he sits every day and as a practitioner knowing his way round the ins and outs of the support systems, ..which a lay bench really have no hope of picking up"*. These views of the Justices' Clerk were also endorsed by one of the court clerks who participated in the interviews. I was told, *"As far as we're concerned sitting with a stipendiary magistrate is having a bit of a rest to be quite honest"*. The same court clerk told me that when working in the court with a lay bench, *"The job is stressful"*. It was explained that the level of this stress depends very much on the competence of the chairman of the lay bench. *"The chairman influences a lot of things, if you've got a good chairman you know it's going to be alright"*. As far as keeping the courts busy and ensuring that the business of the courts was carried through in an effective way, the court clerks, to whom I spoke, did not feel that they could exert too much influence in this matter because this rested very much in the hands of the other court users and in particular the advocates. As one court clerk stated, *"Whatever we do, whatever we say, however we try to get things moving, if they are not in a position to do anything, what can we do, we can't do anything"*.

#### **B2.1.2 I asked, 'What are your basic instructions, as ushers, in respect of running the court ?'**

This was one of the questions which I asked one of the court ushers in the course of an interview. I also asked the supplementary question, ' What is your training and your

function'? I found that the court usher was quite eager to give me his reply. He told me *"I half anticipated this question because it's my 'pet hobby-horse',. You are not basically trained. You are just given to somebody and they say, 'Just follow him and do what he does .. So nobody ever at any time said to me these are your duties, other than are written down on my job description. .. You know where to stand people to take the oath".* So how do the court ushers develop their 'skills'? *"You just follow somebody and adopt their style for a bit. Then you notice that the ushers have different ways of running a court. .. So everybody develops their own style. But nobody actually ever said, ' This is how we run a court, this is why we do it this way, other than your job description. Keep order in court, assist the the court clerk in the smooth running of the process' .. "* I then asked, 'If part of the court ushers' role was to ensure that deference is granted to the magistrates by the other court users'? I had observed in court that not only do the ushers instruct every one to stand each time the magistrates enter or leave the courtroom, but they were also seen to intercept whenever the defendants or witnesses tried to pass any items to the bench. The usher told me that these actions signified nothing other than efforts to uphold the dignity of the court. He did agree that these acts do take place, *"Well that happens yes, but there again I would have thought that is only done, .. to uphold the dignity of the process of the court, not simply because, well I can't imagine a situation where you'd have a witness saying, 'I've got this bit of paper, here you are mate'. You can't have it because this then brings it down to a level which is not right".* The court usher sees a part of his job as giving help and assistance to those people in the court waiting areas who are in need of it. These are mainly the first time attenders at court, *"Well he's never been here before, he doesn't know the ropes and you do tend to look after them differently".* While the ushers are seen as an important part of the court staff they are not necessarily viewed by the defendants as a part of the establishment. As I was told by one court usher, *"You're sort of the buffer between the court and them".*

## **B2.2 Justice and organisational efficiency.**

*"I think it is right to say that we are putting pressure on them, [the defence solicitors], I'm sure that is right, but it's a matter of again, the extent of the pressure and whether it's done, to use the phrase, judiciously".*

(the Justices' Clerk)

### **B2.2.1 Justice has the capability of being subjugated to organisational efficiency.**

In answer to the claim that 'Justice is subjugated to organisational efficiency', (Carlen, 1976, p20), the Justices' Clerk whom I interviewed conceded that, *".. it has that capability, I think the longest standing version of that has been the need to get on with cases at a certain pace".* He told me about specific areas of legislation which had been implemented over the last forty years where the main intention had been to improve the organisational efficiency of the courts. *"The 1957 Magistrates' Court Act which ..allowed guilty pleas by post. Prior to that*

defendants had to turn up at court and plead guilty in person. ..The 1967 Criminal Justice Act which allowed for committals without, [the magistrates], considering the evidence..". But this Justices' Clerk said that in his opinion, " ..the impact of legislation like that on justice is minimal in the sense that those who are going to plead guilty will plead guilty whether they do it by post or in person. Those who concede that there is a case to answer at committal would have liked to have conceded it before the 'paper' committal was invented by and large".

#### **B2.2.1.1 - the pressure to proceed and not to adjourn is not always detrimental to justice.**

The question was asked, 'Does the cash limiting of the courts and the challenging by the magistrates of the need to adjourn cases, put pressure on people in the magistrates' court system and in particular those who have the responsibility for preparing and presenting the accused person's defence, pressure which could adversely affect that preparation and presentation? The Justices' Clerk admitted that there was always a danger that this could happen, but in conceding that, he emphasised that this should not be the case. He told me "I think it's right to say we are putting pressure on them, I'm sure that's right, but it's a matter again, the extent of the pressure and whether or not it's done, to use the phrase, judiciously". He defended the right of the magistrate to question the need for an adjournment, "I think that not to question the reason for an adjournment is not to do justice, because you don't know then whether you are doing justice or not. You, [the magistrates], by questioning can at least be confident in your own minds whether you are doing justice". He then expanded on this point by explaining that just to adjourn cases at every request could very well be argued to be unjust, " ..because justice delayed is justice denied. You can end up with a situation where one side or the other, or both in a criminal case, can prolong the case to such a length that justice is inevitably not done. Because witnesses forget or don't turn up, perhaps they come to court on some occasions and are sent home unused, don't come back a second time". However what the Justices' Clerk was at pains to stress was that the decision whether or not to proceed, should be taken on the merits of the case in hand, " .. and not whether this is the tenth, eleventh or twelfth adjournment you have granted this morning".

#### **B2.2.1.2 - not all of the people who plead guilty, even by letter, are necessarily guilty.**

Not all of the people who claim that they are not guilty of the offences with which they are charged, or feel that there is considerable mitigation which could be put forward in their defence, necessarily attend court to present their case or put their defence before the magistrates. A specific example of this type of person is, " ..the businessman who says, 'I'm not guilty of speeding really, but I can't afford a day off work and call the witnesses and all the rest, in the chance that I might get acquitted or I might be convicted. So I'd rather just get it over and done with and plead guilty by post' ..". The Justices' Clerk did question whether or not in an

attempt to avoid this type of situation, this failure in the justice system, the magistrates' courts should arrange their hours of business so that this type of customer is catered for. He told me, *"Now you could argue that if we are really interested in doing justice, that we wouldn't even run the risk of denying somebody justice by compelling them to take a day off work. We would organise our courts to suit our clients and our clients are the general public, defendants included. .. We should run week-end courts, we should run evening courts"*. He went on to inform me that some areas are currently running evening courts on an experimental basis, but these are only dealing with those cases where guilty pleas have been entered or where matters just require to be adjourned.

#### **B2.2.2 Cash constraints should not be a deciding factor in the judicial decision making process.**

The Justices' Clerk emphasised the point that cash constraints should never be treated as major influential factor in the decision making process, *" .. anymore than when the Home Office say the prisons are full. The question is not whether the prisons are so full, can they accommodate this defendant ? The question is, has this defendant committed such a serious crime that he has to go to prison?"* The Clerk continued, *"I think you can't totally ignore cash restraints, but I would like to think, and I'm not entirely convinced about this, that cash restraints are modelled on the overall considerations of justice, in other words that they allow for adjournments, for some delay for the appropriate length of time necessary to prepare a case properly"*.

#### **B2.2.2.1 - cash limiting certainly appears to have altered the policy of one of the agencies in the Criminal Justice system and to the detriment of justice.**

*"There's one that I'm particularly concerned with at the moment, which is not so much the cash limits on the courts, but the cash limits on the CPS"*. This statement was made by the Justices' Clerk. The reason given for this concern was because of its, *"..serious potential, because there is nobody to counter balance"*. The policy to which he was referring and which is now regularly adopted, is a policy which could be likened to plea bargaining. He continued by expressing the view that the effect of cash limiting on the CPS has been, *"..to push them into accepting deals, pleas to lesser charges rather than run trials, because it's cheaper for them"*. The views of the Justices' Clerk were totally supported by both of the court clerks interviewed. One told me, *"The CPS are now watering down. At the first indication of a 'not guilty' plea they ask, 'What will he plead to ?'. Charges are being watered down left, right and centre and I think as a result of that, yes justice is suffering"*. While it was acknowledged by the clerks that in some of these cases the prosecution evidence, *"might not be very strong"*, there were other cases, *"..where there is clearly evidence to support a stronger charge, but because of policy decisions being made from on high this charge will be reduced whether you like it or not"*. The general feeling amongst the clerks, with whom I spoke, was that where this policy is applied,

this has now weighted justice very much in the favour of the defendants. This perception of the situation was also shared by the Justices' Clerk. When I asked whether the CPS policies were now to the advantage or disadvantage of the general public? He replied, *"It would usually be to the advantage of the defendant but to the disadvantage of the Criminal Justice system and in particular to the disadvantage of the general public"*. He also considered that the policies now imposed, and particularly that of calculating the funding of the various agencies upon their performance indicators, is bringing matters, *"..nearer to justice being cash limited and once that's the case it's not justice anymore"*.

**B2.2.3 There is neither a policy or instructions for the court staff to ensure that throughput targets are achieved within a set timescale.**

There was a general rejection by the court staff, the court clerks and the usher, with whom I spoke that a policy existed in the courts which sacrificed the ideals of justice on the altar of organisational efficiency. As I was told by a rather indignant usher, *"No I would strongly disagree with that. ...Nobody has ever said to me, 'Right we're going to do this, do this, do this', simply because we've got twenty-four cases today and we've got to get through them. 'We don't want anyone asking awkward questions, we want to get them in and out as quickly as we can'. It's never been said that and I never imagine it would be the case"*. The court clerks also saw their ability to keep things moving through the courts efficiently as being very much dependant upon the other court users. As they explained, *"Whatever we do, whatever we say, however we try to get things moving, if they, [the prosecution and the defence], are not in a position to do anything, what can we do ? We can't do anything. What happens in court is dependant on both the defence and the prosecution having everything organised and ready to go"*. The Justices' Clerk also tried to dispel the theory put forward by some critics that the main concern in the courtroom is to keep the courts running and to avoid delays in order not to upset the judge or the magistrate, *"..because they are the most important people in the set up"*. He did admit that the aim of the courts was to keep the decision makers working at all times, *".. because if they're not working, nobody's working, we're not hearing any cases and that adds to the frustration and it adds to the delays. That's the only reason I would say you've got to keep the courts sitting all the time, ..simply to get on with the job"*.

**B2.3 Courtroom organisation and the degradation ceremony.**

*"I think the courtroom is no different to real life as it were, in that some people earn the respect of the defendant, but some defendants are not going to respect you and then you have to use the authority to maintain some sort of order, some sort of dignity"*.

(the Justices' Clerk).

**B2.3.1 Many of the rituals and procedures which are enshrined in the magistrates' courts are relics of the past, but are they really redundant in a more modern era ?**

*"It's all steeped in tradition, 'Your worships', 'My learned friend', and all that sort of stuff". This was one opinion which was expressed by one of the court clerks whom I interviewed as part of the study. "It makes you think of Dickens" ventured another, who continued, "just think about the whole thing, just look at the building for example, it's very old fashioned isn't it? You can see these things just get carried along". The view of these two court clerks was also endorsed by the Justices' Clerk. In answer to the claims which I put to him, claims made by some observers that the ritual and symbolism in the courts is used as a means to humiliate and degrade the defendants, (Emerson, 1969 p174: Carlen, 1976, p23), he did concede that symbolism is still very much in evidence in the magistrates' courts, although not in his opinion, as evident as it is in some of the higher courts. He told me, "The first thing I would say is that I'm quite sure that the symbolism is there. The majority of magistrates' courts buildings were built in an age when much more of that was there than there is now, but because the buildings were built then, they are still like it, our own courthouse .. being a case in point". He then went on to differentiate between the higher and the lower courts, "I would then immediately draw a distinction between the magistrates' courts and the Crown courts, where I think more of what you have just read is true in the Crown court. There are more archaic rules, many more concerns that the defendant should not interrupt, should not slow down the proceedings". He was also quite clear that the time had come to re-assess the situation and to determine which of the rules and procedures are still relevant to the modern day. In his words, "I think sometimes though we've brought our rules, our procedures, our rituals into place because they served a purpose then, but we've never stopped to ask ourselves in the last twenty, even fifty years, whether they still serve a purpose".*

**B2.3.1.1 - some of the language is anachronistic, you can show respect without going over the top.**

One of the questions I asked was whether or not the use of language, and in particular the methods of address which are used in the magistrates' courts, are a means employed by the regular court users to manufacture their own brand of authority? The Justices' Clerk was very critical about the styles of address which are in regular use. *"I think this is archaic and to think that somebody might actually be worshipped these days seems completely anachronistic to me. I don't actually, personally, use that phrase at all, I always refer to the magistrate as 'Sir'. I mean 'Sir' is a bit different, it still shows a modicum of respect, I hope it shows some authority, a bit like going back to school, but I think it's more akin to real life. We do have these phrases, these rituals that are based on history that we have never overcome".* These sentiments were also echoed by one of the court clerks during the interview, *"I can't say that, (Your worships), .. because I find it difficult to say. I mean quite often you get people*

saying, *'May it please your worships'*, that is how they start their address. Sometimes I'll say, *'As you please Sir'*, or something like that. ... You can still show respect for people without going over the top". In the opinion of the Justices' Clerk, *"There is an awful lot of scope for bringing those sorts of practices into the .. Twenty-first Century .. but ensuring that there is still some retention of respect, authority, dignity, call it what you like"*. Neither should the formality of the language be necessarily forced on to the defendants. The Justices' Clerk stated, *"I don't see anything wrong in telling the defendants that magistrates are magistrates. I don't think they need to be told that they call them 'Your worships', and in fact I've seen the defendants, witnesses, who have talked to the magistrates in terms of 'luv' and 'duck' and 'dearie' and it seems to me that if that's their normal everyday way of speaking and if they don't intend any disrespect then it is inappropriate to assume any disrespect and pull them up for it"*. He admitted that in a more liberalised atmosphere there could be people who might try to take advantage of the situation and it is not always easy to pick out those who are genuine from those who intend disrespect, *" .. but I think there ought to be an assumption that he's not and what he is doing is being himself and if he is not necessarily being disrespectful, then why stop him"*.

**B2.3.1.2 - the age of the buildings can often be the cause of the stark contrast between the courtroom and it's environs, but not totally.**

Once again the age of some of the courthouses and particularly those which formed the basis for the study area, were blamed for what is admittedly a stark contrast between the courtrooms and their environs, and in particular the public waiting areas. As one of the court clerks admitted, *"It is a real contrast isn't it, going from the court where you're completely cut off and unaware of what's happening outside, ..you don't hear anything, you can't hear if anything is going on. Everybody in court is very smart and quiet and formal and you go out there and it's all smokey, ..cups of tea and cigarettes all over the floor, the benches and everything"*. This view was reiterated by a second court clerk, who described the scene in the waiting areas as, *" .. pretty horrible out there, ..the conditions for waiting around are pretty stark, ..sitting on those wooden benches quite often awash with tea and coffee"*. Not only was it the waiting areas that came in for criticism, previous observers had also found that many defendants had found themselves waiting to go into the courtroom, *'unable to get either refreshments or the privacy in which to talk to their solicitors or probation officers'*, (Carlen, 1976, p27). The court usher did express some concern about the shortage of rooms which allowed for discussions between the defendants and their solicitors to be held in private, these did exist, but he agreed that these were limited and, *"..not good enough, it really isn't"*. What really concerned the usher was a lack of segregated areas in which the witnesses in a case and the defendants in the same case, but on different sides, could wait for their cases to be called . As he told me, *"The other thing about privacy that always disturbs me out there is where you've got a trial and you've got defendants and you've got witnesses for the prosecution in the corridor and sometimes they're sat almost side by side and it's very embarrassing for people on both sides, especially if it's an*

assault or something". Whilst it is accepted that the criticisms are well founded, again I was told, *"..again I think it comes back to the court design and the age of the building"*.

#### **B2.3.1.3 - the human element does lend a helping hand.**

Vandalism is seen as a major problem by those trying to maintain a reasonable standard of conditions in the public waiting areas and in particular those areas which are situated adjacent to the Youth courts. In the words of one court clerk, *"Well I think that's a problem, particularly with the Youth court, the waiting around just leads to them committing offences against the building, wrecking seats, daubing their names on the walls"*. In an attempt to explain why this vandalism occurs in the magistrates' courts, the Justices' Clerk told me, *"We are not dealing with people who come of their own free will. Most of the people we are talking about who contribute to the squalor, at least those who do it deliberately or recklessly, are there because they are allegedly thought to have been doing something of the same order. They are the sort of people who are perhaps there for criminal damage, for daubing up the toilet walls in the town centre, or breaking into somebody's house and wreaking havoc. It has to be said that no matter how innocent until proven guilty these people are, we still have to say, we are dealing with people charged with criminal offences, the vast majority of whom will be convicted of those charges or plead guilty to those charges"*.

#### **B2.3.1.4 - this contrast is not so prevalent in the more modern courthouses.**

When comparing the magistrates' courts buildings built in the first third of this century, with those which are being designed and built to cater for today's needs, I was told that there are a number of major differences. For example, *"The more modern buildings have almost without exception refreshment facilities, ..all have more numerous and more private interview facilities"*. Although it was emphasised that in respect of the word 'private', what was actually meant possibly needed some clarification, the word I was told means, *"..inaudibility, because most solicitors will tell you that they do not really want to go into a solid door room with some of their clients, problems might arise. But they want to be inaudible"*. In the opinion of the court clerks, the new buildings, *"..have a much more informal feel about them"*, the old court buildings with their oak panelling and brass rails were felt to be intimidating. This point was also taken up by the Justices' Clerk, who told me that in his experience, *"The more modern buildings are less majestic in the courtrooms, less oak panelling and less 'brass railly' and at the same time more comfortable in the waiting areas"*. He had also found that, *"..if the buildings were better constructed so that it is somewhat vandal resistant in the first place and if it actually is easily cleaned overnight then it tends to suffer less vandalism the following day"*.

#### **B2.3.2 Not all of the rules are just symbolic, some have a practical application.**

Whatever rules are adopted and implemented as part of the system in the magistrates' courts, this should only be done after the need for these rules has been fully



evaluated. This was the view put forward by the Justices' Clerk, *"Whatever level of control you adopt, whether it be the level of putting everyone in the dock, or telling people that nobody keeps their hands in their pockets, .. or whether it be right down to the level of saying, 'You only stand up when you take the oath', you've still got to look to why you adopt the practice"*. The ritualism which surrounds the taking of the oath was in the opinion of the Clerk justified in as far as it, *"reinforced the importance"* of this particular act. However one area which he felt was less easy to justify was the placing of some defendants in the dock. He told me of, *"..other magistrates' courts .. where all the adult defendants were put in the dock regardless of whether they were on bail or not. Now I think I would find it very difficult to justify that. I think the system we have where only those defendants who are actually in custody are put in the dock, is the appropriate system"*. There were in his opinion a number of good reasons which justify why some people do need to be subjected to a higher level of security, *"..on the basis that those defendants are potentially a risk of some sort. They're either at risk of absconding, or at risk of committing further offences, which is why they are in custody, some court has come to that decision and I think that a measure of security is practical as well as symbolic"*.

**B2.3.2.1- if there were no rules to govern behaviour in the courtrooms, some people would take advantage.**

*"You've got to maintain some sort of dignity in court otherwise they, [the defendants], would just sit there, put their feet up and say, 'let's have a chat about it'.."*. This statement summarised the fears of one of the court ushers with whom I spoke, if the rules and procedures were relaxed in the magistrates' courts. The court clerks expressed similar concerns, as one of them said, *"I think a lot of the people you get would come in with that sort of attitude, who are so blase about the proceedings, they think, 'Well let's try it on, I'll go in with my mouth full of chewing gum', .. Yes it's the people who come regularly that you seem to get most disrespect from, you know coming in with their hats on and slouching about, and I think you've got to maintain some standards. .. I think people are losing a lot of respect anyway for the courts so you need what little bit you can keep a hold on"*. The court usher insisted that the courts were not demanding anything which was extraordinary, in his opinion all that the rules were designed to achieve was, *"common courtesy"*. This theme was also taken up by the Justices' Clerk who argued that, *"If the purpose of the ritual, the symbolism, is to reinforce some standards, some rules which in themselves have a purpose, then that justifies symbolism, the rituals, the rules"*. He cited, in support of his argument, the attitudes which he perceives among certain of the attenders at court, *" .. particularly young male defendants whose respect for the law is decidedly limited. .. I think there's all the more reason for retaining some of the rules of order within the courtroom .. to preserve the dignity of the court"*. What did concern the court clerks however, was the fact that there are some people who are genuine, who do not realise that they are being disrespectful to the court but who, because of their unintentional actions, are also made aware of the courts' displeasure. As I was told, *" There are some genuine cases, I mean*

some people come in with hats on because they don't realise, and I think to some extent, yes, they might get treated a bit hard. But you tend to 'tar people with the same brush', which is not right at all".

**B2.3.2.2 - the authority invested in the decision makers must be safeguarded, but the respect is for the law, not the individuals who administer it.**

The Justices' Clerk was adamant in his view that the people who have been given the authority as decision makers on behalf of the society whom they represent, should also be enabled to use that authority to its full extent. As he explained, *"Because the bench, whoever it is, whether it be the judge or the magistrate, has been given by statute some authority over the defendant on behalf of the public at large, then they have got to be able to maintain that authority to a degree, if the job that the public expects to be done is going to be done satisfactorily. For example, the judge has got to be able to pass a sentence on the defendant who has been convicted. He shouldn't be in this sense brought down to the level of the defendant to the extent that he has to negotiate a sentence with the defendant"*. The Clerk, however, perceives a problem where respect for the law and respect for the individual administering that law sometimes becomes confused, *"You've got to look at what the purpose is. Now if the purpose is to show respect for the law, as opposed to respect for the individuals given the task of administering the law, again I think that supports an argument for retaining some of the rituals"*.

**B2.3.3 The argument that the procedures are aimed at demeaning the defendant would be quite difficult to justify these days, the fact that some court users do is a different matter.**

*"If it is to suggest that the defendant is to be demeaned, I think that would be quite hard to support these days, although I can't help thinking that there are occasions when judges and magistrates want defendants to be demeaned in court. There are occasions when the advocates want witnesses to be demeaned in court. But I don't think that has anything to do with justice"*. Such was the answer given by the Justices' Clerk when asked to comment on the claim that, 'Courtroom ceremony is characteristically organised to degrade and humiliate the defendant', (Emerson, 1969, p174). The court clerks' view was that there is evidence that the demeaning of defendants still exists in some of the courts. As one court clerk saw it, *"Traditionally the courts set out to degrade the defendants. Someone coming into court had to be made an example of because the public were looking at them. I suppose that was the object in a way"*. This court clerk then went on to describe the situation which is often seen in the Fines Enforcement court, a court in which I had observed and had some experience, a court where people who have failed to pay their fines, as ordered by the court, are brought back to explain why, and where alternative actions can be imposed if considered necessary, for

example and in extreme cases, a custodial sentence can be imposed in default. The clerks had observed that in these courts the magistrates and court staff were more likely to respond adversely to 'uncooperative' defendants, *"Quite often the way you would react to somebody would be for instance, a lot harder on somebody if he started to be 'lippy'. You know, 'It's your fault I've not been paying'. Alright, if you're going to be like that then let's be hard. I don't think I could ever go out of my way to deliberately humiliate somebody, but I think, as you say, Fine Default, you do take a different tack with people, ..and quite often you have to resort to humiliating to get the message across, because sometimes they don't appreciate how serious it is. It's just another hire purchase commitment to them, 'Oh I pay my catalogue every week', 'What about your fine ?' ..".* As another court clerk observed, *"It's weird when you think about that, [humiliating the defendant], compared with the thing about giving the defendant a fair go. You are giving him a fair go but you're making him feel bloody awful about it".* Both of the court clerks were in agreement in that they considered the humiliation and the degrading of the defendants to be the exception rather than the rule. An opinion which was also shared by the court usher whom I interviewed. He again reiterated that he saw the rules, which prohibited defendants from wearing hats, or chewing, or putting their hands in their pockets whilst in the courtroom, as just requiring a, *"..sort of common courtesy and not done to browbeat someone into a situation where they'll agree to anything just so that they can get out".* He considered the claims that these rules were in existence just to humiliate the defendants to be, *"..a totally erroneous impression of why it is done".*

#### **B2.3.3.1 - the courts and the magistrates need to adapt to the different types of witnesses who attend court.**

During my courtroom observations and experiences, I had seen both defendants and witnesses being asked questions by the advocates but being told to address their answers to the magistrates, a procedure which quite often created a deal of confusion. Where the defendants fail to comply with the instructions which they have been given, 'the defendants often find that they are continually rebuked', (Carlen, 1976, p24). When I asked the Justices' Clerk for his views on this particular topic. He replied, *"The word you used was rebuked, well I can only tell you that I don't think that 'continually rebuked' is an accurate reflection of what actually goes on. I think magistrates from time to time do have to ask witnesses to repeat answers and perhaps even to remind them to speak up, but to rebuke, I don't think is a fair reflection on what the magistrates are doing".* With regard to one person asking the question and other people wanting to know the answer, the Clerk continued, *"Yes all advocates these days do have a habit of saying, 'I will ask you the question but please face the magistrates when you answer'. So witnesses will do it to start with and then forget. Some magistrates will react when the witness does forget. I would hope that the reaction would not be, 'You aren't looking at me, you aren't doing as you're supposed to'. But to say something to the effect, 'We*

*have to hear the answers because we have to judge the evidence and we didn't hear the last answer' ..". He went on to say that in his opinion the courts need to recognise and make allowances for the different types of witnesses who attend the courts, they need to, "...adapt to the witnesses because you will always get the witness who won't be able to speak up, they're quiet people anyway. Perhaps, almost certainly they are genuinely nervous about what they are going to say and in some cases are really hesitant to repeat it. I only have to think about a few cases I've done with young children giving evidence about allegations of indecency. You can't ask that young person to speak up, it's ridiculous, and I would hope it would never happen".*

#### **B2.3.4 The smaller more informal courts can make the court clerks feel vulnerable.**

It was pointed out to me that there are a number of different types of court in the judicial system and they are all designed to satisfy different functions. As has already been mentioned in a previous paragraph, there is the Crown court with its 'archaic rules' and 'symbolism' where the procedure is normally 'to place all of the adult defendants in the dock'. It has also been stated that there are a number of similarities between these courts and many of the magistrates' courts in the larger cities. Within the Magistrates' Courts system there are also a number of different types of courts, the Fines Enforcement court already mentioned, being just one of these. At the top end of the scale there is, *"the Criminal court, they're about punishment up to a point and justice"*. At the other end of the scale there is the Family court, *"more a sort of 'wise figure' sorting things out between people", where the philosophy is one of, "let's all sit down on the same level while we're talking to one another"*. But what is seen as a satisfactory configuration of seating for one type of court is not always seen as being suitable for another. Neither are the smaller informal courtrooms always welcomed by the court clerks who expressed a preference for the larger type of courtroom with its tiered seating when operating in certain types of court. As one clerk told me, *"In No 3 Court with fine defaulters, I am always uncomfortable with them because they are there, they are there, (indicating the close proximity). If they want to 'sock you one' they can do. Whereas if you are in No.1 or No. 2, you are a bit higher up and it gives you the edge. I did a court a few weeks ago with ..., [the stipendiary magistrate], there was me, him and the defendants, quite often the usher was not in the room and I thought if anybody turned nasty you've no chance. I suppose all these different height levels give the impression of being bigger and therefore not as approachable"*. This view of the court clerks' vulnerability in certain types of courts and courtrooms was totally endorsed by the other court clerk who participated in the interview.

#### **B2.4 Power and influence.**

*"I think I would have to go as far as to say that I know clerks who have, and probably still do, influence decisions"*  
(the Justices' Clerk)

#### **B2.4.1 The magistrates are the decision makers, like it or not.**

*"But yes there is always that conflict there which you have to try and resolve, and of course it's the magistrates who get the last word whatever anybody says to them, they have the final say". It is obvious from this statement that the court clerk whom I interviewed had no doubt who the decision makers are. But does everyone in the magistrates' court system accept that this is the situation, and in particular does this include the advocates. I asked the Justices' Clerk for his opinion on this particular aspect and he told me, "I think certainly the regular professional advocates have to accept and do accept that the magistrates are going to make the decisions anyway". But whether this fact is fully accepted or just tolerated quite often depends on the respect or otherwise that the advocates have for that individual magistrate. The Justices' Clerk went on to explain, "I think in a court where they do get to know each other, there will be magistrates who have earned the respect of the advocates. .. These amateur magistrates have the respect of the professional advocates, because the advocates know that these magistrates will do a good job, will ask the right questions, will not have the wool pulled over their eyes and so forth. Having said that, on the same Bench, in the courtroom next door perhaps, there will be another chairman, because that's very important, where advocates will go along and say, 'It's only so and so, I can get away with 'blue murder' here ....".*

#### **B2.4.2 Credibility is an important part of the decision making process, but there are limits to which the professional court user will go to obtain it.**

Not only is it what the advocates think of the magistrates that is important, the level of credibility that the court users and particularly the advocates hold with the magistrates can also form an influential part of the decision making process. In discussing the validity, or otherwise of the statement, 'Most courtworkers are concerned with maintaining credibility with the magistrates', (Carlen, 1976, p31), I was told by the Justices' Clerk, *"I think there is a very large element of truth in there"*. The first group of people whom we discussed under this heading were the court clerks, *"The court clerk in my view, not only wants to maintain credibility with the magistrates but needs to because the magistrates have to be confident that they're going to get proper advice, competent advice and reliable advice from the court clerk. Now you can go about that as a court clerk in all sorts of ways and perhaps in one way you retain your credibility by giving unpalatable advice and being shown as a person who will give proper and confident advice rather than as a 'yes man'. I don't think court clerks, .. who are seen as 'yes men', do actually maintain their credibility with the magistrates. I think they are seen as what they are"*. Moving on to the advocates, the Justices' Clerk categorised these under various headings. Initially there were those who saw credibility as being of prime importance and, *"..who are just so concerned to keep in with the courts that they will strive most of all to maintain their credibility at all times"*. At the other end of the scale there are those advocates, *"... a few, very few, who just couldn't give a 'hoot' one way or another"*. There are also those advocates who on occasions will be prepared to risk their credibility with the bench if, in their opinion, the

client whom they are representing , " *...is so important to the advocate*". Although the more common approach by the advocates is to represent their clients in such a way that they maintain their credibility with both their clients and the courts. But there are limits to which most of the court professionals are prepared to go in order to retain this credibility. As the Justices' Clerk explained, *"I think that with most of the professional court users there are very restricting limits as to how far they are prepared to go just for maintaining their credibility with the bench. Having said that, I would still say that most of them would never dream of being rude, inconsiderate even, to the bench and in that sense they would maintain a professional standard. But we all know that you can maintain a professional standard and still voice your opposition and I don't think many advocates, if it was to the detriment of their client, would be 'yes men', just for the sake of maintaining their credibility with the bench. I don't think that happens"*.

#### **B2.4.2.1 - credibility is mainly about personalities and performance.**

In my efforts to try and determine who does exert the greatest influence on the decision makers, I was again left in no doubt by the members of the court staff, that influence is a very variable element. On the one hand there are the personalities and the performances of the individuals who are trying to influence, on the other hand it can depend upon the composition of the bench and the personalities of the individuals who comprise that bench who it is hoped will be influenced. I was told by the court clerks, *"So it's all sort of inter-mingling personalities involved. I mean it depends on how good your advocates are. ...I mean sometimes certain advocates aren't too bothered, but if they get something they feel strongly about they'll put their heart and soul into it. ...The other thing ..quite often is the personalities of the actual benches. You will sometimes get some benches who will do anything that is asked of them. ...and very often without questioning something that is so obvious. But then you go to the other extreme of people, [magistrates], who will stick their neck out because they've got a particular point about something and while you may not possibly agree with it, if they've got that in their minds, that's going to be what it is at the end of the day"*.

#### **B2.4.3 The advocates can adapt their tactics depending on the magistrates and the other court users, or they can just take the initiative away from the magistrates.**

The advocates do recognise that there are differences between the various magistrates, benches, and other court professionals. Many of them make it their business to identify what the differences in these perceived abilities and characteristics are and then use them in the best interests of their clients. I was told that the advocates move from courtroom to courtroom, *"and adopt a different attitude depending perhaps on the chairman, depending perhaps on the clerk, depending perhaps on the clients"*. I was told that this 'gleaning of information' about the various magistrates and court professionals is quite easily achieved, *"...in*

a court where there is a relatively small bench and a relatively small number of advocates, so they get to know each other, unlike perhaps, the big city benches where there are largely anonymous magistrates". In addition to this 'manipulation' of the magistrates, concern was also voiced about the effects of the current practice, already discussed in previous paragraphs, of the willingness of the CPS to accept pleas to lesser charges. This was seen, in certain cases, to take the initiative away from the decision makers. As I was reminded by one court clerk, "it takes things completely out of our hands ..".

#### **B2.4.4 The court clerks, the advisers or the persuaders ?**

*"I would certainly say at the outset that I agree that the clerk has a massive potential for influencing judicial decisions. I think there's no doubt about that based on the professional and permanent everyday experience of the clerk and contrasting that with the lay magistrate. I think I would have to go as far as to say that I know clerks who have, and probably still do influence decisions".* This comment which was made by the Justices' Clerk opened our discussions on the power of the Justices' Clerks and their court clerks in the Magistrates' Courts system. Each, by the very nature of their roles, can influence the decision makers, but because of the differing nature of these roles, this influence can be applied in different ways. The Justices' Clerks can exert their influence through Bench policy decisions and particularly through their roles as the Bench Training officers. The court clerks are more likely to exert their influence in their day to day interaction with the magistrates in the courtroom and in particular in their role as the legal advisors in the decision making process in the Magistrates' Retiring room. The Justices' Clerk told me, *"If a Bench, by which I mean a Petty Sessions area, ..if a Bench consistently commits to prison a significantly higher proportion than its neighbouring colleagues, then my first port of call would be the Clerk, and particularly the training which the Clerk gives the magistrates".* Not only do the Justices' Clerks impose their influence on the magistrates through their training programmes but they are also responsible for the training of the court clerks, *"..both in the function of the clerk and in sentencing policies".*

##### **B2.4.4.1- the court clerk, an influential force in the Magistrates' Retiring room.**

The day to day potential for influencing the magistrates is in the Magistrates' Retiring room, a place where because of administrative pressures very few Justices' Clerks find themselves on a regular basis. So the potential for influencing in this area rests mainly with the court clerks. Those court clerks whom I interviewed accepted that it was inevitable that they would influence magistrates even by just carrying out their everyday basic role of giving advice. As I was told, *"If a bench hasn't considered something and you advise them what their powers are, for example, it is imprisonable, then you are going to influence that sentence, ..when something has to be drawn to their attention that you think that they have overlooked, it quite often results in a different slant being put on it. ... So I think you do".* I then asked the court clerks if they ever went into the Retiring room with direct intention of influencing the

magistrates? The answer given was that they did not, *"No never directly"*. But what is intended and what sometimes materialises are occasionally at odds with each other. As one of the court clerks explained, *"Whatever the bench says, 'Well we are thinking of so and so', quite often I'm afraid my facial expression will reveal something I've been thinking, 'Obviously you don't agree then', and it's very difficult sometimes. But I would never go in with a view of doing something specifically. Sometimes it does turn out that way and you realise at the end of the day that it has gone in a different direction than the bench originally intended and that's because of the input you've made"*.

**B2.4.4.2 - the court clerks would find it difficult to ensure that those 'deserving the harsher sentences' appeared in front of the 'harder benches'.**

In the past some observers have claimed that the court clerks could influence the types of sentences which individual defendants received. This was achieved by arranging the court lists to ensure that the defendants whom they considered deserved the harsher penalties appeared in front of those benches which were more likely to dispense those types of sentences. These claims were rejected almost totally by both the Justices' Clerk and by the court clerks whom I interviewed. The Justices' Clerk did admit, *"I think in theory, yes that's possible, but in practice it's highly improbable these days, more so these days than when that statement was written. Because first of all, even in a medium size court, you've got so many courts to run and so many benches to see to. ..Secondly because in almost all, bar the very small courts, these days, the allocation of the cases to the courts is performed by the Courts' Listing officer, .. the Rota clerk is allocating the magistrates to the courts.. . The Justices' Clerk and certainly the court clerks will have no involvement in that, or very little involvement in it all. So I would discount that one"*. The court clerks told me that there is some allocation of courts to magistrates but this is restricted to those cases which involve the stipendiary magistrate. These are cases which are seen as, *"particularly complicated"* and are more involved with complicated legal argument rather than with the intention of meteing out harsher punishments.

**B2.4.5 In the magistrates' court there are two areas of decision making, the judicial and the administrative, except where they overlap.**

During the period of my observations in the courtrooms of the magistrates' courts, I had noted areas of intense verbal and non-verbal communication which I labelled the 'communication triangles'. These involved two main groups, but each of the groups had its common members. The first group consisted of the magistrate(s), the prosecutor and the defence advocates, the second grouping consisted of the court clerk, the prosecutor and the defence advocates. The former configuration I had found to be used more often in the courts in which the stipendiary magistrate adjudicated, the latter was more commonly observed in those courts overseen by the lay magistrates. Because of the different levels of emphasis which I had observed, I was also concerned whether or not in the lay magistrates courts, the triangle



consisting of the clerk and the advocates, the 'professional lawyer group' were also acting as a decision making group in its own right and to the exclusion of the magistrates. I put these matters to the Justices' Clerk. He agreed with my observations that there were two main communication triangles but in his view each of the triangles fulfilled a different function and came into operation at different stages of the court proceedings. By way of illustration he told me, *"If you had reached a stage in the case, the defendant has pleaded guilty, ..and the decision is what sentence is going to be passed then I would expect that the triangle is advocate-advocate-bench and the clerk has nothing to do with it. Compare that with the other extreme, it has been decided that this case .. requires committal proceedings, [it is to be sent to the Crown Court to dealt with there], we are trying to fix a date for the committal proceedings. I would then expect the triangle to be advocate-advocate-clerk, again almost regardless of who is on the bench"*. However, as he pointed out, not all of the matters fit conveniently into either the judicial or administrative decision making scenarios and it is in these 'hybrid' areas, where the administrative factors quite often dictate the judicial decisions, that the question of who makes the decisions arises. This was described by the Clerk as, *"the middle band area and it's a very wide band"*. He continued, *"Lay magistrates have little or no practical experience of the administrative factors that are going to determine the judicial decision and therefore there is much more likelihood that the triangle will go advocate-advocate-clerk"*. This situation is somewhat different in the stipendiary magistrates' court, *"..because he sits everyday and as a practitioner, .. he will have the experience and the insight .. to perform the function in respect of the administrative elements which the lay bench couldn't honestly be expected to perform. Because he, the 'stipe' can perform that function, it means that the clerk doesn't have to, and the triangle reverts advocate-advocate-'stipe' .."*. What has developed in practice has now been recognised by statute. I was told that, *"The law is moving towards recognising functions that have always in the past been believed to be judicial, they really have such a high element of administrative about them that the law is in effect legitimising your advocate-advocate-clerk triangle but only in some areas"*. In essence recent amendments to the Magistrates' Courts Rules allow the clerk to go in and perform a quasi-judicial function, *"..of deciding that this case will be adjourned to such and such a date, or to say to a defendant, 'You will be committed to the Crown court to stand your trial', but only if it is done with the agreement of the parties and only if there are no other arguments"*. The Justices' Clerk did admit however, that he would be extremely concerned, *"..if I thought that the advocate-advocate-clerk triangle excluded the magistrates from the judicial input"*.

**B2.4.5.1- to the onlooker it often appears that the chairman of the lay bench is just the mouthpiece for decisions taken by the court professionals.**

I suggested to the Justices' Clerk that when the court chairman announces a decision in which the magistrates have had no apparent input, then this can tend to give the onlooker the impression that the magistrates are not really the decision makers but more the mouthpiece

for the court professionals. He replied, *"I'm sure that if that happens then that perception is right, and certainly in my experience as a younger court clerk and particularly when I was a trainee sitting with very experienced clerks I've seen what you have just described many times"*. But in the instances where the decision has been made by the court professionals, the Justices' Clerk was still of the opinion that the impression should be conveyed to any onlookers and in particular the defendant, that the magistrates have had some input into the making of that decision. He told me, *"The important thing to me is that even if the triangle below, [the advocates and the clerk], has effectively come up with one solution only, the solution and the explanation for it should be made clear"*. The policy which should be adopted would be for the clerk to announce the 'proposal' to the whole court and then append the announcement with the statement, *"..and if the magistrates are prepared to agree .'. "*. As he explained, *"That of course is perhaps the code .. but it's done more openly, more publicly, I was going to say more honestly but it isn't actually, it's still equally dishonest, .. because it creates the impression of the magistrates making the decision when the reality still is that the magistrates have had the decision made for them. .. But sometimes it is the perception that counts more than the reality and the perception that you painted is accurate but unfortunate. The perception that I should seek to create is less accurate but it is a better public image. It at least gives some hope that the defendant might say, 'At least the magistrates made the decision', whereas from the picture you painted, he said, 'Well they clearly didn't make that decision', and to that extent that still happens. It really has to be eradicated because whether it be a 'stipe', whether it be a lay bench, they have to be seen to be making the decision and if they're not, there is something wrong"*.

#### **B2.5 The court staffs' perception of and relationship with the defendants.**

*"I try to treat everybody, as far as I can, everybody the same. Try and be polite to them, ... until they get a bit ratty, as sometimes they do, then you change your approach a little bit"*.

(a court usher)

#### **B2.5.1 Defendants are not categorised by the types of crime with which they are associated, only by the level of their experience at court.**

*"The people who come to a magistrates' court don't want to go there"*. This simple statement made by the Justices' Clerk identifies the defendants as being the reluctant participants in the courtroom drama. They are not at court of their own volition and it appears that this is the factor which so often influences their attitudes and behaviour whilst at court, a topic which has already been referred to earlier. The court usher has the task of 'organising' the defendants in the waiting areas prior to their hearings in the courtroom and I asked one of the ushers for his perception of the defendants. His reply was *"They're pretty good people by and large out on the corridor"*, [the waiting area]. I then asked whether or not the ushers tended to categorise the defendants by the seriousness of the offences or the types of crime which they

were alleged to have committed ? I was told, *"In the adult court I don't categorise people other than, they know their way round or they don't know their way round"*. He expanded on this statement, *"You know somebody who's never been in before, you can tell them as soon as they walk up the steps because they look totally lost. You can spot them a mile away, no matter how they are dressed. [Then there are those people], who are used to the court procedure and don't need so much help"*. As far as linking defendants with their alleged offences he said, *"I try, I think so do my colleagues, we try to treat not so much the offence, whatever the offence is, it's above your head if you like, you don't take any notice of it. You can have sex offenders and child molesters or anything like that, which I personally as an individual would find repugnant, but I treat them no different than a guy who is at court for speeding. ... I try to treat everybody the same"*. This particular usher did admit however that this even-handed approach is put to the test on occasions, *"It's difficult at times, the ones I find most difficult, if I'm honest I do tend to categorise, are the youths, the Youth court, because they are something to themselves ..."*.

**B2.5.1.1 - the defendants' reaction to waiting in court is often dependant on their level of 'experience' and the reason they are there.**

The defendants who attend at court react to that experience and the court environment in different ways. From his experience in the waiting areas, the court usher had formed an opinion that, *"The first timers tend to be a little fearful of you, or the bench, or the procedures of the court"*. He recounted a recent experience which he described as a, *"classic example when you talk about nervousness"*. He told me about a lady in her mid-sixties, who had been summoned to attend court for failing to keep a dog under control. As he put it, *"We had a hell of a time with that one. We had to fetch the WRVS out, (the WRVS staffed the snack bar), give her drinks of tea. ...She was convinced that she was going to prison and nothing that you could say could convince her otherwise"*. But the usher was quick to add, *"But I've never actually come across, apart from one or two examples like that, where people because they are waiting think the worst..."*. He then went on to talk about the more experienced attenders at court. He told me, *"I've yet to come across a regular who's bothered whether he's spending an hour or two hours waiting"*. On the subject of the effect of waiting in the magistrates' courts, I also discussed this matter with the Justices' Clerk. I put to him the assertion that had been made in the past by researchers that, 'Defendants become more and more nervous, harbouring fears, usually unfounded, that they will be sent to prison', (Carlen, 1976, p27). His reply was, *"I would be very surprised if anything other than a very insignificant number of people who arrive at this building not thinking that they are going to prison, develop that fear as they are waiting. ...I don't think that happens on any significant scale. ... My own experience suggests to me that the ones who are in some fear of going to prison arrive at the building in that fear"*. What may well affect the defendants' confidence, and particularly those waiting at the Fines Enforcement courts is where a committal order is issued and a defendant is committed to prison in default of

paying an outstanding fine. As the court usher had observed, *"What does put the wind up them of course, is if somebody doesn't come out. They see somebody go in, and I come out and shout the next name and they think, 'Where's he gone'? .."*. However the Fines court doesn't always strike fear into the defendants. In my interviews with the court clerks I was told of an incident in the waiting areas which could suggest that those areas are not always places of apprehension and despondency. *"The other day we had a Fines court, they were all laughing and joking outside. According to [the usher], ..there was a big party going on. He went out and there were about forty attenders. He asked, 'Is anyone going to pay their fine in full', and the whole corridor roared with laughter. So it depends what they're in court for"*. During my discussions, I also asked how the various defendants reacted to the 'squalor' which is characteristic of the waiting areas. The usher told me that the newcomers to the court, *"They're absolutely appalled by the surroundings ... There are regular attenders at court and they seem quite immune to the surroundings quite frankly and couldn't care less. ..There are those who are not so regular but they put up with it anyhow"*. Even if prolonged waiting does not, in the opinion of the court staff, create fear for the majority of people of a custodial sentence being imposed, it does have a detrimental effect in other ways. According to the court usher, *"They get frustrated, they get bored, they get upset"*. In the opinion of the Justices' Clerk, *"I think what does happen is the longer they wait the more fed up, the more frustrated they get. I don't think they get more and more in fear, I think they get more and more short tempered"*, and this, as has been previously stated, can lead to damage and vandalism in those waiting areas. According to the usher the people who are most affected by the waiting in the courts are the witnesses, *"If anyone gets nervous it's the witnesses. The longer they're kept waiting without explanation, the more they get nervous about coming into court"*.

#### **B2.5.1.2 - defendants react in different ways to the sentences they receive.**

In the same way that the defendants react differently to the waiting prior to the court hearing, I was also told that they react in different ways to the sentences which they receive. As the court usher reiterated, *"Most people, if they're going down, have a fair idea that they're going to be locked up, .. they're half expecting it"*. There are, however, occasions when their worst fears are not realised, *".. and they are quite relieved when they don't go down. You can see people, who alright, have had serious offences, it's relief. They're lucky not to go down today and they come out, now on their faces, it's relief. ..they fear the worst and it's not as bad as they expected"*. But not everyone who attends the court leaves by the public entrance, even when they were expecting to, and even then the defendants' reactions are not always what were anticipated. The usher related a recent instance, *"There was a case yesterday where a lad got .. six months and I would have expected him to have been really surprised when he got into court because it wasn't canvassed on his report, [the Pre-Sentence Report]. But even he took it quite calmly and even down the corridor he was quite cheerful. It surprises you that sometimes"*. I was also told about some defendants who play a role in court in order to deceive

the sentencers of their real thoughts and who on leaving the courtroom project a different image. When I put this to the usher, he said, *"Yes I have to agree, I've said to my colleagues, it would be good sometimes to have a video camera outside the courtroom to show the magistrates some of the defendants as they leave court, because whatever their demeanour is in court, it's nothing like it when they go out, ... it's not broad but it does happen especially with, I'm bound to say it again, the young, regular, persistent offenders, ..who've got quite a record and they think that's great, 'I got away with it, that's smashing'".* I asked if there was any evidence whether on leaving court, the defendants imparted knowledge to the people still waiting to go into court, about the bench, i.e. 'unofficial coaching'. This court usher was not aware of this happening as a regular feature, *"Not unless there are two mates"*. In fact to the contrary, he had found that, *"They're only too relieved to get out and away, they're down the corridor like a shot and away, so that doesn't particularly happen"*.

#### **B2.5.2 The court ushers are not seen by the defendants as part of the establishment.**

*"I expect each usher develops his own style. ..I try to keep everybody, as far as I can, everybody the same and be polite to them, 'Say, good morning sir, do you want any help' ..Until they get a bit ratty with me, as sometimes they do, then you change your approach a bit"*. This was the policy adopted towards the defendants by the court usher whom I interviewed, but he did concede that this was not necessarily the approach of all the ushers, not even his colleagues who worked in the study area. But what I was interested in was the attitude of the defendants towards the court ushers. The usher told me, that by and large they were very good, a fact that surprised him when he first started in the job, *" .. you're not considered part of the establishment and if we compare it to when the police used to run the courts you don't get that antagonism towards you, very very rare ..By and large people accept you, ..you're the sort of buffer between the court and them, .."*. But isn't the gown a symbol of authority? I asked. The usher considered that the gown acted as a, *"point of reference"*, rather than a 'symbol of authority', *"...it's just what they expect to see, somebody in a gown because he's an usher and that's it"*.

#### **B2.5.2.1- the defendants' relationships with their advocates, a Justice' Clerk's view.**

I put to the Justices' Clerk, the claims made by some researchers, 'that defendants commonly observed that they had found it difficult to decide whose side their advocates were on', (Baldwin & McConville, 1977, p85). The Justices' Clerk had no difficulty in associating that comment with the Crown court where the observation had been made, and where, *".. the barristers are a bit more matey with each other"*. In the Crown court the advocates' roles are also a little less clearly defined. As it was explained, *"You are talking about two barristers, one of whom today is prosecuting, the other whom is defending. Their roles could equally be reversed tomorrow or even this afternoon .."*. He did see the situation in the magistrates' court

as somewhat different because the majority of advocates have clearly distinct functions in the Crime courts, they are either prosecutors or else they are defence solicitors. However the Clerk did recognise that this only defined their roles in the formal setting of the court. In the informal settings, the period of time when the bench have retired and left the courtroom, then the situation might well be different and the adversarial stances of the advocates may well have been dropped. As the Clerk explained, *"If he, [the defendant], sees the guy who he thinks is on his side, who's putting his story, chatting to the prosecutor, he doesn't know what he's chatting about. It may very well be nothing to do with him at all, it could be the next case, it could be last night's football, ..but he doesn't know that. He thinks that because this advocate is supposed to be his sole prop in front of all these people, that he, the advocate, and the prosecutor must be deadly enemies. They mustn't be seen to be talking to each other politely, certainly not in a matey, chatty sort of way. I can see why the defendants get a little uneasy about that"*. Whilst appreciating the defendant's point of view, the Clerk insists that from the perspective of the courts, *"..they can't be opposing each other day in, day out because the system wouldn't work"*.

#### **B2.5.3 The defendants' understanding, or lack of understanding of what their court hearings were all about.**

*"A lot of people do leave the courtroom without fully understanding what has happened. .. I always think looking at people, 'He's no idea what's happening, he hasn't a clue why he's been committed to the Crown court or why he's being dealt with here' .They just go along with their solicitor who tells them, 'Say this and that', and they say it. But I don't think they grasp what's been said until later on"*. This statement summarised the impression gained by a court usher on what he perceives as the defendant's understanding of what has happened in the courtroom. He elaborated on this by saying that in his opinion the defendant's understanding depended to a large degree on the complexity of the decision and its announcement. He continued, *"If it's just a simple adjournment, 'We're adjourning it for a fortnight ..', I think by and large people grasp that, they know they've got to be back, why they've got to be back they're not exactly sure. .. But once it gets beyond that ... "*. Neither did this court usher blame this lack of understanding by the defendants on the courts. He told me, *"Generally in these courts, people bend over backwards to explain to the defendants what's happening, what will happen next. Information is first class. .. If they don't understand, it's simply because they haven't listened right, not because it's not been explained well or because the accoustics are bad or anything like that"*. This view was not however necessarily shared by the Justices' Clerk. He saw the courtroom language as a potential problem and in particular, courtroom jargon. He explained, *"The jargon is only useful for shorthand if one professional court user is dealing entirely with another professional court user, and I include magistrates in this. This jargon saves time .. and is understood. But the minute that the client is there it's no good using jargon, it is the client who needs the explanation and it's got to be in plain English. It's got to be something he understands"*.

## **B2.6 The court staffs' perception of and relationship with the other court users.**

*"I would certainly agree to start with that there are a lot of competing interests in the courtroom and I'm not even sure that this 'uneasy compromise' is the the right expression. In many cases I'm not even sure there is compromise. I think there is just straightforward competition. The competition can very quickly become a conflict ..."*

(the Justices' Clerk)

### **B2.6.1 The quality of a bench is dependant upon the competency of its chairman.**

To find out the court staffs' view of the magistrates, I went straight to the court clerks, the people who have the job of assisting and advising the magistrates every day and particularly the lay magistrates. They are the people, in my experience, who have to pick up the pieces when the, not infrequent, 'gaffes' are made by the lay magistrates. In the opinion of these court clerks, *"Some lay benches are as good as the stipendiary magistrate, apart from the length of time that they have to consider, but I mean the quality of justice that is dished out is equally as good. But it depends on the mix of the bench, sometimes it's appalling"*. Quite often the quality of a bench is very much dependant on how competent and proficient its chairman is. The clerks continued, *"The chairman influences a lot of things, if you've got a good chairman, you know it's going to be alright"*. With a poor chairman presiding on the bench, I was told that the court clerk's job can become, *"stressful"*.

#### **B2.6.1.1- sentencing by the lay bench is influenced by the individual magistrate, combinations of magistrates and by 'custom and practice'.**

As part of my discussions concerning the lay magistrates, the conversation inevitably centred on their sentencing function. Once again the clerks emphasised the ways in which this can be influenced by the make-up of the individual benches. As I was told, *"Quite often it is the personalities of the actual benches and you will sometimes get some benches who will do anything that is asked of them, .. and very often without questioning something that is so obvious and should have been covered. .. That depends again on the sort of bench you've got, if it's anyone for an easy life"*. Alternatively, I was told that the court clerks also encounter the other extreme, the magistrates who have their own biases, their own likes and dislikes and who bring these into play during the decision making process, because, *" .. if they've got that in their minds, that is going to be what it is at the end of the day"*. The final decision can also depend on the persistence and the resolve of an individual magistrate to win the argument. One of the court clerks related a specific instance to demonstrate this particular point. I was told, *"Well it sometimes depends on how strong minded particular magistrates are. I had a trial the other day and it started off with two of them wanting to dismiss and one to convict. Then I came through and gave some advice and two of them wanted to convict and the other wanted to dismiss, this was after quite a long time of deliberation. The one who wanted to dismiss, she was so .. determined that it was going to happen, that is what they did in the end"*. But what was also

identified as an important factor in the sentencing decisions of the lay magistrates is the 'Bench Sentencing Policy', or to be more accurate the 'customs and practices' adopted by the Bench over time.

#### **B2.6.1.2 - magistrates' courts can be self-perpetuating.**

*"I do think that magistrates' courts..., lay themselves open to criticism of being self-perpetuating. The new magistrates are recommended, by and large, by existing magistrates. One of the tendencies is to look at each candidate and say, 'Will this one fit in? Would I like to sit with this one?' and if not, 'Well we'll not bother with this one'. Now that's a criticism often voiced, I think the criticism can be exaggerated .. but like so many other things it is not without foundation".* This comment by the Justices' Clerk prompted me to put to him the criticism that, 'For new magistrates and for those becoming senior magistrates, the message from the other court workers is clear. 'The system works very well thank you, please leave it alone'..', (Parker, Casburn and Turnbull, 1981, p66). Whilst partially agreeing with this criticism it was not accepted in its entirety. The Clerk agreed that there was a great deal of evidence which suggested that, " .. the message for the new magistrates is, 'We've been doing this job this way for so long, don't you start trying to tell us how to do our job when you're so new". He was quite prepared to concede that the magistrates' courts and their procedures are not beyond criticism and that suggestions on how to improve the situation should not necessarily be ignored, "Because if you've been doing the job ten years, fifteen years, twenty years and you are still not sure how to improve it, you recognise it needs improving, but you are not sure how. Then I think it's a little unfortunate to say that these newcomers might not have some good ideas". In the Clerk's opinion, the magistrates' courts, like most bureaucratic organisations, evolve. They do change, but they change relatively slowly. Where sudden change does occur, I was told that this would normally be brought about by the actions of one of the professional bodies who are a part of that system. As was explained, "It is unlikely that a relative newcomer would have sufficient insight to bring about the necessary changes". In elaborating this statement, the Clerk told me, " .. the relative newcomer, because of their lack of experience and because of the time they would take to gain that experience as a part-timer, who only comes once a week, once a fortnight and because they only look at the system from a limited viewpoint, without an overall view, even with their high level of experience in their own particular field, they might still find it difficult to apply that experience in the right way to the particular problems in the magistrates' court".



**B2.6.2 The stipendiary magistrates' courts are 'more professional', 'quicker' and better at dealing with cases which involve 'complicated legal argument'.**

I was told by the court usher, *"There is a difference, a marked difference when a stipendiary is running a court than when a lay bench are running a court. ..the whole performance from people is a lot sharper. When the 'stipe' is running a court, it's a little more professional. .. I'm talking about the actual appearance of the court and the whole atmosphere of the court, both from our point of view and the defendant's point of view .."*. The court clerks also found that there was a considerable difference, *"..sitting with the stipendiary magistrate is having a bit of a rest to be quite honest because .. apart from keeping the court running you don't need to have your brain switched on"*. According to the clerks, the stipendiary magistrates' courts are much quicker, because the need to consult with colleagues is eliminated. The stipendiary magistrates are also less likely to, but are not totally immune from, making mistakes in their decisions and their announcements. As has already been mentioned in previous chapters, the stipendiary magistrates, because of their training and experience, have a much greater knowledge than the lay magistrates about both the judicial and the administrative matters which have to be considered as part of the decision making process. It is because of this knowledge that the court professionals have a preference that any cases which contain complicated legal argument are listed for hearing by a stipendiary magistrate and such cases are normally allocated in this way.

**B2.6.2.1- the lay benches are seen as being much 'softer' in their sentencing than are the stipendiary magistrates.**

But I was also told, it is not always the situation that the advocates have a preference to have their cases listed in the stipendiary magistrates' courts. From what one of the court clerks told me, there is a definite impression among the advocates, *".. that a lay bench is softer .. and they can get a lay bench to do what they want."* Another court clerk told me, *"You very often get advocates grumbling if they've been put in front of the 'stipe' with a reports case, [a case where Pre-Sentence Reports have been requested]. If they think it's a custody case, if the 'stipe' is sitting, there's more chance of 'going down', [the defendant going into custody], .."*

**B2.6.3 There are areas of conflict between the different individuals and agencies in the magistrates' courts, only some of which can be settled by compromise**

The different teams involved in the magistrates' courts system do have different aims and objectives which are often motivated by their individual or group 'vested' interests. Inevitably this can create conflicts, conflicts which sometimes, but not always, can be settled by compromise. These were the views expressed by the Justices' Clerk during our discussions on the subject of 'Inter-team relationships'. He was certainly of the opinion that, *" .. there are potentially conflicting interests in the courtroom"*. He gave examples such as *".. everybody wants to have their case heard first, .. defendants, witnesses, advocates, all want to get on, get*

*their cases over and go home, all for their different reasons. ...Advocates, because it's financial, defendants and witnesses, perhaps just to get it over and get the pressure relieved, .. and when it gets to two minutes to one and there are three cases left, the court clerk is thinking about his lunch because he's got another court to start at two o' clock". In the final analysis not all of these conflicts are going to be or can be settled by compromise. If they cannot, then I was told that it is, "...usually down to the court clerk, ..somebody has to make that decision and somebody making that decision is going to upset some people". Each of the participants in the courtroom is also there to perform a different function, to play a different role. The Justices' Clerk continued, "It was said, ..that the defence advocate's job is to get his client off. But the prosecution advocate's job is not to get the defendant convicted, it is to present the case fairly. I think I would be inclined to the view that the probation officer's job these days is to present the court with an appropriate sentence other than a custodial sentence. The witnesses wish just to put forward their side of the story as they see it, the truth as they see it. The defence advocate may want to get a different version out of them". One of the court clerks also defined what they saw as areas of conflict within the courtrooms, "There are conflicts between, for example, what we are trying to do and what the CPS are trying to do and increasingly, I think, between Probation and the magistrates' sentences, and there seems to be an increasing conflict there, where they are putting forward representations in reports .. You get probation officers saying, 'Well I don't think this is serious', and of course the magistrates frequently say, 'Ah, but we do', and the defence trying to convince the bench by saying, ' You don't really need to impose a custodial sentence do you', But yes, there is always conflict there".*

#### **B2.6.3.1- without inter-team loyalties the system would not work.**

Within the magistrates' courts, I had observed a number of different groups, but I was told that apart from these obvious groups, the court staff, prosecution, defence and the social workers, there were also certain wider groupings. It was also quite common for an individual to belong to more than one team and this 'dual membership' can sometimes result in an overlap of loyalties. As the Justices' Clerk explained, the court clerk is a member of the 'court team', which comprises of the magistrate, the clerk, the court assistant and the usher, " .. but I think the court clerk also comes into a slightly looser team of the professional court users. Because today you as a magistrate are part of the court clerk's team but tomorrow you are not, you are not there tomorrow ... ". In the same way the Clerk described the 'defence team', " .. the advocate and his client, they form one of today's teams, but tomorrow they don't, because the client isn't there tomorrow. Now he's got another client admittedly, but he, [the advocate], is also part of the professional court users' team which is made up of the advocates and the court clerk and the dock officer and the probation officer who are regulars, they are there everyday". He continued, "When you describe the court team, ..the prosecution team, the defence team, yes they are all there, those sorts of teams. But they can't be opposing each other day in, day

*out, because the system wouldn't work and in that sense some of the loyalties can be a bit divided".*

### **B3 THE ADVOCATES' PERCEPTION.**

#### **B3.1 The role of the defence solicitor.**

*"What the clients think is good representation and what is good representation are not always the same thing".*

*(a defence solicitor)*

##### **B3.1.1 A trained lawyer, not the client's parrot.**

The defence advocates see their role as giving their clients the best representation they can within the rules of the legal system. They are employed to put their clients' side of the argument, but they are quick to point out that this does not necessarily mean that they just put forward the clients' view of the events, *"We represent our clients for their own best interests and to the best of our ability in doing that"*. As one solicitor explained to me, *"The client can tell us the facts of the incident and it must be our job as a lawyer to see how the facts relate to the charge, to decide whether the case is made out, or whether a defence exists, or whether mitigation should be put forward. That is why lawyers are trained and why we are employed, not merely to be parrots repeating comments made to us by our clients, but interpreting those comments and using them for the clients' best interest"*.

##### **B3.1.1.1 - representation, the path that encompasses all, a tortuous path.**

I was told by a number of advocates that there are good and bad solicitors but as one solicitor pointed out what is good and what is bad is quite often a matter of individual perception. *"What clients think is good representation and what is good representation is not always the same thing because a lot of solicitors will do their act for the defendants' ears, whether it benefits the defendants or not, but because the the defendant likes it. I've seen defendants leave court having been very badly represented take the view that they were well represented because he, [their solicitor], was rude to the prosecutor"*. Other solicitors were accused of putting self-interest first, of playing to the gallery rather than focusing on their clients. As one solicitor put it, *"Some solicitors will play to the gallery because generally they are exhibitionists, but to do this job you have to be, they like the sound of their own voice and they think it's a good sales trick"*. A view which was endorsed by a second solicitor who condemned certain of his colleagues for being primarily interested in personal gain, *"There are solicitors who frequently do not act in their client's interest, .. I am deeply offended by solicitors who use every single opportunity to gain publicity for themselves, to further their careers. I've spent many years trying to avoid publicity because usually it does my client harm"*.

But if the job of the solicitor is to represent the interests of the client, while at the same time convincing the client that this is being done, how does the defence solicitor achieve the combining of what should be two complementary issues ? To quote the words of one solicitor, *"The successful solicitor has got to find the path that encompasses all, whilst keeping credibility with all, and it is a very tortuous path"*. In presenting the client's view, all the solicitors whom I interviewed were agreed that if the client insists on something being said in court and

providing that it is not seen as detrimental to the client's interest then it should be said. The problems arise when the clients wish to have something put before the court which is either illegal or which it is deemed will, *"..insult the intelligence of the court"*. Again all were agreed that where the facts indicate that the defendant is in the wrong, then it would be wrong to present the case in any other way, *"It wouldn't therefore be professional to put forward an argument that a client was not in the wrong when they patently were"*. There are however occasions, *"When even the most hardened professional defence advocate will be offended by the instructions he is given by his client"*, and it is this dilemma which concerns most advocates. As I was told by one defence solicitor, *"There is an element of truth in the fact that you discount what the defendant says a lot of the time. But I would like to think that I never give the client that impression or stand up in court and really give the court that impression. It's really back to credibility with the benches, there is a point beyond which you are not prepared to go. I mean yes, you have to challenge your client, there are things that they will say to you on which you do challenge them hard. But at the end of the day, if a client wants something said and unless it is going to be to his detriment if I say it, I'll generally put it across"*. Another solicitor was rather more forthright in his views about the occasions when he is instructed to proceed by the client, even though it is contrary to the advice he has given. In his opinion the solicitor should put the matters to the court as instructed but with a rider which protects the solicitor's credibility with the magistrates, using words which indicate, *"He has specifically asked me to do it, I don't think he should, but this 'dolls-head' won't believe me"*. While this appears not to be an uncommon method by which solicitors distance themselves from some of the views of their clients, it is seen by at least one solicitor as a 'cop out', an abdication of responsibility.

#### **B3.1.1.2 - solicitors do prepare their clients for the court hearing, time permitting.**

It is also part of the defence lawyer's role to prepare the defendant whom they are representing for the appearance in court. The client needs to know what the system is, what to expect during the course of the hearing, to be made aware of and be prepared for all the possible outcomes, and following the hearing, the often bemused client may need to be told what has happened. As I was told by one solicitor, *"It's part of our job, an essential part of our job to make sure that our clients understand the procedures and to go through those procedures carefully and at a pace that the defendants can understand....."*. In the opinion of one solicitor if the represented defendant does not understand what has happened then, *"..his, or her, representative has been inefficient or incompetent and has not done the job of acting for the individual"*. Whilst this observation may be all very well in theory, I was told by another solicitor that in practice it does not always happen. The pressures of time and workload have created a situation where the clients are categorised according to their previous experience and their perceived needs. *"I know that for anybody who is in court for the first time, I am sure that most of my colleagues spend a lot of time telling them what is going to happen, even down to, you'll be taken in and you'll be asked to stand, you'll be standing near me, you'll have to speak*

*your name ... . For people who are there more regularly, yes you get lax, you think, 'I haven't got the time, I've got to dash off somewhere else' ..".*

#### **B3.1.1.3 - who the solicitor represents in the courtroom is not always of their choosing.**

Defence solicitors have been accused of only giving training to their clients, 'often in the last ten minutes before a case is heard and often by a young solicitor whom they have never seen before', (Carlen, 1976, p91). When I put this assertion to the solicitors during the interviews, all agreed that it had a 'ring of truth', but, by and large, the reasons for it were claimed not to be necessarily of the solicitors making. It was conceded that in some firms of solicitors it is the policy for a clerk to deal with much of the preparation, therefore some of the advocates do not see the client until the case is called into court and this was seen as unsatisfactory, "*bad form*" as one solicitor described it. Solicitors in common with many other of the professions like to build up a client base, they would also prefer to, "*..see cases from the initial instructions and all the way through court, but the system does not allow it*". One of the main reasons put forward for this failure is the difficulty of time-tabling within the courts. This can result in conflict when a solicitor who is required to attend in one court is found to be engaged and 'on their feet' in an adjacent court. If the magistrates insist that the case should proceed, and this is not an uncommon occurrence, then the most common solution is to transfer the relevant cases to available colleagues from the same firm and who are attending at court. This situation does not pose a major problem for the solicitors who all consider themselves able "*..to pick up a file, read it quickly and know where we are. The client, however, may well view the situation from a different perspective because as they see it, 'I've told my innermost secrets to one person, to find that somebody else I've never met is now standing and talking on my behalf'. But that happens, not really of our choosing. That happens because of the pressures that are put on us*".

#### **B3.1.1.4 - is there a case for coaching the defendants and their witnesses?**

While most of the solicitors try to prepare their clients for the courtroom experience, the actual 'performance coaching' of defendants and defence witnesses is not widely used. As one solicitor explained, "*I don't think that the coaching of defendants and witnesses is anything as common as people believe. The lawyers that I know will certainly have their clients tell them their version of events and will certainly have their clients read through the statement before they go into court on the day. ..But actually I do not know of any that have 'dress rehearsals'. I do not know of any lawyers who run their clients and witnesses through their version of events time and time again to improve their technique*". Some witnesses are assessed to try and "*perceive how the witness will react in court*". When comparing the defence witness with the prosecution witness then, as one defence advocate observed, the defence could be placed at a disadvantage. The prosecution witness, "*is likely to be a police officer or in many cases a*

professional witness, so they have given evidence many times before. They perhaps, have been coached at training school or in their jobs, in previous cases, on how to give evidence". In comparing this with the normal defendant or defence witness one solicitor did ponder, "Many defendants haven't been in a court before or have never been involved in trials before and may not know how to give evidence and it may well be that we should tell the defendant more about the way in which he or she gives evidence and perhaps we don't do it often enough".

#### **B3.1.1.5 - there is sometimes a requirement to protect the defendant from the bench.**

The defence solicitors also consider that part of their job is to 'protect' their clients from the magistrates, to restrict the direct contact between the defendants and the magistrates and to prevent their clients from making any statements which may be seen as detrimental to their case. As one solicitor told me, *"The minute that certain magistrates want to speak directly to the defendants, the way we generally deal with it is to rise immediately to our feet and try to intervene. That's because we don't know what our client is going to say and we want to try and stop them saying things which are going to drop them in it"*. But this is not the only reason, as I was told by another solicitor, there is also a need in some instances to guard against some chairmen in the court who will, *"...interrogate young defendants disgracefully"*.

#### **B3.1.2 A legal practice or a commercial enterprise - an area of conflict.**

There is no doubt in the minds of any of the defence solicitors with whom I spoke that they operate in a highly competitive market where their businesses are subject to the same commercial pressures as any other business. If they are to succeed then they need to attract clients, they need to build their reputations and not only among the 'defendant population' but also with the other court users. The general view was perhaps summarised by one solicitor who told me, *"In 1993 because the competition is rife, solicitors enjoy their work by reputation and if you sell people short you won't get work"*. The same solicitor when discussing the importance of credibility saw it as, *"...vital, ... You're self-employed, it's a job, if you do the job badly or if people don't like you, they think you're an idiot, or whatever, you will not be successful, you will not make a living"*. This view was supported by a second solicitor who told me that to be successful, legal firms need a high volume of customers, *"I think we need to be busy to make a living because of the financial constraints that are placed upon us. We have to keep busy, we have fewer staff, ... and our staff have to work harder to be profitable"*. This solicitor also bemoaned the change of emphasis which he has experienced, which has been forced upon him, from lawyer to businessman. *"When I started in law .... we never worried about whether there was a profit at the end of the year, because we knew it would be there. Now days we have to manage the business and as a sideline we are allowed to become a lawyer. I should be concerned at doing my work, giving my advice and conducting myself professionally rather than thinking, how do I make a profit, do I make a profit today ?"*

### **B3.1.3 The role of the prosecutor.**

*"... you're there as a minister of justice  
not as an avenging angel"  
(a prosecuting solicitor)*

During the course of my interviews, a view had been expressed that, 'while it is the job of the defence advocates to try everything within the rules to get their clients off, it is not necessarily the job of the prosecutor to get a person convicted', a view with which the prosecutor who was interviewed as part of the study concurred. As he told me, *"You are there to see that your version of the facts are fairly put before the court. ..So yes I see my role as there to help the court, telling one side of the story so that they, [the magistrates], can make the right decision when it comes to sentencing .."*. But in commenting on the adversarial system in the magistrates courts he did admit, *" There is at the end of the day a winner or a loser. I think probably we would be less than human if we don't want to be winners all the time. I think you have got to rarefy it a little bit more and say, we've all won provided that just results have been reached, the right result. That's the theoretical thing, but of course we're all human and we all like to be winners"*.

#### **B3.1.3.1 - the prosecution can find themselves disadvantaged by the rules.**

The prosecutor with whom I spoke felt that in a number of ways and contrary to to popular perception, *" That the feeling here is that the odds are stacked against us. ..I think so far as the guilt or innocence side of the things are concerned, then as a prosecutor my perception is that it's stacked in favour of the defendant"*. In support of his argument he claimed that while the prosecution have to openly declare both their intentions and information to the defence in advance, *"What our evidence is, what our case is, we've given them all our statements"*. The defence do not have to divulge what their defence is , *"..until the day of the trial or even in the course of the trial"*. The prosecutors can find in these circumstances that they can even be presented with, *"..what is known in the trade as an 'ambush defence', something you've got to deal with on your feet .."*. In the adversarial system, which underpins the justice system, the burden of proof rests with the prosecution.

#### **B3.1.3.2 - prosecutors also have feelings.**

Many of the pre-courtroom decisions which the prosecution solicitors have to make are decided without the benefit of the 'human element', they are based upon 'pieces of paper'. The reality of human input can sometimes be quite revealing. As I was told, *"There is no human input into our decision making, .. Your own view can actually be altered when you actually see the witness in the box, or the defendant. A number of times I've dealt with things and it's looked quite bad on paper and then some mousey woman or some poor alcoholic fellow comes into the dock. You think, 'What am I here for? Why am I doing him for this or her for this*



and you feel a bit of a heel about it, ..and you think he can't have done that or it's not in the public interest to prosecute, ..and that's something you can't see on paper".

### **B3.2 Justice and organisational efficiency.**

*"I certainly feel that we as defence solicitors  
.. are coming under increasing pressure  
to get things done quickly regardless of  
whether we are doing a good job for the client"  
(a defence solicitor)*

#### **B3.2.1 It is argued that justice delayed is justice denied, but the real reason is financial.**

There was a strong element of feeling amongst the solicitors whom I interviewed that justice is becoming a casualty of government policy. As one solicitor explained in some detail, *"The emphasis now is on speeding things up on the basis of the argument, 'justice delayed is justice denied', that's the basis of it and in my opinion clever people, ..who have a political bias and are very professional at this deft art of being able to make things apply to certain criteria, ... so they adopt that philosophy but with finance in mind"*. This solicitor was also very critical of the Lord Chancellor's Department who he sees as a, *"..political and financial institution who have moved too far away from the interests of justice"*. I was told that the criteria which is now used to assess the efficiency of a magistrates' court is the speed with which the workload is moved through the system. *"Delay becomes the appropriate term not justice and so consequently we are eaten up by this business of delay and we must have things dealt with first time in, ... courts are told that they must do things more quickly, if they don't, they don't get the appropriate points and if they don't get them ..they will be in difficulties"*, [their funding for the following year will be calculated using current performance indicators]. This solicitor saw change as inevitable, *"Things change, times change, you get bureaucrats who want to change the world and the system and because it's finance orientated, it has to change"*. In accepting the inevitability of it all, this solicitor was concerned at the 'other cost', *".. it's at what cost, now if it's at the cost of the interest of the case and justice for the individual then it's too expensive in my view"*. A second defence solicitor offered the opinion that, *"The courts themselves are now being placed under financial constraints which in my view is reducing the amount of justice we will see, .."*. Not only was it the defence advocates who were concerned with this financial preoccupation in the magistrates' courts, the prosecutor with whom I spoke also volunteered the opinion that, *"Everything over the last ten years or so seems to have been reduced to money and this job or this business, the law, is exactly the same"*.

#### **B3.2.1.1 - the government's aim is to reduce the effectiveness of the Legal Aid system.**

The dissatisfaction with central government's approach to the legal system was also expressed with regard to the recent amendments to the Legal Aid system. One opinion

suggested that solicitor performance will be impaired, I was told, *"With the cut-backs in legal aid, I think you will get corner cutting, you will get solicitors having to be less than what they should be, some might say out of necessity"*. Concern was also expressed for those groups in society who will now find themselves outside of the qualifying criteria for obtaining legal aid because, *"..only people who are actually in receipt of state benefit, that is in particular Family support or Family credit or a financial level similar to Income support, they're the only ones in real terms who are going to get meaningful legal aid. Everybody else, even in a poorly paid job, are going to have such a massive contribution to pay towards the cost of their own representation that I genuinely believe that most people will not have a solicitor"*. It is further claimed that this policy will put an, *".. unfair burden on the clerks of the court who are going to have to carefully go through cases with defendants to make certain that they are taking each procedural step correctly"*, a task for which the courts will find it very difficult to devote the necessary time. Another solicitor told me that with any reduction in legal aid justice will suffer, there will be an increase in unrepresented defendants, *"I would say that without legal aid there would be a much greater injustice than there is, ..I've seen defendants refused legal aid for whatever reason walk into a trial, into a minefield, .."*. It is also envisaged that increased pressure will be placed on the Duty Solicitor system, with solicitors, *"Trying to see people on the hoof, getting instructions in a matter of minutes, a glance at the papers and deal with cases in court. That's not the proper way to consider a charge if we're talking about criminal matters and representing somebody .. and that's the only type of legal aid, it seems to me, that this government is allowing to remain. .. This government is not concerned at all in whether we have a good service, they are simply trying to put together a very cheap service, ..a second rate, cheap 'Public Defender' system"*. The sentiments expressed in these views, while being generally held by the defence advocates with whom I spoke, were not necessarily shared by the prosecutor. It was pointed out that prior to the change in the Legal Aid legislation, *"If it was being done on legal aid, I suspect there was an interest to make it last as long as you can and get what you can"*. Things have changed with the introduction of fixed fees and, *"..now of course the most effective way of doing things with fixed fees is to do it quickly"*. Allowance has been made within the system for not guilty pleas, *"Because if a defendant pleads not guilty then the fixed fees goes up .. and we're not going to make a snap decision about the not guilty there and then because it might not be the right one"*. The prosecuting solicitor was at pains to emphasise the fact however, that there are a number of good reasons for not guilty pleas, not least, *".. because sometimes the evidence isn't there. I mean not every not guilty plea is a device to milk the legal aid fund"*.

### **B3.2.2 There is increasing pressure to restrict delays.**

*"There is a great deal more pressure today than there was to avoid delays"*. This view expressed by a defence solicitor was confirmed by all of the solicitors, whether defence or prosecution, who were interviewed as part of the study. I was told by another solicitor, *"I've*

noticed in the last five years a massive change. *..pre-eighty seven there was a very good working atmosphere, everybody understood everybody's role and the pressure to do things wasn't as great. That didn't mean to say that they would adjourn anything for any reason, they would look into things and see the sense of it, but if you put forward a sensible reason they would grant an adjournment without hesitation*". Both sets of solicitors considered that the greatest pressure to proceed with cases was exerted by the stipendiary magistrates rather than the lay magistrates. There was also general agreement about the fact that when the magistrates insist on a matter going ahead this does not always result in the matter being dealt with in the most effective way, either financially or judiciously. For example if the magistrates insist on pleas being taken then the defence will take the safe way out, *"We'll plead not guilty and then it goes out for pre-trial reviews etc. and it gets listed for trial and at some point in the next three months it dawns on somebody either from our point of view, [the prosecution], that it's a non-runner and from their point of view, [the defence], that it's not a runner and you've not saved any time. There is an atmosphere that ..progress has to be made every time and sometimes it does help to stand back on both sides and take stock before moving on to the next stage"*.

All were agreed that a case should proceed providing there is time to do it on the day and where the defendant is not going to be prejudiced by the decision. It is also accepted that too many adjourned matters can result in the overloading of future court lists which in turn can hinder the smooth running of the courts and ultimately that may not be in the defendant's interest either.

#### **B3.2.2.1 - there is a general and falsely held perception that most delays are caused by the defence solicitors.**

The defence solicitors in the study were somewhat incensed by the fact that they appear to be held responsible for the majority of delays which occur in the magistrates' courts. A perception which one defence solicitor described as *"..offensive"*. In the words of another advocate, *"I feel as a defence lawyer that this is the general attitude that most people have, that lots of delays are caused by the defence, ..lots of pressure appears to be on the defence and it doesn't appear as though there is as much pressure on the prosecution to avoid delays, ..a lot of my colleagues also feel that the pressure is always on us not to delay"*. The defence solicitors argue that the delays are not normally of their making and maintain that it is in fact unreasonable to expect them to proceed, *"..if they haven't had the papers which they are legally entitled to have and to consider them"*. As one disgruntled defence lawyer told me, *"Day in day out I'm handed advanced disclosure on the day of the hearing, seconds before the case is called on. That's not good enough, that's not a defence lawyer's fault. That is because either the police are not efficient at getting the papers to the prosecution, ..or the prosecution are not efficient enough in copying disclosures and getting them out to the defence lawyers, or in my opinion, on occasions they simply can't be bothered to get it out quickly enough. I know from*

their file that they often have the paperwork and don't send it out. Whether it's to avoid postage because of the financial constraints or whether it's because they haven't had the time to consider it and photocopy it I don't know..". Neither was the criticism reserved solely for the Crown Prosecution Service, there was also some criticism of the magistrates' court staff who deal with legal aid applications, "I may apply for legal aid .. that will almost certainly not have been considered before the first hearing date .. It's grossly unfair to want somebody to proceed if you don't know if the solicitor is going to get paid".

### **B3.2.3 To pressure the defence solicitor is to pressure the defendant.**

The defence advocates are also concerned about the effect that the pressure to proceed has on the defendant, "The pressure is on us to try and take instructions in unsatisfactory conditions, knowing that the court is anxious to get a case done. A defendant should not be made to feel that he is being forced to make a decision ..without sitting down properly with his lawyer ..it cannot be right or fair". This theme was also taken up by another defence solicitor who told me, "I know I'm sometimes forcing people to make a decision about their plea quicker than I would like to. Usually I would like an adjournment to go through the papers. Even though I'm in court everyday and know the system they are not, defendants are not in court everyday, they are new to it, ..I think it's poor at the moment".

### **B3.2.4 A policy has emerged which is akin to plea bargaining.**

It would appear that a system has developed, probably dictated by the current policies of cash limiting and efficiency targeting, which involves the acceptance by the Crown Prosecution Service of guilty pleas to offences which are considered less serious than the ones with which the defendant was initially charged, albeit sometimes reluctantly. When I discussed this particular point I was told by one of the defence solicitors that, "Where the CPS know that they have only got limited time back at the office, perhaps they're understaffed .. and yes, if they can get rid of a file they get 'brownie points' as well. If they can go back to the office with five files that they've completed then it's going to be better for them at the end of the day, and if that means reducing something a bit further than perhaps they'd want to go, then perhaps they'll do it". Neither did the prosecution solicitor take any issue with this view. The one proviso being that the case needs to be dealt with on the day. As the prosecutor told me, "I think possibly if you can get away with a lesser offence and have it dealt with on the day, that's a very cost effective way of doing it". But what I asked a defence solicitor does this do to the concept of justice, does it not put pressure on the person who is not guilty to plead guilty as a matter of convenience? I was told, "Obviously as a defence solicitor if people say to us 'we're not guilty', we never say 'Well you ought to plead guilty because this is a good offer', not in direct terms. But obviously it's said to them, 'Well look you could end up convicted of 'x', ..you're being offered a plea to 'y', you ought to think about it. So yes, indirectly I would agree with that".

But all of the solicitors agreed that it was certainly not justice to pressure the defendants into making 'snap decisions' just because it appears to be cost effective.

**B3.2.5. Whatever the outcome of the case the defendants should leave the court feeling that they have had a fair hearing.**

" .. And now we're down the road of factory production". This was the opinion expressed by one of the defence solicitors who regretted the passing of the days when the courtroom atmosphere could be more likened to that of the theatre, a place where personalities were important. Now time pressures do not allow for individual 'performances'. *"We are all, every agency now it seems to me, constrained by financial limits. Statistics seem to be collected endlessly about how quickly you can get to a certain stage in the proceedings. They seem to have taken over, we forget that we are actually dealing with human beings.."* It was also argued that one of the reasons why people don't understand what has happened in the courtroom is that, *"..we're often perhaps doing it too quickly, it all comes back to constraints"*. But a point which was emphasised during the interviews by the solicitors was that if justice is to be seen to be done, *"The defendant ought to go out of court or to the cells and to his prison sentence thinking that he's had a fair hearing, and this cannot always be the case"*.

**B3.3 Courtroom organisation and the degradation ceremony.**

*"I certainly think they, [the procedures], are there to maintain some elements of respect with the court. But I do agree that they should be handled, perhaps with sympathy to the defendant and generally they are not handled in that way".* (a defence solicitor)

**B3.3.1 There is a need to maintain the dignity of the court.**

All of the solicitors whom I interviewed, both prosecution and defence, were in total agreement that the dignity of the court and the factors which contribute to achieving this should be preserved. As I was reminded by solicitors from both sides, *"It is the court, ..it does act in the Queen's name and if that means anything there has got to be a bit of dignity about it"*. In the opinion of the prosecutor, *"If the court does not have dignity then people aren't going to treat it or its orders with any respect"*. There also seemed to be a general desire among the solicitors with whom I spoke to retain the old traditions. As I was told by one, *"I'm a traditionalist, ..I favour the wearing of wigs etc., there's an argument now that they should be gone, but I think that is a bad move. I think the court area should be treated with the greatest of respect and generally I think it is by the people who work in it .."*. This view was supported by another solicitor who told me, *"I don't know that I would want the old standards, the old apparent extra respect we have for the officials, to go. I think that is part of the majesty and I think that kind of majesty is still needed in some forms of officialdom, certainly in courts"*. The language of the court was seen as being one of these traditions which needed to be retained. As one solicitor explained, *"If something is special, or you believe something is special, like judicial*

*proceedings, ..I don't see anything wrong in having a special sort of language which marks it out as being special, ..such as referring to people as my learned friend". One solicitor did admit however that there are people within the profession who do see it as a language of power, "...which is what it is, isn't it, because it excludes somebody else, ..and I know barrister colleagues who get very upset if they're not referred to as learned".*

#### **B3.3.1.1 - and a requirement to demonstrate the seriousness of the occasion.**

Again all of the solicitors in the study had no doubts that the defendants should be made to realise that an appearance in court is a serious matter. As I was told by one of them, *"I think it is necessary to maintain the kind of atmosphere in court that identifies it as a serious occasion ..".* This view was shared by the prosecuting solicitor who objected to the attempts to liberalise the courts which deal with the more serious criminal matters, *"Even in the most liberal things criminal courts are still, well they're not cosy fireside chats. There is something about them, everybody knows exactly and almost literally where they stand. So I'm not in favour of cosy round table chats for criminal courts because sometimes what you are dealing with is not suitable for it".* The general feeling was that the control of the courts. *"Should be strict and should be extremely firm".* As I was told by one solicitor, when defendants have been dealt with in a firm manner, *".. it is always remembered".* But according to another solicitor, it is not only the defendants who require to be controlled, *"I think that ceremony in court is not observed as much as it should be. We're all getting lax in that, defence advocates to prosecutors, we talk in court more than we should. That's largely to get things moving because of the pressures that are put on you to get things through. But that shouldn't happen as much as it does. My own personal view on ceremony is that it should remain and it, [the courtroom], should be a place where there is rigid ceremony because it is a serious occasion".*

#### **B3.3.2 The control of the court should not include the humiliation of the defendant.**

*"I don't think that they, [the defendants], need to be degraded ..and I don't think that the courts have the right or the authority to do so either ..".* This view expressed by one solicitor was endorsed by all the other solicitors with whom I had discussions. A second solicitor whilst reaffirming the opinion that the courts need to be controlled in a firm manner did emphasise, *"I do not feel, however, that this should extend itself to the humiliation and demoralisation of any defendant, ..if he's not holding the court in disrespect".* Another solicitor expressed the opinion that when defendants are rebuked in the open court this can result in the defendant being put at a disadvantage and especially where the transgressions for which they are being admonished are as a result of nervousness rather than a blatant disrespect for the court. The prosecutor with whom I spoke considered that the practice of humiliating defendants only served to reflect adversely on the courts, *"Having dignified proceedings doesn't mean you have to exclude common courtesy, ..that is just basically being nice to people and that doesn't detract one bit from the dignity of the court, it adds to it".*

### **B3.3.2.1 - unless the defendants treat the courts with disrespect.**

*"If by their conduct they, [the defendants], are holding the courts in disrepute or if they're, as it were, laughing at its powers or whatever it is, then I'm afraid that they are the authors of their own misfortunes and they should be dealt with accordingly ..".* This opinion expressed by one of the defence solicitors was not opposed by any of his colleagues whom I interviewed, but they were keen to stress that not all lapses in defendant behaviour are intentional, some of it can be due to the occasion or to nervousness. But it was agreed that some of the poor behaviour by defendants is intentional. As I was told by a prosecution solicitor, *"I mean people might have their hands in their pockets, or be chewing gum, or come into court wearing a hat because they want to 'cock a snöop' at the system".* This type of behaviour does appear to be more common among the more, *"..experienced defendants at court",* and it was agreed that in these circumstances then the way in which people are spoken to is, *"..acceptable to a degree".* But the solicitor who made this observation also pointed out that defendants are not always aware that they are being disrespectful, *"Often they don't realise that these are insults to the court. Because of their backgrounds they don't realise that they should be taking their hats off or not have their hands in their pockets ..".*

### **B3.3.3 The procedures are not designed to humiliate and to degrade.**

When asked for their opinions on the claims that, 'Courtroom ceremony is characteristically organised to degrade and humiliate the defendant', (Emerson, 1969), the general response was one of rebuttal, but with some reservations. The prosecutor described the statement as, *"..a bit one sided".* Another solicitor replied, *"I wouldn't wholly support that argument",* and went on to explain that all that the courts expected from people was a display of "good manners". A third solicitor told me, *"No I don't, I don't think it is, if that's what is being sought then it is not working".* But while the solicitors were generally supportive of the system and the procedures in the magistrates' courts, they were not so positive in their opinions about the way that these procedures are applied.

#### **B3.3.3.1 - it is not the procedures but the unsympathetic way they are implemented.**

As I was told by one defence solicitor, *"I don't think the procedures necessarily are designed to degrade defendants ..but I would say that in some courts, some people have a disregard for the feelings of the defendant, ..I certainly think they, [the procedures], are there to maintain some elements of respect within the court, but I do agree that they should be handled perhaps with sympathy to the defendant and generally they are not handled in that way".* Another solicitor was even more specific and identified the magistrates as the main offenders in the meteing out of this 'unsympathetic treatment'. *"Yes we often feel that the way that defendants are spoken to by certain members of the bench is not appropriate at all",* The stipendiary magistrates in particular were criticised for their treatment of the defendants in the courtroom environment. One of the major criticisms was about the way that defendants are

sometimes addressed by only their surnames and this was seen as being totally unacceptable. As one solicitor explained, *"I'm particularly offended when I see a court call a defendant by his or her surname, without a title or anything else. ... I would never in everyday language talk to anyone in that tone"*. This view was echoed by the prosecuting solicitor who maintained, *".. whatever the defendant is, you refer to them by their title, you know Mister, Miss and you should find out, particularly from the lady what her title is so that she's addressed properly or how she wants ... I never refer to the defendant by their surname only, no matter what they are supposed to have done"*. This solicitor also expanded on this treatment of defendants and to the way they are given, or not given, instructions in the courtroom. He recalled, *".. and we've all had situations where somebody's not told the defendant that he can sit down and he's stood there open mouthed. ..Perhaps the way to deal with it is to say, 'Well would you like to stand up? Would you like to sit down? Is there anything you would like to say'? and at least it gives the defendant the impression that he is being treated fairly, and that is something which I personally feel quite strong about"*. But within this general area of consensus there was one voice expressing a certain level of dissension. One of the defence solicitors concluded, *"I don't favour the 'Youth courts' reference to defendants by their christian names, I don't actually hold with that. I don't think that you should say to a kid who's been out and committed a load of burglaries and frightened an old woman to death, I don't think you should call them Chris or Trev. I think defendants should be referred to, not as Mister either, because they actually lost that quality of respect to be called Mister by the reason of the severity of their offending, whatever it might be"*. This solicitor did concede in later discussion that this could depend upon the seriousness or otherwise of the crime committed and on the magistrates' assessment of the individual concerned and dependent upon this the defendant should be allowed, *"whatever degree of respect we thought they would be entitled to"*.

#### **B3.3.3.2 - the basic right of people to be presumed innocent is not always apparent in the magistrates' courts.**

A further issue on which all of the solicitors, of whatever persuasion, were of one accord was the 'presumption of innocence' and its application within the magistrates' courts. The impression gained from discussing this matter with the various solicitors is that the English lag behind the European courts when it comes to recognising the status of the defendant. I was told, *"On the continent, continental lawyers manage to persuade the courts more often to treat defendants with more respect and to remember that defendants are innocent until proven guilty"*. This solicitor went on to say, *"It's far too easy for courts to assume that every defendant is always guilty of every charge he faces and is therefore always in the wrong. That is not what the law says, the law says that every defendant is innocent until proven guilty and should have the benefit of every doubt"*. In supporting this view, another solicitor suggested that this was a very fundamental issue and one which the magistrates always needed to bear in mind, that



when the defendants enter the court for the first hearing, *"These people are charged with offences, they are not guilty of anything"*.

#### **B3.3.4 The way that the courts are designed and the layouts involved need not necessarily humiliate the defendant.**

Many of the older courthouses in England and in particular the one which was in use in the study area throughout the period of the research, were designed and built in an era, (1928), and for the function which existed at that time. An era when, *"..people were not so liberal in their view of things ..when people had a different view about how people charged with crimes should be treated, ..I mean I've appeared in courts, magistrates' courts, where it is not brass rails, [around the the dock], but it is spikes"*. Such was one solicitor's concept of the old court buildings, buildings which he described as, *".. architectural accidents"*, and which, *" ..perhaps don't suit the purpose and our perception of how we want to do the job now"*. While conceding that not all of the buildings are ideal for satisfying their present day requirements, this solicitor did not necessarily condemn them because of the 'hierarchical seating arrangements of the courtrooms'. In fact he argued that there were good practical reasons for retaining this type of arrangement, and in particular the raised levels at which the magistrates sit, an arrangement which many court users, including some solicitors, perceive as a, *"..psychological barrier"*. He explained, *"I think there are good practical reasons for raising the magistrates up so that they can be seen. They can be seen to be discharging their function, their office, they can be heard to do it and it is after all the magistrates' court and they can see what goes on in their court and they can see the person at the back who's chewing and get him out if they think that offends their dignity or the dignity of the proceedings"*. It was however claimed by at least one solicitor that the seating arrangements in some courtrooms, and particularly those where the defendant is positioned behind their advocate, can severely restrict non-verbal communication, *"..because you can't make any eye to eye contact with your client if you need to try and indicate something to him"*. Neither should the fact that, 'the distances in the courtroom are artificially stretched beyond the familiar boundaries of face to face communication', be seen to necessarily cause humiliation to the defendants. As one defence solicitor explained, *"When I deal with a case, if it is a case which involves some difficult area, whether it be some sex case or whatever it is, then I have a tendency to refer specifically to reports by number and I think you will have heard me say in many cases, 'I don't wish to deal with this matter in open court', and now for example, his means are on his form, [Means Form]. ..I always discuss things with clients anyway, I'm always concerned about how they are going to be treated, because you're representing them and you represent the court and if they're going to get bashed around a little bit then it reflects on you"*. Having given this version of ways of obtaining some protection against humiliation for the represented defendant, this solicitor also expressed his views on the situation of the unrepresented defendant, who in many instances are unemployed. *"This sounds awfully right-wing I'm afraid, but by and large with the*

average 'toe-rag' criminal, they don't feel that they are being humiliated to talk about paying fines, because he's on benefit, because everybody gets the same, so there's no humiliation about being unemployed anymore. There used to be, I remember twenty five years ago if you were unemployed there was humiliation then. Certainly if you were in work you didn't like your wages being talked about ..".

**B3.3.5 In order not to disadvantage the defendant the courts need to review some of their practices, but not at the expense of the dignity of the court.**

There was a general consensus among all of the solicitors that improvements could be made within the magistrates' court which would be to the benefit of the defendant. However all were unanimous in the opinion that none of the changes made should detract from the dignity of the court. It was, in the first instance, pointed out that not all of the cases dealt with in a criminal court are necessarily suited to an informal setting, "You've got to remember that sometimes people are in custody, sometimes people need to be in handcuffs or in a dock, that will always continue to happen and that cannot alter, but it isn't the case in every single case in the magistrates' court". The prosecuting solicitor did suggest that there could be a better way, a more liberal method of dealing with what he described as the 'regulatory type' of offence, "I mean so far as motoring is concerned ..we treat motorists who've done ninety-five on the motorway in exactly the same way as you might treat somebody who's charged with theft or assault. Perhaps there is scope for greater liberality in those really regulatory offences rather than in proper crime". Another area where most of the solicitors considered that improvements could be made was in the way that the courts are laid out and in the hierarchical seating arrangements. In the words of one solicitor, "We could sit in a more open forum and still have respect for the court and the majesty of the law without actually having to stand like frightened schoolchildren before the school-master's desk". But once again it was emphasised that whatever changes were made these could not be seen to detract from either the dignity or the objectivity of the court. As one solicitor saw it, too much informality would devalue the occasion, people would see it as, "You know it's just another day, another day at the supermarket and things like that ..I mean where does it end, I mean are you going to have solicitors turning up in polo-neck sweaters and things like this".

The solution as proffered by one solicitor would not be to dilute the present traditions or the respect for, or the dignity of, the court, but to uprate the level of respect which is shown to the defendants. As this solicitor explained, "I don't want to lose the right to treat magistrates with respect nor treat my colleagues with respect that the title infers when I call him 'my learned friend or a friend'. I wouldn't want that to go, that's because I have genuine respect for those people, as I hope they have respect for me. But I also don't treat the defendants as badly as the courts may".

### **B3.4 Power and influence.**

*"It's like the child leaving the Juvenile court and saying, 'Who are those three people sitting behind the judge' ..".*  
(a prosecution solicitor)

#### **B3.4.1 It is the magistrates' decision, that is the system.**

There was a general acceptance among the advocates who were interviewed that the magistrates are the decision makers. The enthusiasm or otherwise with which this fact was actually accepted did however indicate a degree of variation. One solicitor appeared to have no problems with the system at all. As I was told, *"I don't find the fact that amateurs, if you want to use that word, that amateurs make the decisions. I don't find anything wrong with that".* A second solicitor acknowledged that it was something over which he had little influence and therefore had to accept, *".. it's the judicial system and it's their decision, otherwise why have them".* Other solicitors whilst accepting the situation, did appear to take some consolation from the fact that the system does have some elements of 'damage control' built in. As one solicitor put it, *"So I think there is a safeguard there with sitting in threes ..".* Another solicitor saw the effects of the wide variations in the sentencing policies of the different magistrates' courts as at least being cushioned, *".. because of the much reduced or limited powers of magistrates".*

#### **B3.4.2 Advocacy is all about the power of persuasion.**

In trying to determine who exerts the greatest influence over the decision makers, I again found it impossible to obtain a definitive answer to my question. In the words of a prosecuting solicitor, *"There are lots of imponderables, how well the advocates know the magistrates, how well the magistrates know the advocates",* being just two of these. Another important element is the ability and skill of the individual solicitor, the advocate's power of persuasion, *"..that's what advocacy is all about. ..Can you persuade the tribunal round to your point of view? How well you present your application, ..that's part of the skill of the job, knowing what to say and what to leave out".* The magistrates make their decisions based on what they see and hear in the courtroom. *"At the end of the day that's what the magistrates, of whatever sort, are there for, to make decisions and they are only as good at decision making as the material which they have been given by the parties".*

##### **B3.4.2.1 - tactics are used by solicitors to avoid the idiosyncracies of some benches.**

All of the solicitors with whom I spoke were in agreement that personalities and tactics do have a part to play in how submissions are formulated and presented or even whether a case is proceeded with on a particular day, or in a particular courtroom, or by a specific solicitor. As one defence solicitor explained, *"The same case before two different benches can produce stark differences in sentencing and many experienced lawyers will know what that is*

and some lawyers will use that to their clients' advantage". This particular lawyer was critical of colleagues who operated in this way because it was seen as, "... a breach of professional standards". But he went on to tell me, "I do know it happens and I know lawyers do use that knowledge to try and make sure their clients get, in their opinion, a better deal". A second solicitor also agreed that advocates do sometimes manipulate the situation in order to avoid certain benches but claimed that the instigator of the move is not always the solicitor. It was explained, "Yes it would be untruthful to say that there isn't an element of that, there has to be. It usually, to be honest, comes from the client as opposed to the solicitor, because our view, my view certainly, is don't risk adjourning today because you might finish up with a worse bench the next time ...". Another solicitor said that on occasions there is a need for solicitors to pass their cases to colleagues because of what they perceive as doubtful relationships with some of the magistrates whom they have to appear before. "There is a feeling that some solicitors feel that certain magistrates have 'downers' on them". The magistrate will refuse an adjournment, "...he'll then refer to the criteria and say, 'Ah well my little red book, [the Magistrates Sentencing Guidelines], says I've got to refuse adjournments', and you know very well it is because it's you and you won't get it. What you do is give the case to another one of your colleagues and let them make the application because you know they'll get it, and that I'm afraid is a fact of life".

#### **B3.4.2.2 - credibility is used by solicitors in an attempt to influence decision**

##### **making.**

As has been indicated previously, the defence solicitors find on occasions, the need to distance themselves from some of the claims or statements which are made by their clients. Whilst it is agreed that this should only occur as a last resort and when the client has rejected the advice of the advocate, it is nevertheless seen by the majority of solicitors to be important that their credibility with the bench is preserved. As previously indicated one of the imponderables when assessing who or what influences the decision makers is how well the magistrates know the advocates. To quote one solicitor who was asked how important maintaining credibility with the magistrates was he replied, "In my opinion vital ...you've got to aim for a good relationship with all the parties, otherwise the job becomes extremely difficult and it won't work out. It's even more important than that with the actual magistrate". Once having gained that credibility then it is something which the solicitors from both ends of the adversarial process try to utilise in an attempt to win the argument. As one solicitor told me, "You see it from defence solicitors when they try to impose their credibility on the bench by saying, 'You can believe me when I tell you he will not do it again'. You see it from the prosecution solicitors when they express the opinion, 'This is the worst assault I have ever seen' ...". However in the opinion of one solicitor, this type of approach should be rejected by the magistrates, "Both of these opinions should be excluded by a competent court and seen as no more than window dressing. That's the magistrate's role in life to look through the window dressing and see the facts of the case". This view was also shared by a prosecutor, but this

solicitor expressed some doubt as to whether the lay magistrates possess the ability to separate the facts from the trimming. *"You rely on the magistrates' ability to cut through the mitigation they've heard and the stuff they've read and perhaps get to the real sub-text of it and sometimes magistrates don't do that"*. Credibility with the magistrates appears to be neither automatic nor permanent and can be forfeited by advocates who are in the habit of making unsustainable applications and submissions, these can, on occasions, rebound on both the solicitors and their clients. In the opinion of one solicitor, *".. you've got to get the balance right, you've got to be prepared not to go that one step too far where the magistrates would tend to say, 'It's her again or it's him again with a ridiculous application'. Because I think if you do lose your credibility then it's going to be very difficult when you've got a good application with a lot of merit in it. I like to think, I'm certain that other solicitors like to think, that if they do a good job and if they've got a case with a lot of merit, magistrates are going to say, 'Well she doesn't make applications like that very often, or he doesn't come out with that very often, so there must be something in it'. You know we like to think that, so to that extent credibility is important"*.

**B3.4.3. The professional lawyer influence, decisions which exclude the magistrates are only taken on minor matters.**

When asked about the 'professional lawyer' influence, that involving the court clerks and the advocates, it was admitted that some decisions are taken by these court users and without reference to the magistrates, but it was emphasised that these types of decision only involve matters which were, *"..really mundane things, .. it's those kind of peripheral points which wouldn't be of any actual interest, I don't think, to the magistrates, and again it's just to get things moving quickly"*. That was the view of one solicitor, but another solicitor was of the opinion that in practice it did often appear that, *".. the magistrates are presented with a 'fait accompli', which they are there to rubber stamp. That happens, it's bound to happen"*. This solicitor felt that for the sake of appearances, the impression should always be given that it is the magistrates who have made the decision, and this does not always happen. *"Some people say 'We've agreed', I don't, I do it as an application and a suggestion, so that the magistrates know it's their decision. That is what I think about it, but it's their decision, 'If you agree that he should be bailed. What about these conditions' ? .. I know some people don't and I suspect that to someone sitting at the back, it appears that whatever those people do, [the magistrates], it's nothing to do with them. It's like the child leaving the Juvenile court, [now replaced by the Youth court], and saying, 'Who were those three people sat behind the judge, [the court clerk]] and that has happened"*.

**B3.4.4. If the court clerks wish to influence the bench they can do so.**

As I was told by one solicitor, who during his career had worked as a court clerk for a period of time, *"I never realised how powerful the clerk was until I stopped being one"*. Not only

is the clerk powerful within the courtroom setting, because they can, "*.. make appearing before the court either a pleasure or a right pain*", but they can also be very influential in the 'behind the scenes area', in the Magistrates' Retiring room. As this solicitor explained, "*I know a little of what goes on around the back as well and if you want to influence a bench you can do so*". This it appears can be done in two ways, the direct approach, "*Blatantly telling them*", or the indirect approach, "*.. drawing things to their attention. Perhaps getting again to the sub-text of what they've heard and addressing their minds to that*".

### **B3.5 The advocates' perception of and relationship with the defendant.**

*"It maybe quite wrong to say that I have respect for the defendant, but certainly I am sympathetic of their feelings and the situation they are in".*

(a defence solicitor)

#### **B3.5.1 "Many defendants are culturally ill-equipped to participate effectively in the proceedings in the magistrates' courts".**

Whilst the quotation used above was made by a defence advocate during one of the interviews which I carried out, this could not be claimed to be the universal view of all the solicitors with whom I spoke. As has been seen from opinions expressed by the various solicitors in the earlier sections, the defendants are often seen as the victims of an unsympathetic setting, not necessarily because it is designed that way but more because of the way that the system and procedures are applied by the magistrates and some of the other regular court users. It has also been indicated that some of the problem rests with the defendants themselves who, either through ignorance or by intent, can become the, "*Authors of their own misfortune*". During the course of the interviews, defendants were variously described as being, "*sometimes silly*", or "*unscrupulous*", or "*criminal people*". I was told that, "*..a lot of defendants*" were culturally inadequate and incapable of participating effectively in the magistrates' courts system. They "*..have difficulty in stringing words together by means of lack of education or limited stimulation when young, a million things ..*". These limitations can quite often extend to their knowledge of the law, particularly in relation to the offences which they are alleged to have committed. As one solicitor explained, "*A client never thinks they're in the wrong, they often think they're treated wrongly, ..It must be a case that at least some of the defendants are in the wrong*".

##### **B3.5.1.1 - the defendant, 'the object of the game'?**

As has been indicated in some of the previous chapters, for many defendants and in particular those attending at court for the first time, the court appearance can be a very traumatic, unnerving and distressing experience. But as one solicitor pointed out, this does not necessarily apply to all defendants and one needs to draw distinctions between the different types of defendant. "*..But your regular offender, they know as much about the system and procedure as a lot of solicitors and magistrates and clerks do themselves. A lot of them are not*

*stupid, a lot of them are very bright, they talk a lot to one another. They come to court and they say, 'Who's on the bench', ... that's the kind of approach you get from defendants, 'It's not the one who sentenced me last time is it?' ..". When asked, 'Do you feel that the defendant is the object of the game'? this solicitor certainly did not see the 'experienced' defendant in that role. In answering the question I was told, "No not really, no, because nowadays you tend to find the same people are coming back time and time again, so they're the creators of the game really rather than the objects of the game. .. They're not really the victims of the game they're part of the game, but they're not the ones at the losing end of it always. They're very streetwise, put it that way, you know they are". Neither do all of the defendants display their true emotions whilst they are in the courtroom, some are guilty of subterfuge. I was given an insight into the world of, "...the skilled punter who has contempt and hatred, [for the court], and would give entirely the opposite impression. Because there you have got the classic case of a person looking at the system and saying, 'I don't like the system, I don't respect it, I don't agree with it'. .. but they feel that they get a better deal by 'bowing and scraping', and courtesy costs nothing".*

### **B3.5.2 Defendants experience varying emotions towards the court.**

When asked to express their opinions about the defendants' attitudes towards the court and asked if past observations of 'indifference, fear, contempt or hatred', (Carlen, 1976, p33), are still the most prominent features, I was told by one solicitor that there is still much evidence of this. It was thought that some of the problem could be created because the defendants *"..don't understand or they are not given enough information about the courts ..".* It could also be because of the circumstances in which the defendants find themselves at court, *"People who are guilty of an offence will presumably be afraid of appearing in court because of the sentence which will be imposed on them".* Alternatively the defendant who is innocent may quite well display a different set of emotions, *"People who are innocent of an offence and have therefore been wrongly charged will quite obviously be contemptuous of the court itself because of the procedure they are forced to go through when they have done nothing wrong".* So in the opinion of this particular solicitor it was not difficult to see how the impressions gained by previous researchers had derived, *"I can understand that kind of comment and that kind of reaction from defendants and I think, yes, perhaps it is accurate that many defendants feel that way towards the court".*

During my experience and observations in court I had gained the feeling that many magistrates were of the opinion that when some defendants left the courtroom they gave the impression that they were 'laughing at the court'. In the course of the interviews I asked if this was an impression which was also shared by the solicitors. This perception was generally rejected, although it was not denied that defendants do often leave the courtroom laughing. As one solicitor admitted, *"Yes they do leave the court and laugh, they do leave the court like that, but does it mean to say that they think that the court is inept or is it something more?"*

*Defendants do behave in that way on occasions, perhaps it is nothing more than a release of tension .. releasing the tension that has built up because of the fear of the sentence". This view was supported by a second defence advocate who explained that the solicitors can be seen to be failing in their duty to their clients if they do not explain all of the possible outcomes in sentencing terms. "We say there's a prospect of you losing your liberty etc. etc.. You've got to do that otherwise the defendants are not properly prepared, he's not warned, he'll not turn up with his toothbrush, his 'fag' papers and things like that. So sometimes when they don't go, it might not be a particularly lenient let off, but he might be so frightened ..that they walk out laughing because they think they've done well, they might be laughing at what the penalty was but I'd be very surprised if they were laughing at the magistrates or the court ..".*

### **B3.5.3 The defendant's understanding of what has happened in the magistrates' court.**

One of the main criticisms that has been levelled at the magistrates' courts as a result of previous studies has been the defendant's apparent lack of understanding about what has taken place during the court hearing, (Carlen, 1976, p22-23; Baldwin & McConville, 1977, p83). When asked to express their views about this, the solicitors with whom I spoke accepted that in respect of the unrepresented defendant they had no doubts that this is the situation which still persists. However if this criticism was also seen as applying to the represented defendant then there was something seriously amiss. As I was told by one solicitor, *"The majority of unrepresented defendants don't really understand what goes off"*. Even the represented defendant often leaves the courtroom not having understood what it was all about, but at least there is someone available after the hearing to explain what has happened. The reasons for this lack of understanding can be numerous. One defence solicitor relating his experiences told me, *".. they'll tell you a number of things, one, 'I didn't hear', or two, 'I didn't understand it', or three, 'to be honest I wasn't listening, not out of disrespect but I was so bloody frightened that my knees were knocking and I was so upset'. Invariably people will ask when they come out, they'll ask you what they've got, and it fascinates me, they were there and you know what they got, ..they didn't"*. I was also told that even when the defendants are asked by the magistrates if they have understood what has been said, a very frequent question, they will invariably say yes even though they have not. *"They say that for two reasons, .. they don't understand and they daren't say so, or they don't understand and they just want to get out"*. But there was total agreement that if the represented defendant did leave the courthouse not fully understanding what had happened and what the consequences of this were, then the fault lay with the solicitor and not with the defendant. As one defence solicitor admitted, *"If after investigation it was found that a majority of defendants who were represented by a solicitor didn't understand then there is something lacking in our ability as defence lawyers"*. A second solicitor, whilst agreeing with this view, was critical of some of the language which is used in the courtroom, particularly when the defendant is being asked to make decisions on venue, that is, where an



offence is suitable to be dealt with either at the magistrates' court or at the Crown Court. As this solicitor told me, *"The venue, the election, we do explain that to them but I'm quite sure they don't understand it. It's a long unwieldy expression that the clerks have to read to them, ... of course they don't understand it, because it's too much for them to take in"*. But all of the solicitors were agreed about the importance of trying to ensure that the defendants do understand what has taken place and what the outcome means. This was best summarised by one solicitor who said, *"If he, [the defendant], is unrepresented, then I think the duty falls on everybody to make sure that the defendant understands, .. They must, whatever the constraints are, because it would be unjust not to do so and that is what the whole thing exists to do"*. This solicitor also expressed the opinion that the magistrates' court system has progressed during the last two decades, *"Well I hope we've progressed since then. It is explained, people do know what is going to happen to them and that seems only right. Because if people don't understand it they're going to have no confidence that they've had a 'fair crack of the whip', whether they are guilty or innocent. They're going to have no respect for the institution and the wider thing called law if that is how they are treated"*.

#### **B3.5.4 The client's perception of the solicitor - the solicitors view.**

*".. 'I've got a bad barrister', .. 'That barrister got me five years', nothing to do with the offence. 'That barrister got me five years. If he'd have told him that my girlfriend was pregnant I wouldn't have got five'. .. I've actually had 'punters', [the clients], tell me that"*. As has already been indicated in previous chapters what the client considers to be good representation and what the solicitor thinks is good representation are not always one and the same thing. The solicitor who made this opening statement was also concerned about this aspect of representation because when this conflict arises then it often brings into question the advocate's loyalty to the client. An example given to illustrate this is, *"There are times when you say to a defendant, 'You are wasting your time applying for bail'. He says 'Whose side are tha' on?' So if you don't apply for bail you lose your credibility, he thinks you're on somebody else's side not his"*. The net result of this dilemma is that if the solicitors do not represent the defendants in the way they have been instructed, inevitably the defendants, when the results go against them, see the fault as being with the solicitors. It appears, and not unnaturally, that the defendants assess success or failure on the results achieved and not on the quality of their advocates' performances. I was told, *"I have seen particularly poor barristers get a good result because the case merited it and the defendants have been back in my office saying, 'When I have to go back to Crown Court I want that barrister because he's brilliant', when in fact the man is a fool"*. It is also seen to be an important factor when representing defendants that the solicitors demonstrate to the defendants that they are 'in their corner'. Whilst on the surface this appears to be a basic requirement, this is not always apparent because of the 'friendly relationships' which often exist between the advocates of either persuasion and which are often witnessed by the defendants within the courtroom settings, (Baldwin & McConville, 1977, p85).

As I was told, *"We do work in a relatively small profession, in a relatively small town, so it's in our interests to get on"*. But it was generally agreed that it is important that this friendliness should not be demonstrated in front of the defendant. As one solicitor explained it, *"Again it's justice being seen to be done and whilst with my client being out of court I'll be as friendly with the prosecutor as I want to be, I always try and maintain a degree of separation in court. Now I know it's a facade but the defendant has got to see, from his point of view, that you are on his side"*. This view was also shared by one of this solicitor's colleagues who did point out some of the difficulties in maintaining this facade, *"... because you're at work and you can't keep up a war of attrition all of the time. .. Yes there is that difficulty but defendants do think you should fight their corner to the death and that you should dislike them, [the prosecutors], and dislike policemen and that's one of the things you've got to be conscious of and I don't do it, [have discussions with the prosecutor in the presence of the client], because I think that it's dangerous professionally and it's bad business, .. but if you've got to discuss cases, the only time you can do it sensibly is when the bench is out. .. But I don't do it because I think it is a bad advert, your client is going to get a false impression and the impression he is going to get is false because you're not going to give any quarter to these people when you're actually doing the job"*. All of the solicitors in the study were in agreement that this problem is much more prevalent in the Crown Court where the system is one of barristers regularly inter-changing between the role of prosecutor and defence and where opposing advocates may well work out of the same chambers. It was agreed that this does make for some confusion. As one defence solicitor observed, *"In the Crown Court I agree it's abominable and even as a solicitor sitting in the Crown Court, sometimes on particularly big cases if we go along, it is difficult to decide from the word go whose side certain barristers are on because they are so closely inter-linked, .. in the magistrates' court I think it's a lot better"*.

**B3.5.5 Neither do the solicitors just go through the motions of representation, sometimes it can be for real.**

Solicitors cannot always remain dispassionate about a case in which they are involved, there are times when a result goes against them and it does personally affect the advocate. *"There will obviously be cases where you personally think it's right that they, [the defendants], should have bail or they should be found not guilty and it would be a fool who would say that they are totally detached at all times, that they merely present their case. There are people like that, I don't fall into that category, and I get very concerned when it's a case of a man who's innocent ... I get very worried about that because I don't want it on my conscience when I leave the courtroom, for somebody to have been found guilty when they're not. And yes, if you get a result which you don't agree with, then you get very uptight about it"*.

### **B3.6 The advocates' perception of and relationship with the other regular court users.**

*"Often criminal matters are dealt with by compromise, because both sides know that they cannot win the argument one hundred per cent, and you have to meet somewhere in middle. Any advocate who has been at the bench for a few years realises that no case is just black and white".*

*(a defence solicitor)*

#### **B3.6.1 Inter-agency alliances are formed for a number of reasons.**

##### **B3.6.1.1 - commercial gain or mutual respect ?**

*"A solicitor is a professional, it is his living, it is his job, it's what he pays his bills with and his staff with, and a solicitor who can't get on with people is a solicitor who won't enjoy an awful lot of success. So commonsense dictates that it pays for you to get on with people ..". As this solicitor indicated there is at least one reason, a commercial reason, why some of the regular court users need to have good relationships. This commercial aspect was also mentioned by a second solicitor who described some relationships as being financially beneficial to one or other of the parties in the alliance. I was told, "Yes there are alliances, I've seen examples of alliances specifically with some advocates and social workers for example. Because I know of a massive amount of work which goes from social workers to solicitors and it's patently obvious that a number of people abuse that and make a great deal of money from it". Having made this claim however this particular solicitor did stress that, ".. rather than underhanded alliances, I think the alliances that often exist are simply professional respect. So for example, a policeman who's been working in an area for many years, may actually form an opinion that such and such a solicitor is competent and reasonable .. and it's a natural reaction to say, 'You need help, you have a problem, go and see so and so I know he's good, competent, whatever'. That will always happen, that's not always creating an alliance falsely, that is simply respect from one person to another".*

##### **B3.6.1.2 - good inter-agency relationships aid the dispensing of justice.**

*Not all advocates see the need for good relationships with the other court users, but according to the solicitors with whom I spoke, these people are very much in the minority. As one solicitor explained, "I know some people will say it doesn't matter, you don't have to get on with the people who are prosecuting, or get on with the Probation Service, or get on with the clerk. But I actually think that it's vital that you do, I think in the end of the day we are all working in the same direction, we're all trying to get cases dealt with expeditiously, but properly, and to treat people who are perhaps not guilty of offences to try to get them through the court with as little problem as is possible". Another solicitor told me that in his opinion he did not feel that having good relationships necessarily obtained, "..a better deal ..I don't think it's that, I just think that you will be able to achieve what's right more quickly by having a proper liaison".*

### **B3.6.1.3 - most of the alliances are formed on a reciprocal basis.**

*"My view is that I like to try and get on with everybody and it's selfish in parts. ..So I think anyway, that if I go out of my way to be cooperative as far as I can with everybody then to a large extent I find personally that most agencies are cooperative with me. I don't find that I have a lot of problems".* This was the reciprocal approach which was favoured by one solicitor. But how does one actually compromise and how does justice emerge from these areas of compromise? In the opinion of the prosecuting solicitor with whom I spoke, compromise can in some cases be seen to be both expedient and acceptable to the justice system. I was told, *"I think if perhaps in so far as it is consistent with duty, you can make life easier, it's very much in your interest and the system's interest to do so. So you know you accept pleas, you sometimes soft pedal on the facts, don't make as much of what you've got as you could do and do it that way, and then when your turn comes round for a favour, when you need one, you ask and by and large it is given".* But what happens if the favours are not reciprocated or if one finds oneself facing an adversary who is not interested in compromise? In the words of one defence solicitor, *"..human nature being what it is, you'll have certain prosecutors who you don't get on with, who you will not cooperate with and ..if a prosecutor has been particularly naughty to me and unfairly cooperative, ..then I'm afraid I will be particularly uncooperative with them. Having said that, I won't in doing that ruin a case or hurt anybody ..".*

### **B3.6.1.4 - inter-group relationships can be difficult at times.**

Whilst all the solicitors with whom I spoke were in agreement about the benefits which were obtained from both individual and group cooperation, this does not guarantee that these relationships necessarily operate trouble free. In the opinion of one solicitor, *"I feel that we all, all the agencies, ought to be a little more understanding at times, I think we are all very quick to criticize each other, ..But it's difficult at times, there are tendencies to want to shout and bawl at say the prosecution, or say the probation, if they have not done something they've said they'll do".*

### **B3.6.2 Good relationships with ones adversaries are important.**

#### **B3.6.2.1 - the idea is to resolve the problem not just to have a good fight.**

By and large it was agreed by the defence advocates whom I interviewed that, *"With the prosecutors it is very important to have a good working relationship".* It is a fact, as has been indicated in previous chapters, that some defence solicitors are highly critical of the Crown Prosecution Service as an agency, one the reasons already discussed being the late availability of the advanced disclosure information, that is the prosecution information about the case to which the defence and the defendants are legally entitled to have sight of before the case can proceed. Despite this there appears to be a genuine desire by the two sides to

maintain good relations based on compromise. As has been previously stated one of the reasons for this appears to be the size of the court and the relatively small number of lawyers regularly involved in the business of the court. In answer to a suggestion that most of the relationships in the magistrates' court are ones of 'uneasy compromise', (Carlen, 1976, p43), one defence solicitor replied, *"You said uneasy compromise, I don't find that because in .. where I work, I get on very well with the other agencies whether it be my adversary from the CPS or whether it be other members of the court. .. I don't need an adversarial approach with everybody, because most of us get on fairly well together and work together to resolve the problem rather than going into every problem as though it were a fight. .. I know that in big cities, in the magistrates' courts, that is very, very different. The bigger the city the more adversarial the approach will be"*.

#### **B3.6.2.2 - exploiting the inexperience of the opposition is within the rules, but only if you are a defence advocate.**

Following up on a comment made by a stipendiary magistrate that 'young prosecutors are disgracefully manipulated by experienced defence solicitors', I was told by a prosecutor with considerable court experience, that this type of tactic was quite legitimate and acceptable within the adversarial 'rules'. I was further told that, in the opinion of this solicitor, if the defence failed to exploit such a situation then they would be failing in their duty to their client. In the words of the prosecutor, *"That must happen, again it's their duty to do so, to get the best for their client. So short of being downright dishonest, if you can do that and manipulate the other side you've got to do it"*. But this type of tactic is not reciprocal, it would appear that it is a weapon which is only available to the defence. The prosecutor continued, *"However prosecuting, it's a bit different, I would hope my colleagues would not take advantage of an inexperienced solicitor on the other side. It comes back to our first point doesn't it, about what the role of the prosecutor is, ..being there to achieve the just result, not the result perhaps that you want"*.

#### **B3.6.3 The magistrate - the advocates' perception.**

##### **B3.6.3.1 - middle aged, middle class and not very streetwise ?**

The advocates whom I interviewed were unanimous in their opinion that the lay magistracy are middle aged and are middle class but they were not of the opinion that they are necessarily not very streetwise. In expressing an opinion one solicitor did concede that magistrates are both middle aged and middle class but also questioned whether this had transpired because of circumstances rather than it being an organised and deliberate policy. In his view, *"Perhaps it happens non-intentionally, but simply it's not until people become middle aged and successful in life that they can afford to give up the time from their lives to be a magistrate for no pay, ..because other members of society can't afford to sit on the bench for however many days a year you must sit"*. This solicitor did conclude that this narrow

representation of society on the bench was a deficiency in the system , *"That is a fault which should be redressed very quickly. Because ..you only get a small section of society represented on the bench, that must be wrong"*. This view was supported by a second solicitor who also agreed that magistrates are *".. mainly middle aged and I suppose they are mainly middle class as well. They are the people who've got the time to do it"*. This solicitor was also convinced that magistrates are not truly representative of the society from which they are drawn. He told me about a bench where he had worked, *".. if the .. Bench was typical of the population of the town, fifteen per cent of them would be millionaires"*.

A third solicitor suggested that perhaps, *"You only become streetwise, substantially by reason of age"*. This solicitor also expressed the view that, *"I'd be a little unhappy appearing before a twenty-one, twenty-two year old magistrate"*. Another solicitor did offer the opinion that the higher up the social scale the magistrate is in everyday life, the more remote they are from the world of those on whom they sit in judgement, *"If you get some lady of sixty to sixty-five who dines with the Lord Lieutenant and spends her time in crocheting classes, I think she might find it difficult to understand the mores of the criminal sub-culture"*. In the opinion of this particular solicitor the magistrates with the best credentials are, *".. people who have worked in industry or the professions who have a lot of contact with the general populace, are the ones, in my experience, who are the most streetwise"*. The claim that magistrates 'are not very streetwise' was also queried by a fourth solicitor who told me, *"I actually don't agree with that quote, that they are not very streetwise, because I think that particularly in courts like [ ], we have an awful lot of streetwise magistrates sitting on the Bench"*.

**B3.6.3.2 - magistrates, in theory are appointed to provide the 'common touch', but in practice this does not work.**

A number of advocates saw the need to expand the range of backgrounds from which the magistrates are selected, *".. in age, social background, ethnic background and through training maintain the common sense that everyday people bring to the bench .."*, such was the view of one solicitor. Another thought that, *"There is a lack of, what you could conveniently label as working class women on the bench, they seem to be somebody who are totally unrepresented"*. In the opinion of one advocate, the theoretical function of the magistracy does not always work in practice, *"Lay magistrates were specifically appointed to bring the common touch, .. the touch of the common man, that is the theory behind the magistrates, I don't think it works in practice because in the early days when a magistrate is just starting on the bench, .. he or she will have a lot of feeling from everyday life. The more they sit on the bench, the more they become accustomed to the way things are done and they lose their original feeling from everyday life"*.

**B3.6.3.3 - even magistrates appointed from working class backgrounds adopt middle class values and the norms of the court.**

Throughout the course of the interviews with the advocates from both the defence and the prosecution, it emerged that most of the solicitors considered that the majority of magistrates do modify their views over time and do conform to the norms of the bench. This particularly applies to those magistrates who were appointed from working class backgrounds. The reason for this according to one solicitor, "*.. may well be peer pressure. Let's say a Magistrate with a very strong working class background sits often enough with magistrates from a different social background and day in and day out on the bench, he sees the way sentences are passed and the way everyone expects him to behave, perhaps he or she doesn't want to be the odd one out, doesn't want to be continually arguing against his colleagues*". Another solicitor saw the change in the working class lay magistrate as part of the, "*..bourgeois education of society, .. you know you become a justice and you sit on the bench and you become 'respectable' and probably other things are happening as well, .. greater responsibility at work, you become an home owner ..*". Another contributory factor which influences magistrates to conform to 'bench practices', was the influence of the more senior magistrates. I was told, "*As a younger magistrate sits with an older magistrate, they often follow into the pattern of sentencing that the town has developed rather than bringing their own fresh ideas, and that again is sad*".

**B3.6.3.4 - there is a danger that the lay magistrates can 'fall between two stools'.**

According to one of the solicitors with whom I spoke, these changes in the attitudes and perceptions of the lay magistrates can result in an unsatisfactory situation and one which is not necessarily in the best interests of justice. In this solicitor's opinion, "*I think we come to the dangerous situation of somebody who is following a pattern of procedures or sentencing who has lost the common touch but has not gained the legal training to be a professional. So by that point in time we can have achieved the worst of both worlds and lost the best of one*".

**B3.6.3.5 - the lay magistracy can turn justice into something of a lottery.**

During my courtroom observations, one solicitor described justice in the magistrates' courts as 'a lottery'. This was, therefore, a topic which I raised with other solicitors during our discussions. It was admitted by one solicitor to be just that, "*That's fair enough, yes. A lot depends on who you've got on the day, which side of the bed they've got out of, yes*". Another solicitor whilst agreeing that it could well be, qualified the reply by saying, "*I would agree to some extent, it could be a lottery but I don't find that in the majority of cases, I find that in just a few*". By and large the presence of the lay magistrates was actually welcomed by the advocates in the study group. In the opinion of one of them, they brought qualities and vision to judicial proceedings which are sometimes absent in the regular court professionals. "*They*

might see something you've missed because looking at it in legalistic terms, you might have missed something".

#### **B3.6.3.6 - the advocates' perception of the stipendiary magistrates.**

The stipendiary magistrates were seen by the advocates with whom I spoke as being very much like the 'curate's egg', excellent in parts. The courts in which the stipendiary magistrates presided were generally seen, when compared to those of the lay magistrates, as being, *"More efficient"* in terms of time. The stipendiary magistrates are considered to be, *"Far more skilled at communicating with the court and the defendants"*. They are *"..legally qualified"*, and they are better at *"reading between the lines"*. However the stipendiaries were also identified, by some of the advocates, to possess what were considered to be a number of weaknesses. One solicitor queried how streetwise the stipendiary magistrates are, *"..in the sense that stipendiaries are from even more coveted backgrounds and have seen less of real life than some of the lay Bench have"*. The stipendiaries were criticised for their apparent preoccupation with the speed with which they dispensed their workloads. As one solicitor told me, *"I find that the stipendiary magistrates are too keen to get work moved through quickly"*. The 'stipes' were also accused of being too ready to prejudge a case before all the matters had been put before the court. In the words of one solicitor, *"In a lot of cases, I often find that a decision has been made before I get to my feet and there is no effort to cover that up, ..and I think that's poor from the point of view of justice being seen to be done"*. The stipendiary magistrates were seen as being more selective in what they wanted to hear when compared to the lay magistrates. A reason for this was suggested by one of the solicitors as, *"Perhaps because they are in a lot of cases ex-solicitors or barristers themselves, and perhaps they come in a bit more cynical and they don't want to hear it all, but I think they ought to from the point of view of our system, .. where you are entitled to a fair hearing"*.

#### **B3.6.4 Stipendiary magistrates' courts are more efficient than the lay magistrates, but not necessarily in terms of justice.**

The previous paragraph identifies that there are a number of marked differences between the stipendiary magistrates and their lay colleagues. The solicitors whom I interviewed were also in agreement that these differences also extended to the courts over which the 'stipes' presided and in which they adjudicated.

##### **B3.6.4.1 - stipendiary magistrates' courts are more daunting for the advocates.**

As has already been discussed the stipendiary magistrates' courts are seen as being efficient in terms of time, if for no other reason than the 'stipes' sit alone and have no colleagues on the bench with whom they have to consult. Because of this, the stipendiary magistrates are in a position where they are able to indicate to the advocates their views on a case and how their minds are working in terms of a disposal. In the words of one solicitor, *"If*



that happens, and if his mind is working on the same lines as my mind is working, then I don't need to go through the whole story to get him to my point of view". It is also possible in some situations to anticipate how the magistrates think and how a case should be presented in order to obtain the maximum advantage. Once again it is easier to do this with a single magistrate who sits frequently than it is with a group of magistrates who sit infrequently and can adjudicate in any combination of three. As I was told " ... you know what the stipendiary magistrates like, what he likes to be told .... ". But appearing before the stipendiary can also be quite a daunting experience, "You can't get away with as much .. .Because a stipendiary magistrate is legally qualified, if you go in unprepared he's more likely to notice, than say a lay bench is. ..So yes when you are appearing before a professional tribunal it does affect your delivery". This view was also shared by a second solicitor and particularly in respect of trials, "Trials are the most significant difference, ..There are results obtained in front of lay benches that you do come out thinking, you would never have got that in front of a professional. Yes, ..there's more that you can put forward in front of a lay bench by way of a defence. ... Yes you can get some odd decisions". Despite these variations which can be interpreted, in some instances, as shortcomings within the lay magistrates' courts, one solicitor did identify one area of difference between the two types of court where the advantage was with the lay magistrates, and that was their willingness to listen. "Lay benches have an advantage over a stipendiary magistrate because they are at least prepared to listen to what the defence advocates have to say. I'm not saying that they agree with what they say, but they are prepared to listen".

#### **B3.6.4.2 - stipendiary magistrates are harder in their sentencing policies.**

There was also a high level of consensus that the stipendiary magistrates, " ..are usually quite a lot harder than most lay magistrates". This point was expanded upon by another defence solicitor who declared, "Yes there are times when we go into court and we prefer the fact that there is a lay bench, because I genuinely think that lay magistrates don't send people to custody as often as stipendiaries do".

#### **B3.6.4.3 - the case for an all professional magistracy.**

The prosecuting solicitor whom I interviewed left me in no doubt that if he had a choice he would prefer an all professional judiciary, including an all professional magistracy. The reasoning behind his view was, "If somebody gets tried at the Crown Court, it goes before a professional judge who is learned in law. If it goes before a lay bench, you're very much in the hands of your own skill of persuasion, how good the clerk is, so that the relevant law can be explained to the tribunal. There's a lot that is said, which perhaps before a stipendiary magistrate wouldn't need to be said". For example, "With the lay magistrate, you might tell them but whether they appreciate it is another matter and he, [the stipendiary magistrate], can sometimes get to the sub-text of it, the stuff which isn't actually said but it is there nevertheless".

### **B3.6.5 The advocate's overriding view of the lay magistrate is one of respect.**

Achieving credibility with the magistrates is seen by the majority of advocates as being important and even vital in the opinion of one of the defence advocates. But according to another defence solicitor, not of all of his colleagues necessarily see it in that way. He told me, *"It depends on the solicitor, a lot of people think it is the most important thing. ..I try very hard not to lose my credibility. But there certainly are advocates who are not interested whether or not they are credible. They may either tell a story flamboyantly, ..or may exaggerate the story. To some people credibility isn't important"*. But again what the lay magistrates perception of credibility is, was queried. As one solicitor suggested, some credibility might well be personality based, *"I suspect there's a bit of, if Mister 'X' thinks that and said that, then it has happened"*.

When I asked how the professional advocates saw their relationships with the lay magistrates, I was told, *"There's a tendency sometimes to think, 'I'm legally qualified, I've done a lot of training etc., and they're sitting up there and they've no idea what I've got to put with out here', ..but that's not the overriding view. The overriding view, I like to think, is one of respect shown to the lay magistrates"*.

### **B3.6.6 The Probation Service comprises of ideologically motivated people.**

In passing an opinion about the advocates' relationships with the probation officers, one of the prosecutors was quite definite in his opinions. He told me, *"I think there are people who are ideologically motivated to arrive at a particular result and that's the social workers and the probation officers, whatever they might say. I mean that's what they are there for isn't it, they are there to keep people out of prison, and sometimes the only just way of dealing with somebody for something is to send them to prison"*. Therefore, the Pre-Sentence Report was seen by this solicitor as being a very influential document in the sentencing process, *".. the last thing the magistrates see before they retire ..to consider the disposal of a case, ..is the report prepared by somebody who has ideological objections to somebody going to prison"*.

## **B4 THE PROBATION OFFICERS' PERCEPTION.**

### **B4.1 The probation officer's role in the courtroom.**

#### **B4.1.1 The probation officer's dilemma.**

"I don't bow. I think that's to do with the 'fish or fowl bit', about knowing whether I'm actually part of the structure of the court. I'm not one of the clerks, I'm not one of the prosecutors, I'm not one of the defence, I'm just not part of the court structure".  
(a probation officer)

This statement in many ways summarises the almost constant quandary experienced by the probation officers who work in the magistrates' courts. The probation officers feel that as a group they are somewhat apart from the other court professionals, "*we're still the officers of the court, yes, we're of the court but in another sense, no we're not*". So where do the probation officers fit within the structure of the magistrates' court? Are they officers of the court, the champions of the defendants, or the standard bearers for the Probation Service? Do the probation officers see themselves as an important part of the court structure or just someone on the periphery who should only speak when spoken to?

#### **B4.1.2 An officer of the court, an ally of the defendant, an agent of the service, - a matter of conflict.**

##### **B4.1.2.1- the 'administrative assistant', a provider of information.**

As officers of the court, the probation officers are seen as a source for providing information to the sentencers and to the other court users. Many probation officers would concur with the view that their main contribution to the courts is assisting and advising the magistrates by supplying them with such information about defendants, and other information that is pertinent to the offence, which will allow the magistrates to reach the appropriate decision in respect of that particular defendant. Such information is normally provided by means of a Pre-Sentence Report (PSR). In the opinion of the probation officers with whom I spoke, this aspect of their role takes up a disproportionate part of their time, time which could be better utilised at the 'sharp end' with the defendants.

##### **B4.1.2.2 - a trained 'social worker', the friend of the defendant.**

The 'classic view' of the probation officer's role in court is to 'assist, advise and befriend the defendant', a role in which many probation officers consider that they are under-employed. As one officer commented, "*and that role is overlooked because of other pressures and I think personally that is a serious role which needs review*". This was an opinion which was echoed by all three of the probation officers who were interviewed as part of the study.

The probation officers do not see their role as the defendant's 'advocate', in fact this is a term from which they are very keen to disassociate themselves. They see their role much more in the context of a 'mentor'. The probation officers express real concern for the defendant

who they see in the court as being "very isolated" and also "feeling very unsure of themselves". As one probation officer insisted, "I don't care who you are in court, it's a very distressing experience". The officers have a number of objectives, in the first instance it is to attempt to make the waiting period prior to the court hearing a little less traumatic for the defendants. Secondly, and where they are directly involved with a client, they also try to ensure that "their clients know what the rules of the game are, ..as it were stepping them up a grade or two in front of all the other court users, so that they start off from a better position". Finally, the probation officers see their role as making certain that their client is viewed by the court as a human being, "to put the flesh on the bones of this burglar and say 'he is a burglar, but he is also a married man with children and responsibilities ..' and I think, hopefully, try to bring the individuality of that person so that the sentencing matches the individual".

**B4.1.2.3 - the probation officer has direct personal contact with the defendant which, when compared with that of the other court personnel, is unique.**

The probation officer's concern for the defendant results not only from their innate qualities and their training but also because of the very nature of their work. One probation officer with whom I spoke claimed that the probation officer-defendant relationship was totally different to those of any of the other regular participants in the magistrates' court system. I was told, "I think it's very easy for people to sit up on the bench and not to be involved with people, ...We have the opportunity to sit down with people and you can't sit with people without something rubbing off between you". This was a view which was supported by a second officer, "The very fact that you've actually sat down and discussed with the defendant the offences, the circumstances of those offences, the personal circumstances. That makes them more human because it puts flesh on there, because you see their despair, their happiness ..Probation officers see the defendant's side of the story. They are the only ones who actually have contact with the defendants outside of the court arena".

**B4.1.2.4 - a representative of the 'corporate policy'.**

The probation officer, on behalf of the Probation Service, is also expected to advise the courts about both the existence and the availability of the resources provided by the service and to promote, within the Criminal Justice system, both the resources and especially the policies of the Probation Service. This is a facet of their role which the probation officers have not always found to be easy, often because by promoting these policies they have found themselves in conflict with the sentencers, "...probation officers were pressured by their own management to make recommendations which did not meet the criteria required for that specific defendant". A situation which has not been improved by recent legislation. The emphasis on punishment in the Criminal Justice Act 1991, has now increased the difficulties for the probation officer who wishes to argue for the 'assisting of the defendant' by means of a Probation Order. The emphasis on punishment has, as seen through the eyes of the probation

officer, demanded a considerable adjustment to the basic philosophies of the Probation Service and its representatives. As I was advised, *"There's a thing tied in with the current bit about probation services that we need to be harder, it is more punitive now. The days of the self-employed independent probation officer doing good in the community are gone. You are now more of an employee of a corporate policy and paid to implement that policy"*.

#### **B4.1.2.5 - the court or the defendant - a matter of conflict.**

*".. you occupy the ground between the offender and the courts  
..Assisting courts and offender to make sense of each other  
and assisting with sentencing. It sounds a bit of a tall order,  
doesn't it? Needless to say, it is complicated".*

*( Jones et al, - The Probation Handbook, p74 )*

This sentiment was shared by all the probation officers with whom I conversed during my study. An 'officer of the court' or a 'friend to the defendant', two roles which can be seen by the various participants in the court scene as, at best different, at worst irreconcilable. So how does the probation officer cope with a situation which is very real and which 'has to be managed'? To quote one probation officer, *"We straddle and that is our job. Our task is to straddle ... Can you help and assist and yet at the same time be seen to be punishing? In the court context, I'm not sure, I don't think you can. Hence you get this confused, fuzzy relationship. The probation officer must be seen not to be a part of the court process, in the sense of being one of them. Equally, the probation officer must not be seen as being the client's advocate ... That is not their job either"*. However in spite of a personal preference intimated by most probation officers, they feel that in practice, their role in the courtroom does involve them to a greater degree as officers of the court and much less as a friend and adviser to the defendant. If however, the probation officer is representing one of his, or her, own clients in the courtroom then this emphasis may shift.

#### **B4.1.3 Probation officers are pressured to demonstrate their loyalty to the court.**

The probation officers are acutely aware that there is a great deal of pressure exerted upon them to ally themselves with the court. *"All too often you feel under pressure from the court to ally yourself with the clerks, the solicitors, the magistracy .."*. Pressures are imposed by the clerks, *"The bench may want certain things doing, maybe unrealistically in terms of time or what they want. You may be in conflict with a solicitor over a proposal they don't want to follow through or which they want to object to"*. Neither is the courtroom the place which the probation officers see as their first priority, they maintain that these demands to demonstrate their allegiance to the court must be resisted if they are to perform effectively in the system. They see their skills being best utilised at the 'sharp end', in the waiting areas, where there appears to be that *".. air of despondency, of dejection, the feeling is one of separateness, that they, [the defendants], are apart"*. As I was told by one probation officer, *"It's a squalid place to be and it's a place where we belong, the Probation Service, and I don't get*

enough time to spend with the people in there because I'm spending a lot of time in the actual court".

#### **B4.1.3.1 - some of the barriers are physical.**

While some of the barriers which prevent the probation officers functioning in the way that they would choose are psychological, there are also some which have physical characteristics. One example of these barriers is when the probation officer is required to communicate with, and assess, a defendant who is being held in custody within the cells area, a situation which was graphically described to me. *"I've got to actually go down into the cells, I've got to talk to these people who are our clients, they're my bread and butter, so I try to break down the barrier, but it's very difficult because the structures are there. The people are manacled to other people who are going to take them out, for security purposes. The barriers are there, the physical barriers to prevent them communicating effectively".*

#### **B4.1.4 A 'passive clerk' or a 'Don Quixote tilting at the bureaucratic machine'.**

Because of the varying conflicts of interest which have been outlined in the previous sections, the probation officers also feel that they face another problem, how to project themselves in the courtroom. The general perception of the probation officer is that they are seen in the passive mode. Apart from actually providing the court with information in the form of the Pre-Sentence Report, [formerly the Social Enquiry Report], the probation officers have normally chosen to keep a low profile. This is seen by some as the best method of enabling them 'to maintain the impression of neutrality between the court and the defendant'. Others would argue that they have little choice in the matter, but that the passive role is dictated by the way the courts are organised and operate and by the way that relationships are formed. As it was explained by one probation officer, *"I don't have a part within the one-act play. The first scene is bringing in the defendant, that's the court usher's role. The second scene is the court clerk establishing who the defendant is and making out the charge and so on. The prosecutor, the defence, each have their own little 'marionette place' within that. But no place for the probation officer and there's a certain sort of hesitancy about interrupting a bureaucratic machine because one's experience of bureaucratic machines is that they steamroller individuals and carry on regardless, and there's also the question about what useful impact is there for the probation officer in a direct, up front at the footlights bit. But I certainly am active in the grounds behind the scenes".*

Others do argue however, that to say that probation officers prefer to play a passive role in the courtroom is too much of a generalisation and purport that the probation officers do have a choice in the way they project themselves. Indeed some officers do undertake a much more pro-active role, *"..and still represent to the defendant as being on his side.. by being up on your feet and questioning".* To perform this role does require a measure of confidence by the officers in their ability to participate in the courtroom setting, an ability in which some probation

officers appear to have doubts. Because of this they assume the low profile of *"..an admin person writing results"*. The danger of adopting this type of guise is, in the opinion of one probation officer, *"..that other court users might see passivity as passivity and nothing more, all very ineffective"*.

#### **B4.2 Justice and organisational efficiency.**

*"...the throughput of work seems an overriding aspect as opposed to the actual individual, in this case justice for the individual.., and that is something which I think everybody conspires with within the court organisation".*  
(a probation officer)

##### **B4.2.1 The courts of justice can take on the characteristics of a factory production line.**

All of the probation officers who were interviewed as part of the study concurred with the view of some observers that 'justice is subjugated to organisational efficiency in the magistrates' courts', (Carlen 1976, p20). All too often the courtroom is seen not as a place in which justice is dispensed, but more as a place where the defendant is processed. As one probation officer explained, *"..that does come over in court, that he, [the defendant], is being processed and dealt with, and that clears the sheet in that particular case. The individual has not been dealt with as he should have been dealt with"*. Some officers compared it to a conveyor belt where the main emphasis is placed on getting through the workload.

##### **B4.2.1.1 - the probation officer occasionally attempts to challenge the 'production line' mentality' but all too often they become engulfed by the system, just part of the process line, until.....**

One officer did emphasise that probation officers do challenge the system if they consider that the drive to move a case through the system quickly, by minimising the length of an adjournment for example, is not considered to be in the defendant's interest. *"So yes I think we try to resist that, we're conscious of it, ..but sometimes we all get sucked into this I'm afraid"*. This officer went on to describe the frustrations of their life on the 'production line' but then how, on the rare occasion, the routine is punctuated by a different type of case. *"It is like a conveyor belt and sometimes when we're writing our fifteen reports a month you feel that you are part of the conveyor belt I'm afraid ..and you feel as though you are processing people sometimes. I think what breaks it, is when you get a different type of case, the one which appeals to your social work training, who makes demands on you, who actually gets to you .. and then you start to think, he's bringing me back to earth again, I'm not on the process line"*.

**B4.2.2 There are times when the court proceeds almost in spite of the presence of the defendant.**

*"That would certainly fit with the picture I have at times, that the defendant is almost an irrelevancy in the court and everything goes on between everybody else..".* Neither is this impression, expressed by one probation officer, an isolated view. An even more pointed picture was described by another officer who was concerned that the person who was vital to the court proceedings, the defendant, was almost totally excluded by the procedure, *"You could as easily have one of those cut out models standing there and let the rest of the players carry on regardless".* A third officer commented, *"If the solicitor was to turn up with the defendant's name and a signed chitty saying 'yes you can represent me', it would be almost all that would be required ...everything goes on between the other people, it doesn't include the defendant. Every court I've worked in, they, [the defendants], are either towards the back or off to one side and very separated off, and everything else goes on around this bit", [the body of the court].* Even the defendants who are represented cannot always be certain that their views will be made known to the court. *"If they've got a representative they don't know what he's going to say".* Some probation officers are also of the view, not without foundation, that the magistrates tend to deal with the perpetrator of a crime and as a result of this the penalty imposed only recognises the 'norm' for the crime, often to the exclusion of the individual who stands before them. The view expressed to me was, *"I'm sure that you on the bench must think, 'Now what do we do with this one, because we've had three or four this afternoon. What is the tariff for this afternoon?' and the impression given is that people are being processed".*

**B4.2.3 The courtroom procedures are designed to facilitate the control of the defendants, the systems are intentionally kept opaque.**

*"Yes if you can keep them guessing it makes you and your system more important, it acknowledges power. If you can keep the poor beggars guessing you can control them, .. there's nothing worse than a defendant who knows his rights".* Such is one probation officer's theory on why the courts are organised in the way they are. Others see the defendants in a state of uncertainty, not knowing when or how to present their version of events, not knowing when they are supposed to stand or when they are allowed to sit, definitely not being allowed to challenge either the procedures or the system, *"..and they're not certain whether they can say anything, or if they try to they're told to shut up straight away. So that's the uncertainty of what they are to do. They're not well versed or rehearsed in what they are allowed to say".*

**B4.2.4 Efficiency and the need to proceed takes precedence over a requirement for accurate communication.**

As one probation officer indicated, if one of the criteria for efficiency was effective communication then the magistrates' courts would be adjudged to be inefficient, *"I would say at best people understand very little and at worst they understand nothing".* Magistrates and clerks



appear to go to some lengths to ascertain that the defendant does have an understanding of the event, but the urgency to proceed does demand that provided that some indication of understanding is conveyed by the defendant then this is accepted as sufficient justification to continue. The probation officers recognise that too often the ideal has to give way to the practical, *"But you have to draw the line, reality draws the line, .. we're back into potential conflict with the organisation and throughput, otherwise you've got a waiting area full of a 'days-worth' of defendants if you're labouring over one particular situation, minutely explaining"*.

#### **B4.2.5 The quest for courtroom efficiency can quite often be financially motivated.**

The probation officers acknowledge that they now operate in a world of cash limiting, cost effectiveness and business failures. An environment where deals are agreed between the different agencies because they are seen to be cost effective. Deals where, in the opinion of at least one probation officer, it appears *"..that the least considered person is the defendant"*. It is conceded that in some situations, the acceptance of a lesser plea or a discontinuation, the defendant can be seen to have gained, but where does this leave justice? As one probation officer stated, *"I mean money really affects whatever your perception of justice is"*. Neither are the courts immune from the need for businesses to demonstrate commercial success. The probation officers recognise that solicitors not only have a responsibility and a duty to the client, but also to a business and the people whom they employ. Whilst many probation officers do condemn the approach of some solicitors, they also concede that they may have difficulties, *"I think a lot of the time, in a lot of courts, a lot of solicitors are unprepared and I would criticise them for that. However if they are trying to keep a firm afloat, they need as many clients as possible, processed as quickly as possible"*.

This view, however, does contrast quite markedly with that of another probation officer who made the comment that, *"When the bench are out, one overhears solicitors boasting about their latest yachts"*.

#### **B4.2.6 The word 'efficiency' is somewhat misplaced when used in the context of the magistrates' courts.**

Any observer within the magistrates' court system cannot help but note the apparent lack of order, at times almost verging on chaos, which pervades in the courtroom. This view was summarised by one officer who deemed, *"Efficiency does sound a little misplaced in the context of the magistrates' court, which does strike me so often as being totally disorganised and hinging on the presence or otherwise of key individuals. For instance if a solicitor is held up at another courtroom ..then the whole thing seems to ground to a halt. So the word efficiency is a misnomer"*.

**B4.2.7 The corollary of excluding the defendant from the proceedings is to promote a negative response to the judicial system.**

But what is the effect on the defendants, this preoccupation with efficiency, One probation officer was keen to point out the negative effects and claimed, that if defendants are treated like spectators and only allowed a very restricted level of participation, and if the defendants are also denied that level of respect to which they are entitled, then this will militate against the effect of the sentence and will only result in reinforcing the negativity of the system.

**B4.3 Courtroom organisation and the degradation ceremony.**

*"I'm sure there must be other ways of dealing with all the elements that need to be dealt with, without having to humiliate and degrade the defendant in that type of way".*  
(a probation officer)

**B4.3.1 The use and abuse of rules in the magistrates' courts.**

**B4.3.1.1 - there is a need for rules.**

All of the probation officers who were interviewed believe that rules are essential to the running of the magistrates' courts. Without rules, the system, which by its very nature is adversarial, would be almost impossible to operate and control. The rules have been formulated over time with the aim of bringing and maintaining order in what can quite often be seen as a complicated process. As one probation officer said, *"I would hope that the intent was actually to keep a very complex set of circumstances in some sort of workable, logical framework. If you didn't have rules when people could and could not speak, you'd have bedlam, people shouting at every verse end, at something they disagreed or agreed with. There have to be rules, but do they have to dehumanise?"*

**B4.3.1.2 - the (ab)use of the rules.**

It was this final point which concerned the majority of the probation officers with whom I spoke. Whilst the need for rules is widely accepted, it is the way in which the rules are applied which the probation officers find disturbing. The impression gained was that these people consider that the application of the rules is asymmetrical, because in practice it appears that the rules are only invoked in respect of the defendants. It was said that behaviour which is condemned in the defendants can with regularity be enacted with almost total impunity by the sentencers and other court officials. An example of this one-sided application of the rules was recalled by one probation officer who told me, *"Yes I've seen all those things", [the various sanctions imposed on the defendants in the courtroom setting]. "I've seen people told 'whatever you've got in your mouth take it out' .. and I contrast this with Judge S.. popping Nuttall's Mintoos into his mouth throughout the whole of the proceedings in his court. You know one rule for one and one rule for another".* Not only are the rules seen as being applied unfairly, the overall impression is that the consequence of the way in which the rules are applied,

intentionally or unintentionally, is that the defendant is frequently demeaned, As one officer remarked, *".. and yet I don't know whether the original intent of all the procedures and the rules was to actually debase the defendants, but it's certainly one side effect"*.

#### **B4.3.2 The organisation of the courtroom and its procedures, - a demonstration of impartiality or part of the degradation ceremony ?**

When asked the question, 'Is the setting up of the defendants in a guarded dock and at a distance artificially stretched beyond the familiar boundaries of face to face communication and asking them to describe or comment on intimate details of their lives, designed to degrade and humiliate the defendants'? The responses received from the various probation officers could all be included under the heading of a 'qualified yes'. As one officer commented, *"But isn't this part and parcel of the whole machinery? If someone is going to be humiliated then you arrange the stage. ..The whole purpose has got to be bawled from one end of the stage to the other"*. Others also saw that the way in which the courtroom was organised and the way in which the participants were arranged did have the effect of humiliating the defendants but they were not all convinced that there is a policy calculated just to humiliate the defendants. In the words of one officer, *"I can see a lot of that occurring, I don't know how deliberate it is"*. Another officer, whilst expressing concern about the spatial aspects of the courtroom organisation, also recognised that there is a need to demonstrate the impartiality of the sentencers. As he told me, *"I think the fact of who's involved has a direct relevance on the seating arrangements. I find a part of me says no, keep the distance thing, I think that is possibly the emotion to do with tradition. The visual distance bit is important, it says that the magistrates who are making the decision, are making the decision and they are not in cahoots with the prosecutor who is sitting round a table to their left within note passing distance. I think that is important"*. The same officer did go on to say that in their efforts to distance the sentencers from the rest of the court, some courts and particularly in the older buildings, do take it to ridiculous extremes where, *"..the judge sits in this farcical sort of isolation between these hugely carved things.. . I mean it makes him look totally foolish as opposed to giving some impression of majesty, it simply makes it a farce"*.

#### **B4.3.3 A matter of policy or a misuse of personal power - a conspiracy of ego inflation?**

*"I've seen examples of people being made to feel extremely uncomfortable when there was no need to do that, ..where certain chair people have actually made clients extremely uncomfortable when the need wasn't there. The client was visibly shaken in my view and there's no need for that, it was an overkill situation"*. This was one probation officer's experience of the way that the defendant is treated in the courtroom situation. The overall view of the probation officers with whom I spoke, was that officious and disrespectful orders are given to the defendants by both the magistrates and by the other court professionals. I was told by

another officer, *"I've certainly noticed that the professional magistrates tend to say 'Stand up Smith', and then proceed to address them in that sort of impersonal way".* A third officer voiced his concern at the lack of politeness in the way some clerks address the defendants, *"I see it when certain clerks snap, 'What is your name, date of birth, address'? and don't say 'Thank you' or give a title 'Mr' ... Those lubricants are missing and the sorry story goes on".* All this adds up to a very impersonal environment, a situation which led this probation officer to compare it to a cattle-market. *"Yes I see it very much as cattle-market on occasions. I see it very much in the way they, [the defendants], are brought into court and everyone turns and stares.... Everyone, as when the beast is brought into the auction ring and is paraded there. Now this is a dramatic overstatement but I think there's an essence of truth in there".* But what of the defendants' representatives, the defence solicitors, and their part in protecting the client ? This same probation officer was quite scathing in his opinions on that point, *"It's something that I despair of, how can one possibly hope to improve when the very person who's supposed to be representing the offender is colluding with the whole system and indeed exacerbating the system by treating them as, just again, an article in a cattle-market".* One theory which was proffered suggested that one of the reasons for the demeaning of the defendants by the regular court users was to, *".. heighten the self-importance of the ones who conspire together in this, ..to make it our club and we are feeding on, if you like, these people who come through the courts, ..they are not one of us, they are a different breed. Nobody actually says that, but that's the message".* Not, it must be emphasised, are all of the regular court users categorised under the one heading. While agreeing with the overall sentiments, another officer did say, *"I'm sure there are elements of that in there, but I've also watched court personnel actively work against that by calling a defendant by their name .. They treat people in a very encouraging way to make somebody feel more comfortable than degraded".*

#### **B4.3.4. There's got to be a better way - the probation officers view.**

*"It seems to me that there's got to be a way where people could be physically closer together, I think that reduces the barriers to some extent.. I personally think that things could be dealt with in a much more humane way".* Such was the view of one probation officer, a view which I found was almost universally shared by his colleagues. In order to justify this claim this officer describes the procedure in the Juvenile Court where, *"It seems much more civilised somehow",* where people, among other things, are *".. addressed by their first names".* I was also told about other cases, some involving 'relatively serious matters' which were actually dealt with in the Magistrates' Assembly room. Where, in the words of the probation officer, *"I thought that justice was dispensed in a proper manner, without the barriers there. We were sat around the table, including the defendant.. The defendant wasn't as nervous".* Whilst a greater degree of informality would be welcomed by the probation officers whom I interviewed, one officer did query how such a move would be viewed by the people outside of the court arena. He pondered *"I wonder if that setting would sit uneasily with the 'public good bit' and the*

*demonstration of justice being done". Another officer argued that no matter how a room is laid out, the fact that people have defined roles and defined responsibilities for those roles, "...even that tells you where and how you fit in, how you actually act within the court. That occurs anyway and would occur whether we all sat round one table or not".*

It was accepted that, *"...you need solemnity for the occasion"* to mark its importance, but it was argued that this aspect is already evident by the fact that defendants have to go to a special building, where they are dealt with by people who they do not usually meet in their everyday activities. They have a specific date and time at which to attend, a reason for being there and *"...knowing that they are up in front of 'the Beak', all these factors mark it as special without the rest surely.."*. Another view which was also expressed, concerned the possible negative affects of humiliating the defendant. As one officer said, *"I think humiliation breeds resentment, it breeds a feeling of I'm going to get back at you somehow, you may not be the person but I'll get back at the system. So no, I don't feel that humiliation should be a tool.. I think that one can achieve one's intent, possibly achieving more by courtesy, by carefully following the social rules so that one is not seen as abusing power"*.

#### **B4.4 Power, influence and Pre-Sentence Reports.**

*"A lot of settings and the courts specifically, are personality based and credibility based, consequently the power, the decision making, could be rested in any number of people, the magistrates, the clerks or the advocates depending on the strength of their personalities and the degree of credibility they possess"*  
(a probation officer)

##### **B4.4.1 In court the magistrates announce the decisions, but who actually makes those decisions?**

This question was put to all three of the probation officers who were interviewed and their initial replies were all fairly consistent. They apparently had no doubts that the decision makers were the sentencers, the magistrates. What was not quite as clear cut was who, or what, has the greatest influence on the magistrates in their decision making process?

##### **B4.4.2 The magistrates, 'it's their decision and they're the people with the power'.**

As I was told by one probation officer, when dealing with clients it is important to make them understand that it is not the probation officers who make the decisions. Probation officers only make proposals, advocates present the facts and put forward mitigation and the court clerks give advice, but at the end of all this, *"...clients have to be made to realise that the bench make the sentencing decisions, the other people are only there as the providers of information"*. So in practice the decision making is, in the vast majority of magistrates' courts, in the hands of a group of part-time amateur members of the public, the lay magistrates. I asked the officers for their views, as professional court users, on this aspect of the magistrates' courts system. Their overall opinion was perhaps best summarised by the comments of one officer,

*"Some lay benches are good, some are appalling, but irrespective they are the decision makers, it is their decision and they're the people with the power and I think as professionals working in the court situation, you've got to live with that or you can't do the job".*

The power of decision making is not the only power which the magistrates possess, they also have a great deal of inter-personal power. The extent of this power was emphasised by another probation officer who talked about the power relationship between the magistrates and the other court users, *"You can't argue with the bench"*, and in particular he stressed the wide discrepancy of power which exists between the magistrates and the defendants, *"..there is a power relationship there and the bench is untouchable, utterly untouchable, you cannot answer the bench back. If the bench chooses to criticize one, you can't stand there and say 'you're a damned fool', maybe everyone in the courtroom knows that, but you're not allowed to say that, least of all the defendant.."*

#### **B4.4.3 Power and influence - a matter of credibility**

*"I don't really know who has the greatest influence, because at times I've seen powerful prosecutors make a great impact on the sentence, assisted on occasions by very weak defence barristers or defence solicitors and at other times I've seen the reverse".* The same probation officer then went on to talk about the influence of the probation officer in court, *"I've seen occasions where the Probation Service report, or a comment made by a probation officer who's been asked to give evidence, has been useful and has swayed the case in favour, maybe, of the proposal that was put forward. So it is difficult to say .."*. This difficulty was also commented on by another officer who indicated that one of the difficulties in assessing who in the court holds the most influence is the probation officer's own standing in the court system, *"It's extremely difficult, I think, from somebody who's excluded from a lot of that to say where the power rests"*.

##### **B4.4.3.1 - a powerful network, the professional lawyer influence.**

One probation officer identified what he considered to be a powerful group of people within the magistrates' courts, 'the professional lawyers', the court clerks and the advocates. A group from which the both the amateurs and the non-legally trained members of the court scene are excluded. I was told, *"I don't think we're part of it, I don't think we are powerful enough in court to be a part of it. We are certainly outside the circuit of the clerk, the defence and the prosecution. There's a very powerful network there, I think you, [the lay magistrates], are excluded, you'll never be a part of that, ..and we, like you, are amateurs, we're not professionally trained in law in any case. So we're not included in that and I think that has a lot to do with our role in court, the fact that we're not professional lawyers"*. I was told of decisions that are made by this group and to the exclusion of the magistrates, often, but not always, when the magistrates have retired from the courtroom, *"A lot goes on in front of the bench that we*

*don't hear or know of and I can give you incidents where deals have been made on the 'front bench', and while the lay magistrates have been out, about how something will operate ..".*

#### **B4.4.3.2 - the power of the court clerk. What happens behind closed doors ?**

The power of the court clerks was also discussed in the context of the influence they exert when giving advice to the lay magistrates. A contrast was made by one probation officer between the information which is presented by the other court users in the open court and that information which is given to the magistrates in the confidential confines of the Magistrates' Retiring room. *"The solicitor standing up and presenting facts and dealing with matters is generally very open and is heard by all concerned. A report is not quite so open but it is subject to scrutiny by quite a number of people. .. But the vast majority of how decisions come about, through the magistrates or in connection with the clerk, are as it were, behind closed doors. .. There's a lot of power held by the clerk, in terms of their knowledge base and hence the advice they can produce. One cannot be but suspicious sometimes, in personality terms, as to what goes on behind closed doors, I wish I knew".*

#### **B4.4.3.3 - the probation officers, the 'Cinderellas' of the court structure.**

It is evident from some of the statements volunteered by probation officers in the preceding sections, that they do not see themselves at the forefront when it comes to influencing the decision makers. Comments such as, *"We're not powerful enough in court to be a part of it",* or *"It's extremely difficult I think for somebody who's excluded from that to say where the power rests".* Perhaps the probation officers' perception of where they stand in relation to the power and influence debate is summarised by the feelings expressed by one officer, *"You can't argue with a bench or a judge, the probation officers, possibly because they're the weakest, they are the ones who hold least power within that court structure".*

#### **B4.4.3.4 - credibility is important, but what is it ?**

An oft-used word when discussing power, influence and relationships within the magistrates' courts is 'credibility', and particularly gaining and maintaining credibility with the magistrates. In my discussions with the probation officers I found that their attitude on this subject varied little with that of the other court professionals. They see credibility as an important factor in their ability to function effectively and specifically in the way that their reports are viewed by the magistrates. The probation officers were under no illusions that the *"acceptance of the PSR, (the Pre-Sentence Report ), and its conclusions can be highly influenced by the credibility element of the individual writing the report and if what is being suggested links in with that particular magistrate's point of view, especially if that person happens to be in the chair..".* This view was emphasised by one probation officer who talked about the need to impress the magistrate, *"If you want to get your proposal accepted you've got to make your report credible and therefore, do you write for an audience? Do you play to the*

*gallery, the gallery being the magistrates? Do you play upon their prejudices and persuade this particular bench? If I don't, if I put in a report that is incredible I'm wasting everyone's time, I may feel myself spiritually pure, but I've not achieved a great deal".*

But while it is agreed that credibility, particularly with the magistrates, is essential, concern was expressed about the way in which that credibility is perceived. As has already been stated, the courts are seen as being *"..personality based and credibility based"*, and in the opinion of one probation officer problems occur when these two factors become confused. *"A lot of credibility is gained by ones personality, not necessarily by the quality of their work, ..it is this that bothers me because where a false credibility is gained then justice doesn't come anywhere near"*. One of the reasons that lay behind this concern, I was told, is that there are a number of the regular court professionals who believe that they can *"pull the wool over the eyes of the lay benches"*.

#### **B4.4.4 The Pre-sentence Report - an aid to decision making or a usurping of power.**

*"I think they, [Pre-Sentence Reports], can be powerful if they are well argued, ..I think sometimes the Pre-Sentence Report can be very influential, I bear in mind that it is one of the last documents that the sentencers will read before making their decision and I think that the things you read last tend to stay in your mind the most"*. This was the view of a probation officer when discussing one of the most important 'tools' used by the Probation Service in influencing the magistrates.

##### **B4.4.4.1 - the objectives and preparation of the PSR, a change of style.**

The central theme of a Pre-Sentence Report is the defendant, but at the same time the probation officer needs to bear in mind that an important aim, if not the major aim, is to persuade the magistrates to accept and implement the proposals which have been suggested in the report. In order to achieve this, the report must be seen by the sentencers to have a high degree of credibility. As one officer explained, *"You are writing it with the interests of the defendant in mind because you are a probation officer, because we take the point of view of the underdog, ..and some officers take that point to its extreme and hence, I think, devalue their reports, ..and if you want to get your proposal accepted you've got to make your report credible"*. Another officer with whom I spoke felt that probation officers and their reports had suffered in the past due to the policies imposed on them by the Probation Service management, *"..in the past I think we've been pushed quite strongly, management have said to us, ' we expect you to guide sentencers by coming up with proposals', and when faced sometimes with people who've had everything that's available to them, supervision, custody, the works, sometimes in the past I've felt very much, I don't know what the hell to recommend to the court in respect of this bloke"*. The general opinion among the probation officers was that recent legislation has brought about changes for the better, as one officer concluded, *"I certainly think that the new Criminal Justice Act,[1991], has encouraged us to be more objective*



and to look at the aggravating and mitigating features in peoples lives, ..I personally feel, that in the last twelve months, I've had to look more carefully at what I write in my reports to support my comments". It is also recognised by the officers that their reports, by and large, only represents one part of what can sometimes be a very complex picture, "You have to constantly remind yourself, you are writing a report, you are reflecting very particular bits of this whole scenario. But the bench has to take into account not only the personal bits, but also the public bits, which are in many ways beyond the ken of the probation officer. They should consider that in their report, acknowledge it, but that really is the preserve of the bench".

#### **B4.4.4.2 - a matter of presentation - how not to alienate the magistrates.**

Previous studies have found that some magistrates were very critical of the recommendations which were contained in the Social Enquiry Reports, as they were then called, and resentful of what they interpreted as a usurping of their power, (Parker et al, 1989). When I discussed these findings with the probation officers, I was told that this resentment still prevails, "That comes across often, not necessarily within the court setting, but it does come out through other meetings and discussions that occur". I was also told by another officer that it is a problem which has now been addressed nationally, "One thing we have been told latterly by National Standards is not to be seen to be trying to usurp the benches prerogative on sentencing, we now have to use words like proposal ..and couch it in such a way as not to offend sensibilities. Because I think in the past, and probably in the present as well, report writers have been careless in their use of language and have succeeded in antagonising the bench".

When I queried whether reports were written and presented with a particular audience in mind, I got a number of variable answers. It depended not only on who was writing the report but also on whether the report was being presented to a stipendiary magistrate or to a lay bench. One of the major obstacles for the writer of the report is, that in most instances, neither the type or composition of the bench is known until the day of the hearing, Even where a case has been reserved by the stipendiary magistrate to be heard in his court, this knowledge cannot always be put to use by the writer, As I was informed by one officer, "I don't think I know the 'stipe' well enough to be able to do that. So I don't think that applies really". Another officer claimed however, "I think in terms of base material and the base of what I wanted to say it would be common to whoever it was. But maybe the way it was presented or possibly emphasised to try and achieve what you were suggesting, yes it would definitely be different". I was told that with the introduction of the stipendiary magistrate as a permanent member of the Bench there had been a very positive effect on the report writers. According to one of the officers, "I think standards have been jolted by the presence of the 'stipe' and I don't think that's a bad thing".

When I asked how receptive magistrates in the study area were to accepting the proposals which were contained in the reports, I was told by one officer, who had worked at and

had considerable experience of a neighbouring bench, *"In a way I was used to writing reports for punitive courts and in some instances not getting the proposals that were being put forward accepted. I've come to work here ..there is a more receptive audience towards constructive proposals"*.

**B4.5 The probation officers' perception of and relationship with the defendant.**

*"I think by temperament, by self selection almost, probation officers see the defendant's side of the story. ..We certainly are temperamentally inclined to see the side of the underdog".*

(a probation officer)

**B4.5.1 The welfare of the defendant is not always the prime concern of the court.**

From the opinions expressed in some of the preceding sections, the probation officers see the defendants who appear in the magistrates' court, as a group of people who are regularly disadvantaged by the system. The overall view conveyed is, that defendants tend to be processed by the courts rather than being dealt with effectively as individuals. It was said that the defendants' interests can be sacrificed to the competing interests of cost effectiveness and inter-group compromises, although this can and does on occasions work to the benefit of the defendant. Defendants are subjected to rules and procedures which not only restrict their opportunity to participate effectively in the proceedings, but the way in which the rules are applied, intentionally or otherwise, can often have the effect of humiliating and degrading them. Their treatment by some, but not all, of the regular court users is seen as disrespectful and officious, the corollary of this type of treatment is that it can produce a negative reaction which fosters a feeling of resentment against authority as a whole and the Criminal Justice system in particular. One probation officer went as far as describing the defendants as 'cannon fodder' for the court system.

**B4.5.2 Defendants can be disadvantaged by emotional, intellectual and social factors when attending court.**

**B4.5.2.1 - even the most hardened criminals experience anxiety when they have to attend court.**

All of the probation officers with whom I spoke were unanimous in the view that the majority of defendants, when they attend court, are affected to some degree by feelings of apprehension. This can range at one end of the scale as a simple feeling of uncertainty, whilst at the other end of the scale people can be gripped by a sense of fear. I was told by one officer, *"We deal with a lot of people who aren't all that experienced in court. ..There is a hard core of people who are in and out of court all of the time. But a lot of people come through our hands ..who aren't all that experienced or well versed in what's going to happen and there's always that fear, it's such a real fear amongst the people we deal with"*. What of this 'hard core', the regular attenders, has familiarity with the system resulted in a 'couldn't care less, I've seen it all

before attitude'? The opinion expressed by the probation officers definitely dispelled this theory, *"..even the well tattooed young man who attends and you, [the magistrates], think he's got a record as long as my arm, he's still unsure of himself"*. This could be because, as a persistent offender, he may well be in fear that a custodial sentence will be imposed. But there are always those who don't appear overly concerned, as I was told, there are always the optimists, *"Who think I'm going to get away with it"*.

#### **B4.5.2.2 - defendants are disadvantaged by both emotional and personal characteristics.**

The effect of this apprehension, often combined with personal shortcomings, for example limited intelligence, is thought to put many defendants at a distinct disadvantage when appearing in the courtroom. In the opinion of the probation officers with whom I conversed, this resulted not only in them not understanding the procedures, but of even more importance they didn't even appreciate what had happened to them or why. As one officer explained, *"The very limited individuals haven't got a clue, ...there are some who really are very bright, not bright in the conventional sense but streetwise and know what the score is. But a lot of people don't and it's so painfully obvious that they don't understand"*. The defendants' emotional state was also underlined as a cause for their lack of understanding of events. *"You've got somebody so wound up that they can't concentrate and especially if they are fresh to everything, I don't think they even listen sometimes. I mean your hearts beating too fast, too loudly in your ears .."*. It is not only the inherent characteristics which have the effect of putting defendants at a disadvantage, dress can also have a discriminatory effect. As one officer described the situation, *"The defendants are dressed in a different uniform to us aren't they? We're all part of the 'old boy network'. .. We're all one, the solicitors wear their whatever, we all carry brief cases, we look business like. The defendants look different to us normally, not always, and in a way, in that situation, he's put down immediately"*.

#### **B4.5.3 - Probation officer-client relationships.**

The probation officers' perception of their relationships with the defendants, their clients, have already been touched on previously. These relationships when compared with those of the other regular court users are perceived by the officers as being very different, if not unique. While they do not wish to be seen as the defendant's advocate, they do see themselves cast in the role of a 'mentor', someone charged with the responsibility to 'assist, advise and befriend' the defendant. Someone to take the defendant's side, to try and provide some help for the people who they view as the underdogs in the Criminal Justice system.

##### **B4.5.3.1 - defendants are actually human when you get to know them.**

The probation officers see themselves as having positive relationships with the defendants. They are disposed not to be judgemental of their clients and admit to having a fair

degree of empathy with the client's situation, in other words they are inclined to see the defendant's point of view. As one officer explained, *"The very fact that you've actually sat down and discussed with the defendant the circumstances of those offences, the personal circumstances, that makes them more human .."*. This statement was not only supported but was also expanded upon by one of this officer's colleagues, *"I think once you sit down with people and engage in a sort of rapport with them it's very unlikely that you are not going to look for some good aspects of that person's background, personality and so forth to offer to the court. So I think inevitably we get caught up with people and that's the end product .."*. The probation officers realise that in some instances they can become a 'privileged confidant' of their clients, but all of the officers with whom I spoke were at pains to stress the need for them to retain both their objectivity and their professionalism. Many of their clients have quite difficult and sensitive areas in their lives which need addressing, drink problems and marital difficulties being just two amongst many, but if the probation officers allow themselves to become too enmeshed in these problems, this might not necessarily benefit the situation. One officer summarised his own views on this particular aspect, *"I think in a way we've got to distance ourselves from the client. If you get too close to the client you're not helping them, there's got to be a professional distance"*.

#### **B4.5.3.2 - concern for the defendant is not the only reason for maintaining a professional distance.**

There are times when the writer of a Pre-Sentence Report will use words or phrases which have been developed with intention of distancing the views of that officer from those of the client. These phrases are used where either statements or claims made by the client have not been able to be checked out by the officer, or in some instances where they are considered to be rather dubious, when it is thought that the client, to quote one officer, *".. is telling 'pork pies' here"*, and the probation officers do not wish to jeopardise their credibility with the bench by just appearing to go along with those statements. *"So there are things about self-preservation, there are things about this lads trying to pull a fast one, I can't let him make a fool out of me"*. So the probation officer will sometimes include a 'disclaimer', hidden between the lines of the report, phrases such as , 'The defendant tells me ..'. The reason for this is not primarily to 'hoodwink' the client, it is more to do with maintaining credibility with the magistrates. The balancing act which the probation officer must strive to achieve is one of maintaining credibility with all sides.

#### **B4.5.3.3 - a good relationship is not a one-way street.**

Whether or not clients see the probation officers as being part of 'the system', quite often depends on the person's past experiences with the Probation Service, or with any of the other agencies which they associate with 'the system'. As one officer explained, *"Sometimes people who have had lots of contact with us over the years speak fondly of a probation officer*

who was extremely useful at some point in their lives, maybe when they were most receptive to receiving it". In order to illustrate that clients do not always look back on their contact with the Probation Service in quite the same way, I was also told a story about a particular client, " .. who's got a very long record and a lot of 'custodial'. He's been virtually brought up in care and spent most of his time in and out of institutions. He's quite embittered about all of us, he groups us all together, 'the system' as he calls us. Magistrates, judges, solicitors, probation officers and social workers, have all dealt with him and the upshot of it is, he's spent most of his life in prison and therefore no one has helped him .. So it depends at what point you engage people in their lives as to whether we can be helpful and whether we can be seen to be useful".

But what is a good officer-client relationship? In the opinion of one officer it must be based on a give and take relationship, the relationship is not a 'one way street', *"What is not needed is a constant giving approach, there has to be an approach that demands certain things as well"*. The client must be taxed and asked for explanations and reasons for their behaviour. This particular officer did concede that he was not necessarily expressing the views of all his colleagues, but he did go on to say that in his opinion, *"If a probation officer is seen as soft by the magistrates, I think there's a good chance that the probation officer will be seen as soft by the client, ..and the client will despise someone who is just a waste of time"*.

#### **B4.6 The probation officers' perception of and relationship with the other regular court users.**

*"I still maintain that the Probation are marginalised, I think that there has been more progress towards, not us being equal members playing our different roles, but we've notched up a bit, we've been accepted more"*.

(a probation officer)

#### **B4.6.1 The probation officers do not identify with the other court professionals although they do engage in relationships of 'reciprocal privilege'.**

##### **B4.6.1.1 - 'we are there in body but not in spirit'.**

As we have seen in the preceding chapters, the probation officers do not readily identify with the other court professionals. As was indicated by one officer, they are officially officers of the court and yet in other ways they see themselves in a different role. They do not consider that they have the same pecuniary interest in either the court or the defendant as do some of the other court professionals. To quote one officer, *"I'm not sure whether Probation have a vested interest in there. This is the theme which keeps coming into my head, about whether we are there in body but not in spirit, could we care less who gets the carcass .. I for myself couldn't give a carrot which bit of the carcass solicitors get or the clerk gets or whoever gets, I'm an observer of the passing scene.."*. The officers find that on the one hand there are pressures from both the magistrates and the court professionals for them to ally themselves with the court, but then again they feel that they are excluded from the arena of power and

influence, the 'professional lawyer network', and because of this they do see themselves as being 'marginalised'.

#### **B4.6.1.2 - it is an 'uneasy truce' but there are some good working relationships.**

*"Yes any system works I guess on the basis that, 'You'll scratch my back and I'll scratch yours', and yes I've participated in that sense. Within my needs' within that system, I've scratched peoples' backs ..".* This was the admission of one officer and something to which all of the officers whom I interviewed admitted to participating in. So relationships are formed by all the professional agencies, including the Probation Service, where it is seen to be to the mutual benefit of both parties or as part of a reciprocal arrangement. Whether these arrangements benefit the Probation Service and its officers to a greater or a lesser extent seems to be open to debate. As one officer told me, *"Liaisons are formed, ..I think we have an uneasy truce in courts, but the situation works reasonably well. But the Probation Service does not have any special relationships with any of the firms of solicitors or anyone else, but we do have some good working relationships".* A second probation officer sounded somewhat less enthusiastic and voiced the opinion that the standing of the Probation Service fluctuates and is dependent upon how useful they are seen to be at a particular time. *"I think police, solicitors, clerks, anybody really, and prosecution, if we are seen as being useful to them then we're in effect given more of a position than marginalised and it is very influenced by that".* But underlaying all of these liaisons is the fact that the system is predominantly adversarial and to repeat the view of one officer, *"I think overall the adversarial element does influence everything that operates".*

#### **B4.6.2 Magistrates - the probation officers' perception.**

As previously stated, the probation officers have expressed several opinions about the magistrates and their role. These have included topics such as the authority which they possess, the way they act towards other court users and the way in which their conduct is reciprocated. The opinions expressed depict the magistrates as sometimes good, at other times abysmal, but they are the decision makers, a fact which all of the court users need to adjust to and accept if they are to perform effectively. The magistrates also appear to have great interpersonal power which can be, and is on occasions misused to the detriment of the other court users and of defendants in particular. Magistrates also vary in their assessment of the abilities of the other court users. Whilst obtaining and maintaining a high level of credibility is seen as an important asset by all of the probation officers with whom I spoke, there is some concern that in identifying what constitutes credibility, magistrates can confuse the two attributes of personality and ability. Magistrates do have a jealous concern for their sentencing powers and do resent other court users attempting to usurp this power, this applies to the probation officer and particularly to the proposals contained in Pre-Sentence Reports. Even though the magistrates do occupy the position of power, an opinion expressed by one officer indicated that

the lay magistrates are seen as gullible by some of the professional court users and are therefore susceptible 'to having the wool pulled over their eyes'.

#### **B4.6.2.1 - the lay magistrate is a positive good.**

In the opinion of at least one probation officer the lay magistrates are an important asset to the legal system because of their independence. Their greatest strength is seen to be, that unlike the professionals who participate in the court and Criminal Justice system, they are not inhibited by vested interests. As one probation officer explained, *"When a professional puts forward a point of view, they're putting forward a vested interest, or a perception of a vested interest. The generalist, the magistrate who comes in, can surely be an invaluable dose of commonsense, other worldliness, non-vested interest, call it what you will, but at least they are questioning this established set up"*.

#### **B4.6.2.2 - magistrates are still mainly middle aged and middle class.**

Magistrates are still seen by probation officers to be mainly middle aged and middle class although it is recognised that there are some positive efforts being made to broaden the 'class' base. The Lord Chancellor's Department through its Local Advisory Committees are, in some areas targeting the 'working class districts' by advertising, *"for potential magistrates to put themselves forward or to be put forward, particularly people from certain districts where one would expect manual workers to come from and is asking for 'working class' people to join the Bench .."*. This strategy according to one officer is succeeding in so far as, *"I think there's an increased number of people who are lay magistrates now who come from a much broader perspective than there were fifteen years ago"*. But magistrates still appear to be drawn from that section of the community who have the free time, who either don't work or who have the flexibility of working arrangements which allows them the time to participate as magistrates. This type of magistrate is perceived by one officer, *"...to come from a very different world to the people they deal with"*.

#### **B4.6.2.3 - working class magistrates do assume middle class values.**

In answer to the question, 'Do magistrates appointed from working class backgrounds, after appointment, assume middle class ideals and values'? The probation officers whom I interviewed were in no doubt that this shift in attitude does occur. The common opinion was that the magistrates who originate from working class backgrounds tend to be harsher in their sentencing, they see the working class defendant as lacking moral stamina, *"I pulled myself up by the boot straps lad, I don't see why you couldn't have done"*, and because of this, *"...their adjudications were far harsher than the middle aged, middle class magistrates .."*. The officer who put forward this view then went on to say that in his opinion the working class magistrates, *"were aspiring so hard that they over reached themselves and became more punitive, whereas the 'naturals', if I can put it that way, ..didn't need to try they were already middle class"*.

Agreeing with the basic sentiments of this assessment, a second officer said that a shift in the attitude of working class magistrates was almost inevitable, *" I think we can't help but do that, it's the same with probation officers, because of what we're drawn into and the way we have to function and the way we're forced into thinking, forces us more into that way. But I think the fact that people have been drawn from other settings, hopefully people retain something of that"*.

#### **B4.6.2.4 - magistrates are subject to prejudices and presuppositions.**

Also intimated during my interviews with the probation officers, was the fact that magistrates, in the same way as other members of the society from which they are drawn, have their own prejudices and make their own assumptions and this can result in them being swayed by the apparent moral status of the defendants rather than the merits of the case. I was reminded that magistrates can quite often make the assumption that, *"..young men with tattoos are both experienced in the ways of the courts and are also likely to have previous criminal records"*, assumptions which can be erroneous. Magistrates were also criticized by the probation officers because it is considered that many of them are likely to devalue any arguments in favour of the defendant, *"..which smack of leniency"*.

#### **B4.6.2.5 - magistrates can be subject to personal vanity?**

One probation officer did question whether or not some magistrates can, on occasions, get carried away with their own importance and confuse the respect which is shown to the court as an institution, with respect for the individual. As was explained, *" I like to think that when the magistrates come in, [to the courtroom], and people stand and whatever, [bow], it is directed, not towards the magistrates as individuals, but towards the court as an institution. But I often wonder whether magistrates get that a little mixed up in their own minds and I wonder sometimes whether they sometimes get a sense of their own personal importance"*.

#### **B4.6.2.6 - magistrates are seen at many levels of ability.**

As has already been indicated, magistrates in general and court chairmen in particular are seen at many levels of ability, some are seen as good and others have been described by probation officers as abysmal. Court chairmen are criticized in the main because of their apparent inability to communicate with the rest of the court. The general view can be summarised into the comments of one probation officer, *"Chairmen are human beings like everyone else, there are good and bad. I think a lot of chairmen want the clerk to do things .. even though you are put in a position of authority on the bench some aren't very good at public speaking, ..they may be good at chairing magistrates but when it comes to the actual speaking in a busy court it must be quite difficult"*. To overcome this difficulty some chairmen prefer to 'read their lines' but even this can have a different effect to that intended. As I was informed by a second officer, *"I can't speak on behalf of the defendants, but from my point of view sometimes that has made me shut off as you are reading. It sometimes gives the impression*



*that you, [the magistrates], don't know what's going on because you've had to read it out. Certainly when one or two of your less articulate colleagues have read it out and mis-read it as well and then have to go back or have the error pointed out, it just adds to that view and interpretation".*

#### **B4.6.3 Probation officers are not infrequently humiliated by the magistrates.**

The relationships that exist between the magistrates and the probation officers are dependent on the individuals involved, the levels of respect that exist between those individuals and the circumstances pertaining to the particular occasion. As a general rule, one officer with whom I spoke did find that the relationships between the magistrates and the probation officers, particularly those who work in the Court team, were considerably better in the study area than in other courts where he had worked, *"When I came here I couldn't believe the things that went on at the liaison panel, [the Probation Liaison sub-Committee], people were friendly for a start. It was amazing because we had an official sort of meeting at --- . I've got used to the more relaxed atmosphere, not that I mean more relaxed in a negative way".* This was also the view which was expressed by other probation officers with experience of working in other petty sessional divisions. But there are also down sides to the relationships and these were blamed by one officer on the lack of awareness on the part of the magistrates about the role of the Probation Service, *"I'm not sure that a lot of sentencers understand what we do".* As has been indicated in earlier chapters, the major 'bone of contention' between the two areas is the Pre-Sentence Report, or to be more precise the suggestions for disposal which are contained within it. As one officer observed, *"As your colleagues were saying, [at the Probation Liaison sub-Committee], with this, [the PSR], and the Unit Fines system, [now repealed], and what have you, you felt very much that you were 'straight jacketed' with what you could do. That must anger you as well".* It is also these factors which are considered to be the main contributing factors in influencing the behaviour of some magistrates towards the probation officers who, *"..are not infrequently humiliated by either deliberate or careless remarks from the bench".*

#### **B4.6.4 Professional or lay bench, a matter of preference.**

*"I must personally say that I prefer to work with the 'stipe', I know where I stand with him and because the lay benches are so unpredictable, because the constituent members of the lay bench make up a different panel from one bench to another".* This preference was echoed by the other probation officers whom I interviewed. Another statement which also summarised the general feeling was, *"If I work with the 'stipe' I know he's going to be tough and I know I'm going to have to argue my corner all of the time. ..With a lay bench, I can sometimes get away with a lot more than I can with him".* So it is acknowledged that because of the stipendiary magistrate's superior knowledge and experience he can be far more difficult to convince about a specific point or a certain course of action than a lay bench. Despite this the

consensus among the probation officers was that they would rather do 'battle with the stipe' than take part in a 'lottery with the lay magistrates'. In the words of one officer, *"With a lay bench learning what their thinking is and what influences are needed is very difficult, with the 'stipe' it's easier in that there are certain constants ..."*.

#### **B4.6.5 Solicitors - the probation officers' perception.**

##### **B4.6.5.1 - there is a stark difference between the defence advocates and their clients.**

I found that of the many topics discussed with the probation officers, the subject on which they were most outspoken was 'solicitors', and in particular the defence advocates. In the main they were viewed by the probation officers in an unfavourable light. One of their major criticisms of defence solicitors is the way that they are seen to treat the defendants, their clients. As one officer noted, *"I think it's squalid the way they talk about their clients"*, and it is not only the fact that they discuss them, the treatment of the clients by some solicitors within the confines of the court was also a matter of some concern. This was a point which was expounded upon by another officer, *"I think this is part of the squalor in terms of solicitors, their attitude towards their clients, not all solicitors but certainly some solicitors .. Even though interview rooms are at a premium, there may be one vacant but they choose not to use it, they choose to sort of sit on their bums, [in the general waiting area], because their client is just one of many, all the others are around ... So what? Why should this person need any privacy?.... and all the questions that begs about the attitude of a solicitor, again not treating that person with basic courtesy. Maybe it is someone they see week in-week out professionally, does that lessen the need?"*. The solicitors are therefore seen as colluding with a system in which, as has already been stated, the welfare of the defendant is not seen as the prime concern. The solicitors are also seen as being over concerned with the pecuniary aspects of the legal system, this was illustrated by a probation officer who drew comparisons between the life-styles of the solicitors and those of their clients. *"One overhears solicitors boasting about their latest yacht and this sits oddly with what sits outside, [the clients], who are the ones in a sense indirectly providing those yachts. I know it's been said before but the contrast nevertheless strikes me"*.

##### **B4.6.5.2 - the solicitors appear, on occasions, to be unprepared.**

In answer to the question, Are defence solicitors still considered to be 'money making plagiarists'? The responses which I obtained exhibited only a slight degree of variation. One officer answered, *"Yes there's a constant theme amongst probation officers that they write a report and the solicitor stands up and reads it to the magistrate and gets paid a fat fee"*. Another officer was somewhat less critical but still suspicious of some of the solicitors for what was seen as a lack of preparedness and the subsequent reliance upon the probation officer's report. *"I don't know whether I'm right or not but I suspect they haven't done their homework and I feel*

*that a lot of them come rushing in, you ought to see the look on their faces when they see a PSR... , 'Thank goodness for that'. There is a feeling that we've done the groundwork for them".* This last view was also endorsed by a third probation officer but it was conceded that generally solicitors now tend to make use of the reports rather than relying upon them totally.

#### **B4.6.5.3 - many solicitors are seen as failed Thespians.**

In the opinion of one of the probation officers who was interviewed, the solicitors and particularly the barristers who are part of the court scene are failed Thespians who, *".. love to dress up and perform in front of an audience and that in the waving of the arms they're disclaiming, not really to the bench, but to the whole world who happens to be passing through the courtroom. That's not for their clients benefit, not at all, that's for their own benefit, they love the sound of their own voice."*

#### **B4.6.5.4 - the Probation Service is marginalised by both the prosecution and the defence.**

According to its probation officers, the Probation Service finds itself somewhere between the prosecution and the defence, two agencies which have to be dealt with in different ways and using different subject matter. The Probation Service is, according to one officer, *"..either treated with suspicion or even disregarded"*. Another officer did consider that relationships with the Crown Prosecution Service have improved in recent times, but only in so far as the demands of the Children Act are concerned.

#### **B4.6.6 The police - the probation officers' perception.**

The probation officers were unanimous in their views of the Probation Service's relationship with the police. As one officer stated, *"The probation officer who thinks he's got a good relationship with the police is self-deluding. The police do see us as soft, well meaning, naive, gullible, all of which I'd go along with, that's why I joined the Probation Service"*. This perception was supported by a second officer who said, *"The relationships with the police are very distant, we have very little in common with the police. ..There's always been suspicion between the two services naturally, they think we're soft do gooders and we think they're after something when they contact us"*. These points were reiterated by the third officer who said, *"Overall we would be seen as do gooders, acting on behalf of the 'toe-rags' .."*.

**ILLUSTRATIONS.**

**Fig. 1** No.1 Court in the old courthouse. A view from the bench showing the progressively raised seating, used by the various court professionals, and the elevated public gallery which overlooked the proceedings. Latterly this gallery was not used, the public being relegated to the 'restricted view' seating located at the rear of the court and to the left of the exit.

**Fig. 2** No.3 Court in the new courthouse. The scene is from the public seating which is at ground level. Note that the bench even in the modern courthouse is raised, as is the seating of the court clerks. The dock is located to the left of the picture.

**Fig. 3** The dock in No.1 Court in the old courthouse. The brass railing demonstrates the symbolism which characterised many of the traditional courts. Those defendants not produced from the cells occupy the seats which are located immediately below the dock.

**Fig. 4** The dock in No.10 Court in the new courthouse. This dock has none of the symbolic furnishings of the past but was designed solely as a secure area. The dock is used only for those defendants who are being produced from the cell area. Other defendants use the seats immediately in front of the dock and behind those of their advocates.

Note that **Figs. 3 & 4** illustrate the view from the bench and as seen by the court chairman.

**Fig. 5** The formal design and layout of an Adult Crime courtroom. The scene is as viewed from public seating. It illustrates the elevated bench and the raised seating of the court clerk. Facing the bench are the tables and seating used by the advocates. The two rows of seats in the foreground and at right-angles to the bench, are reserved for use by the Probation Service, the court ushers or any other 'special' visitors. The grills are evidence of the court's air conditioning system.

**Fig. 6** The informal layout of the Family court where the participants sit around an arrangement of tables. Note that the bench is screened by curtains.

**Fig. 7** The main waiting area in the old courthouse which amply demonstrates the 'squalor of its environs'. Note the seating arrangements which often resulted in defendants and prosecution witnesses being 'face to face' across the corridor.

**Fig. 8** A 'large open public waiting area' in the new courthouse with its modern design and emphasis on natural lighting.

**Fig. 9** The reception area in the new courthouse showing the kiosk which is manned during normal working hours.

**Fig. 10** In the new courthouse a clear system of signs are displayed to guide the unfamiliar court users around the 'public' areas.

Fig 1



Fig 2





Fig 3



Fig 4





Fig 5



Fig 6







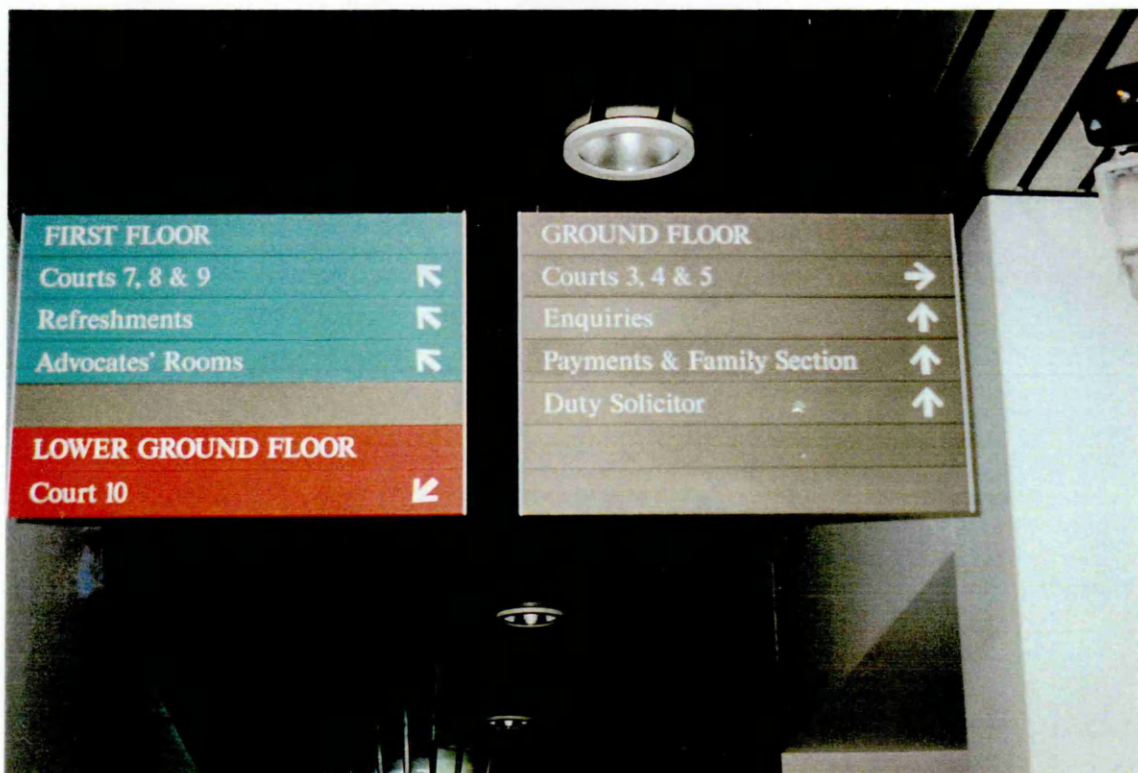
Fig 8



Fig 9



Fig 10



**A chronology of relevant legislation.**

- 1957** Magistrates' Courts Act.
- 1967** Criminal Justice Act.
- 1973** Powers of Criminal Courts Act.
- 1977** The Criminal Law Act.
- 1980** Magistrates' Courts Act.
- 1981** Transport Act.
- 1982** Transport Act.
- 1982** Criminal Justice Act.
- 1984** Police and Criminal Evidence Act.
- 1985** Prosecution of Offences Act.
- 1987** Criminal Justice Act.
- 1988** Criminal Justice Act.
- 1988** Legal Aid Act.
- 1988** Road Traffic Act.
- 1988** Road Traffic Offenders Act.
- 1989** The Children Act.
- 1991** Criminal Justice Act.
- 1991** Road Traffic Act.
- 1993** Criminal Justice Act.
- 1994** Criminal Justice and Public Order Act.
- 1994** The Police and Magistrates' Courts Act.