The role and influence of District Judges in the magistrates’ courts.

Thesis submitted for the degree of
Doctor of Philosophy
at the University of Leicester

by

Bethany Smith B.Sc. MA
Department of Criminology
University of Leicester

November 2004
Acknowledgements

It is difficult to know how to adequately thank all the people that have supported me throughout the time I have spent researching and writing this thesis.

I am extremely grateful to those responsible in each of the three magistrates’ courts for affording me the opportunity in the first instance to collect the data for this study. I would also like to thank all the lay magistrates, District and Deputy District Judges, court clerks and solicitors who gave up their time to talk to me and share their views. Special thanks must go to the court clerks who gave up some of their limited desk space and welcomed me into their work environments, and to the court administrators who took the trouble to explain their recording and filing systems in great detail. I am also appreciative of all those court practitioners, whom I did not meet individually, but gave up their time to complete my questionnaire. Particular thanks to Rod Morgan, whose support proved invaluable in helping me securing access to two of the courts.

Researching and writing this thesis has, at times, seemed a very lonely endeavour. But I have never felt far removed from the love and support of my wonderful family and friends. They have refused to lose faith in me and never failed to offer encouraging words when they were most needed. Special mention has to go to my friend Hannah, a fellow sufferer, whose patience, support, advice and proof-reading have proved invaluable. Finally I want to thank Rupert - who is usually right.

Finally, my sincerest and ever grateful thanks to Dr Anthea Hucklesby who has become a treasured friend as well as an enduring, selfless and expert supervisor. The value of her guidance and assistance and seemingly unshakeable confidence in my abilities, is beyond measure.
The Role and Influence of District Judges

by Bethany Smith (B.Sc. MA)

This study examines the role and influence of District Judges in the magistrates’ courts.

The judicial responsibility for dealing with over one million defendants in the magistrates’ courts each year is currently shared between over 30,000 volunteer lay magistrates, usually sitting in panels of two or three, and 281 legally qualified, state paid, District Judges (Magistrates’ Courts) and Deputy District Judges (Magistrates’ Courts), who sit alone.

District Judges (or stipendiary magistrates as they were previously entitled) were traditionally considered an anomalous feature of the magistrates’ courts system. However, the last 10 years has seen the greatest expansion in their numbers and the consolidation of their role, status and organisation. Two main factors have contributed to these developments: the pressure for efficiency that has been brought to bear on the criminal justice process over the last twenty years, most recently embodied in the ethos of New Public Management and the marked shift towards professionalisation of the magistrates’ courts. The combination of these factors, and the resultant growth in the numbers and role of District Judges, has led to the resurgence of familiar debates surrounding the fundamental values and functions of the magistrates’ courts.

The objectives of this study were to assess the role of District Judges in terms of the assumptions made in respect of the skills and benefits they bring to the magistrates’ courts and to determine the extent of their influence upon the conduct of court business.

It is argued that District Judges exert the greatest influence in the micro arena of the courtroom. The combination of their status as legal professional and decision-maker transformed the dynamics of working relationships. However, they had little direct impact upon the general administration or non-judicial work of the court. It was found that their assumed quality in terms of speed was reflected in the largely pragmatic judicial role they undertook in the courts. However, it was also apparent that District Judges tended to be allocated a greater proportion of the ‘more serious’ types of cases in deference to their professional status. Finally, it is argued that, as ‘expert’ decision-makers within a system historically based on ‘amateur community justice’ the increased presence of District Judges has both led to, and been emblematic of, a subtle shift in the underlying values of the magistrates’ courts.
# Contents

Acknowledgements ................................................................. ii
Abstract ....................................................................................... iii
Contents ....................................................................................... iv
List of Tables ................................................................................ v

Preface ......................................................................................... 1

Chapter 1: Legitimising the “Odd Appendix” – The Consolidation of the Professional Magistracy ...................................................... 6

Chapter 2: Research Design and Methodology .............................................. 35

Chapter 3: The Judicial Work of District Judges – Perceptions and Reality ….. 65

Chapter 4: Sharing the Same Bench? The Balance of Power and Approaches to Decision-Making ......................................................... 121

Chapter 5: The Non-Judicial Role of District Judges ................................... 158

Chapter 6: Court Conduct and Exchange Relationships ................................ 185

Conclusions ..................................................................................... 241

Appendix A .................................................................................... 250
Appendix B .................................................................................... 256
Appendix C .................................................................................... 265
Appendix D .................................................................................... 276
Appendix E .................................................................................... 288
Appendix F .................................................................................... 294
Appendix G .................................................................................... 301

References ...................................................................................... 306
List of Tables

Table 2.1: Sessions and cases observed by court and bench type ......................... 51
Table 2.2: Sessions and cases recorded from court registers by bench type ...................... 55
Table 2.3: Questionnaires distributed and returned by court and participant group ................. 58
Table 2.4: Number of interviews conducted by court and participant group ...................... 61
Table 3.1: Does the presence of District Judges negatively affect workload? .................. 70
Table 3.2: How has your workload been affected? ......................................................... 73
Table 3.3: Proportion of cases and court sessions handled by lay benches and District Judges in all three courts ......................... 82
Table 3.4: Total cases heard by lay benches and District Judges by offence type .................. 84
Table 3.5: Total cases heard by lay benches and District Judges by offence type and court .......... 85
Table 3.6: Total cases heard by lay magistrates and District Judges by offence class .............. 87
Table 3.7: Total cases heard by lay benches and District Judges by offence class and court .......... 88
Table 3.8: Bail decisions taken by lay benches and District Judges at each court .................. 94
Table 3.9: Sentencing decisions taken by lay benches and District Judges at each court ............. 104
Table 3.10: Number of sentencing decisions taken by lay benches and District Judges by offence class and court ............... 113
Table 3.11  Number of sentencing decisions taken by benches and District Judges by offence class and court.......................... 114

Table 4.1  Do lay magistrates and District Judges ever sit together?.................125

Table 4.2  Should more use be made of mixed benches?........................................128

Table 4.3:  Who is more likely to pass a custodial sentence?.............................. 134

Table 4.4:  Are lay magistrates or District Judges more likely to possess common sense................................................................. 143

Table 4.5:  Are lay magistrates or District Judges more likely to possess legal knowledge?................................................................. 143
Preface

The magistrates’ courts in England and Wales have been called the "workhorse" of the criminal justice process (Sanders and Young, 2000:485). There are currently 281 legally qualified District Judges (Magistrates’ Courts) and Deputy District Judges (Magistrates’ Courts), who sit alone, and over 30,000 lay magistrates, sitting in panels of two or three, sharing judicial responsibility for the processing and sentencing of in excess of one million defendants each year. This amounts to approximately 96% of criminal court business. It has been estimated that approximately 9% of this work is dealt with by professional judges (Morgan and Russell: 2000:99). According to Sanders (2001:1) this proportion is growing and suggests that District Judges based in magistrates’ courts in large cities may now be dealing with approximately one-third of cases. This development, as Sanders (2001:1) points out, has occurred largely in the absence of public debate.

This thesis will examine the role and influence of District Judges both from their own point of view and from that of those they work with on a day-to-day basis. It aims to assess the impact of these professional decision-makers on both the macro arena of the courts (matters such as administration, policy, and training, where their influence affects courtrooms indirectly), and the micro arena of the courtrooms in which they preside. The research on which this thesis is based was conducted over the period of the greatest consolidation and change in the professional magistracy, between 1998 and 2001. The objectives of this study were to explore two broad areas. First, the manner in which professional magistrates were actually used as a resource within the courts and the extent to

---

1 Figures as of March 2003 (Department of Constitutional Affairs). Formerly known as Stipendiary Magistrates and Acting Stipendiary Magistrates, they were respectively re-titled District Judges (Magistrates’ Courts) and Deputy District Judges (Magistrates’ Courts) by virtue of the Access to Justice Act 1999, two years after this study began. However, this change in title did not become effective until October 2000. For the sake of succinctness and consistency the term 'District Judge' has been used throughout this thesis when referring to the present study. This term will be used generically for both District and Deputy District Judges collectively, although they will be referred to separately when necessary. The one exception to this is when quoting directly from interviewees, the majority of whom used the term stipendiary magistrate. Also, the terms "professional magistracy" and "legally qualified decision-makers" have been used generically in places. Where research conducted prior to October 2000 is discussed the term stipendiary magistrate will be used.

2 In 2001 magistrate’s courts dealt with over 1.84 million defendants and sentenced 1.35 million, approximately 95% of all convicted offenders (Home Office, 2002).
which this reflected the perceptions of others in the court, assumptions made about their skills and qualities and Government recommendations. Second, the impact of their presence and status as legal professionals on their relationships with others in the courtroom workgroup and the extent to which the dynamics of these relationships impacted upon the conduct of court business.

The development of this dual system, where legal professionals came to co-exist with the long established lay magistracy as judicial decision-makers, was far from systematic and has been referred to as being the result of two distinct “historical accidents” (Milton, 1967:23; Seago et al 2000:634). From the mid-18th century a small number of professional magistrates carved out a niche within what had previously been the sole province of “the great unpaid”. This resulted initially from the lay magistracy in London (and in some other areas) falling into disrepute owing to corruption, and later was due to an increase in workload in the provinces. Milton (1967:23) described these state paid, legally trained, professional magistrates as an “odd appendix to the system of summary justice.” Tacit acceptance of this largely arbitrary arrangement prevailed well into the 20th century; there was no attempt to formalise it, and in fact the number of professional magistrates in the provinces was in decline until twenty years ago (Milton 1967; Skyrme, 1979; Seago et al, 2000).

Over the last twenty years two key, but interlinked, factors have contributed to the steady rise in the number of professional magistrates, leading to the current record levels. First, an increasing workload in the magistrates’ courts and consequent delays, and second, the application of managerialism within the public sector; with its focus on modernisation through professionalisation and efficiency (Raine and Willson, 1993a; Seago et al, 2000). This wider modernisation agenda has had a significant effect on the operation of summary criminal justice (Fitzpatrick et al, 2001; Raine, 2001). Professional magistrates, who could sit alone and use their professional knowledge and status to drive cases forward, were considered ideal as a pragmatic tool in the campaign for modernisation of the courts (Narey, 1997).

---

3 This idiom was used on October 19th 1945 by the then Lord Chancellor, while addressing the Magistrates Association. He was assuring them that there was no plan to replace lay justices with professional magistrates. Quote taken from an article written by Jackson (1946:1). The same assurances can be seen in similar speeches by more recent Lord Chancellors (for example Lord Irvine’s speech to the Annual General Meeting of the Magistrates’ Association in October 2000). This demonstrates the endurance of this concern on the part of the lay magistracy.
In 1993 the Royal Commission on Criminal Justice asserted that a more "systematic approach" was needed to the organisation and role of stipendiary magistrates. There followed a flurry of academic interest and analysis (Bush, 1993; Seago et al, 1995; Morgan and Russell 2000; Sanders, 2001), governmental consultation and appraisal4 (culminating in the appointment of Lord Justice Auld to conduct a whole scale review of the criminal courts in England and Wales)5 and legislative activity.6 The objective was to reassess the previously neglected anomaly represented by the dual system and to define, consolidate and expand the role of the professional magistracy. In the last ten years the "odd appendix" that was then the stipendiary magistracy has been re-invented. What has emerged is a cohesive, additional layer of the judiciary with a clearly defined role and the entitlement to sit in any magistrates’ court in England and Wales.

This growth and development has re-opened familiar debates about the marked shift towards professionalisation and how the push for efficiency might impact upon the distribution of work between professional judges and lay magistrates and the working relationships within the magistrates’ courts and the nature of the justice they dispense (Raine and Willson, 1993a; Seago et al, 1995 & 2000; Morgan and Russell, 2000; Sanders 2001). Authors have previously identified the importance of the relationships between those in the regular ‘courtroom workgroup’ (Eisenstein and Jacob, 1977; Nardulli, 1978; McConville and Baldwin, 1981). Cole (1979) used the term ‘exchange relationships’ to describe the symbiotic nature of the associations between those that regularly work together. It has also been suggested that it is the professionals that come to dominate such workplace relationships (Carlen, 1975, 1976; Lipetz, 1980; Raine and Willson, 1993a). This thesis examines the working relationships between


District Judges and others in the courtroom, their impact upon the courtroom and the wider role of District Judges within the courts in which they sit.

Overall, it was found that District Judges had the greatest impact within the micro arena of the courtroom itself, and this was chiefly because of the way their presence in the courtroom transformed the dynamics of the symbiotic relationships between the regular members of the courtroom workgroup. It is argued that this influence emanated from their combined status as legal professionals and decision-makers, rather than their legal skills per se, and from the regularity and familiarity of their presence within the courtroom workgroup. In comparison, their input into the allocation of their judicial work and their role in non-judicial work varied between courts and was dependent upon a number of factors. In general, it appeared that the District Judges, in this particular study, had little direct influence on either the allocation of their judicial work or in the non-judicial areas of the court, such as training or administration. Government recommendations concerning their judicial work and non-judicial role were only adopted where they did not conflict with the prevailing culture of the court as a whole. However, there was some evidence to suggest that District Judges were being allocated a greater proportion of the 'more serious' routine work, than lay magistrates.

Chapter One provides the background to the study and sets the scene for the research. It discusses the influential factors behind the growth and consolidation of the professional magistracy and assesses its place in the shift towards the modernisation and professionalisation of summary justice as a whole. The pragmatic justifications expounded for a greater role for District Judges as expeditious handlers of judicial business and the accompanying objections, based largely on principles related to lay and local justice, are examined. Finally, previous research is discussed. Arguments are put forward about the general impact of the escalating professionalism with the magistrates’ courts.

Chapter Two details and justifies the research methodology used and outlines the aim and objectives of the study. Chapter Three examines the actual judicial work undertaken by District Judges and lay magistrates at the courts at which the research was carried out and how this was organised and allocated. It assesses the extent to which this concurred with Governmental recommendations and
assumptions surrounding the skills of District Judges and the most efficient use of
them as a practical resource. It also considers the accuracy of perceptions within
the court about the difference between the work allocated to District Judges and
lay magistrates and the degree to which District Judges exert influence over the
work they are allocated.

Chapter 4 examines the declared qualities and skills of both District Judges and
lay magistrates that render them both eligible for, and capable of, making judicial
decisions. It discusses whether their respective skills and qualities are
complementary or contradictory in light of recent proposals to extend the use of
mixed sittings for some types of cases. It was clear that both the District Judges
and lay magistrates that participated in this study would object to any increase in
the use of hybrid tribunals. The reasons for these objections are explored and
found to be rooted in fundamental differences between the bases upon which lay
magistrates and District Judges validate their judicial power, which is reflected in
the different ways in which they approach decision-making. It was also found that
mixed benches would result in a loss of power for both District Judges and lay
magistrates.

Chapter Five goes on to examine the role of District Judges in the non-judicial
side of court work; namely training and administration. As in Chapter Three the
extent to which their role accorded with or diverged from Governmental
recommendations in these areas was assessed. It was found that a combination of
factors, including apathy on the part of the District Judges themselves, and
barriers erected by the lay bench and court clerks in order to preserve their
traditional roles in training and administration, meant that the role and influence
of the District Judges in these areas was negligible.

Chapter Six focuses upon the way in which the conduct of court business may be
affected by the presence of a District Judge on the bench. It is suggested that there
is a ‘legal hierarchy’ in operation in the courtroom which impacts upon the
dynamics of the relationships between the various members of the ‘courtroom
workgroup’. This, in turn, it is argued, has a direct impact upon the manner in
which court business is managed.
Chapter 1

Legitimising the “Odd Appendix”: The Growth and Consolidation of the Professional Magistracy

Introduction

The magistrates’ courts in England and Wales currently deal with over one million defendants charged with criminal offences each year. This represents 95% of all criminal cases (Home Office, 2002). These cases are dealt with by a dual system of judicial decision-makers comprised of over 30,000 part-time, volunteer, lay magistrates, who sit together on benches of two or three, 104 full-time District Judges (Magistrates’ Courts) and 177 part-time Deputy District Judges (Magistrates’ Courts), who are legally qualified, state paid, and who sit alone. At present their sentencing powers range from six months custody, for a single offence, to fines, conditional and absolute discharges. Although lay magistrates and District Judges have the same jurisdiction and share the same courts buildings, their judicial decisions are largely made independently of one another and no formal national policy exists as to the allocation of work between them. Previous research has estimated that legally qualified decision-makers deal with approximately 9% of cases within the magistrates’ courts overall and undertake about one-third of the workload in some larger urban court centres (Morgan and Russell, 2000; Sanders, 2001). Despite its central role in the criminal justice process, this dual system, that comprises both lay and professional decision-makers, has developed in a fairly arbitrary fashion over the last 250 years and, until the last 10 years, had received little academic scrutiny or significant legislative interference.

The New Public Management (or managerialist) agenda, which emphasises efficiency, standardisation and professionalisation through modernisation, has permeated public policy over the last twenty years and has had a particular effect on the organisation of the magistrates’ courts, where growing delays have caused concern (Fitzpatrick et al, 2001, Sanders, 2001). This has forced a re-examination

1 District and Deputy District Judges are required by statute to have a least 7 years post legal qualification experience. They can be barristers or solicitors.

2 Figures as of March 2003 (Department for Constitutional Affairs).
of the core principles of the summary courts, which, for over six centuries, have been based on the concepts of civic involvement in judicial decision-making and community justice - as epitomised by the lay magistracy. Previous research has suggested that the focus on efficiency and professionalism over the last twenty years has contributed to a steady increase in the numbers of legally qualified decision makers taking a role within the magistrates’ courts, which in turn has led to the legislative consolidation of their role and organisation (Raine and Willson, 1993a; Seago et al., 1999 & 2000; Fitzpatrick et al., 2001; Raine 2001). This has stirred disquiet among lay magistrates and their proponents and stimulated a general debate concerning the respective roles of lay magistrates and their professional colleagues (Sanders, 2001). The role of District Judges within the magistrates’ courts has therefore been subjected to examination in the cause of its validation.

This thesis develops this debate, by examining closely the role and influence of District Judges in the courts in which they sit. This chapter situates the research in the wider framework of policy developments in summary justice over the last twenty years and explains why a study of the influence of District Judges is of such contemporary significance. The chapter begins with a brief history of the summary courts and the development of the role of professional magistrates within them. This is followed by an analysis of the reasons behind the recent expansion in the numbers of District Judges. The growth and legislative consolidation of the professional magistracy is discussed in the context of the dominance of managerialism within the public sector and, in particular, the modernisation and professionalisation of the magistrates’ court environment. The expansion of the professional magistracy has led to the recurrence of familiar arguments both for and against the use of legally trained, state paid, decision-makers sitting as lone arbiters of law, fact and sentence, within a ‘local’, and principally ‘amateur’, system of summary justice. The findings of previous research that has addressed these debates is then assessed, and the focus of this thesis clarified.
The History of the Professional Magistracy

It is a unique feature of the English legal process that the vast majority of criminal cases are disposed of by lay adjudicators (Darbyshire, 2002). Prior to the emergence of salaried or 'stipendiary' magistrates in the mid 18th Century, all summary criminal cases were dealt with by appointed lay members of the local community, known as magistrates or Justices of the Peace, an office that can be traced back to 1361 (Milton, 1967; Skyrme, 1992). Their role from the mid 14th to the early 19th Century went beyond that of judicial decision-making in the four yearly criminal "Quarter Sessions" and extended into matters of local government and policing (Morgan and Russell, 2000:2). The central tenet of the office of the Justice of the Peace was that the "most worthy" from each county would be appointed to keep the peace by having the power of punishment over offenders, locally and within the law.

Seago et al (1995:10) note that, in common law jurisdictions, the apex of civic involvement in the judicial system is the jury, which is emblematic of collective, rather than autocratic, justice. Seago et al (1995:10) identified the incompatibility of stipendiary magistrates with these traditional characteristics of summary criminal justice as being the core reason behind the controversy that their role has recently provoked. The lay magistracy, they argue, has been the "acceptable compromise" for the summary court tier of the criminal justice process, providing three main elements were satisfied:

... they comprise local people and lay people (these reflected cherished attributes of the jury) and they confined their activities to less serious cases – ideally cases where liberty is not at stake. Thus, there are fundamental principles of democracy and the protection of individual rights which call for representative (and therefore predominantly lay) and local involvement at all levels of justice.

(Seago et al, 1995:10)

The District Judges of today clearly do not satisfy these requirements: they sit alone and are legally qualified professionals. They therefore have been viewed historically as an anomalous feature of the summary criminal courts (Seago et al, 1995:10) or as Milton (1967:23) refers to them "an odd appendix." Examination of the development of the role of District Judges is important because it demonstrates how the fundamental arguments associated with the involvement of salaried, legally trained professionals in the summary courts were present at their
inception and have been recurring, to varying degrees, up until the present day. As Davies (1996:31) states: “the question of how stipendiaries should continue to operate cannot be addressed without reference to history.”

The permeation of professional magistrates into this system was, according to Milton (1967:23), the result of two separate “historical accidents,” united by a common theme of “crisis and failure” relating firstly to the quality, and secondly, to the quantity of those performing the role of Justices of the Peace (Seago et al, 1995:12). These occurred in two distinct waves, the first being specific to London and the second to the provinces. The consequence of this was the development of two distinct corps of stipendiary magistrates, each with its own remit. This led to a distinction between the role of stipendiary magistrates in the capital and other areas of the country, which is still reflected today to a certain extent (Seago et al, 1995). The nominal distinction between “metropolitan” and “provincial” stipendiary magistrates remained until 2000 when they were consolidated into a single corps of “District Judges (Magistrates’ Courts).”

In Inner London, by the mid 18th century, corruption had become rife in the lay magistracy, particularly among members the infamous Middlesex Bench, who had become known as “the scum of the earth” to their fellow lay justices (Milton, 1959:22). From 1740 onwards, in an unofficial remedial effort to stem corruption, “reliable” and respected members of the Middlesex Bench were appointed by the government as “Court Justices.” They were paid out of government funds with a specific remit to maintain order in the capital. Therefore, the first stipendiary magistrates were appointed from within the ranks of existing lay justices. Bartle (1995) equates attempts to formalise the role of these stipendiary magistrates at this time with parallel efforts to introduce a professional police force - both ideas provoking like objections:

3 By virtue of the Access to Justice Act 1999, section 78.

4 However, it should be noted that lay justices themselves were remunerated for their work until 1854 (Skyrme, 1992).
In June 1785 the Government took the idea up and the Solicitor-General introducing a Bill called the “London and Westminster Police Bill” said this:- “Public business of any sort will never be adequately and effectually performed unless those to whom the performance is committed are paid for their trouble” ... The proposal aroused a storm of opposition... it was said in Parliament that this would mean that Justices of the Peace would become paid lackeys of the Government, that we were drifting towards the idea of Continental tyranny, with officialdom being enthroned... that magistrates drawing a salary would be robbed of all independence.”

(Bartle, 1995:240)

The force of these objections was somewhat surprising considering the sullied reputation of the lay magistracy at that time. However, counter arguments were expressed that, in London, an effective system of summary justice could only be achieved by salaried professionals:

... the time had come to trust the problem of crime to those that were appropriately trained, could work full-time and be paid for their trouble – in other words, professionals.

(Seago et al, 1995:12)

However, a corrupt lay magistracy was, seemingly, preferable to one that was considered to extend the power and influence of the government:

Anything which involved an increase in governmental power was unpopular; and the ill-repute of the magistracy as a whole... caused less indignation than the idea of establishing ‘hirelings’ to do the work of the (nominally) ‘great unpaid’.

(Milton, 1967:29)

Bartle (1995:240) takes a different view to that of Milton (1967). He suggests that the objections surrounding the formalisation of a professional magistracy were misconceived and based on concerns about paying salaries to existing, and at that time, largely corrupt lay justices, as opposed to objections surrounding what was actually being proposed - the creation of distinct body of magistrates that were already professionals – legal professionals.

Owing to the vehemence of the opposition, stipendiary magistrates in London were not officially recognised until the Middlesex Justices Act 1792, when they became “Police Magistrates” and were appointed to sit at seven new ‘Police Offices’ (Jackson, 1946; Milton, 1967; French, 1967; Skyrme, 1979). Many of the original 24 appointees were not, in fact, professional lawyers, although this had been in the spirit, if not the letter, of the 1792 Act (Bartle, 1995:241). However,
opposition to stipendiary magistrates continued along similar lines. Milton (1967:31) quotes one Justice of the Peace, a member of the infamous Middlesex Bench, who petitioned the King on the basis that London was being deprived of an “independent, gratuitous magistracy” who, unlike stipendiary magistrates, were “independent guardians of the public interest.”

Legal qualifications, as a pre-requisite for the post, became law in the Metropolitan Police Courts Act 1839. Prior to this, Parliament had increased the salaries of stipendiary magistrates, in an effort to maintain a high standard of appointee and prevent the post becoming a “refuse” for those that had failed at the Bar (Milton, 1967:32). The position of the lay justices in London was clarified by a second Metropolitan Police Court Act the following year, resulting in, what Milton (1967:33) termed, a “judicial apartheid” that was to remain largely static until the middle of the next century:

... the old ethos of local lay justice remained, even in London. The lay justices did not disappear, but they retained effective jurisdiction only in administrative matters such as licensing and very petty crimes. They sat in different courts, in different buildings and were served by separate staff.

(Seago et al, 1995:12)

According to Milton (1967:37), the division of labour that existed in London at this time highlighted the distinction between lay and professional adjudicators:

Lay was lay (with the control of administrative and licensing matters, and some trivial items of criminal business); professional was professional (with jurisdiction over the whole wide field of criminal and matrimonial work.)

Heath (1993:137) suggests that the near total replacement of lay justices by stipendiary magistrates in London was imperative to the long term survival of the lay magistracy; it “revitalized [sic]” the system and gave a “model of probity to follow.” In addition, the 1840 Act placed a ceiling of 27 on the number of “Police Magistrates” that could be appointed. This ceiling was not, in fact reached until 1928 (Milton, 1967). The 1840 Act was the last significant statute to be passed concerning summary jurisdiction in London until the 20th Century.

---

5 At this time, appointments were restricted to those who had been called to the Bar. Solicitors did not become eligible until 1949, the same year that the “Police Magistrates” in London were re-titled “Metropolitan Stipendiary Magistrates.”
The first equivalent appointment, to be made outside London, did not occur until 1813, when an Act of Parliament enabled the appointment of one stipendiary magistrate to be shared between Manchester and Salford (Seago et al, 1995:12). The basis of this appointment was purely pragmatic and justified on the grounds that there were insufficient Justices of the Peace in the division to cope with the workload. Legislation to allow similar appointments outside Manchester did not appear until the Municipal Corporations Act 1835 (Skyrme, 1992). In the twenty years that followed, only four stipendiary appointments were made outside London, under this Act. Over the next thirty years, six additional stipendiary appointments were made in the provinces by virtue of a series of 'local' Acts, mostly in other urban areas such as Birmingham (1856) and Cardiff (1858). Such appointments were allowed only in exceptional circumstances, where the case for such an appointment had been sufficiently made out.

Seago et al (1995:12) argue that the small number of stipendiary appointments in the provinces was a reflection of the tone and provisions of the legislation, and contributed to the impression of stipendiary magistrates in the provinces as an "exceptional" solution to a particular and specific need. By 1863, there was still a dire shortage of lay justices in the provinces. In response, the Stipendiary Magistrates Act of that year extended the scope of the 1835 Act, legislating for the appointment of stipendiary magistrates in the more densely populated areas. The Act stated clearly that any appointment of stipendiary magistrates would be pragmatic:

Whereas the execution of the office of justice of the peace within populous cities and places in England and Wales has become difficult and burdensome, the great and increasing extent of the populations there is, and the difficult and important legal questions that arise under various public and private acts, creating demands upon the time of justices.

(Quoted in Jackson, 1946:1)

At the end of the 19th Century, therefore, summary criminal matters in England and Wales were effectively dealt with by a dual system that comprised both lay and professional decision-makers. In London, criminal jurisdiction was administered almost entirely by paid legal professionals. Milton (1967:36) declared that the term "dual system" was perhaps an inappropriate term, given the unsystematic manner of its development. Despite minor organisational changes
that were made to the summary courts following the end of the Second World War,\textsuperscript{6} the role of stipendiary magistrates, both in London and the provinces, remained largely unchanged throughout the first half of the 20\textsuperscript{th} Century. In London, the gradual reintegration of the lay justices into the magistrates' courts (finally officially completed in 1964)\textsuperscript{7} meant that, although stipendiary magistrates still predominated in criminal matters, the system began to resemble the more collaborative arrangements seen in the provinces (Seago \textit{et al}, 1995:13). Some concerns were expressed by the Royal Commission on Justices of the Peace (1948) that the position of stipendiary magistrates, as sole arbiters of law, fact and sentence, conferred an unfettered power and responsibility upon them that was unique within the entire criminal justice process (Davies, 1996). This was, incidentally, the last time a Royal Commission considered the respective roles of lay and stipendiary magistrates in any depth (Darbyshire, 2002:288).

Although they concluded overall that the dual system should be retained, this concern led the Royal Commission (1948) to express the hope that the limited practice of stipendiary and lay magistrates sitting together would be extended (Milton, 1967:38). It is interesting to note briefly here that, to date, this has still not happened, even though two recent public policy documents have recommended the extension of mixed tribunals (Sanders, 2001; Auld, 2001).\textsuperscript{8}

Therefore, it appeared that by the middle of the 20\textsuperscript{th} Century, there was universal approval and acceptance, both politically and publicly, of the dual system. It satisfied practical considerations, in terms of both cost and workload, and the symbolic sensibilities associated with civic involvement in the administration of justice (Milton, 1967:37). By 1974 there were 39\textsuperscript{9} stipendiary magistrates in London. However, in the provinces their numbers were declining (Milton, 1967; Skyrme, 1979). This was a trend which Milton (1967:36) remarked at the time appeared contrary to the inclination towards professionalism in many others areas,

\footnotesize
\textsuperscript{6} Such as the Justice of the Peace Act 1949. This Act made the Lord Chancellor responsible for the appointment of metropolitan stipendiary magistrates and provided a new framework for the establishment of local "Magistrates' Courts Committees".

\textsuperscript{7} See Davies (1996); Milton, (1967).

\textsuperscript{8} These will be discussed in more detail later in this chapter

\textsuperscript{9} The Administration of Justice Act 1973 (s.10 (1)) had placed the ceiling for the number of such appointments at 40.
including the higher courts. In 1946 there were 16 provincial stipendiary magistrates and by 1974 there were only 10. According to Seago et al (1995:13) this decrease was due to an escalation in the appointment of lay magistrates, who, they note, were “cost-effective and... could also command community support.” However, this downward trend has certainly turned upward in the last twenty years; numbers rose from 11 in 1980 to 47 in 2000 (Seago et al, 2000). The total number of full-time professional magistrates has more than doubled in the last twenty years, from 50 in 1980 to 104 in 2003 (Seago, et al, 1995 & 2000; Department for Constitutional Affairs, 2003). In addition, as of March 2003, there were 177 part-time professional magistrates (Department for Constitutional Affairs, 2003).

Prior to the early 1990’s, academic and political interest in the professional magistracy was limited. Notwithstanding the political controversy at their inception and the handful of historical commentaries that have been written since\(^\text{10}\), the “odd appendix” had co-existed quietly with the lay magistracy with relatively little scholarly scrutiny, comment or political interference (Milton, 1967; Sanders, 2001). Recent academic and political interest in the relative roles of lay and professional magistrates appears to have been initiated by the Royal Commission on Criminal Justice (1993). Although it gave scant consideration to the magistrates’ courts (Darbyshire, 1997a), a recommendation of the Royal Commission (1993) was that consideration should be given to developing a more systematic approach to the function and organisation of the professional magistracy (p.142). A Working Party was subsequently formed, in 1994, to pursue this objective. Research was commissioned by the Lord Chancellor’s Department specifically to inform the considerations of the Working Party. Seago et al (1995) conducted an extensive study of:

\[
\text{[the] function and tasks performed by stipendiary magistrates...the role which they perform within the criminal justice system... and the impact of their use on other court personnel and court users.} \\
\text{(Seago et al, 1995:v)}
\]

\(^{10}\) For examples see Chorley (1945); French (1965 & 1967); Milton (1967); Skyrme (1979 &1992) and Bartle (1995).
A particular focus of their research was to compare and contrast the roles and working relationships of metropolitan and provincial stipendiary magistrates. Following the completion of this research the Working Party published their report, “The Role of the Stipendiary Magistracy” in 1996, known as the “Venne Report.” Seago et al (1995) had concluded that steps should be taken to clarify the role of the professional magistracy, which had traditionally been considered an exceptional and irregular feature of summary justice:

Sooner or later someone will have to address the question of whether stipendiaries are simply especially well qualified lay magistrates or whether they are a fundamentally different animal.

(Seago et al, 1995:143)

The Venne Report effectively offered magistrates’ courts, for the first time, some guidance on the respective roles of lay and stipendiary magistrates: “having due regard to the differences between the needs of the Shire counties and the metropolitan areas” (p.i). It recommended that stipendiary and lay magistrates should continue to share the same workload, but that stipendiary magistrates may be more suitable for especially lengthy or complex cases.

Since the publication of Seago et al (1995) and the Venne Report (1996), the future co-existence of the professional and lay magistracy has become a ‘hot’ political issue, spawning both legislative development and further research. Subsequent legislative changes to the organisation of the professional bench, as contained in the Access to Justice Act 1999, have been radical and substantial: “a potent recognition of the institutional importance of stipendiary magistrates” (Seago et al, 2000:634). The Access to Justice Act 1999 unified the provincial and metropolitan stipendiary benches into a single judicial core, with national jurisdiction, and conferred upon them the new title of “District Judge (Magistrates’ Courts)”. The aim was to consolidate both the role and organisation of the professional magistracy and was largely considered by stipendiary magistrates themselves to be a long overdue development (McGowan, 1998).

---

11 Seago et al (1995) have expanded upon the findings of their research in subsequent articles published in 1999 and 2000.
The steady rise in the numbers of professional magistrates and the legislative encouragement that has sought to consolidate and legitimise the “odd appendix” has led to significant diminishment in the largely tacit acceptance of the dual system that has existed over the last two decades (Morgan, 2002). The fear among the lay magistracy and its proponents has been that the ‘end game’ of such reforms is the wholesale replacement of lay magistrates by professionals. This apprehension, however, is not an entirely novel one (Jackson, 1946:1).

Several features of the developmental history of the role of the professional magistracy within the summary tier of criminal justice still have relevance to the current debates surrounding their role. Firstly, the introduction of stipendiary magistrates into a traditionally lay system of summary justice stemmed from two distinct bases: matters of principle, in respect of a remedy for corruption, and matters of pragmatism, in respect of increasing workloads. In London, professional magistrates were appointed in order to supplant a lay magistracy that had lost public confidence, whereas in the provinces, the appointment of stipendiary magistrates was couched in the language of ‘supplementation,’ as opposed to displacement. Therefore, this fundamental difference in the history of the stipendiary magistracy in London and elsewhere has meant that, in the provinces, lay and stipendiary magistrates have worked alongside each other from their inception. It is clear that, as their role developed throughout the 20th century, and the lay magistracy was fully reinstated into the system in London, the matters of principle gave way entirely to those relating to expediency. The dominant ‘official’ discourse surrounding the appointment of stipendiary magistrates over the last thirty years has been that they “complement” the lay magistracy by assisting in the prevention of delay due to increasing workloads (Davies, 1996; Morgan and Russell, 2000). However, this has come to be seen by many proponents of the lay magistracy, including many lay magistrates themselves, as merely the rhetoric that hides a hidden agenda of replacement.

Secondly, the arbitrary nature of the development of the professional magistracy has provided the basis for justifying the recent political emphasis on its consolidation. Finally, it explains why lay magistrates and District Judges, while sharing responsibility for the caseload in the magistrates’ courts, undertake their work principally independently of one another - a situation that is largely unique
among other similar jurisdictions, that comprise both lay and professional decision-makers, internationally (Morgan and Russell, 2000:99). The next section will discuss the growth and consolidation of the professional magistracy in recent years, in more detail, particularly within the context of the modernisation and managerialist agenda that have governed the organisation of the magistrates’ courts over the past twenty years.

Efficiency and Professionalisation: The Wider Political Context and Court Culture

Fitzpatrick et al (2001) suggest that the growth and consolidation of the professional magistracy has both contributed to, and is a result of, the managerialist principles that have pervaded the magistrates' courts over the last 20 years. This has more recently been engendered by the drive for 'modernisation;' although it has gathered pace over the last ten years. Raine (2001) marks the beginning of the drive for modernisation as 1989 with the wholesale review of the organisation of the magistrates’ courts that took place in that year (Home Office, 1989).12 Raine (2001:118) observes that the modernisation tenets of efficiency and speed have had a "profound effect" on the magistrates’ courts:

... the pursuit of greater efficiency has meant a three-stage transformation of magistrates’ courts from their traditional 'local justice' roots (understood in terms of local magistrates – lay members of the community- dealing with the cases arising in their own local areas) through a rationalised form of 'lay justice' (in which the tradition of lay magistrates was maintained, but with justices working on larger divisional areas, and with courts now sitting in the main towns only) to 'lower court justice’ (where professional stipendiary magistrates are playing an increasingly significant part... ).

Previous research has identified the existence of court cultures within the magistrates’ courts as a whole and also peculiar to individual magistrates’ courts.

---

12 The legislative framework currently governing the organisation of magistrates’ courts is the Courts Act 2003 (based on the Justice For All White paper published in 2002). The Courts Act 2003 was intended to improve and modernise the criminal justice system as a whole. Following a recommendation from Lord Justice Auld in his Review of the Criminal Courts (2001) the administration of all courts in England and Wales has been integrated under a Unified Courts Administration (UCA) which will replace Magistrates' Courts Committees. This legislation was very unpopular with the Magistrates' Association as it was considered to sever, or at least substantially curtail, 'local' justice.
As far as the latter is concerned research has suggested that lay magistrates become socialised into the local judicial culture of the court in which they sit. This local judicial culture is governed by informal norms and expectations, which have an impact upon courtroom procedures and approaches to decision-making within individual courts (Hood, 1972; Church, 1982). As Sanders (2001:11) explains:

In other words, within a bench there are shared understandings, ways of doing things and decision-making standards — that are not often shared by other benches. This leads to different decision-making patterns that are not explained by the different patterns of cases coming before different benches.

Research has examined the impact of court cultures upon decision-making and procedures in the magistrates’ courts in a number of different areas including: sentencing (Henham, 1990; Flood-Page and Mackie, 1998); bail (Hucklesby, 1997); committal rates (Riley and Vennard, 1988; Hedderman and Moxon, 1992) and the pace at which cases are dealt with in different courts (Mahoney et al, 1981; Grossman, et al, 1981; Ryan et al, 1981; Church, 1981, 1982, 1986 & 1992; Vennard, 1985; Church and Heumann, 1990) 13. The findings of this research have suggested that court culture can account for the delays, inconsistent decisions and the resistance to change that has been associated with the magistrates’ courts system. These concerns have come to the fore in recent years, particularly over the last twenty years within the climate of the ‘modernisation’ agenda, which has focused on efficiency through standardisation and professionalism (Raine and Willson, 1993a; Fitzpatrick et al, 2001). The pressures of managerialism and modernisation have, therefore, been brought to bear in order to tackle both the increasing quantity and complexity of the workload in the magistrates’ courts and to combat what were seen as inconsistent decisions and unacceptable delays (Raine and Willson, 1993a; Narey 1997; Sanders 2001, Raine 2001).

Previous research has found that the dynamics of individual court cultures are largely dependant on the nature of the working relationships of those who appear regularly in the courtroom, including the presiding decision-maker (Carlen, 1975, McConville et al, 1994). Legal professionals and their desire to retain effective

13 See also Choo, (1989); Pattenden, (1990); Martin and Maron, (1991); Choongh, (1997); and Bridges and Jacobs, (1999).
professional working relationships and status with the judicial decision-maker, have particular influence in this regard (Carlen, 1975 & 1976; Lipetz, 1980; Church, 1992; McConville et al, 1994; Rumgay, 1995). The personality of the decision-maker and their attitude to case management has also been found to be important, particularly in terms of the rate of case disposal (Grossman et al, 1981).

Commentators have argued that the perception of legally qualified decision-makers as both efficient and ‘professional’ has made them an essential part of the apparatus for the modernisation project within the magistrates’ courts. The growth and consolidation of the professional magistracy has therefore been readily accepted as one of the clearest manifestations of the managerialist ethos of efficiency and the shift towards professionalism within the summary courts (Raine and Willson, 1993a, James and Raine, 1998; Seago et al, 1999 & 2000; Fitzpatrick et al, 2001, Raine, 2001).

The pressure to make the courts more efficient has led to a rapid increase in the number of professional magistrates...who sit alone. In most of the large cities in England and Wales, around one third of cases are now heard by stipendiaries, a development which has taken place largely without public debate

(Sanders, 2001:1).

Raine and Willson (1993a) observe that the concept of professionalism suggests a nuance of superiority and “knowing best”. It is suggested here that the expansion and consolidation of the professional bench is only one, but a main part of, the increasingly professionalised ethos of summary justice (Seago et al, 2000; Fitzpatrick et al, 2001:114). Other advances illustrate that this movement are: the increase in training and the introduction of appraisal systems for lay magistrates, the expansion of legal aid and representation of defendants and more recently the introduction of the requirement that court clerks should, not just be legally trained, but qualified solicitors or barristers (Raine, 1993a, McConville et al, 1994; Darbyshire, 1999).

The rhetoric of efficiency associated with the professional magistracy has invariably been linked to their professional status. It is argued that their legal training is at the root of their ability to 'manage' the workload of the courtroom,
by having the confidence to exert control over other court personnel and the extent and nature of the information that is presented to them (Narey, 1997; Morgan and Russell, 2000). Therefore, it is from their professionalism and associated proficiency in the law, as well as their powers to sit alone, that their rapidity apparently emanates (Narey, 1997:25). This, in turn, is used as both the official and unofficial justification for their increasing use.

... every organised body has to justify its existence and stipendiary magistrates are no exception to that rule. We have to show that we have a valid role to play in society and that we have a valid function in the judicial structure...there are two things that justify stipendiary magistrates. First of all...they do bring a very professional attitude to their work and, secondly, they do, generally speaking despatch court business more quickly. That had to be their justification...on those two things we stand or fall.

(Bartle, 1995:242)

A counter-view can be found in James and Raine (1998) and Raine (2001). They suggest that the professionalisation of the criminal justice process, such as the growth in defence representation and the creation of additional professional agencies such as the Crown Prosecution Service, have produced consistency and fairness but “at the price of corresponding tardiness” (Raine 2001:119). This idea might lead to questions about how the increasing infiltration and influence of a further specialised body, in the shape of District Judges, should be hailed and marketed as, at least in part, a remedy to the delays inherent in the magistrates’ courts.

Despite his criticisms of lay magistrates, Martin Narey, in his “Review of Delay in the Criminal Justice System” (1997) resisted the temptation to recommend the total or partial replacement of the lay magistracy:

It is not, therefore, for financial reasons that I have rejected the possibility of a substantial increase in the number or proportion of stipendiaries. I have done so rather in recognition of the widespread and formally held belief that the existence of the lay magistracy is intrinsic to our justice system.

(Narey, 1997: 25)

However, as ever in the lower courts advances made on the basis of pragmatism are contested by those steeped in principle and tradition (Morgan and Russell, 2000):
The cases will zip through more quickly, the great god of productivity will be appeased and another little battle will be won against the beleaguered amateur (Humphrys, 2001:1)

Raine (2001:106) argues that, in one sense, the modernisation of the courts is crucial because of the very basis on which they, as opposed to other public institutions, derive their legitimacy:

... modernity, in the sense of being, and being seen to be, up-to-date and in tune with contemporary society, is arguably more critical to the courts than to other public institutions because their legitimacy depends, not on electoral mandates, but simply on their ability to command public confidence.

However, the application of managerialist principles to an organisation has the potential to alter the culture of that organisation. In the case of the magistrates' courts it has given rise to tensions and conflicts that concern the fundamental values upon which they have historically operated (Rozenberg, 1994; Seago, et al, 2000, Raine, 2001). Church (1986) argued that court culture is the result of historical development. Magistrates' courts in England and Wales have traditionally dispensed a particular kind of 'local' and 'lay' justice, where the vast majority of cases have been dealt with by lay, as opposed to professional, decision-makers and the focus has been on locally developed, community based, courts. This mode of justice, the very purpose of which was to 'legitimise' the criminal justice process, has arguably led to an overall culture characterised by a rhetoric of triviality, delays and inconsistency, and individual courts have developed independently of each other under local, as opposed to central, control. For example, Morgan and Russell (2000) suggest that 'local knowledge', seen as a fundamental feature of both community and lay justice may impact upon the nature of the justice dispensed in the magistrates' courts:

... 'local knowledge' may be an impediment to the dispensation of justice to the extent that lay magistrates are inclined to rely on what they know, or believe, to be the case as opposed to the evidence presented in court.

(Morgan and Russell, 2000:8)
The concept of ‘modernisation’ has, therefore, inspired the resurrection of age-old arguments between ‘legal justice’ and ‘community justice’ and highlighted the differences between the lay and professional approaches to dispensing justice within the magistrates’ courts. The ostensibly inherent personal qualities of lay magistrates (i.e. common sense, local knowledge) have historically been considered as indistinguishable from their practical skills in terms of judicial decision-making. In addition, they have been inexorably linked to the lay magistracy’s symbolic importance as the very manifestation of representative democracy and the antithesis of legal professionalism (Raine, 2001). Consequently, Worrall (1987) contends that the way lay magistrates apply themselves to judicial decisions is both inevitably, and by design, distinct from that of legally qualified professionals:

... the appointment of lay magistrates represents an explicit statement about the need to safeguard the interest of ‘the community’ against the abuse of the power of the law by ‘experts... Summary justice, it may be argued, is not simply a quicker, cheaper form of ‘proper’ justice; it has the potential to be a qualitatively different form of justice.

(Worrall, 1987:109)

However, it can also be argued that the application of legal principles and rules, objectively and consistently, is an equally, if not more important, core value than ‘lay involvement’ in terms of dispensing ‘justice’ (Burney, 1979; Pearson; 1980; Sanders, 2002). Stipendiary magistrates, it has been argued dispense cases more speedily, while maintaining the legal exactitude necessary for consistency and fairness (Narey, 1997).

‘Legal’ justice, it appears, is mainly concerned with rules which have been laid down beforehand and which are strictly adhered to in adjudication... Other ways which involve treating the rules in a more cavalier fashion are seen as an unwarranted and arbitrary power which thereby endangers freedom. The emphasis is on coherence and consistency... Justice, then, is produced by following legal rules and requires legally trained professionals to administer it.

(Bankowski et al, 1987:3)

The debate between these two positions is not new. In two articles, written in the mid-1940s, Chorley (1945) and Jackson (1946) assessed the relative merits of lay and professional magistrates as judicial decision-makers. The issues highlighted in these two articles are so familiar that one could easily be reading an article written
50 years later: criticism of the ability of lay magistrates to understand or even consider the law, the importance of the court clerk to the legitimacy of lay magistrates’ decisions, the dangers of ‘case hardened’ professional magistrates, the pros and cons of panel and individual decisions and the idea of mixed benches, all feature.

Fitzpatrick et al (2001:98) recognise the durability and influence of the “old ideologies” of “localism and laity” and consider that their endurance has largely moderated the impact of the ‘Holy Trinity’ of managerialism: economy, efficiency and effectiveness. In practice the presence of court clerks has meant that magistrates’ courts have always represented a hybrid of the two central principles of ‘community’ justice and ‘legal’ justice. However, the dominance of lay magistrates, in terms of their numbers and endurance, has ensured that the ascendant rhetoric has been that of an “altruistic ethic” (Raine, 1989:107) based on community justice and voluntary lay participation (Bankowski et al, 1987).

However, while the “old ideologies” have always been apportioned merit, there has been “... unrelenting pressure towards more professionalism and training” (Raine, 1989:180). These traditional concepts have inevitably been subjected to challenge as professionalisation has permeated the courts over the last twenty years (Seago et al, 1999:16) and more specifically since the advent of the ‘modernisation’ agenda in 1997 (Francis and Loveday, 2000; Raine, 2001). Therefore, it is suggested that the pursuit of managerialist aims has resulted in a development in the process of summary justice from one dominated by the notion of ‘ordinary’ local people with worldly experience and common sense, taking collective decisions; to one that also encompasses individual decisions, taken by professional judges employed for their legal expertise (Raine, 1993a).

The swing towards professionalisation, away from the emphasis on locally dispensed justice, is apparent, albeit in a subtle manner, in the provisions relating to the professional magistracy found in the Access to Justice Act 1999. The main provisions of the Access to Justice Act 1999, that contributed to both the real and perceived increase in status and influence of the professional magistracy, were the reorganisation of the bench into a unified body with unlimited jurisdiction to sit in any magistrates’ court in England and Wales and the, seemingly inconsequential,
change in their title from “stipendiary magistrates” to “District Judges (Magistrates’ Courts).” The rationale for these changes appears to have been the creation of a “national identity” for the professional magistracy (Seago et al, 2000:645, McGowan, 1998). It was suggested that less weight had been given to the views of the professional magistracy previously because of the fragmentation of their organisation (Badge, 1989). Moreover, it was suggested that this ‘national identity’ would contribute to speed and efficiency in the administration of justice and provide a basis from which an expansion of the role of professional magistrates could be considered:

Fusion would give a much needed common identity [which would be]... an important development in the process of speeding up and improving the system of justice... it would be a step towards considering the appropriateness of increasing the jurisdiction of the Professional Bench.

(Peter Badge14, 1998 quoted in McGowan 1998:2)

Thus it would appear that amalgamating the stipendiary magistracy into a single, professional body was a means of broadening, or at least fortifying, their legitimacy and influence within the sphere of summary justice and that the primary justification advanced was the benefits it would provide in terms of efficiency within the magistrates’ courts. Unsurprisingly, these proposals evoked concerns from various quarters. Some members of The Magistrate’s Association, Justice’s Clerks Society and Council of Circuit Judges expressed disquiet that national jurisdiction would “erode the sense of local co-operation” that had developed between lay and stipendiary magistrates, especially in the provinces (McGowan, 1998:3).

The conferring of the title “District Judge” was also met with unease. On the final day of the Bill’s ‘Committee Stage’ in Parliament, Lord Gisborough moved to eliminate the clause renaming stipendiary magistrates. Although he accepted that stipendiary magistrates played an important role, Lord Gisborough was concerned that the change of title would be perplexing and give the appearance of a two-tier system, as opposed to a ‘dual’ one. He also pointed out that lay magistrates were generally opposed to the new name and considered it to be “detrimental to the role and image of the magisterial system” (Hansard, 28th January 1999, Column 1255).

14 Sir Peter Badge, the Chief Metropolitan Stipendiary Magistrate at this time.
Although it is accepted that stipendiary magistrates are professional lawyers who support and complement the work of benches, they enjoy the same powers and the jurisdictional limitations as the lay magistrates. Their sentencing powers are identical and the maximum penalties, which apply to the bench, are the same. To differentiate their role from that of lay magistrates may demean the latter's role in the eyes of the courts' users and the general public.

(Lord Gisborough, Hansard, 28th January 1999, Column 1254)

In the same debate it was suggested that, although the work of stipendiary magistrates was appreciated and should be recognised, the implications of the name change ran more deeply that a mere change in name would suggest, “I urge strongly therefore that the Government think hard about this apparently superficial, but far from superficial change” (Lord Phillips of Sudbury, Hansard, 28th January 1999, Column 1256). The Magistrate's Association, in particular, were concerned that removal of the term “magistrate” would eradicate the symbol which identifies the powers of lay and stipendiary magistrates as the same:

It would seem that we promote structural harmony within the professional judiciary, at the expense of the goodwill of the lay bench.

(McGowan, 1998:7)

Both these modifications were couched in pragmatic terms and dismissed as 'tidying up' administrative anomalies or merely giving stipendiary magistrates their long overdue correct titles. However, it was more than this. It can be argued that the consequences of both these changes have been far reaching both symbolically and practically. Whereas before, there were two distinct corps of a relatively small number of paid magistrates, largely confined to individual commission areas. The professional magistracy, which was once the “odd appendix” to the lay system of summary justice, is now a new and discrete judicial layer within the criminal justice process, with jurisdiction to sit in any magistrates' court in England and Wales. At the time that Morgan and Russell (2000) conducted their research full-time stipendiary magistrates were predominantly solicitors (as opposed to barristers) and most had been defence solicitors. One-quarter had been Clerks to the Justices. This was a career progression that was more common in the provinces. The consolidation of the professional magistracy as the bottom rung of the professional judicial hierarchy had therefore provided a clear career structure for those legal professionals wishing to pursue judicial office. The nominal and organisational changes may have been administratively insignificant, but the Access to Justice Act 1999
widened the potential influence of the professional magistracy and significantly increased their status.

District Judges represent the antithesis of the lay magistracy and the values upon which they have traditionally founded their judicial authority. Their increased and formalised presence in the magistrates’ courts has afforded those already critical of the lay magistracy the opportunity for unfavourable comparisons and provided the backdrop for the re-emergence of long standing debates surrounding the nature and function of summary justice (Raine, 1989, Sanders, 2001); hence the unease among the lay magistracy and its supporters that has arisen throughout the expansion and consolidation of the professional magistracy. The development of discontent among the lay magistracy with respect to the role and growth of professional magistrates, and attempts at Governmental reassurance, is revealed by an examination of the articles and letters pages in the ‘in house’ publications and press releases of the Magistrates’ Association15, over the last 10-15 years (see Samuels (1989); Crowther, (1993); Heath (1993); O’Connor, (1995), Thompson (1996) and Findlay, (1997).

Through the Magistrates’ Association the lay magistracy has fought to preserve its legitimacy by campaigning on a ticket that offers a unique blend of historical endurance, symbolic importance, value for money and the inherent ability of ‘ordinary’ people to make decisions that are sensitive to local concerns and governed by common sense, rather than simply the rule of law. Their objections to the growth in numbers of legally qualified decision-makers have largely been “pitched at an ideological level” (Seago et al, 2000:651). Indeed, successive Lord Chancellors have responded in kind by seeking to reassure the lay magistracy of its continued validity on the more ‘philosophical’ of their submitted selling points (Lewis and Hughman; 1975, Fitzpatrick et al, 2001). However, the lay magistracy does not feature in any of the chief documents proffered by the Government in

15 The Magistrates’ Association was formed in 1921 and granted a Royal Charter in 1962. Today it has over 29,000 members and represents over 80% of serving lay magistrates. It publishes its own ‘in house’ magazine The Magistrate and aims to promote uniformity of practice through training and public awareness of the role of the lay magistracy. The Magistrates’ Association advises, supports and represents its members and contributes to all relevant consultations concerning the criminal justice process. To this extent lay magistrates can be viewed as a “professionalised body” overseen by their own association. More information can be found at www.magistrates-association.org.uk. Court clerks also have their own professional association – the Justice’s Clerks Society – established in 1839 (see www.jc-society.co.uk). There is also an Association of District Judges (Magistrates’ Courts) – however they do not have their own website.
recent years that promote their view of an 'active community'.\textsuperscript{16} Raine (2001:115) notes the apparent irony in the fact that the lay magistracy, the very "heartland of democratic practice within the courts" should feel under pressure at a time when the modernisation agenda is emphasising citizenship and public involvement in decision-making.

Objections have also been pitched at a practical level. Lay magistrates complain that their professionally qualified colleagues 'asset strip' the more interesting cases in the court. Proponents of lay justice argue that stipendiary magistrates, as autonomous arbiters of law and fact, become "case hardened," too cynical towards arguments of mitigation leading to harsher sentences and that decisions taken by an individual, without the need for consultation and usually without challenge, can too easily reflect the prejudices and idiosyncrasies of that individual (Morgan and Russell, 2000). Lay magistrates, on the other hand, symbolise civic participation in the criminal justice process, which brings with it a more socially representative, broader 'life' experience to the task of judicial decision-making. Furthermore, they make decisions based on consensus. Conversely, proponents of the 'professional approach' argue that District Judges are trained to apply the law dispassionately, that panel decisions take longer, contributing to delays and lead to unjustified levels of disparity both within and between courts. Furthermore, that lay magistrates are not confident enough to manage court business effectively and are unable to take proper account of the law and of evidence.

Following the Access to Justice Act 1999, a number of further research studies have addressed the debates surrounding the growth and development of the professional magistracy, The Home Office and the Lord Chancellor's Department (as it was then called) jointly commissioned research to address the respective role of professional decision-makers in the magistrates' courts: "The judiciary in the magistrates' courts" by Morgan and Russell was published in 2000. It evaluated the work of the magistrates' courts in England and Wales within the context of the policy trends outlined above, in particular it provided: "a comparison of the contribution that lay and stipendiary magistrates make to the work of the courts" (Morgan and Russell, 2000:1). The stated aim of the research was to: "contribute

\textsuperscript{16} Such as the Home Office (1999) document "Giving Time, Getting Involved: A Strategy Report by the Working Group on the Active Community"
to the broad debate which is taking place about the future of the magistrates' courts within our criminal court system.” Its remit was wide-ranging, encompassing evaluations of the following: the type of work done by lay and stipendiary magistrates, the time taken by each to process similar work, the quality of the decisions made by lay and stipendiary magistrates, the validity of commonly held views as to the merits and demerits of lay and stipendiary magistrates, the cost implications of employing both, the nature and extent of public knowledge and opinion concerning the operation of the summary courts, the views of other court personnel as to the relative merits of lay and stipendiary magistrates; and, finally, the extent to which lay persons are involved in judicial decision-making in other jurisdictions (Morgan and Russell, 2000:5).

Morgan and Russell (2000) also endeavoured to answer the question of whether or not the growth in the number of stipendiary magistrates, particularly within large, urban magistrates’ courts has had an impact on local, lay judicial cultures or whether stipendiary magistrates themselves form their own distinct judicial culture. Although they noted some differences between lay and stipendiary magistrates in respect of sentencing decisions,17 by their own admission their findings on this question overall were largely inconclusive. Seago et al (2000) also considered this question. They concluded that stipendiary magistrates, to a large extent, shared the judicial culture of lay magistrates and had not, as yet, had a significant influence on magistrates’ courts culture.

The most recent research to be published in respect of the relative roles of lay magistrates and District Judges was “Community Justice – Modernising the Magistracy in England and Wales” by Andrew Sanders in 2001. This study noted that the growth in the number of District Judges had brought the magistracy to a “turning point” and aimed to re-evaluate the organisation of the magistrates’ courts with reference to its “basic principles” (Sanders, 2001:6-7). The research focused on the importance of public opinion and fairness for the legitimacy of the magistrates’ courts. The respective skills and qualities that lay and professional magistrates brought to the administration of justice were evaluated and

17 They confirmed the previous finding of Flood-Page and Mackie (1998) that District Judges tend to impose more severe penalties than lay magistrates for similar cases. They also confirmed that there was acculturation effect in the sense that lay magistrates in courts where there was a District Judge tended to sentence more severely than those in courts where there wasn’t a District Judge.
suggestions made for the way in which these could be combined, through the extended use of joint sittings in particular types of cases.

Although it was essentially a thematic review rather than a research study, the “Report of the Review of the Criminal Courts in England and Wales” by Lord Justice Auld was also published in 2001. This was a whole scale appraisal of the court structure in England and Wales and was the culmination of the drive towards modernisation in the criminal courts (Lord Chancellor’s Department, 2001). As part of the review, Lord Justice Auld considered the respective roles of lay magistrates and District Judges, in particular he suggested the introduction of a new ‘middle court tier’ where lay magistrates and District Judges would sit jointly to hear cases of ‘medium seriousness.’ (Auld, 2001: Chapter 4).

This thesis explores this question in more depth and draws out the differences between the approach of lay magistrates and District Judges to dispensing justice in the magistrates’ courts. It seeks to highlight the impact that the District Judges in this study had on both the macro arena of the magistrates’ courts in which they work and the micro arena of the courtroom itself. Central to the latter, this thesis argues, are the relationships between District Judges and other regular courtroom professionals and how these differ to their interactions with lay magistrates. It is argued that District Judges do not have a direct impact upon the wider organisation and policies of the courts in which they work, however, they are emblematic of a shift in overall magistrates’ courts culture towards the ‘professional approach’ to dispensing justice. The traditional symbolic attraction of the participation of lay magistrates as representatives of civic involvement in the criminal justice process has little practical relevance in the magistrates’ courts of today.

This section has explored the recent growth and consolidation of the professional magistracy within the wider political context of the managerialist agenda of modernisation, efficiency and professionalisation, which has permeated the courts over the last twenty years. It has also discussed how the expansion and consolidation in the numbers and organisation of District Judges has re-opened debates surrounding both the core principles traditionally associated with civic participation in summary justice and practical issues concerning the relative
merits of the, allegedly more efficient, ‘professional approach’ to decision-making. The main research studies to have considered these debates have been referred to above. The next section highlights the issues they have endeavoured to address and which this study enhances.

**The Role and Influence of District Judges: Issues Addressed by Previous Research**

There is a paucity of robust academic study with specific regard to the role of the professional magistracy (Seago et al, 1995; Lord Chancellor’s Department 1996; Sanders, 2001). The main academic research studies have been conducted before, during and since the consolidation of the professional bench, between 1995 and 2001. These studies have endeavoured to clarify the role of the professional magistracy and the impact that the presence of professional decision-makers has had on the operation of summary justice. This has included addressing practical issues, namely: the efficiency of legally qualified decision-makers as compared to lay magistrates, the allocation of judicial work, their role in the development of court policy and their effect on the culture within the courtroom (Seago et al, 1995; Morgan and Russell, 2000, Sanders, 2001). The respective skills and qualities of lay and professional magistrates, in terms of their approach to decision-making, have also been addressed (Morgan and Russell, 2000; Sanders, 2001). Consideration has also been given to the more philosophical issues that have arisen from the creation of a formal judicial core, with national jurisdiction, that operates within the historically amateur and community based ethos of the magistrates’ courts (Seago et al, 1999 & 2000). Although it has been acknowledged that the consolidation and increased presence of legally qualified decision-makers has challenged some fundamental concepts in relation to the workings of summary justice, it has been concluded by previous research that District Judges have had little significant impact upon the work or culture of magistrates’ courts as a whole (Seago et al, 1999 & 2000; Morgan and Russell, 2000).
Speed, Court Management and Decision-making

As this chapter has already discussed, the speed at which single, legally qualified decision-makers are able to dispense court business has been at the heart of the justifications for the continued growth in their numbers, and so has been a central element in previous research. Narey (1997) argued that they are able to dispense cases more quickly for two main reasons: because they sit alone they don’t need to consult in the decision-making process, and because they have the experience and confidence to manage the court, and those in it, more effectively than lay magistrates. Previous research findings have tended to support this contention. Morgan and Russell (2000:112) place the differential at approximately 22 per cent.

Furthermore, previous research has found that the reasons for this are, indeed, that they sit alone, rarely retire and are more confident than lay magistrates, in controlling the various aspects of case management that can cause delays. Morgan and Russell (2000) found that this was demonstrated by the fact that the stipendiary magistrates in their study were more ‘interventionist’ in the courtroom. Central to this issue was the relationship between the stipendiary magistrates and other court users, who tended to prepare more fully for hearings before a stipendiary (Morgan and Russell, 2000:46). Concerns that the autonomous nature of stipendiary magistrates leads to cynicism or inappropriate idiosyncratic behaviour were found to be largely unsupported (Morgan and Russell, 2000:44). However, there was evidence to suggest that stipendiary magistrates were less likely to grant bail and more likely to pass custodial sentences than lay magistrates (Morgan and Russell, 2000:113-114).

The instant research expands upon these issues, by drawing on the findings of other research that has explored the dynamics of the courtroom arena and highlighted the importance of reciprocal relationships among members of a common ‘court workgroup’ and maintaining credibility with the decision-maker (Carlen, 1975 & 1976; McConville, et al, 1994).
Judicial Work and Working Together

A common feature of previous research has been an assessment of the type of judicial work that is allocated to lay and professional magistrates. Beyond the guidelines offered by the Venne Report (Lord Chancellor's Department, 1996) there remains at the time of writing no official national policy with regard to the allocation of work to lay magistrates and District Judges. A widespread complaint of the lay magistracy, however, has been that a greater proportion of the more "serious" and "interesting" work of the court is being allocated to District Judges. An extension of this claim is that District Judges use their influence to ensure the allocation of such work to themselves.

The research by both Seago et al (1995) and Morgan and Russell (2000) confirmed the sensitivities surrounding this issue, but concluded that the complaints of the lay magistracy were exaggerated. Although the stipendiary magistrates that took part in these two studies tended to deal with the more serious end of the range of judicial work, they also dealt with a broad and fair share of the routine court work. Seago et al (1995) did note some differences between the work of stipendiary magistrates in London and in the provinces, which, they argued, reflected the differing historical development of the professional magistracy in and outside London.

Debates around the 'appropriateness' of various types of judicial work for lay magistrates and District Judges are also explored in the context of the 'complementary' nature of their differing skills and qualities. In order to satisfy the many conflicting values and goals in a modern criminal justice process and capitalise on the resources available, recent contemplations on the future organisation of summary justice have suggested that magistrates' courts should "play to the strengths" of both District Judges and lay magistrates by combining their skills and qualities on one bench. The two most recent proposals in this regard by Sanders (2001) and Auld (2001) (neither of which have been adopted as policy) considered the issue from very different standpoints, however they shared the common theme of re-organising the magistrates' courts in such a way as to achieve a number of aims simultaneously. Firstly, to preserve the contribution of the lay magistracy along with the symbolic core values associated with it.
Secondly, to harness the strengths of District Judges in such a way as to significantly reduce delays and ensure legal rigour in judicial decision-making.

*The Non-Judicial Work of District Judges: Training and Administration*

Seago *et al* (1995) examined the non-judicial input of stipendiary magistrates in the magistrates’ courts. They found that non-judicial activities were not of great importance to the stipendiary magistrates in their study, although the nature and extent of their contribution in training and administration tended to vary from court to court. In particular they noted that stipendiary magistrates in the provinces tended to have a greater role in training and administration than their colleagues in London; a reflection, they argued, of the differing historical development of the professional magistracy in London and elsewhere.

Seago *et al* (1995) have used their original findings to argue subsequently that stipendiary magistrates have had little impact on the policy or organisation of the magistrates’ courts in which they sit. Seago *et al* (2000:641) suggest that it has been the Justices’ Clerks, rather than the stipendiary magistrates, that have been the “standard bearers” of managerialism. This conclusion stems from the role of Justices’ Clerks as administrative policy makers and managers of the courts - particularly since the Access to Justice Act 1997 which allowed Clerks to the Justices to also become Justices’ Chief Executive and “thereby the local helmsmen of government administrative policies in this sphere.” (p. 641).

**Concluding Comments**

This chapter has examined the growth and consolidation of the professional magistracy and discussed its importance in the context of policy developments within the magistrates’ courts as a whole. It has also examined the debates that have developed as a result of these changes and outlined the findings of the previous research that has addressed some of these issues.

It is clear that the research upon which this thesis is based has been conducted over the period of the greatest consolidation and change in the professional magistracy since its inception. Most importantly, unlike previously substantive research which has been funded centrally with a view to informing policy developments, this research was conducted independently and was not constrained...
by any boundaries or remits imposed by funders. This has enabled both a wider overall view to be taken along a more detailed consideration of the role of District Judges within individual courts.

Even though the lay magistracy still deal with the vast majority of cases, if the numbers of District Judges continues to grow, so will the proportion of cases they deal with. Magistrates' courts have often been neglected both in academic research and the public consciousness (Darbyshire, 1997a & 1997b). However, in light of the fact that they deal with over 95% of criminal cases in England and Wales, it is contended that any exploration of significant changes to their ethos or organisation requires scrutiny.

The developments in the professional magistracy have led to the re-emergence of familiar debates about the nature of summary justice and who should be responsible for its dispensation. This research and thesis re-examines these debates by exploring the role and influence of District Judges in a modern court context. It explores, in greater depth than previous studies, the assumptions and perceptions that surround the qualities and abilities of District Judges and to assesses, more closely than previous research, the subtleties of their influence within the magistrates' courts environment; in particular on the dynamics of working relationships and in shifting the emphasis inherent in the underlying values of summary justice.
Chapter 2
Research Design and Methodology

Introduction

This chapter will explain, in detail, the methodology adopted for the collection of data in this study. The aim and objectives of the study were as follows:

Aim

To explore the role and influence of District Judges within the magistrates’ courts.

Objectives

1. To examine the role, functions and tasks, both judicial and non-judicial, performed by District Judges.
2. To examine the attitudes of District Judges and other court personnel to their work and role.
3. To explore the relationship between District Judges and other court personnel.

In order to achieve its aim and objectives this study used a combination of qualitative and quantitative data collection methods. Three courts, two provincial and one in London, were selected and, after access had been negotiated, various types of data were collected using four main methods. These were direct courtroom observations, self-report questionnaires, the recording of details of a number of sample cases from the court registers and, finally, a series of one-to-one interviews with various court personnel.

Overall, the research provided a rich set of data. There were, however, limitations to the research design. Although every effort was made to observe a broad range of cases, time and resource constraints inevitably impacted upon the number and breadth of the cases observed – for example trials were not observed. In some courts the researcher did not have full control over selecting a random sample of interviewees and in one court no control at all over which court personnel received a questionnaire. Finally, the observation pro-forma used to record details of the courtroom observations was, with hindsight, an overly complex tool. Much of the minutiae it was designed to record did not lend itself well to analysis.
The limitations found in each part of the data collection process are discussed in detail throughout this chapter.

This chapter will begin by explaining, in a broad sense, why the mixed research design, as outlined above, was used for this study. This is done with reference to both general methodological literature and, more specifically, previous criminological research within a court environment. Following this each of the methods employed in this study will be explained and justified in more detail, starting with the process of selecting and gaining access to the courts included in the research. A reflective approach to the development and conduct of the research has been taken. This is in order for the researcher to share her contemplations with regard to her own part in the process and any lessons that were learnt during the process of data collection.

Research Design

Achievement of the aim and objectives of this research clearly necessitated a methodology that included the observation of District Judges at work within the specific environs of the magistrates' courts themselves. Furthermore, the aim and objectives required an exploration of their working practices and relationships with other court personnel in order to gauge any impact District Judges may have had upon court procedure and case outcomes.

Criminological research has been generally classified as the study of the many and varied facets of crime and criminal justice (Pond, 1999:9); including what Jupp (2000:16) terms “the institutions of criminal justice and their workings”. Baldwin (2000) suggests that the courts offer “enticing opportunities” to criminological researchers; not least because of the emphasis placed upon them by politicians as being “in the front-line in the war on crime” (Baldwin, 2000:237). From the standpoint of criminological research this study can be viewed as adopting, at least partially, the institutionalist approach. Proponents of this approach argue that the criminologist, as well as interpreting official statistics, must consider the policies and practices, both formal and informal, which generate and create such statistics (Jupp, 1993:94).
In order to achieve its aim and objectives this study used a variety of methods, both qualitative and quantitative. This approach was in accordance with Lipetz (1980:59) who asserted that, "a methodological mix is desirable for understanding the operations and outcomes in many courts." Previous studies that have examined various aspects of magistrates’ courts have tended to use a variety of methods, depending on the objectives of the research. These have ranged from observation and interviews to questionnaires, analysis of simulated cases and examination of court records (see Lipetz, 1980; Mahoney et al, 1981; Diamond, 1990; Seago et al, 1995; Hucklesby, 1997; Morgan and Russell, 2000).

**Combining Qualitative and Quantitative Methods**

Utilising a number of data collection methods is commonly known as triangulation (Denzin, 1978, Bannister et al, 1994). Cresswell (1994) comments on the historical development of triangulation and explains that the concept of mixing qualitative and quantitative approaches “owes much to past discussions about mixing methods, linking paradigms to methods and combining research designs in all phases of a study” (p.174). According to Jick (1979) the notion of triangulation was founded on the supposition that employing a combination of techniques would counterbalance any bias present in individual methods, sources or researchers.

A combination of methods was deemed the most appropriate approach to this study. Greene et al (1989) argue that there are several significant advantages and reasons for combining data collection methods within a single study. These included: seeking convergence of results, the complementary nature of triangulation in that the intersecting of various methods may encourage different aspects of a phenomenon to emerge and, finally, the scope and breadth it brings to the study. Therefore, with regard to this study, it was decided that triangulation afforded the greatest opportunity for achieving a rich data set that would provide a full picture of both the social setting of the court as a whole and the courtroom; as well as the individuals that contribute to and work together in that social setting. This adopts what Cresswell (1994:176) terms the “pragmatic” stance:

> Pragmatists argued that a false dichotomy existed between qualitative and quantitative approaches and that researchers should make the most efficient use of both paradigms in understanding social phenomena.
Jick (1979) described, at length, the difference between adopting triangulation "within methods" and "between methods". The former refers to those studies that implement various data collection and analytical strategies within a single overall paradigm, be it qualitative or quantitative. The latter to those research designs that employ a variety of techniques, both qualitative and quantitative. The present study embraced both of these styles to some extent. Courtroom observations were recorded both on a pre-designed pro-forma where quantitative information was noted and in extensive fieldwork diaries where qualitative information was documented. However, the overall research design adopted both qualitative and quantitative techniques, namely: a questionnaire survey, semi-structured interviews and direct observations. Grant and Fine (1992) note that there are abundant examples within the methodological literature where such combinations have been largely successful.

As a result of an extensive review of methodological literature, Cresswell (1994:177) advanced three models of how combined research designs may be weighted. He termed these the two-phase design, dominant-less dominant design and the mixed methodology design. The first of these involves two distinct phases of a study, one qualitative and one quantitative and therefore was not suitable for this study. This was due to the simultaneous use of qualitative and quantitative approaches to the recording of data within one method of data collection (i.e. within the courtroom observations as described above). In the second model, dominant-less dominant, the study is presented within a single governing paradigm, but includes a small element of the alternative paradigm. It can be argued that this study falls into this model, in that it could be interpreted as being largely qualitative in nature, but including some quantitative analysis. However, the distinction between the various models is largely a case of weighting and it is also possible that this study could be interpreted as adopting the mixed methodology model. As Cresswell (1994:177) states:

...this model represents the highest degree of mixing paradigms. The researcher would mix aspects of the qualitative and quantitative paradigm at all or many methodological steps in the design.
The Qualitative Element of the Research Design

The nature of this study, namely identifying and examining roles, attitudes and relationships within selected court environments lent itself to a design where the focus was mainly qualitative in nature. Indeed, a large part of the data collection was ethnographic, in that a combination of observations and interviews were utilised in order to obtain a holistic picture of the research setting (Altheide and Johnson, 1998). The main purpose of qualitative methodologies and studies is to enable an understanding of the way people behave in particular contexts and to gain an understanding of a particular social situation, role group or interaction (Yin, 1998; Locke et al., 1987). Yin (1998:230) states that this purpose is often best facilitated by focusing on a small number of individuals or situations in order to understand events and actions in unique circumstances. Therefore the concentration of this study on a small number of individual courts reflects this view.

However, Altheide and Johnson (1998) highlight the importance and difficulties of assessing validity in research that includes, as the present study does, a strong element of interpretive, ethnographic data. They cite Morgan (1983) who stated:

If we are to understand the detailed means through which human beings engage in meaningful action and create a world of their own or one that is shared with others... we must acknowledge that insufficient attention has as yet been devoted to evolving criteria of assessing the general quality and rigor of interpretive research

(Quoted in Altheide and Johnson, 1998: 284)

Altheide and Johnson (1998) examine various viewpoints, particularly those of recent post-modern critiques and present some guidelines for the evaluation of ethnographic research, as opposed to the traditional criteria of “methodological adequacy” devised by positivism. Their starting point is the view of Hammersley (1992:69) who claimed that the validity of ethnographic research could be defined thus, “an account is valid or true if it represents accurately those features of the phenomena that it is intended to describe, explain or theorise.” Therefore validity is dependent on the goals of the research and will mean different things to various researchers and ‘audiences’. However, according to Altheide and Johnson (1998) it is possible to devise a more tapered notion of validity that is more closely associated with the design of the research and the researchers themselves. They
suggest that interpretive research can be said to be valid if it produces relevant knowledge. Others, however, such as Miller (1991) suggest that both internal validity and reliability can be achieved, in largely qualitative studies, simply by the triangulation of data, repeated observation of similar phenomena at the research site and explicit awareness of researcher bias, all of which are present in this study. External validity, such as that discussed by Merriam (1988) can be ensured though the provision of plentiful and detailed description. According to Cresswell (1994:168) this will ensure that “anyone interested in transferability will have a solid framework for comparison.”

The Quantitative Element of the Research Design

A number of the research objectives of this study involved a quantitative element either in the way data were collected or analysed. For example, the second objective refers to an examination of the attitude of District Judges and other court personnel to their work and role. This was a largely qualitative objective and one that was addressed, in the main, by semi-structured interviews. However, this was also addressed in a quantitative way by the questionnaire survey where participants were asked to rate their attitudes in response to pre-designed scales. Therefore, the design of the present study could be interpreted as falling into the dominant-less dominant category based on the overarching nature of the study of the dynamics of the courtroom workgroup, coupled with the quantitative elements inherent in the questionnaire data and, to some extent, the observation data.

Summary

In summary, the achievement of this study’s aim and objectives involved an integrated use of methods (Rossman and Wilson, 1985). The research design encompassed qualitative and quantitative elements, both in the data collection methods used to gather information to measure the objectives and in the way the material was analysed and presented. However, Morse (1991) asserted that two paradigms could never be evenly weighted within one study. On balance, it was concluded that this study fell into the mixed design category. Quantitative and qualitative data was variably combined in symbiotic support of the development of ideas and themes in relation to all the objectives.
Selecting Courts

Size and Scope of the Study

This study focused on the role and influence of District Judges in three magistrates’ courts. Two of the courts were located in provincial cities and one in central London. In their study, Seago et al (1995) presented both a national and localised enquiry of the work of professional magistrates, by canvassing all the stipendiary magistrates across England and Wales and then focusing on a small number of individual courts for detailed analysis. This study hoped to implement a similar approach as this would have allowed conclusions to be drawn both about the culture of specific courts and more generalised conclusions about the role, backgrounds and attitudes of District Judges, throughout England and Wales. It was anticipated that this wider scope could have been achieved by a close examination of particular courts complemented by canvassing as many District Judges in England and Wales as possible by postal questionnaire. However, any decisions concerning sampling methods were unavoidably prescribed by time and resource constraints (Schofield, 1996). Thus, the wider survey was not possible and the study concentrated on examining three individual magistrates’ courts in depth.¹

Below is information pertaining to the three courts that were utilised in this study.² Following this is an explanation of the criteria that was used for selecting courts for the study and the process that followed for gaining access to the courts selected.

¹ It should be noted that despite access difficulties the courts that made up the final sample were among the courts initially approached at the outset of the research. Therefore no compromise was necessary in terms of size or geographical location of the courts.

² The information provided is very brief. This is in order to protect the anonymity of the courts involved and subsequently the personnel within them. Any further, more detailed, information pertaining to the personnel, structure, organisation and procedures in each court will be given only where it is necessary and relevant to the findings of the study.
Provincial Court I

Provincial Court I served a large urban area. The largest court in its Petty Sessional Division, it covered a population of over one million. It had a lay bench in excess of 350 magistrates, two full-time District Judges and five Deputy District Judges, all of whom were male. In 1997 over 7000 defendants were proceeded against and over 3000 were sentenced.

Provincial Court II

Provincial Court II also served an urban area and was the largest court in its Petty Sessional Division. It had a lay bench in excess of 250 lay magistrates. Like Provincial Court I it also had two full-time District Judges and five Deputy District Judges, all of whom were male. In 1997 over 5000 defendants were proceeded against and over 2000 were sentenced.

London Court

Although this was not the biggest court in Inner London, it was one of the busiest. It was selected for the convenience of its location and the encouraging response given to the original approach made at the outset of the research, despite initially refusing access. It served a central London location so its workload was fairly comparable with the two urban provincial courts. It was also the largest court in its Petty Sessional Division. Because of the differing historical development of the courts in London and the provinces, no London courts had a lay bench comparable in size with Provincial Courts I or II. Therefore the lay bench at the London Court was considerably smaller then that of Provincial Court II at just under 100 lay magistrates. It had five full-time District Judges, two of whom were female. At the time this research was carried out courts in Inner London did not have Deputy District Judges attached specifically to them, but requested them from a pool that supplied the whole of Inner London, when required.3 In 1997, over 3000 defendants were proceeded against and just under 2000 were sentenced.

---

3 Since the Access to Justice Act 1999 came into force, all District Judges, both full and part time can now sit at any magistrates’ court in England and Wales.
Criteria for Selection of the Court Sample

A review of previous court research demonstrated that some authors were not always explicit in their reasons for selecting certain courts for a study. Those that were explicit had various reasons for selecting a court or courts. Some studies focusing on magistrates' courts had concentrated on one court only (Lipetz, 1980; Rungay, 1995; Dignan and Wynne, 1997). Others have focused on several (Bankowski et al, 1987; Seago et al, 1995; Raine and Willson, 1993b; Hucklesby, 1997). Some were all in the same geographical area or dealt with the same type of case. Others were chosen in order to achieve as much variety in size, location and workload as possible (Grossman et al, 1981; Bankowski et al, 1987). It was expected, rather obviously, that, in the majority of cases, courts were chosen because they enabled researchers to achieve measurement of their objectives. For example, if they were testing the effectiveness of a delay reduction programme, they chose courts that had implemented such programmes and it is likely that a variety of different courts were examined in order to look for differences in effectiveness between courts, where variations were consistently found.

Since this study was concerned with the role and influence of District Judges, it was logical to assume that the most important criteria should be that at least some of the courts selected should employ full-time District Judges. Patton (1990:169) describes this as "purposeful sampling" and explains that it is a method most often used within a mainly qualitative design. Particular settings are chosen because of the information they provide. Maxwell (1998:95) asserts that:

> Qualitative researchers often study only a single setting or small number of individuals or sites, using theoretical or purposeful rather than probability sampling and rarely make explicit claims about the generalizability of their accounts.

It was noted that of the seven 'target courts' studied in detail by Seago et al (1995) one had no professional magistrates at all. Of the other six courts a variety was chosen that differed in size, location (both provincial and metropolitan) the number of professional magistrates permanently based there and the length of time they had served in that particular court. However, few reasons are given in the final report as to why these particular courts were chosen or what criteria were used. Seago et al (1995) do however explain that the purpose of using of a 'non-
stipendiary court' was as a comparison to the other courts. The 'non-stipendiary court' selected met some of the criteria for the appointment of a stipendiary but had resisted for several years. Seago et al (1995) explain that they were interested in using this court as a way of examining why some courts choose to appoint stipendiaries and others did not. This fulfilled one of the objectives of their study, which was to examine the appointment procedure of stipendiary magistrates at that time.

This study had no such objective; however consideration was given to whether a 'non-stipendiary court' should be included in the selected courts. After consideration it was decided that all the courts included in the study should employ full-time District Judges. For a variety of reasons it was concluded that the inclusion of a court where there was no permanent District Judge employed would contribute little to the aim or objectives of this study.

It can be argued that, in order to fully appreciate the role and influence of a District Judge, that a court that does have one (or more) permanently appointed should be compared and contrasted with a court that does not. This would enable the researcher to identify how functions, roles and tasks that are performed by the District Judge in one court are carried out in a purely lay court. However, it could also be argued that the inclusion of a court that did not have a District Judge would detract more from the study of the role and influence of District Judges then it would add. Firstly, and most obviously, if there is no District Judge then one simply cannot explore their role or influence on that particular court.

Secondly, as Mahoney et al. (1981) pointed out, it is useful to study a small number of courts intensively. However, ideally, they should be courts of a similar size, workload and resources in order to compare like with like and control for any other factors which could account for any differences in procedures. A court where no permanent District Judge presides is more than likely to have a different profile to a court where one does. It would probably be smaller, more rural and deal with a different type of caseload. Therefore, one would not be comparing like with like. Seago et al (1995) state that, although they chose a 'non-stipendiary court' as a 'target court' they made sure that it was comparable in the type of work both in volume and range to at least one other court in their study.
Each of the three courts that were ultimately accessed had more than one full time District Judge, each being appointed at different times. This, combined with interviews with various court personnel who had worked at the courts before, during and after their appointments, meant that information was available about any perceived and actual differences in court culture and procedure prior to the employment of permanent District Judges.

The second criterion for selecting courts for this study was that the sample should include both provincial and London magistrates’ courts. There were a number of reasons for this. First, there appeared to be a lack of research that included an examination of courts from both areas. At the outset of the present study the researcher was aware of only one published academic study which had examined the role of, what were then called, stipendiary magistrates, in both the provincial and London magistrates’ courts (Seago et al., 1995). An unpublished study by Bush (1993) had purposely avoided provincial courts and focused totally on the role of stipendiary magistrates in London.

Church (1985:452) argues that one of the main determinants of court culture is “historical accident”. The second reason was therefore the differing historical development of the professional magistracy in London and the provinces. Seago et al (1995) touched upon the divergence in culture and attitudes amongst the workgroup in provincial and metropolitan courts. The current study offered the opportunity to build upon their findings and provided an additional area of exploration and interest in terms of the nature and extent of the role of the District Judge. Thirdly, the proposed amalgamation of the metropolitan and provincial branches of the professional magistracy in the Access to Justice Act 1999 meant that there would be limited opportunity for such comparable analysis in future research.

---

4 Since the present study was undertaken, two further academic studies concerning the role of District Judges have been published, namely: Morgan and Russell (2000) and Sanders (2001).

5 At the time this research began in 1998 this was only a proposal. It became law in October 2000 when the distinction was removed.
Therefore, the two main sample criteria for this study were that all the courts should have full-time District Judges and that at least one London court was included in the sample. In order to comply with the maxim of comparing “like with like” it was also decided that all the courts should be of a comparable size and serving similar areas. In light of the decision to include a London court this meant that the provincial courts selected should serve an urban, rather than rural, location. Such sampling was necessarily limited by the resource and travel constraints that inevitably accompany a lone researcher. This was particularly relevant where the court observations were concerned. Observations were expected to last for several weeks at each court and therefore consideration had to be taken of accommodation availability and cost of commuting to court areas on a daily basis. In the event the researcher was limited to the courts where access was granted.

The Process of Court Selection and Gaining Access

Courts are probably one of the most open arenas of the criminal justice process, due to the right of the public to observe their proceedings; an advantage that only adds to their appeal in terms of opportunities for research (Baldwin, 2000) However, gaining access to courts on a more firsthand basis proved very difficult during the course of designing and carrying out the present study. This was indicative of what Baldwin (2000:237) calls the “uniquely resistant” nature of court personnel to the idea of social research.

Three provincial courts and all Inner London magistrates’ courts were initially approached by way of a letter to the Clerk to the Justices. The letter outlined the basis of the study and enquired about the possibility of including their court within the study. It offered a meeting to discuss the study in more detail. A letter was also sent to the Chief Metropolitan Stipendiary Magistrate at the time, requesting his advice and assistance with gaining access to a court in Inner London. Initial responses were encouraging and the first reply was a very positive one from one of the provincial courts. After a meeting with the Deputy Clerk to the Justices, where the details of the research methodology were discussed and

6 Since the amalgamation of the stipendiary bench this position has been re-named ‘Senior District Judge (Magistrates’ Courts)’.
finalised, this court became “Provincial Court I”. Data collection began at Provincial Court I in September 1999 and was completed in April 2000.

Unfortunately, all the other courts approached initially refused access. The main reason for this was the fact that a similar (but large scale) research project, funded jointly by the Home Office and the Lord Chancellor’s Department, was due to begin in the near future. Some courts therefore felt unable to accommodate another researcher and others had been given instructions to refuse access after consulting with the Lord Chancellor's Department or the District Judges employed at the court. Repeated attempts to gain access continued between October 1999 and June 2000. Other provincial courts, outside the originally chosen geographical area, were approached and access was granted at one of these, only to be withdrawn at the instruction of the Lord Chancellor’s Department shortly before fieldwork was due to begin.

Advice was sought from Rod Morgan who was due to conduct the jointly commissioned research. As a result of his support and assistance, the Lord Chancellor’s Department agreed to lift the restriction on courts to allow permission for this study in June 2000. In addition help in approaching and gaining access to the courts of the researcher’s choice. Two courts, one provincial and one in London were re-approached, accompanied by a letter of support from the Lord Chancellor’s Department. Both granted access and they became “Provincial Court II” and the “London Court” respectively. As with Provincial Court I meetings were held at each court with the Clerk or Deputy Clerk to the Justices to finalise arrangements for the fieldwork. In the case of Provincial Court II the two full-time District Judges also attended this meeting. Fieldwork at this court began in June 2000 and was completed in January 2001. Fieldwork at the London Court began in October 2000 and was completed in December 2000.
Data Collection

Court Observation

Observation in the present study was utilised to contribute to the achievement of all three of the objectives of the study. Raine and Willson (1993b), Lipetz (1980) and Baldwin (2000) have expressed the usefulness of direct observation in gaining an overall impression of the workings of a court. Lipetz (1980:51) specifically asserted that observational techniques "allowed documentation of the existence of norms, the operation of norms and the strength of those norms when challenged" and that "the strength and importance of the courtroom workgroup can best be demonstrated through the use of observational data" (p.59). Baldwin (2000) considered the collective importance of previous observational studies of the courts, citing, among others, Carlen (1976) and McBarnet (1981). He concluded that they had made a significant contribution; particularly to the "understanding of the influence of 'court culture' on decision-making and the importance of examining the relationships that exist between the various court actors" (Baldwin, 2000:245). As Altheide and Johnson (1998) state:

Good ethnographies reflect tacit knowledge, the largely unarticulated, contextual understanding that is often manifested in nods, silences, humour and naughty nuances.

(p.297)

It has also been noted by several authors that observational studies of specific courts can indicate the influence on decision making of court culture or the working group norms of the court personnel within them (Rumgay, 1995; Burney, 1979 and Parker et al, 1981). Previous researchers in this field have therefore regarded observation as a valuable method for gathering data on the processes of a court and for helping provide descriptions of local court operations.

Patton (1990) concluded that direct personal contact with and observation of a social setting, such as that conducted for this study, has several advantages. Firstly, by directly observing the situation or event in question the researcher is better able to understand the context within which the situation operates. Secondly, the researcher has the opportunity to observe events that may routinely escape conscious awareness among regular participants and staff.
During the periods of court observations at all three courts, the researcher had permission to sit at one of the desks in the main well of the court as opposed to the benches in the public gallery. This had been requested to facilitate the completion of the pre-designed observation proforma and to ensure that the activities and procedures of the court could be heard clearly. Yin (1998:231) has expressed concerns about the nature of observation, especially those related to reflexivity (i.e. that the events within the court may proceed differently because they are being observed). However, despite memoranda being distributed to all court personnel at both the Provincial Courts, explaining that the study was to take place and to expect the presence of the researcher during court sessions, the researcher sat largely unnoticed by the majority of court actors and seemed known only to those to whom she had previously been introduced or who enquired within the courtroom itself. On numerous occasions, in all three courts, the researcher was mistaken for a member of the press. This usually resulted in no obvious impact upon court procedures. However, on one occasion the court assumed that the researcher was a probation officer. This led to the court dealing with business as if a probation officer was present, only discovering later, that the researcher was not a member of the court probation team. This resulted in a certain amount of confusion.

Design of Recording Instrument and Piloting

In order to fulfil the objectives of this study, the recording of several areas of information, through observation, was required. Therefore, before observations commenced at any of the three courts a recording instrument was designed and piloted. Jupp (1993:73) acknowledged that, “observation is primarily qualitative but quantification is not ruled out, particularly with more structured forms of observation.” However, as Jupp (1993:7) states:

An alternative strategy is to treat theoretical generalisations as the product of empirical investigation, or at the very least as the outcome of a flexible and continuous interchange between theory and data. This is often, but not always linked to the belief that ‘qualitative’ data and not quantitative data provide more valid representations of the social world.
Patton (1990:202) states that the recording of observational data should be “factual, accurate and thorough without being cluttered.” Some of the information to be recorded was specific and quantifiable, such as the defendant’s age, the offence and the sentence passed. Other information was more descriptive such as the role and influence of various court personnel and general observations about the court. An initial observation-recording tool was devised using the information gathered from informal observations at Provincial Court II, prior to requesting formal access. The court was attended on three occasions during May 1999. On each of these occasions a different type of court was observed. Firstly, a mixed business court presided over by a lay bench, secondly, a sentencing court presided over by a District Judge and finally a mixed business court presided over by a District Judge. After these initial visits, a draft copy of the observation-recording tool was designed. It attempted to include a means of recording all the main decisions of the court and the processes that took place in court leading up to those decisions.

After the initial observation tool had been designed it was piloted in Provincial Court I, again prior to approaching the court to take part in the main study. The court was attended for one morning in June 1999 and ten cases in total were observed and recorded using the first draft of the observation tool. Several areas for improvement were noted and the tool was modified accordingly.

The revised observation proforma consisted of two parts: a “Macro” section (see Appendix A) which only needed to be filled out once per court session, and a “main body” (See Appendix B) to record the processes and outcomes within each case. A reference number system was devised to include the court, day, and case and defendant number. One Macro, therefore, has several main bodies related to it for each court session observed. As well as completing this proforma, extensive field notes were taken at each court session where more general impressions and observations both in and outside the courtroom were noted.
Observation Procedure

Across the three courts a total of 470 cases were observed and recorded. A brief overview of the observation data collected is provided in the table below.

Table 2.1: Sessions and Cases Observed by Court and Bench Type.

<table>
<thead>
<tr>
<th></th>
<th>Number of Court Sessions Observed</th>
<th>No. Lay Bench Sessions</th>
<th>No. District Judge Sessions</th>
<th>Total Number of Cases Recorded</th>
<th>Lay Bench Cases</th>
<th>District Judge Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provincial Court I</td>
<td>32</td>
<td>12</td>
<td>20</td>
<td>217</td>
<td>73</td>
<td>134</td>
</tr>
<tr>
<td>Provincial Court II</td>
<td>25</td>
<td>11</td>
<td>14</td>
<td>172</td>
<td>69</td>
<td>103</td>
</tr>
<tr>
<td>London Court</td>
<td>9</td>
<td>2</td>
<td>7</td>
<td>81</td>
<td>13</td>
<td>68</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>25</td>
<td>41</td>
<td>470</td>
<td>155</td>
<td>305</td>
</tr>
</tbody>
</table>

In most courts, two court sessions (one morning and one afternoon) were observed each day from Monday to Thursday. It was initially decided that six weeks would be spent observing each court and this was the case at Provincial Court I. However as a result of the difficulties with access and pressure of time, it was decided that Provincial Court II and the London Court would be observed for as long as was necessary to observe approximately the same percentage of the total number of cases proceeded with in 1997, as Provincial Court I. In other words at Provincial Court I, a total of 217 cases were observed, this figure was approximately 3% of the total number of defendants proceeded against at the court in 1997. Based on this percentage, target figures were calculated for Provincial Court II and the London Court of 165 and 100 cases respectively. Estimation was then made as to the length of time that would be necessary to achieve these target figures.

At Provincial Court I the observations formed the first phase of the data collection, however in Provincial Court II and the London Court they occurred simultaneously with both the interviews and the distribution of questionnaires. Using a combination of weekly or general rotas, provided by each court, an approximate timetable was devised for observing various courtrooms in each court, over a period of weeks. The main criterion in devising the observation schedule in each court was the observation of a variety of tribunals and court work such as sentencing, mode of trial and bail decisions. Trials were not observed.
This was because this would have involved observing one case only for a period of time and it was decided that it would provide a richer data set if numerous cases could be observed in each session which demonstrated a variety of court decisions.

As well as following the guides provided by the court, note was taken of comments and advice given by ushers and court clerks as to which courts tended to be the busiest or have the most ‘interesting’ cases. The researcher was aware that taking advice such as this may result in an over-representation of certain types of courts and therefore decisions (i.e. sentencing and ‘in custody’ bail applications). Therefore, regular statistics were recorded at the end of each day of observations including whether a lay or professional tribunal had been observed, the number of male and female defendants and the numbers of different court decisions observed. These statistics were scrutinized halfway though the observation period at each court. If any tribunal or court types or decisions appeared under-represented, efforts were made the next week in order to maintain a balance and breadth of observation. For example, at Provincial Court I, one full-time District Judge was on leave for the first two weeks of the observation period. This showed up on the intermediate statistics and therefore endeavour was made to observe him over the final four weeks of observation. The process of observations at each court is explained in detail below.

Provincial Court I

Provincial Court I was observed over a period of six weeks and a total of 217 cases were recorded. This was fewer than had been expected, but the pace of the court sessions was often sluggish and some sessions only dealt with four or five cases. A court “liar” (as it was called by court personnel) was provided by the court clerks at the start of each week. This laid out what business would be conducted in each court on each day of the week, split into morning and afternoon sessions. The “liar” also included the name of which court clerk was to sit in which court and also whether the court would be presided over by a lay bench or a District Judge. Where a District Judge was presiding their name was given. During the period of observation the researcher shared an office with four other court clerks, which helped in the establishment of a rapport with the clerks, who were extremely helpful and eager to give their views. A security pass was also
provided which meant that movement around the court was free and courtrooms were often entered from the "staff" rather than the public side. The usher also provided a court list for each session observed. This listed all the cases that were due to be heard in the court session, including the name and address of the defendant, the offence, their plea (if one had been entered) and the name of their legal representative where applicable. The information the court list provided was an important tool in aiding the recording of cases because some of the details could be completed in advance of the defendant appearing, such as the offence and name of defence solicitor or firm.

Provincial Court II

Provincial Court II was observed for a period of four weeks and the number of cases recorded was 172, which was just over the target figure of 165. The observation procedure was, however, quite different than it had been at Provincial Court I. A general timetable of court activity was provided, but this was often altered. It therefore became necessary to check with the ushers' desk each morning exactly what was happening in each court. Also no security pass and no office accommodation within the court were provided. Therefore, over the period of four weeks the researcher's range of movement within the court was largely akin to that of the public. Courts were always entered from the "public" side, though once in the court it was possible to sit in the well of the court as opposed to the public gallery. With no accommodation provided within the court the researcher was prevented from meeting the court personnel, other than within a court session. This meant that no relationship or rapport could be built as at Provincial Court I. This minimised the opportunity for informal discussion. Court lists were sometimes provided by the ushers' desk, but they were often incomplete and the court ushers usually did not have a spare list to give to the researcher. Therefore, court sessions were often observed without a list, making the recording of case details more difficult due to having to wait for defendants to appear before some important case details, such as the offence, could be noted.
London Court

The London Court was observed over a period of two weeks; however the target figure of 100 cases was not reached. The total number of cases observed was 81. There were two main reasons for this shortfall. Great difficulties were experienced travelling to and from London over the period of observation. Secondly, two afternoon sessions were “lost” due to administrative meetings and training sessions, where the court was closed for the afternoon. The court provided a general timetable of court activity, but as with Provincial Court II this was often changed. Therefore, the researcher decided to check the court lists which were posted in the court foyer each morning. These lists gave the names of defendants and whether the court was to be presided over by a lay bench or a District Judge and if so, which one. This knowledge was then supplemented with an examination of the weekly rota that was available for the researcher to see on the notice board in the office provided as accommodation within the court. This gave the name of the clerk for each court and the type of business. Decisions on which court to observe were therefore taken daily and not planned in advance. An office was provided for the researcher’s use, which was shared with the personal assistant to the Deputy Clerk to the Justices. The atmosphere was warm and welcoming and the office was situated next door to the clerks’ office. It was therefore possible for the researcher to meet the clerks prior to the court session and the court was often entered from the “staff” rather than the “public side”. Unfortunately, being among the court clerks did not seem to have a positive effect in respect of the return of the self-report questionnaires (see section on questionnaires below). The security desk outside the courtrooms occasionally provided court lists. However, they were often incomplete or unavailable creating the same difficulties in recording information that were experienced at Provincial Court II.

Court Register Surveys

For the purposes of this study the examination of court registers was a way of examining the judicial work and decisions of the lay bench and the District Judges, as well as acting as a control sample for the observations. As Hucklesby (1997:270) noted, “court registers provided a representative sample ... and acted

7 This was due to circumstances beyond the researcher’s control; namely speed restrictions and repairs on the line following a series of rail crashes.
as a control which permitted an assessment of the reliability and validity of the observation sample.” This method formed part of the quantitative element of the study’s methodology, alongside some of the information gleaned from the questionnaires. Several previous studies, which have examined various aspects of magistrates’ courts, have included an examination of court registers (Diamond, 1990; Raine and Willson, 1993b; Rumgay, 1995). Different studies have used different techniques for sampling which registers to examine. Some chose to study particular offences, others took a random sample for a specific time period or looked at all registers in a certain time scale (Diamond, 1990). An overview of the data collected from the Court Registers is provided in the table below.

Table 2.2: Sessions and Cases Recorded from Court Registers by Court and Bench Type.

<table>
<thead>
<tr>
<th>Court Type</th>
<th>Total Number of Court Sessions Recorded</th>
<th>Lay Bench Sessions</th>
<th>District Judge Sessions</th>
<th>Total Number of Cases Recorded</th>
<th>Lay Bench Cases</th>
<th>Ratio of Court Sessions to cases</th>
<th>District Judge Cases</th>
<th>Ratio of Court Sessions to cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provincial Court I</td>
<td>28</td>
<td>21</td>
<td>7</td>
<td>400</td>
<td>274</td>
<td>1:13</td>
<td>126</td>
<td>1:17</td>
</tr>
<tr>
<td>Provincial Court II</td>
<td>38</td>
<td>26</td>
<td>12</td>
<td>320</td>
<td>199</td>
<td>1:8</td>
<td>121</td>
<td>1:10</td>
</tr>
<tr>
<td>London Court</td>
<td>23</td>
<td>12</td>
<td>11</td>
<td>115</td>
<td>47</td>
<td>1:4</td>
<td>68</td>
<td>1:6</td>
</tr>
<tr>
<td>Total</td>
<td>89</td>
<td>59</td>
<td>30</td>
<td>835</td>
<td>520</td>
<td>1:9</td>
<td>315</td>
<td>1:10</td>
</tr>
</tbody>
</table>

When compared with the Table 2.1 it can be seen that a greater proportion of court sessions presided over by District Judges were recorded during the observations than were recorded from the court registers. This suggests that the observation sample may over-represent the cases dealt with by District Judges in the three courts. However, this is justified by the objectives of this study, which necessitated the recording of not only quantitative case data but also the manner in which the District Judges controlled the business in the courtroom and their interactions with other court personnel. For this purpose it was necessary to observe them at work as much as possible, always bearing in mind that a sufficient number of lay benches should be observed as well. Differences between the ‘case diets’ of lay magistrates and District Judges is discussed in detail in Chapter 3.
There are two main sorts of records held in a magistrates’ court. There are the actual court files, which hold all the papers pertaining to a defendant and their passage through the court process, and the court registers. Court registers record the outcomes of all cases, in all courtrooms, dealt with on any particular day. They appear in the form of computer printouts and invariably include the name and date of birth of the defendant, the offence/s, plea and a brief description of the outcome of that particular court appearance. This could be the sentence passed, a bail decision or an adjournment and the reasons for it. It was decided that for the purposes of this study the court registers alone would provide sufficient information.

However which registers were sampled and recorded in each court depended to a large extent on how the court had organised them. It was initially decided that the number of cases noted from the court registers should be double the number of those cases observed. These were to be sampled by taking a selection of days throughout the observation period. Exactly how these were sampled is explained below. Difficulties arose because all three courts used different filing systems and all differed in the amount of detail their registers provided. This had consequences for the placing of the data onto a computer spreadsheet for analysis. Data were inputted straight from the court registers onto a laptop computer. The spreadsheet was designed based on the information provided by the registers in Provincial Court I, as these were recorded first. However, these registers were particularly well-organised and included detailed information about the clerk, magistrates and CPS prosecutor present at each court session. They also included the name of the defendant’s solicitor, if they were represented. This information was not present in the registers held at Provincial Court II and the London Court. However, some of this information was able to be inserted from the researchers own observation records and field notes. The recording of the court registers at each of the three courts is outlined in detail below.
**Provincial Court I**

Since 217 cases had been observed it was decided that 400 cases should be recorded from the court register. They were sampled by taking the middle two weeks of the observation period and then two different days from each of these weeks, 100 cases to be recorded from each day. It has already been mentioned that the registers at this court were particularly well organised, each day was filed separately in a large book, clearly labelled and stored in chronological order. It was therefore very easy to identify the books that were needed. Each book began with court number one and progressed through. Morning and afternoon sessions for each court were stored together, so each book encompassed a whole day of the court's activity. Provincial Court I held the most detailed records and included the information laid out above, much of which was not available at the other two courts.

**Provincial Court II**

At this court 165 cases were observed. It was decided to record 320 cases from the court registers, again taking the middle two weeks of the observation period and then two days from each week, recording 80 cases from each of these days. These registers were fairly well organised. Each 'book' of registers covered one whole week of court activity, not just one day. They were also separated by morning and afternoon sessions, i.e. all the morning sessions for one week stored in one book and all the afternoon sessions for one week stored in another book. It was therefore a little more time consuming to find the right days than it had been at Provincial Court I. The registers did not contain any information pertaining to defence solicitors or CPS prosecutors.

**London Court**

In light of the 81 cases that were observed at the London Court, the target number for cases to record from the register was 160. However, because of the combination of transport difficulties and the disorganisation of the court records themselves, only 115 were recorded. As before, the initial strategy was to take two days from each week of the observation period were requested. However the researcher was told that this was not possible, because the computer records were not up to date. The printed registers were compiled from the actual lists used by
the magistrates in the courtroom, who made handwritten notes on them about the outcome of each case heard. The London Court was only able to offer the researcher these ‘raw’ registers, before they had been entered onto the computer and then only from two days of the first week of the observation period. When they were collected these registers were not filed in books but in loose-leaf piles, held together by elastic bands. They were not in chronological court order, but were in a random order. These registers did not include information about defence solicitors or CPS prosecutors. There was also no indication of the identity of the clerk. Some of this information was gleaned by cross checking the court “liar” for that week and the notes taken during observations. This set of registers was therefore the most difficult to record, mainly due to the fact that the majority of the case outcomes were handwritten, in a largely abbreviated or coded fashion.

**Questionnaires**

Four questionnaires were developed, each designed specifically for the respondents, namely District Judges, lay magistrates, court clerks and defence solicitors (See Appendices C and D for examples). Several types of questions were utilised within each questionnaire. The majority of questions asked respondents to broadly rate the type and amount of work they do, court procedures and relationships on a series of scales. Other questions were more open and required a more qualitative response. Several drafts of the questionnaires were designed and piloted where possible. Details of the numbers distributed in each court/area and the numbers returned are given in the table below:

<table>
<thead>
<tr>
<th></th>
<th>Provincial Court I</th>
<th></th>
<th>Provincial Court II</th>
<th></th>
<th>London Court</th>
<th></th>
<th>Total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sent</td>
<td>R'td</td>
<td>%</td>
<td>Sent</td>
<td>R'td</td>
<td>%</td>
<td>Sent</td>
<td>R'td</td>
</tr>
<tr>
<td>Lay Magistrates</td>
<td>100</td>
<td>61</td>
<td>63</td>
<td>60</td>
<td>30</td>
<td>50</td>
<td>20</td>
<td>7</td>
</tr>
<tr>
<td>District Judges</td>
<td>6</td>
<td>5</td>
<td>83</td>
<td>7</td>
<td>5</td>
<td>71</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Court Clerks</td>
<td>30</td>
<td>12</td>
<td>40</td>
<td>15</td>
<td>7</td>
<td>47</td>
<td>12</td>
<td>0</td>
</tr>
<tr>
<td>Defence Solicitors</td>
<td>50</td>
<td>10</td>
<td>20</td>
<td>25</td>
<td>3</td>
<td>12</td>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>186</td>
<td>90</td>
<td>48</td>
<td>107</td>
<td>45</td>
<td>42</td>
<td>49</td>
<td>12</td>
</tr>
</tbody>
</table>
The above figures represent an overall response rate across all three courts of 43% (n=146). The response from the London Court was particularly disappointing, especially the 100% non-response of the court clerks, despite reminder letters being sent. The overall response rate of lay magistrates of 56% was equivalent to that of the lay magistrates canvassed by Morgan and Russell (2000:129) where there was a response rate of 58%. However the District Judge response of 61% for the present study was somewhat below that of those canvassed by Morgan and Russell (2000) where 73% returned completed questionnaires.

The questionnaires were distributed in different ways at each court, but the number of questionnaires distributed followed a similar pattern for all three courts. With regard to the number of lay magistrates canvassed, the percentage sent at Provincial Court I, 20% of the total bench, was reflected in Provincial Court II and the London Court. Questionnaires were distributed to all the full time District Judges and, at the two provincial courts, the Deputy District Judges and all court clerks. In all courts, the Clerk or Deputy Clerk to the Justices arranged the distribution of questionnaires to the District and Deputy District Judges and court clerks. The Chairman of the lay bench arranged a random distribution to lay justices at Provincial Court I. At the London Court, lay magistrates were given questionnaires in the meeting room when they were sitting in court that day, by both the researcher and the Deputy Clerk’s personal assistant. At Provincial Court II, the Clerk to the Justices distributed the lay magistrates’ questionnaire. The method by which this was done was not made explicit to the researcher. However, the researcher was discouraged by the Clerk to Justices from approaching the lay magistrates herself, because the subject matter was considered to be somewhat sensitive. Therefore the possibility remained that the distribution was not random and therefore the views returned may not necessarily have been representative.

Distribution to defence solicitors was arranged differently and was organised entirely by the researcher. The duty solicitor rotas for both provincial courts were obtained. A number of solicitors were then selected by the combined criteria of allowing for a range of different firms in the area and those that the researcher had seen at court most frequently when carrying out observations. Questionnaires were then distributed to these solicitors individually by post. The London Court provided the researcher with the names of the most frequently appearing defence
firms at the court. A letter was sent to each of these firms, explaining the research and asking them if they willing to receive some questionnaires. Only three of sixteen firms responded, despite a second letter being sent to all the remaining firms. Reminder letters were also sent to all court personnel where it was felt that there had been a poor response. All questionnaires were distributed with a stamped addressed envelope for return, a covering letter and instructions.

Both Seago et al (1995) and Morgan and Russell (2000) utilised questionnaires as a means of extending the scope of their study, enabling them to gather both national and localised data. The benefits of concentrating on a small number of specific court settings have already been discussed, but a nationally distributed questionnaire would have allowed a wider number of key people to be canvassed about important issues. Unfortunately time and resource constraints prevented the canvassing of all District Judges throughout England and Wales for the present study. The narrow focus of the questionnaire survey meant that it was difficult to come to generalised conclusions, beyond the three courts, in respect of responses gleaned. However, given the narrow focus of the research design as a whole, it was concluded that the lack of a nationalised questionnaire survey did not compromise the overall aim and objectives of the study.

**Interviews**

In this study interviews were a key part of the methodology. It was anticipated that interviews would be conducted at each court with the following court personnel: all District and Deputy District Judges, the Clerk or Deputy Clerk to the Justices, lay bench Chairmen and a sample of lay magistrates. The achievement of the study’s objectives also necessitated interviews with both CPS and defence lawyers and court clerks. Several previous studies have not included this latter group of court personnel. However, because the examination of the conduct of both lay magistrates and District Judges within the courtroom was a specific objective of the proposed study, it was thought essential that the views of those that form the regular courtroom workgroup were included. Overall, a total of 31 interviews were completed. The table below indicates how these were spread across courts and personnel, followed by an explanation of how the interviews were arranged and conducted in each court.
Table 2.4: Number of Interviews Conducted by Court and Participant Group.

<table>
<thead>
<tr>
<th></th>
<th>Provincial Court I</th>
<th>Provincial Court II</th>
<th>London Court</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lay Magistrates</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>District Judges</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Deputy District Judges</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Court Clerks</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Deputy Clerk/Clerk to Justices</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Defence Solicitors</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>CPS Lawyers</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>14</strong></td>
<td><strong>8</strong></td>
<td><strong>9</strong></td>
<td><strong>31</strong></td>
</tr>
</tbody>
</table>

Seago *et al* (1995) interviewed a number of key court personnel namely, District Judges, clerks, lawyers and lay magistrates. In their study, interviews were used, alongside questionnaires and observations, as a means of expanding upon important issues. This was also the purpose of the interviews conducted for this study. They are a qualitative method and allowed the researcher to focus in on issues raised by the questionnaire and court observations. The interviews were concerned with subjective meanings, the meanings that the participants accorded to the topic of the research, rather than eliciting responses within a standard format. They enabled the researcher to gather more detailed information, specific to the selected courts, which in turn enabled the drawing of some conclusions about the culture of those courts and the role and influence of the District Judges within it. In this study, the lack of interviews that were conducted with defence solicitors was disappointing. This meant that in drawing any conclusions in respect of defence solicitors, the researcher had to rely in the main on questionnaire responses and observations.

Conducting interviews is a complex and labour intensive method, thus the dual data collection method of distributing questionnaires. Previous studies, which have focused on various aspects of the magistrates' courts, have usually involved a certain number of interviews with key personnel. There are few previous studies on District Judges from which to take guidance. However, of those that are available, all have utilised interviews to some extent (Diamond, 1990; Bush, 1993; Seago *et al*, 1995; Morgan and Russell, 2000). Morgan and Russell (2000) relied on telephone interviews alone. However, Seago *et al* (1995) included both telephone and face-to-face interviews with court personnel and describe these interviews as 'semi-structured' with a range of issues included on the schedule for discussion. However Bush (1993) conducted the majority of his interviews in an
‘informal’ and unstructured way. His work did not concentrate on specific courts (although his study focused only on metropolitan District Judges) and it was therefore more of a general enquiry about people rather than place. His interviewees came to him in a rather ad-hoc manner and many of them were chance encounters. This was a consequence of his personal position as a lay magistrate in London and a member of the Inner London Magistrates Courts Committee. The current study involved interviews of a more formal nature due to the researcher’s position as an ‘outsider’.

Although interview schedules were devised for this study (See Appendices E - G for examples), these were largely used as a guide. The researcher endeavoured to have as ‘unstructured’ discussion as possible, in order to let any themes emerge independently. This was usually successful and a large majority of the interviews flowed effortlessly and covered all the main areas documented in the schedule, without having to resort to “question and answer” sessions. The majority of the interviews lasted between 45 minutes and one hour and were all tape-recorded after the interviewee had signed a permission slip. It was explained on each occasion that any quotations used in the final thesis would be anonymous in order to ensure wider confidentiality.

*Provincial Court I*

All the interviews took place at the court (except those with the CPS lawyers) and were co-ordinated by a single trainee clerk. After discussion with the researcher about her requirements, she booked a room and arranged all the interviews to take place over two days at hourly intervals. However, she was unsuccessful at arranging interviews with any Deputy District Judges and despite personal letters being sent to each by the researcher, none was conducted. As with the other courts, special permission was gained from CPS headquarters in London to interview CPS lawyers. A lengthy procedure was followed in order to attain this permission. Once permission was received in writing, the specific CPS headquarters for the court area was contacted by telephone and interviews arranged. Both these took place at the local CPS headquarters on the same day. The researcher was unable to secure any interviews with defence solicitors in the area, despite repeated attempts. No defence solicitors actually refused to be
interviewed. The lack of success in this regard appeared to be due to a lack of time (and perhaps incentive).

**Provincial Court II**

The researcher arranged interviews with the District Judges at this court. Letters were sent to all District and Deputy District Judges requesting an interview and both District Judges and one Deputy District Judge responded positively. One permanent District Judge and the Deputy District Judge were interviewed at the court. The other permanent District Judge requested that he be interviewed at home and this was duly done. Although the setting felt comfortable it was unusual, in the course of this study, to interview professionals in their own homes. In fact this was the only interview that was conducted outside of a professional work environment. Perhaps because of the different environment, this interview felt less formal than some of the others. The Clerk to the Justices arranged interviews with other court personnel, such as court clerks and lay magistrates. This included an interview with the Chairman of the lay bench. As with the questionnaire distribution in this court, the central role of the Clerk to the Justices in arranging these interviews meant that the researcher was not involved in selecting those that took part and therefore could not be sure of the representativeness of the interview sample. Despite gaining permission from CPS headquarters to interview locally based CPS lawyers, a lack of response from the local CPS office meant that it proved difficult to arrange. Eventually, the researcher approached a frequently appearing CPS lawyer within the court and an interview was arranged and conducted.

**London Court**

The researcher arranged interviews with the District Judges by making personal approaches to them at court during the observation period, where feasible. Of the three approached, two accepted. Lay magistrates were approached initially by the personal assistant to the Deputy Clerk and "sounded out" about being interviewed. Those who responded positively were then written to by the researcher and interviews subsequently arranged by telephone. Both of the lay magistrates were interviewed in the library at the court. As with Provincial Court I, permission was gained from the CPS to interview two prosecutors. Once permission had been granted and two names suggested, interviews were arranged over the telephone.
Both were conducted on the same day at CPS headquarters in London. In order to try and gain interviews with defence solicitors, after the difficulties experienced at Provincial Court I, an extra section was added to the questionnaires requesting that any respondents interested in a further interview should contact the researcher by phone. Only one responded to this and the interview took place at the firm's offices.

**Data Analysis**

The quantitative data gleaned from the questionnaires, observations and court registers was entered onto spreadsheets and the statistical analysis conducted using the software package SPSS. All the interviews were transcribed in full. A phenomenological, rather than positivistic, approach was taken to the interpretation of the interview data. The analysis was based on the reading and re-reading of the text from which patterns were identified, quotes extracted and organised in general themes.

**Concluding Comments**

The study aimed to explore the role and influence of District Judges in the magistrates' courts. A review of previous research in the arena of the criminal courts demonstrated that a variety of methods could be used. In order to accomplish the aim of this study, a combination of qualitative and quantitative research methods were employed at three magistrates' courts; namely, courtroom observations, self report questionnaires, an analysis of a sample of cases from the court registers and interviews of key court personnel. Gaining access to courts proved problematical, causing considerable delay in completing the fieldwork necessary. Travel difficulties also impacted upon the extent of fieldwork possible in the London Court. The data gathered were interpreted using a combination of statistical analysis and a phenomenological approach to the elicitation of themes.
Chapter 3

The Judicial Work of District Judges: Perceptions and Reality

Introduction

This chapter explores the nature of the judicial work undertaken by the District Judges at the three courts included in this study. Half of lay magistrates involved in this study took the view that the presence of District Judges had a negative impact upon the type of work they were being allocated. This chapter examines the nature of the work undertaken by the District Judges at the three courts within the overall context of this common notion; with a view to demonstrating both the real and perceived influence of District Judges in terms of their judicial role in each court. As Seago et al (1995:36) observed:

The proper judicial role of stipendiaries and its relationship to the workload of the lay justices is at the heart of the controversy over the place of stipendiaries in the criminal justice system.

Unlike other jurisdictions that feature both lay and professional decision-makers within the lower tiers of their court structure, the respective roles of lay magistrates and District Judges has never been formally organised or laid down in statute. However, the Venne Report (Lord Chancellor’s Department, 1996) devised some general guidance for magistrates’ courts about the type of work District Judges were most suitable for and therefore ought to be allocated. These guidelines were largely based on a combination of the two main advantages associated with District Judges; namely their legal skill and alacrity in dealing with cases. Legally or procedurally complex and lengthy cases in particular were suggested. However, in order to offset any concerns of the lay magistracy about being excluded from the more ‘interesting’ work, the Venne Report also specified that District Judges should also undertake a reasonable share of “routine” court business.

The extent to which the District Judges’ work reflected both this national guidance and any formal work allocation policies within the individual courts was explored. This was achieved in the main through an examination of the court register and court observation data. Consideration was given to the way in which
District Judges were being used as a resource at each of the three courts and the degree to which District Judges themselves exerted influence over the work they did was considered. The effect of any informal work allocation or listing policies on the work the District Judges undertook was also explored. Conclusions were then drawn about the extent to which the grievances expressed by the lay magistrates in this study, concerning the inequitable allocation of work between them and District Judges, were founded in reality.

The data demonstrated that, overall, District Judges dealt with a breadth of judicial work which was similar to the lay magistrates at each of the three courts. The majority of District Judges’ work was routine and not the ‘special’ or ‘complex’ work referred to in the Venne Report. However, there was some evidence that their work tended towards the more serious end of the range of judicial work. In this respect the current research supported the conclusions of both Seago et al (1995) and Morgan and Russell (2000). It was apparent from their work patterns that District Judges were primarily used by the courts as a pragmatic, rather than legal, resource. However, it was also apparent that pragmatic considerations in allocating judicial work to District Judges were tempered by considerations of their status as legal professionals; the latter sometimes employed as the rationale for not applying the former.

It is argued that the negative perception of many lay magistrates about the inequitable allocation of judicial work between themselves and District Judges has been fuelled by the very guidelines put in place to prevent such feelings developing and the interpretation of these guidelines by those responsible for allocating judicial work. This was particularly found to be the case in Provincial Court I. Therefore the “cherry picking” perception was principally the result of a

---

1 It should be noted that “old style committals”, one of the more complex and lengthy procedures to have taken place in magistrates’ courts, was only abolished in 1994. Prior to 1967 all cases to be tried by jury went through a preliminary hearing in the magistrates’ courts, where the magistrates took oral evidence to decide whether the prosecution had made out a prima facie case. Following the Criminal Justice Act 1967 the vast majority of committals were dealt with as “paper committals” where, if a defendant agreed and was legally represented they could be committed to the Crown Court without any consideration of the evidence. The Criminal Justice and Public Order Act 1994 was intended to abolish committal proceedings altogether. A system of transfer was introduced where the prosecution submit a notice to the defendant and the court of a transfer to the Crown Court. Unless there is a defence application to have the case dismissed the notice of transfer will take place automatically. If such an application is made then “paper committals” can still take place where the statements are read out and disputed in court.
gap between the rhetoric surrounding the work that should be conducted by District Judges and the reality of it. The rhetoric, as espoused in the Venne Report, was that District Judges should supplement the work of the lay magistracy and do their "fair share" of "ordinary" work; but that their permanence and legal training meant that they should be allocated legally and procedurally complex cases and lengthy cases. However, the lack of this latter type of "special" work within the magistrates' courts (in this study at least) meant that, in reality, District Judges spent the majority of their time doing the former — that is "ordinary" court work, traditionally the preserve of the lay magistrates. However, the District Judges share of the 'ordinary' court work was skewed, towards the more serious end of the 'routine' court work.

It was concluded that it was notions of seriousness that concerned the lay magistrates. At the root of the lay magistrates' discontent was the perception that the "more serious" routine work had become scarcer, such as 'in custody' bail cases and sentencing cases where the nature of the offence had necessitated a pre-sentence report. The findings of this study indicated that there was some degree of support for both of these contentions. Notwithstanding some minor exceptions, it emerged that there was a disparity between the perception of the lay magistrates that District Judges either directly influenced the work they were allocated or were being allocated significantly more (in terms of quantity) sentencing or remand work than they were, and the reality. However, it was crucial to take account of the distinction between lay benches and individual lay magistrates. Lay benches and District Judges undertaking a similar share of sentencing or remand work inevitably meant that individual lay magistrates were spending less time doing this type of work than they might have done prior to the appointment of a full-time District Judge to the court.

The chapter begins by outlining the particular concerns and perceptions of the lay magistrates in this study about the distribution of judicial work to the District Judges and their influence upon it. This is followed by an overview of the nature and extent of any policy at each court for the allocation of judicial work to District Judges. The extent to which the concerns of the lay magistrates were founded in reality is then explored. Each of the charges made against District Judges are tested by disentangling the relationship between the official policies with regard
to the allocation of work to District Judges at the three courts and the actual work undertaken by them and the lay magistrates.

‘Cherry Picking’: The Concerns of the Lay Magistrates

In other jurisdictions, the relative roles of lay and professional decision-makers, in equivalent court tiers to the magistrates’ courts in England and Wales, have been clearly defined in policy (Morgan and Russell, 2000:99). Although the different systems vary in detail, the common determining factor in deciding the types of hearing to be dealt with by lay and professional decision-makers, in other jurisdictions, is the level of case seriousness. Those cases that are considered to be of the highest seriousness, with the most severe penalties available, are reserved mainly, in other jurisdictions, for either professional decision-makers sitting alone or with lay adjudicators in hybrid tribunals. However, in the magistrates’ courts in England and Wales, no such classifications exist, at a policy level, with regard to the relative roles of lay magistrates and District Judges in the determination of particular types of cases (Morgan and Russell 2000: 110). This may have stemmed from the fact that magistrates’ courts have historically been administered at a local level by Magistrates’ Courts Committees and the Clerk to the Justices (or since 1994 a Justices’ Chief Executive). Such local administration had led to inconsistent approaches by different courts to administrative functions (Darbyshire, 2002:306). Furthermore, since the introduction of the Justices’ Chief Executive (which was intended to facilitate the separation of judicial and administrative powers – the former remaining with the Clerk to the Justices) it has been unclear whether the allocation of work between lay and professional magistrates is an administrative or judicial function. There has, however, been some attempt, in recent years, to proffer some guidance on the relative roles of

---

2 This issue will be examined in more detail in Chapter 4. It should be noted that comparisons between different systems is problematic due to the differing nature and number of court tiers in other jurisdictions. For example it is rare to find lay adjudicators dealing with cases of moderate seriousness, such as lay magistrates do. Or for lay decision-makers to have the power to impose custodial sentences.

3 The Police and Magistrates’ Courts Act 1994 made Magistrates’ Courts Committees statutorily responsible for running the courts in their area. It also created a role for fixed term Justices Chief Executives, appointed by the MCC, to carry out the day to day administration of the courts. However, many Clerks to the Justices have, in fact, become Chief Executives by virtue of s.75 of the Act (now superseded by s.40(6) of the Justices of the Peace Act 1997) despite the fact that the office was intended to dissociate the appointee from judicial functions.
District Judges and lay magistrates, although they stop short of distinguishing between the serious and non-serious cases.

Basing its recommendations on the findings of research carried out by Seago et al (1995), the Venne Report (Lord Chancellor’s Department, 1996) offered some direction on the allocation of work between lay magistrates and District Judges. It is clear from the Venne Report that the working party viewed the allocation of work between lay and stipendiary magistrates as a “quasi judicial function” within the remit of the Clerk to the Justices. Their recommendations reflected the long held common view of the ‘appropriate’ judicial role for professional magistrates (Skyrme, 1979, Badge 1989), which is still apparent in several official documents. For example, a recently published job description for the post of District Judge stated, “[District Judges] deal with the full range of business falling to be dealt with by the lay magistracy and in particular may be expected to hear lengthier and more complex matters” (Department for Constitutional Affairs, 2003).

Specifically, the Venne Report stated that where a professional magistrate was available there should be a “presumption” that they undertake certain kinds of work. The most common characteristic attributed to this ‘distinctive’ work was a degree of complexity in law, evidence or procedure, rather than seriousness. Also included were lengthy trials or ‘public interest’ cases. Notwithstanding this, rather vague, catalogue of appropriate work, the Venne Report also asserted that: “stipendiary magistrates should take a fair share of the more routine business of the court” (Lord Chancellor’s Department, 1996:18). In justifying this recommendation the Venne Report cited the ability of professional magistrates to work quickly through a large volume of standard cases. It also stated that the application of this recommendation would help to prevent lay magistrates from feeling marginalised from the more interesting work of the court. Therefore, if these guidelines were to be followed, it would appear that any individual magistrates’ court policy with regard to the allocation of judicial work to District Judges should ensure two things. Firstly, that any particularly complex or lengthy work where their ‘special skills’ might be needed is allocated to District Judges. Secondly, that in addition to any “special” work, District Judges should undertake their ‘fair share’ (in terms of breadth and quantity presumably) of standard court work. Furthermore, any allocation of this routine work should reflect the fact that
District Judges should be able to deal with a large volume of standard cases relatively quickly.

Previous research findings have largely converged on the view that the vast majority of professional magistrates’ time is taken up, not with the ‘special’ work deemed suitable for their particular skills, but with a broad sweep of the ‘routine’ business that those responsible for the Venne Report recommended that they should undertake (Seago et al, 1995; Morgan and Russell, 2000). Part of the Venne Report’s rationale on this point was that, if District Judges were to participate in the full range of standard court business, then lay magistrates would not feel as though they were being marginalised from the more ‘interesting’ judicial work. However, this tactic does not appear to have been successful:

A prevalent unofficial view is almost exactly the opposite. This is that whether sitting in at home or away, stipendiary magistrates generally deal with the ‘heavy business’. Which is to say, that in the minds of critical lay magistrates, stipendiaries asset-strip court lists by having allocated to them more serious and interesting cases, leaving routine and intrinsically less demanding business (prosecutions for TV license evasion, summary motoring cases, and so on) to their lay colleagues. Only in Inner London, where there are large numbers of stipendiaries and where the majority of court appearances may be heard by stipendiaries, is it said that this division of labour does not apply.

(Morgan and Russell, 2000:26)

The lay magistrates that participated in this study were no exception, as their responses to the questionnaire demonstrated:

Table 3.1: Does the presence of District Judges in your court negatively affect your workload?

<table>
<thead>
<tr>
<th></th>
<th>Provincial Court I</th>
<th>Provincial Court II</th>
<th>London Court</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>Yes</td>
<td>26</td>
<td>43</td>
<td>15</td>
<td>50</td>
</tr>
<tr>
<td>No</td>
<td>13</td>
<td>21</td>
<td>8</td>
<td>27</td>
</tr>
<tr>
<td>Don’t Know</td>
<td>22</td>
<td>36</td>
<td>7</td>
<td>23</td>
</tr>
<tr>
<td>Total</td>
<td>61</td>
<td>100</td>
<td>30</td>
<td>100</td>
</tr>
</tbody>
</table>

(Source: Questionnaires)
Table 3.1 shows that nearly half (46%, n=45) of all the lay magistrates canvassed stated that they felt the presence of District Judges had had a negative effect on their own workload. Therefore, the expressed wish of those that compiled the Venne Report (1996:18) that “lay magistrates should not feel that they are being excluded from the more interesting work of the court” appears to have been a somewhat optimistic hope. The tensions surrounding this issue were well described by one of the District Judges in interview:

The lay bench have always said, “the stipendiaries take all the best work, the stipendiaries are supposed to be here to assist us, the stipendiaries go home too early, the stipendiaries are doing too much work, the stipendiaries shouldn’t do trials, the stipendiaries shouldn’t sit in the youth court on their own”. It depends what day of the week it is as to what they are saying. Yes, we know full well that we can’t get it right whatever we do.

(District Judge, Provincial Court I, Interview Transcript)

Table 3.1 indicates that over half of lay magistrates surveyed in London stated that the presence of District Judges had a negative effect on their workload (57%, n=4) 4 compared to just under half in the provincial courts (45%, n=41). 5 Also, a smaller percentage at the London Court stated that there had been no negative effect, compared to the provincial courts. This finding differed from the supposition of Seago et al (1995). They concluded that the view that professional magistrates “cherry pick” their work should be more dominant within the provincial courts. They argued that this is because, historically, the District Judges in London almost totally supplanted the lay bench, which meant that they had to take on a wide range of judicial work. As lay justices were re-incorporated into London courts in the mid-20th century, the District Judges retained their extensive role and continued to hear a large proportion of cases. However, in the provinces, the historical relationship between professional and lay magistrates is different. Professional magistrates were appointed in the provinces to support, rather than supplant, the lay magistracy. Seago et al (1995) suggest that this has resulted in their work being organised in a different way to their colleagues in London.

Morgan and Russell (2000:26) summarise this argument as follows:

4 However, it is accepted that the numbers for this court were very small and that these four lay magistrates represented only about 4% of the entire lay bench.

5 When the data from the two Provincial Courts was taken together.
In London, stipendiary and lay magistrates are said to operate almost in parallel with one another, whereas in the provinces the relationship is more one of a division of labour, complementary or otherwise, depending on one’s viewpoint.

Given the small numbers in the instant study it was difficult to explain, with any degree of certainty, why the findings of this study indicated the opposite; namely that the “cherry picking” perception was more pronounced in the London Court than in the provincial courts. It was possible that the findings of this particular study were a reflection of the historical relationship between District Judges and lay magistrates at this particular London court. Another possible explanation, as will be discussed later in this chapter, was that there was a greater discrepancy between the share of “serious” routine work undertaken by District Judges and lay magistrates at the London Court, than at the provincial courts. It was noted however that this finding also contradicted the conclusion of Seago et al (1995) that the work of District Judges and lay magistrates in London was more likely to be analogous, than in the provincial courts. Furthermore, it differed from the findings of Morgan and Russell (2000:27) that District Judges in London were more likely than their provincial colleagues to deal routinely with “lower end” summary matters.

The negative views of the lay magistrates expressed in the questionnaire responses were supplemented by several written comments added to their completed questionnaires. These comments included: “stipendiary magistrates definitely impact on our workload”, “we get a large slice of the rubbish”, “the stipes are definitely first in the queue when it comes to the allocation of serious work” and “the stipes refuse to get involved in work they consider beneath them”. Lay magistrates who believed that their workload had been negatively affected were asked to expand on the nature of this negative effect.
Table 3.2: How Has Your Workload Been Affected?

<table>
<thead>
<tr>
<th></th>
<th>Provincial Court I</th>
<th>Provincial Court II</th>
<th>London Court</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rarely Deal With Remand Cases 6</td>
<td>13 50</td>
<td>5 33</td>
<td>2 50</td>
<td>20 45</td>
</tr>
<tr>
<td>Less Sentencing</td>
<td>7 26</td>
<td>6 40</td>
<td>2 50</td>
<td>15 33</td>
</tr>
<tr>
<td>Fewer Serious Cases</td>
<td>3 12</td>
<td>3 20</td>
<td>0 0</td>
<td>6 13</td>
</tr>
<tr>
<td>Very Few Trials</td>
<td>3 12</td>
<td>1 7</td>
<td>0 0</td>
<td>4 9</td>
</tr>
<tr>
<td>Total</td>
<td>26 100</td>
<td>15 100</td>
<td>4 100</td>
<td>45 100</td>
</tr>
</tbody>
</table>

(Source: Questionnaires)

Table 3.2 shows that the only two effects to be cited in all three courts were a reduction in the amount of remand and sentence work. However, in the two provincial courts there appeared to be a belief, be it real or perceived, that the District Judges also conducted more than their fair share of serious cases and trials. In order to assess whether these concerns had any foundation in reality, the actual work undertaken by District Judges and lay magistrates was examined in detail. At the same time it was possible to explore whether the work actually carried out by District Judges corresponded with national guidelines or formal local court policies (where they existed). It was also possible to determine whether their work appeared to reflect any patterns of unofficial or informal work allocation.

The Distribution of Judicial Work: Policies at the Three Courts

Seago et al (1995) found that individual courts differed in their approaches to the use of professional magistrates; a divergence highlighted by the existence or otherwise of an official policy for the distribution of judicial work between District Judges and lay magistrates. Seago et al (1995:37) declared themselves “surprised” that so few of the courts included in their study had specific guidelines for the allocation of judicial work to District Judges:

This practice seems also to contradict the spirit of the recommendation by the Royal Commission of Justices of the Peace (1948) that there should be a general direction at each Provincial Court to the listing of suitable business.

(Seago et al, 1995:37)

6 The responses as indicated on the questionnaire did not distinguish between different types of remand work. This is explored further later in this chapter.
It could similarly be argued that a lack of any locally developed strategy for distributing work between professional and lay magistrates was at odds with the more recent Royal Commission on Criminal Justice (1993). Despite only a cursory glance at magistrates' courts, the Royal Commission (1993) concluded that a more “systematic approach” was needed to the utilisation of professional magistrates. Seago et al (1995:37) also found a significant difference between the existence of local guidelines for the allocation of work to District Judges and lay magistrates in the London courts, where they were a rarity, and the provinces, where they were much more in evidence.

A key element in the notion of “cherry picking” is that it assumes an undue influence, on the part of District Judges, over the work that they are allocated, be that directly or indirectly, officially or unofficially. The Venne Report (1996) stated that decisions concerning listing should be the remit of the Justice’s Clerk alone, but that “we would expect him to consult the stipendiary and Chairman of the Bench in cases where the opinion of either would be of value” (p.12). The authors of the Venne Report were of the opinion that, whilst the distribution of judicial work should be carried out with consultation it was also, essentially, “a quasi-judicial function” that “must be a matter for the Justices’ Clerk and for no other” (p.12) This is a recommendation that was followed in differing degrees by the three courts in this study.

The findings of the present study replicated those of Seago et al (1995) in the sense that only the two provincial courts had any kind of official listing policy for allocating work to District Judges; the London Court had no official policy in this regard at all. However, the extent of the formal listing procedures at the two provincial courts varied enormously.

Provincial Courts I & II

Provincial Court I was the only court to prepare a weekly work rota for the District Judges. District Judges were assigned to preside over courts where a particular category of judicial work had been listed. With the exception of the “plea and applications” court where a mix of business was found, other discrete types of work were deliberately differentiated and placed in particular courts. For
example, there was a “main remand” court (usually in courtroom number one), and a “pre-trial review” court. On the District Judge’s rota there was also a sentencing court entitled the “double sentencing”, reflecting the fact that it was very heavily listed. The “plea and applications”, “double sentencing” and “main remand” courts dominated the District Judges timetable. With the exception of the “double sentencing” courts, District Judges did not preside over the type of courts as named in their rota exclusively. The courts still ran on days when the District Judges were not designated to sit in them and were presided over by lay benches.

In interview the Deputy Clerk to the Justices of Provincial Court I cited the Venne Report as the basis for formulation of the District Judge rota:

... there’s that document isn’t there on the role of the stipendiary magistrate, so that’s what we use and that’s what the listing officer works to. What we do is we have a plan of which courts the stipendiaries are in which is drawn up by the listing office week by week to give them a fair spread of work throughout the week. It also gives them a mix of what might be thought of as the boring courts as well, so that they are getting a fair spread.

(Deputy Clerk to the Justices, Provincial Court I, Interview Transcript)

The “document” he refers to was confirmed as the Venne Report by one of the District Judges who stated in interview “... generally we follow the Venne Report when it comes to allocating work.” The focus on the Venne Report would appear to indicate that the guidelines followed in Provincial Court I were nationally rather than locally developed. However the fact that the courts in which District Judges would sit was decided on a “week by week” basis indicated that suggestions made in the Venne Report (1996) were adapted to local requirements and, more importantly, the requirements of the District Judges themselves. Lay magistrates were not consulted:

... the weekly plan is drawn up in consultation with the stipes but not representatives of the lay bench.

(Deputy Clerk to the Justices, Provincial Court I, Interview Transcript)
The official listing procedure therefore seemed to operate with the exclusion of the lay bench, contrary to the advice of the Venne Report. This possibly accounted for the fact that only one-quarter (23%, n=14) of lay magistrates canvassed at Provincial Court I were aware that an allocation policy existed. This suggested that the District Judges had a significant input into the formulation and execution of the allocation policy. However, this did not appear to be the case in practice. In concordance with one District Judge who stated in interview, quite vehemently, "I have never made representations about what work I do and don’t do" the Deputy Clerk went on to explain:

After the listing office has drawn it up, I approve it and then it’s taken to the stipendiaries to say this is what we’d like you to do and then periodically it’ll get changed as circumstances move on. I’m only really doing it out of courtesy to them and they each realise that they shouldn’t be saying which courts they want to do, because that’s a matter for the administration. I think that if they were it would be a recipe for absolute disaster in the court if they were able to pick and choose courts because that’s not their role at all and all hell would break loose with the lay justices too.7

(Deputy Clerk to the Justices, Provincial Court I, Interview Transcript)

There were two things to note from this statement. Firstly, although the District Judges were consulted it was clearly intended purely as a matter of courtesy, not meant as an open invitation for them to influence the listing to any great extent. This was reflected in the responses of lay magistrates at Provincial Court I, nearly three-quarters (71%, n=14) of whom, when asked who they thought was responsible for allocating judicial work, gave their reply as the Clerk or Deputy Clerk to the Justices. The remainder believed that it was a combination of these two and the District Judges. Both responses appeared to be correct in part. However, it must be noted that if a ‘suitable’ timetable was already prepared on their behalf, District Judges would feel little need to influence it.

7 Any italics that appear in quotations from interviews represent the emphasis placed on a particular word or words by the speaker, not emphasis added by the writer.
Secondly, it demonstrated how closely the Venne Report was followed in Provincial Court I in terms of listing being ultimately within the remit of the Clerks to the Justices (notwithstanding that in this court it was overseen by the Deputy Clerk to the Justices). Interestingly though, it was referred to by the Deputy Clerk as a “matter for the administration” rather than a “quasi judicial function” a distinction that was corroborated by one of the London Court, court clerks who, in interview, stated “senior clerks used to organise the rota but this was felt to be a waste of resources so it became an administrative function.” Whatever the nature of this function, it was clear that the Deputy Clerk to the Justices in Provincial Court I considered the allocation of judicial work between District Judges and lay magistrates a difficult and problematical task. This reflected the findings of Morgan and Russell (2000:28).

I’m ultimately responsible for managing the listing so I’m having to make this fine balance, walk this tightrope to make sure that the lay bench are doing the same interesting type of work as the stipes.

(Deputy Clerk to the Justices, Provincial Court I, Interview Transcript)

Provincial Court II did not have a specific rota prepared for its two District Judges. One Deputy District Judge explained the reason for this thus:

... as a general rule my understanding is that stipendiaries are given exactly the same allocation of work as lay magistrates, save where there is a complex question of law involved, so I don’t see why any specific or different work schedule for us would be necessary.

(Deputy District Judge, Provincial Court II, Interview Transcript)

However, there was a general weekly court timetable that set out what type of work was to be dealt with in each courtroom. It included one court which was specified as being presided over by a District Judge. Courtroom number two was a sentencing court scheduled to deal with pre-sentence report cases. On three mornings a week this court was presided over by a District Judge. On the other two mornings the same court was presided over by a lay bench. This was the only court that carried such a specification with regard to lay magistrates and District Judges. This regular arrangement was presented, not as a rota for the District Judges, but as a rota for the individual courtroom. Therefore, even though there
was no official policy with regard to the allocation of all work to District Judges in particular, it could be argued that with regard to the sentencing work of District Judges their regular appearance in that particular courtroom amounted to an formal allocation policy, if only a partial one. To the lay magistrates at Provincial Court II, the responsibility for the allocation of cases appeared to be something of a mystery; as one commented in interview:

Presumably the clerk must be accountable, but I am not privy as to exactly who is responsible. The allocation of work is a 'closed book'.

(Lay Magistrate, Provincial Court II, Interview Transcript)

This could account for one-third (30%, n=9) of the lay magistrates canvassed at Provincial Court II believing that a formal policy for the allocation of work to District Judges was in place. According to the court timetable (and apart from their regular sentencing courts) the District Judges at Provincial Court II were not specifically designated any other type of judicial work or particular court. This was despite Provincial Court II taking a broadly similar approach to the organisation of their court work as Provincial Court I, in the sense that there were clear demarcations between distinctive types of judicial business and in which courts they were scheduled to be dealt with. For example, as in Provincial Court I, courtroom number one was specified as dealing largely with remand work particularly adjourned ‘in custody’ cases and bail variations. 8 ‘New’ custody cases (mostly overnight remands) were designated to be heard in a different court (courtroom number six). There were also particular courtrooms and court sessions designated for traffic offences, fine enforcement, trials, early administrative hearings and early first hearings. 9

8 It should be noted that courtroom number one in both provincial courts had a secure dock and was therefore more suited to remand/custody cases.

9 Early Administrative Hearings (EAH) and Early First Hearings (EFH) were a relatively recent development in court management at this time. They were implemented in light of the recommendations of the Narey Report (1997) and aimed to reduce delays in the magistrates’ courts. EAH in particular were a means of utilising the new powers given to court clerks by virtue of the Crime and Disorder Act 1998 to deal with the ‘administrative’ aspects of cases without the presence of magistrates or District Judges (see Darbyshire (1999)).
Therefore, as far as 'official' influence over the allocation of their work was concerned both the District Judges at Provincial Court I, stated that their input was limited to some general consultation while the District Judges in Provincial Court II did not consider there to be any allocation policy at all. As far as the lay magistrates were concerned, a large majority (89% n=54) at Provincial Court I and all at Provincial Court II felt that they had no influence on or input into the allocation of judicial work. The remainder of lay magistrates at Provincial Court I felt that there was room for some general consultation with the listing office, with one magistrate stating that though he was aware of this facility he did not feel the need to use it. This facility did not seem to exist at Provincial Court II, as one lay magistrate commented:

I would like to be able to request different sittings in courts I have not sat in for a while. I think this would allow me to gain a wider experience, but it is not possible as far as I am aware. It seems pointless to expend resources on training if the skill is not practised.

(Lay Magistrate, Provincial Court II, Interview Transcript)

Despite the evidence presented above which suggests that the influence of District Judges over the judicial work they were allocated was limited, there must be at least a partial explanation for the perception already discussed that they "cherry pick" the 'best' work. The overriding response to this enquiry was that District Judges exerted a great deal of informal influence by the manipulation of case management; usually by reserving cases to themselves:

... they manipulate things by reserving cases to themselves... that's how they do it, but I mean they don't in the sense of saying "I want to do this or that" so they don't go through the normal listing channels. They just say, I'm doing that court in three weeks time so put it in there and lots of clerks aren't strong enough to say, well I need to phone up first and see that that court isn't already full...I think that some lay magistrates are aware of that and I think they feel that what they're doing, stipendiaries are putting cases to themselves because they don't trust the lay bench to deal with it.

(Deputy Clerk to the Justices, Provincial Court I, Interview Transcript)
This explanation implicated the court clerks in the strategy, but portrayed them as unwilling or at least weak accomplices in the manoeuvring. However, the view expressed by one of the District Judges at Provincial Court I in interview was quite different:

I think that the listing here has got to know how to use us and the clerks have got to know how to use us, but there are more requests to the listing office for, you know, “put the stipe on this” than they can satisfy …

(District Judge, Provincial Court I, Interview Transcript)

Notwithstanding the existence or extent of an exclusive District Judge work rota, both provincial courts were allotting similar types of judicial work, in particular sentencing, to District Judges. At Provincial Court II three times as many adjourned sentencing cases (those that had been put off for a pre-sentence report to be prepared) were listed when District Judges were scheduled to preside over the court than on days when the court was scheduled to be presided over by a lay bench. Similarly, the “double sentencing” court at Provincial Court I was so called due to the fact that they were particularly heavily listed. The nature of this allocation policy in each of the provincial courts, reflected the assumption outlined in the Venne Report, that District Judges were able to complete a greater number of cases in a court session than a lay bench.

*The London Court*

This court produced a very detailed weekly listing framework for court business. However, it was a general timetable for each courtroom and did not distinguish between work for lay magistrates and District Judges. The timetable was similar to that of the provincial courts in so much as particular courtrooms were designated for specific kinds of work on certain days. One court was given over completely to trials every day of the week, one was dominated by early first and administrative hearings and another was divided between traffic, licensing and private prosecutions. Although the London court had no apparent official policy with regard to particular types of work for District Judges, there was a tradition of allocating one of the main courtrooms exclusively to District Judges and the other to lay magistrates; courtroom numbers one and two respectively. The listing framework of both of these two main courtrooms carried a mix of business
consisting mainly of sentencing and remand work, with cases being allocated to each court according to police area. Both these courtrooms appeared to deal with a similar range of judicial work. Although presented as a traditional practice as opposed to a formal policy, the system of ‘exclusive’ courtrooms might well have been the reason behind all the District Judges and the majority of lay magistrates canvassed at the London Court indicating on their questionnaires that there were formal court guidelines for the allocation of work between District Judges and lay magistrates.

The Work of District Judges and Lay Magistrates: The Reality

This section begins by examining the general pattern of the work carried out by lay benches and District Judges in each of the three courts. This is followed by a more in-depth examination of the nature of the work undertaken. Consideration is given to whether the work of the District Judges was a reflection of either national guidelines or local court policy guidelines (where there were any) and the extent to which the particular concerns of the lay bench expressed above were founded in reality.

As stated above, previous research has concluded that, on the whole, District Judges deal with a broad range of judicial work. Morgan and Russell (2000) relied mainly on observation data and were only able to access the (arguably more objective) data from the court registers of two of the ten courts in their study. Having examined this data they found that District Judges dealt with an even greater range of work than their observational data had suggested:

... the allocation of work to stipendiaries is much more evenly distributed than the sessional data suggests... With the exception of fines enforcement and private prosecutions stipendiary magistrates appear to deal with, in these two large provincial courts at least, the full range of criminal cases including summary cases both motoring and non – motoring.

(Morgan and Russell, 2000: 28)

For the current study, it was possible to access the registers held locally at all three of the included courts. In total 835 cases were recorded from these registers. In addition to this a further 470 cases were directly observed. For the purposes of this chapter, the majority of data will be taken from the court registers. These
tended to give a more comprehensive picture of the work undertaken by the District Judges and lay magistrates at the three courts.  

**General Work Patterns**

Table 3.3 below presents an overall view of the number of cases and court sessions dealt with by District Judges and lay magistrates at all three courts.

Table 3.3: Proportion of cases and court sessions dealt with by lay benches and District Judges across all three courts.

<table>
<thead>
<tr>
<th></th>
<th>Provincial Court I</th>
<th>Provincial Court II</th>
<th>London Court</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>Lay Bench Sessions</td>
<td>21</td>
<td>75</td>
<td>26</td>
<td>68</td>
</tr>
<tr>
<td>District Judge Sessions</td>
<td>7</td>
<td>25</td>
<td>12</td>
<td>32</td>
</tr>
<tr>
<td>Total</td>
<td>28</td>
<td>100</td>
<td>38</td>
<td>100</td>
</tr>
<tr>
<td>Lay Bench Cases</td>
<td>274</td>
<td>69</td>
<td>199</td>
<td>62</td>
</tr>
<tr>
<td>District Judge Cases</td>
<td>126</td>
<td>31</td>
<td>121</td>
<td>38</td>
</tr>
<tr>
<td>Total</td>
<td>400</td>
<td>100</td>
<td>320</td>
<td>100</td>
</tr>
</tbody>
</table>

(Source: Court Registers)

Table 3.3 shows that the sample taken from the court registers indicated that overall, across all three courts, lay benches presided over approximately two-thirds (66%, n=59) and District Judges one-third (34%, n=34) of court sessions. These proportions were closely echoed in the number of cases each dealt with overall. However, these proportions differed between the three courts. For example, lay benches at Provincial Court I presided over the greater proportion of court sessions than the lay benches at the other courts. This could be explained by the fact that Provincial Court I had the largest lay bench and the greatest number of courtrooms of all the courts. It was evident from this sample of cases that in the

---

10 Every endeavour was made to observe a range of courts, but observations are by their nature more selective and therefore less objective than the data gleaned from court registers. The aim of the observations was to record as many decisions and cases as possible across a range of business in a relatively short time. Conversely the cases recorded from the registers were sampled in a more systematic way (see Chapter 2). Therefore the majority of analysis for this section will be based on the court register data, with the observation data being included where appropriate. However, in discussing the differences between the work patterns of lay magistrates and District Judges at the three courts, it is recognised that the court register data represents only approximately 3% of the annual caseload of each court. It therefore may not be representative and any differences demonstrated may not be 'real'.

82
two provincial courts District Judges dealt with a relatively similar proportion of cases compared to lay benches, the ratio being approximately one-third to two-thirds of cases respectively. However, in the London court, this ratio was reversed with the District Judges handling a larger proportion of cases than the lay benches, even though they dealt with a slightly smaller proportion of court sessions. It can be argued that this outcome was hardly surprising when the size of the lay bench in each provincial court and the relative number of District Judges is taken into consideration. For example Provincial Court I had a lay bench in excess of 350 and two District Judges, whereas the London court had a lay bench not exceeding 100 and five District Judges.

Although lay benches presided over the majority of court sessions overall this translated into lay benches dealing, on average, with 8.8 cases per sitting and District Judges 10.5 cases per sitting. This indicated that District Judges were more efficient than lay benches; dealing with 19% more cases per court session. This finding was similar to that of Morgan and Russell (2000:35) who found that the District Judges in their study dealt with 22% more cases per court session overall than lay benches. However, in the present study, when each court was considered individually, there were significant differences between the average number of cases dealt with per court session by lay benches and District Judges.

Provincial Court I appeared to have the highest overall work rate. The District Judges dealt with an average of 18 cases per court session and the lay benches 13 cases. This meant that lay benches at Provincial Court I dealt with, on average, more cases per court session than the District Judges at both the London Court and Provincial Court II, who dealt with 6.2 and 10 cases per court session respectively; and thus lay benches at Provincial Court I dealt with almost double the number of cases per court session than the District Judges at the London Court. The London Court was the least productive (by this measure), lay benches at this court dealing with 3.9 cases per session. However, in terms of the differences between the work rates of lay benches and District Judges within each court, the greatest disparity was found in the most productive court overall – Provincial Court I. In Provincial Court I District Judges dealt with 5 more cases per session on average than lay benches, compared to just 2.3 and 2.4 more cases at the London Court and Provincial Court II respectively.

83
Therefore although overall, and within each court, the District Judges dealt with more cases per court session than lay benches; the data from the court registers suggested that such work rates might reflect the culture, practices and circumstances at individual courts. For example, Seago et al (1995:19) suggested that in London, where there is a high number of District Judges in each court, there is insufficient work to support both them and the lay magistrates. Also, Morgan and Russell (2000:34-35) noted that there were variations in the length of court sessions at different courts and that this might account for some of the differences in the number of cases completed per session. However, in the current study, the court registers did not record the length of court sessions and no significant differences in the length of court sessions were noted during the observations.

In order to examine the distribution of the workload between lay magistrates and District Judges further it was necessary to look in more detail at the type of work being undertaken. There were several ways of doing this. Examining the actual offence types dealt with made it possible to gauge the level of cases each tended to handle; similarly this could be achieved by analysing the class of offence. Morgan and Russell (2000:28) present a combination of these two methods in a single table, but for the purposes of this study they were examined separately.

Table 3.4: Total cases heard by lay benches and District Judges by offence type.

<table>
<thead>
<tr>
<th>Offence Type</th>
<th>Lay Benches</th>
<th>District Judges</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
</tr>
<tr>
<td>Motoring</td>
<td>176</td>
<td>34</td>
<td>71</td>
</tr>
<tr>
<td>Theft</td>
<td>83</td>
<td>16</td>
<td>65</td>
</tr>
<tr>
<td>Violence</td>
<td>87</td>
<td>17</td>
<td>51</td>
</tr>
<tr>
<td>Public Order</td>
<td>71</td>
<td>13</td>
<td>56</td>
</tr>
<tr>
<td>Burglary</td>
<td>22</td>
<td>4</td>
<td>21</td>
</tr>
<tr>
<td>Drugs</td>
<td>25</td>
<td>5</td>
<td>13</td>
</tr>
<tr>
<td>Property</td>
<td>17</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td>Sexual</td>
<td>15</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td>Other 12</td>
<td>24</td>
<td>5</td>
<td>16</td>
</tr>
<tr>
<td>Total</td>
<td>520</td>
<td>100</td>
<td>315</td>
</tr>
</tbody>
</table>

(Source: Court Registers)

11 Possible reasons for this apparent differential in the work rates of District Judges and lay magistrates are considered in Chapter 6.

12 This category included offences against bail and other court orders, weapons offences and offences against the police.
It is clear from Table 3.4 that District Judges dealt with proportionately less motoring offences than the lay benches. However, District Judges, across all three courts, appeared to deal with a broad range of offences. This largely confirmed the findings of Morgan and Russell (2000). It was notable that District Judges dealt with a higher proportion of theft, burglary and public order offences than lay benches. It could be ventured that this was indicative of their tendency to deal with the more serious summary and triable either way offences.

The three courts were considered individually. There were no significant differences between the two provincial courts in the proportion of offence types dealt with by lay benches and District Judges. However there were some notable variations between the London Court and the provincial courts, as demonstrated in Table 3.5.

Table 3.5: Total cases heard by lay benches and District Judges by offence type and court.

<table>
<thead>
<tr>
<th>Offence Type</th>
<th>Provincial Courts</th>
<th>London Court</th>
<th>All Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Lay DJ n %</td>
<td>Lay DJ n %</td>
<td>Lay DJ n %</td>
</tr>
<tr>
<td>Motoring</td>
<td>166 35 66 28</td>
<td>10 21 5 7</td>
<td>247 30</td>
</tr>
<tr>
<td>Theft</td>
<td>77 16 45 18</td>
<td>6 13 20 29</td>
<td>148 18</td>
</tr>
<tr>
<td>Violence</td>
<td>77 16 44 18</td>
<td>10 21 7 10</td>
<td>138 17</td>
</tr>
<tr>
<td>Public Order</td>
<td>65 14 42 17</td>
<td>6 13 14 21</td>
<td>127 15</td>
</tr>
<tr>
<td>Burglary</td>
<td>18 4 13 5</td>
<td>4 9 8 12</td>
<td>43 5</td>
</tr>
<tr>
<td>Drugs</td>
<td>24 5 8 3</td>
<td>1 2 5 7</td>
<td>38 5</td>
</tr>
<tr>
<td>Property</td>
<td>16 3 9 4</td>
<td>1 2 2 3</td>
<td>28 3</td>
</tr>
<tr>
<td>Sexual</td>
<td>7 1 6 2</td>
<td>8 17 5 7</td>
<td>26 3</td>
</tr>
<tr>
<td>Other</td>
<td>23 5 14 6</td>
<td>1 2 2 3</td>
<td>40 4</td>
</tr>
<tr>
<td>Total</td>
<td>473 100 247 100</td>
<td>47 100 68 100</td>
<td>835 100</td>
</tr>
</tbody>
</table>

(Source: Court Registers)

Table 3.5 highlights a number of differences between the London Court and the provincial courts in terms of the types of offences dealt with by lay benches and District Judges. The first evident overall difference between the London Court and the provincial courts was that, in the London Court, motoring offences were not the most commonly occurring offence. Motoring offences accounted for approximately one-third of offences dealt with in the provincial courts (32%, n=232), but only 13% in the London Court (n=15). The most commonly occurring
offence type dealt with at the London Court were theft offences. These accounted for nearly one-quarter (23%, n=26) of the offences dealt with at the London Court compared to under one-fifth (17%, n=122) at the provincial courts.

From the data it appeared that any proportional differences between the types of offences dealt with by lay benches and District Judges were more manifest in the London Court, than in the provincial courts. For example, District Judges dealt with proportionately less motoring offences than lay benches in both the provincial courts and the London Court. However, in the London Court lay benches dealt with 14% more motoring offences than the District Judges, compared to 7% more in the provincial courts. Also, the District Judges in the London Court dealt with a higher proportion of theft, public order and burglary offences than lay benches when compared to the provincial courts. As stated above, these offence types include more offences that are triable either way and could therefore, by definition, be considered more serious. In conclusion, Table 3.5 indicated that the differences between lay benches and District Judges in terms of the number of offences of this type that they dealt with (as highlighted in Table 3.4) was predominantly a reflection of the apparent inequitable distribution of work in the London Court. Therefore, in terms of serious, or potentially serious, cases the greatest discrepancy between District Judges and lay benches was found at the London Court. However, it should be taken into account that only in the London Court did the District Judges deal with a higher proportion of cases overall, than their lay colleagues.

Interestingly however, having reached this conclusion, lay benches at the London Court appeared to deal with a much higher proportion of sexual and violent offences than not only the District Judges in their own court but also the District Judges and the lay benches in the provincial courts. This suggested that the London Court had a higher proportion of these types of offences to deal with overall, than the provincial courts. However, there was an apparent explanation for the large difference between the sexual offences dealt with by lay benches and the District Judges within the London Court. The majority of these offences were soliciting and kerb crawling. The London Court ran a regular specialist court to deal with the outcome of police operations targeting the local red-light areas. One of these courts was observed during the observation period at the London Court.
A closer examination of the court register data revealed that one of these courts, presided over by a lay bench, was included during the period from which the data represented in Table 3.5 was taken. It can be seen from Table 3.5 that the actual number of sexual offences dealt with by lay benches and District Judges at the London Court was fairly similar. The percentage difference appeared large because it was calculated as a proportion of the total number of cases dealt with by lay benches. It was possible therefore that the inclusion of this dedicated soliciting and kerb-crawling court in the court register sample skewed the data in respect of sexual offences to a certain degree.

Offence class was also examined as shown in Table 3.6.

Table 3.6: Total cases heard by lay benches and District Judges by offence class.

<table>
<thead>
<tr>
<th>Offence Class</th>
<th>Lay Benches</th>
<th>District Judges</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
</tr>
<tr>
<td>Triable Either Way</td>
<td>184</td>
<td>35</td>
<td>131</td>
</tr>
<tr>
<td>Summary Motoring</td>
<td>175</td>
<td>34</td>
<td>68</td>
</tr>
<tr>
<td>Summary Non-Motoring</td>
<td>132</td>
<td>25</td>
<td>91</td>
</tr>
<tr>
<td>Indictable Only</td>
<td>21</td>
<td>4</td>
<td>15</td>
</tr>
<tr>
<td>Other</td>
<td>8</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>520</td>
<td>100</td>
<td>315</td>
</tr>
</tbody>
</table>

(Source: Court Registers)

As in Tables 3.4 and 3.5 it was clear from Table 3.6 that lay magistrates dealt with proportionately more motoring offences than District Judges overall. As was also suggested by Tables 3.4 and 3.5 District Judges dealt with a greater share of triable either way offences. However, each dealt with a similar proportion of non-motoring summary offences. Together these results suggested that, although District Judges dealt with a broad range of court work overall, they tended to deal with a higher proportion of the potentially more serious cases than lay benches and less ‘lower end’ court work such as motoring offences. This is in line with previous research findings (Morgan and Russell, 2000:109). However, notable differences were found between the provincial courts and the London Court.
Table 3.7: Total cases heard by lay benches and District Judges by offence class and court.

<table>
<thead>
<tr>
<th>Offence Class</th>
<th>Provincial Courts</th>
<th>London Court</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Lay</td>
<td>DJ</td>
</tr>
<tr>
<td></td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>Triable Either Way</td>
<td>171</td>
<td>36</td>
</tr>
<tr>
<td>Summary Motoring</td>
<td>165</td>
<td>35</td>
</tr>
<tr>
<td>Summary Non-Motoring</td>
<td>108</td>
<td>23</td>
</tr>
<tr>
<td>Indictable Only</td>
<td>21</td>
<td>4</td>
</tr>
<tr>
<td>Other</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>473</td>
<td>100</td>
</tr>
</tbody>
</table>

(Source: Court Registers)

The data shown in Table 3.7 reflects the differences between the patterns of offence type dealt with by District Judges and lay benches in the provincial courts and the London Court, as highlighted by Table 3.5. Table 3.7 demonstrates that, in the London Court, there was a significant difference in the share of summary motoring cases dealt with by District Judges. However, there was an even more patent difference between the provincial courts and London Court in the handling of triable either way cases. The data for the provincial courts indicated that, as a proportion of their overall caseload, lay benches and District Judges dealt with approximately equal amounts of triable either way cases. However, in the London court, triable either way cases made up a considerably greater proportion of the caseload of District Judges compared to lay benches (71% and 28% respectively) and motoring offences a significantly lesser proportion (4% and 21% respectively). District Judges in the London Court also dealt with all the indictable only offences recorded, although it was appreciated that only a small number of such cases were recorded.

In comparison, the District Judges in the provincial courts appeared to have a more balanced caseload overall. In particular they dealt with a much higher share of the summary non-motoring cases than their colleagues in London; and indeed a significantly greater share than lay benches in the provincial courts. Lay benches in the London Court appeared to spend a much higher proportion of their time on non-motoring summary cases compared to their lay colleagues in the provinces, who spent more time on motoring offences.
Therefore, in comparison to their provincial colleagues, the judicial work of the District Judges at the London Court appeared to be less evenly spread across the full range of offence type and class. The pattern of the types of cases they dealt with showed the greatest divergence between what are commonly deemed 'more serious' and 'less serious' types of case. Although the apparently identical listing in courtroom numbers one and two of the London Court supported the premise of Seago et al (1995) that, in London, the work of District Judges and lay magistrates is more or less analogous, the pattern of offence class they handled, as indicated by the findings of this study, does not. This therefore suggested that there were in place in the London Court differential work allocation practices between the District Judges and the lay magistrates. That this was the case was supported by the apparent discontent of the lay magistrates at the London Court with the current division of labour. Nearly all of lay magistrates canvassed at the London Court (80%, n=16) felt that they wanted a greater influence in the work they were allocated. As one London Court lay magistrate commented on his/her questionnaire:

Many of us would like more input into the allocation of courts and cases as this might help counter the uneven allocation of work between us and the stipendiary magistrates.

This was despite the comment of a District Judge at the London Court in interview that:

As far as I know guidelines about the allocation of particular sorts of work are drawn up in full consultation with the Chairman of the lay bench.

This comment is all the more surprising considering that there was no explicit or official court policy for the allocation of work between District Judges and lay magistrates at the London Court. It could also be argued that the origin of the apparent differential in the allocation of cases in the London Court could be the higher number of District Judges that sit in London courts. If this was the case then, given the continuing growth in the number of District Judges in the provincial courts, it appears inevitable that a similar disparity will emerge in the provinces, leading to a further sense of marginalisation among the lay magistracy.
Summary

The data relating to the general work patterns of lay magistrates and District Judges suggests that District Judges dealt with a broad range of court business in all three courts (with the exception of fine enforcement and licensing).\(^{13}\) However, it was also clear that there were differences in the proportions of types of cases dealt with by lay benches and District Judges. These differences were the most pronounced in the London Court, despite the absence of any formal work allocation policy in the court. It was suggested that could be indicative of informal work allocation practices that 'favoured' the District Judges and that such practices may have developed as a result of the larger number of District Judges presiding within the London Courts. The division of labour between lay magistrates and District Judges in the provincial courts appeared, from this data, to be more evenly balanced.

However, as Morgan and Russell (2000:28) rightly point out these figures tell us little about the nature of appearances dealt with by lay benches and District Judges. Moreover, although the level of seriousness and complexity was implicit in the concerns expressed of the lay bench, their grievances were mainly centred on the type of work they perceived was being inequitably allocated. Therefore the following section will draw on the data above but focus on the types of work that formed the core of the lay magistrates' 'cherry picking' concerns, namely remand work and sentencing. In each case the basis of the lay magistrates' complaints is outlined first. This will be followed by an assessment of whether their perception was grounded in the reality of the work undertaken by lay magistrates and District Judges and also whether this reality reflected the local allocation policy at the three courts (where one existed). Where any gaps between official policy and reality were identified, possible reasons for the discrepancies were explored. Finally, the issue of seriousness and complexity will be returned to and some overall conclusions drawn about the root cause of the lay magistrates' discontent.

\(^{13}\) In all three courts 100% of District Judges claimed to never or rarely deal with licensing or fine enforcement.
Remand Work

A reduction in the amount of remand work was the most common area in which lay magistrates expressed the view that the presence of District Judges had negatively affected their workload. This view did not appear to be reflected in the responses to the questionnaire. When both lay magistrates and District Judges were asked to assess how often they had engaged in this type of work over the last six months, all of the District Judges stated that they undertook remand work “very often” and over three-quarters of the lay magistrates (76%, n=74) considered that they undertook adult remand work “often” or “very often”. In addition, the majority of the court clerks considered that lay magistrates and District Judges undertook approximately equal amounts of remand work (70%, n=14).

However, it was important to draw some distinctions between different types of ‘remand work’. This was something that, on reflection, the design of the questionnaire had failed to do. Previous research has found that, in practice, the majority of remand ‘decisions’ are the end result of informal rather than formal processes. This has been demonstrated by the high number of uncontested remand hearings, the particulars of which have been agreed by the prosecution and defence beforehand and require only a “rubber-stamping” exercise on the part of the judicial decision-maker (Hucklesby, 1997).

From the interviews it was clear that the lay magistrates’ complaints did not refer to this type of remand work. It was apparent that they were referring to contested remand hearings. That is situations where a remand in custody was applied for by the Crown and challenged by the defence; or where the defence applied for a variation in bail conditions that was objected to by the Crown. These situations required the judicial decision-maker/s to consider conflicting submissions, leading to a tangible ‘decision’. Contested remand hearings were therefore regarded as more complex and, furthermore, to involve the actual exercising of judicial power. For example, as these lay magistrates commented in interview:
To be honest a lot of the work we do is a bit dull really... it doesn’t take much mental agility... you become a lay magistrate because you want to play a part in the community and make decisions that have an actual effect on that community... we have all this power but more often than not we end up messing about, adjourning things, fining people for not having a TV licence or car tax or whatever... all these things are important and have to be done but sometimes I wish the work was more...well more challenging I suppose.

(Lay Magistrate, Provincial Court II, Interview Transcript)

I myself would say a lot of my colleagues tend to feel like we miss out on the opportunities to make real decisions in favour of putting that kind of work the way of the stipes... the kinds of decisions that are more difficult and involve real scrutiny... decisions that have a real consequence.

(Lay Magistrate, London Court, Interview Transcript)

The findings of previous research have demonstrated that contested remand work is atypical.

In only a small proportion of cases, where the prosecution and defence were in dispute, when contested bail applications were made, did the magistrates play a decision making role.

(Hucklesby, 1997:272)

The rarity of contested remand hearings perhaps explained why any real or perceived domination of District Judges in this area of work would give rise to objections on the part of the lay magistrates. It could further be argued that contested remand hearings tended to occur where there was a higher degree of seriousness with an accompanying higher degree of risk to the public, giving rise to a more complex set of considerations for the decision-maker. The comments of the lay magistrates from Provincial Courts I and II during the interviews suggested that they equated ‘seriousness’ with remand hearings involving defendants who were in custody. Their complaints with respect to a lack of remand work appeared to be focused on a comparison between the amount of time they and District Judges spent sitting in the “main” remand court – which in both provincial courts was courtroom number one. Courtroom number one in both courts had a secure dock and therefore would be more likely to deal with cases
where a defendant was already remanded in custody. As one lay magistrate at Provincial Court II stated, “We mere mortals never sit in courtroom one anymore.” A lay magistrate from Provincial Court I observed:

Most of us notice that a stipe is always in court one... I cannot remember the last time that I sat in the remand court, I sat once in number two court for an additional remand a few weeks ago, but I never seem to get to go in the main remand court or court number one at any other time come to think of it...

(Lay Magistrate, Provincial Court I, Interview Transcript)

Furthermore, one lay magistrate at Provincial Court I felt that the bench as a whole had been misled about the proposed role of the District Judges, prior to their appointment:

... they went out of the way to assure us that the stipendiaries would take a core division of the work, in other words they wouldn’t only sit in the remand courts, but they would take an even share of all the courts that we were doing. And people believed that at the time... it didn’t happen. Have you looked at the court rota? Who sits in court one every day in this building?

(Lay Magistrate, Provincial Court I, Interview Transcript)

Therefore, it would seem that there were two, interrelated, limbs to the lay magistrates complaints in respect of the allocation of remand work. First, a reduction in the number of contested remand hearings and, second, a reduction in remand hearings involving defendants in custody in particular. By definition of course, contested hearings and ‘custodial’ remand hearings were perceived by lay magistrates to involve the most serious offences. They therefore concerned the application of judicial responsibility, where the demands of due process and the protection of the public needed to be balanced.

The court registers at all three courts recorded very limited information about bail decisions. The type of information they recorded also differed between courts. It was not recorded in any of the registers whether or not a bail application had been

---

14 It should also be noted that courtroom number one in both courts tended to deal with defendants who had been previously remanded into custody by the court, rather than by the police as an “overnight remand”. The distinction between these two sorts of ‘custodial’ remand work is discussed later in this section.
"contested." Entries in the registers at all three courts normally recorded what the bail situation was at the conclusion of the hearing (i.e. conditional bail renewed, unconditional bail granted, remanded in custody) and whether or not there had been a "full application." An entry in the register that there had been a "full" bail application indicated only that the issue of bail had been 'live' at the hearing - that an application had been made orally for the consideration of the bench.

In light of the limited information available from the court registers, it was decided to rely, in the main, on the more detailed observational data in considering remand work. A total of 470 cases were observed across all three courts. Table 3.8 shows the number of bail decisions taken by lay benches and District Judges at each court following a formal bail application and the number of these that had been contested.

Table 3.8 Bail Decisions taken by lay benches and District Judges at each Court.

<table>
<thead>
<tr>
<th></th>
<th>Provincial Court I</th>
<th>Provincial Court II</th>
<th>London Court</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Lay</td>
<td>DJ</td>
<td>Lay</td>
<td>DJ</td>
</tr>
<tr>
<td>Bail decisions</td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>after formal</td>
<td>17</td>
<td>23</td>
<td>22</td>
<td>32</td>
</tr>
<tr>
<td>application.</td>
<td>15</td>
<td></td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Bail decisions</td>
<td>8</td>
<td>11</td>
<td>9</td>
<td>6</td>
</tr>
<tr>
<td>after a contested</td>
<td>6</td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>application.</td>
<td></td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Bail decisions</td>
<td>9</td>
<td>2</td>
<td>13</td>
<td>9</td>
</tr>
<tr>
<td>after an uncontested</td>
<td>9</td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>application.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Cases</td>
<td>73</td>
<td>100</td>
<td>144</td>
<td>100</td>
</tr>
</tbody>
</table>

(Source: Court Observations)

Table 3.8 shows that only 16% (n=77) of the observed cases dealt with by lay benches and District Judges involved the consideration of bail following a formal bail application. Overall, bail decisions following a formal application were taken in just over one-quarter (28%, n=43) of all the cases dealt with by lay benches and one-tenth (11%, n=34) of all cases dealt with by District Judges. Therefore, as a

---

15 The term "formal bail application" was used to denote a hearing where the lay bench or District Judge specifically considered the issue of bail, as opposed to a hearing where there were no representations in respect of the bail situation of the defendant and the bail was just renewed as it stood. However, as the table shows this did not always mean that the application was contested. The data indicated that formal applications that were uncontested usually involved the defence asking for a variation in bail conditions, to which the CPS did not object.
proportion of their overall caseload across all three courts, lay benches dealt with a greater number of formal bail applications, than District Judges.

In the provincial courts, over one-quarter (27%, n=39) of all the cases dealt with by lay benches involved the consideration of a formal bail application. This was in comparison to one-tenth (11%, n=28) of all the cases dealt with by District Judges in the provincial courts. Therefore, over the period of time during which the observations were undertaken, lay benches at the provincial courts took proportionately more bail decisions following a formal application than the District Judges. Of the District Judges at all three courts, those in Provincial Court I dealt with the highest proportion of formal bail applications. Given the prevalence of remand courts in the District Judges’ rota at this court, this finding was not unexpected.

Just over half of the remand hearings observed at all three courts were contested (53%, n=41). Lay benches dealt with over half of these (56%, n=23). As a proportion of all the cases they dealt with, contested remand hearings accounted for 15% (n=23) of the work undertaken by lay benches and 6% (n=18) of the work of the District Judges. The small number of remand hearings observed in the London Court made it difficult to draw any reliable conclusions. However it was noted that, in comparison to the provincial courts, nearly all of the remand hearings observed in the London Court were contested.

These findings suggested that, in the provincial courts at least, the first ‘limb’ of the lay magistrate’s complaint in respect of remand work was misconceived or exaggerated. As opposed to District Judges dominating this kind of work, lay benches appeared to be handling a higher proportion of contested remand work than the District Judges, in the context of their overall caseload. However, the complaint of the lay magistrates went beyond merely relinquishing a share of the ‘serious’ remand work to District Judges. The question remained whether there was any foundation in reality to the perception that District Judges ‘creamed off’ or were purposely allocated the ‘majority’ of this type of remand work. One

---

16 This finding is considerably higher than the 9% found in previous research (Hucklesby, 1997:271). However, Hucklesby’s 1997 study focused on the practical operation of the Bail Act and therefore only remand hearings were observed. The number of remand hearings observed in the current study was significantly smaller.
explanation might have been that this was no more than a popular misconception among the lay bench, a possibility that was fully acknowledged by some lay magistrates and their legal advisers in interview. For example, the Deputy Clerk to the Justices at Provincial Court I felt that the lay bench had, “become convinced that the stipendiaries are doing what they’re not doing” and another court clerk stated:

the complaint is that the stipes get to sit in courtroom number one all the time and take the most interesting cases, but that’s not the case it’s just their perception... and one they are happy to perpetuate among themselves.

(Court Clerk, Provincial Court I, Interview Transcript)

This view was echoed by the Deputy Chairman of the lay bench:

I fear that we as magistrates have some wrong perceptions; you know they have persuaded themselves beyond reality sometimes.

(Deputy Chairman of the lay bench, Provincial Court I, Interview Transcript)

One lay magistrate suggested an explanation as to how these impressions may have pervaded the lay bench:

... it’s mostly a perception but there’s no proof, it’s just the way people feel at the time... a group of three people who have been sat in a courtroom during the morning, a trial has collapsed and they’ve spent the entire time picking up bits and pieces and a lot of time in the retiring room... there’s a feeling that your time is being wasted and then it starts “I bet the stipes don’t have to operate like this” so it’s really at the level of feeling a bit fed up because you’ve given up your time and it’s been boring and tedious and you wish you had something more interesting to do, and it’s at that point that comments come out about stipes.

(Lay Magistrate, Provincial Court I, Interview Transcript)

In order to fully examine the origin of the lay magistrates’ perception, it was important to examine the observation data further by addressing the second limb of their complaint – seriousness. In particular the nature and extent of ‘custodial’ remand hearings, with particular reference to the ‘main’ remand courtrooms in the provincial courts.
'Custodial' Remand Hearings

Of the 77 remand hearings observed at all three courts nearly half (47%, n=36) resulted in the defendant being remanded into custody. Over two-thirds of remands into custody followed a contested remand hearing (69%, n=25). This accounted for nearly two-thirds of all the contested remand hearings (61%, n=25). An examination of the types of offences where defendants were remanded into custody following a bail application demonstrated that they tended to be the more serious offences. Of the 36 appearances where a defendant was remanded in custody following an application for bail, three-quarters (75%, n=27) were alleged to have committed triable either way offences. The majority of these were burglaries. Indictable only offences were the next largest group (n=4). Three summary motoring offences were also included. These were all for driving under the influence of alcohol or driving whilst disqualified – clearly the serious end of the summary motoring offence scale.

Proportionately, across all three courts, about half of the remand hearings dealt with by lay benches resulted in a remand in custody (49%, n=21). Nearly three-quarters of these were contested remand hearings (71%, n=15). A slightly smaller proportion of the remand hearings dealt with by District Judges resulted in a remand in custody (44%, n=15). Two-thirds of these were contested (66%, n=10). To this extent therefore, lay benches and District Judges dealt with a fairly equivalent share of the observed remand hearings, contested and uncontested, resulting in a remand in custody. Furthermore, as a proportion of all the cases observed, remands in custody following a bail application accounted for a higher proportion of the cases dealt with by lay benches than District Judges; 14% (n=21) and 5% respectively. Thus far there seemed to be little support for the lay magistrates’ contention that District Judges took a greater share of this work.

However, it is crucial to note the distinction between lay benches and individual lay magistrates. This distinction, it is argued, is fundamental to any consideration of the allocation of judicial work between lay magistrates and District Judges. The data indicated that lay benches at the provincial courts took a largely equivalent, if not greater, share of ‘serious’ remand work as District Judges. Nonetheless, these equivalent shares of work themselves were not being shared equally among lay magistrates and District Judges. For example, the lay bench at
Provincial Court I was made of up of several hundred individual lay magistrates and there were two full-time District Judges and five part-time Deputy District Judges. Before any full or part-time District Judges were appointed at this court, lay magistrates would have dealt with all of the remand work. Therefore although the data gleaned for this study indicated that lay benches undertook a similar share of the more ‘serious’ contested remand work as the District Judges, the inevitable deduction is that individual lay magistrates must have been doing less of this type of work than prior to the appointment of any District Judges. Add to this the explicit policy, like that at Provincial Court I, of allocating a District Judge to the main remand court for at least one session per day and it is entirely possible to see how the perception that District Judges dominated this area of work could take root. Therefore an equivalent share overall translated into a much greater individual share of ‘serious’ remand work for District Judges when compared to lay magistrates. In order to trace the roots of the lay magistrates’ perception further, the types of custodial remand hearings dealt with by lay benches and District Judges were examined in more detail, particularly in the provincial courts.

As alluded to earlier in this chapter, ‘custodial’ remand hearings fell broadly into two main categories. First, those where the defendant appeared in custody having previously been remanded by the court. It was considered that these cases were likely to be deemed the most serious or represent the most risk, either in respect of offence type or offender characteristics.17 Second, those defendants who appeared from police custody having been detained by the police, usually overnight. In this latter category defendants could have been arrested for a fresh offence or in pursuance of a warrant, either in respect of an alleged breach of bail conditions or perhaps a failure to appear in court. It has already been mentioned above that, at both provincial courts the “main” remand courtroom was courtroom number one and it was in this courtroom in particular that the lay magistrates appeared to feel as if they rarely presided, compared to the District Judges.

17 Of course a defendant could also have been remanded in custody because no suitable accommodation could be found for them at the time of the previous court hearing.
Provincial Court I

At Provincial Court I, scheduled remand hearings were generally listed to be heard in the ‘main’ remand court (courtroom number one) in the morning. There was also an “additional remand court” held in courtroom number two, usually in the afternoons. Overall, 15 court sessions were observed in these dedicated remand courts; nine morning sessions in the “main” remand court and six afternoon sessions in the “additional” remand court. Of the 39 formal bail applications observed at Provincial Court I, the vast majority were heard in the “main” remand court (84%, n=33). Of the 15 contested remand hearings observed at Provincial Court I, the majority (80%, n=12) were also heard in the “main” remand court.

The data demonstrated that the main remand court at Provincial Court I tended to deal with cases where the defendant had previously been remanded into custody by the court and were ‘produced’ from prison for their court appearance. This was presumably due to the higher degree of security needed for defendants being produced from prison being satisfied by the presence of a secure dock. Of the 33 remand hearings observed in courtroom number one, nearly two-thirds of defendants appeared in custody, having previously been remanded by the court (64%, n=21). A further eight defendants were in police custody following their arrest on a warrant.

As was to be expected, in view of the District Judge’s rota, the majority of the court sessions observed in the main remand court were presided over by District Judges (six sessions as compared to three presided over by a lay bench). It was not therefore surprising to find that of the 71 cases observed in courtroom number one overall, over three-quarters were dealt with by District Judges (80%, n=57), including 19 of the 33 formal bail applications heard in this courtroom and 8 of the 12 contested bail applications. Also, over three-quarters of the contested bail applications dealt with by District Judges in courtroom number one resulted in a remand in custody (75%, n=6). In comparison lay benches dealt with four

---

18 On some occasions “additional remands” were dealt with in both courtroom numbers one and two in the afternoons. These “additional remand” courts did not have a formal “list”. They dealt with cases that were left over from the morning session. These tended to be cases that the morning court had simply not managed to get to before lunch or sometimes a defendant had not arrived in time from prison.
contested remand hearings in courtroom number one where the defendant had appeared in custody. All of these were remanded back into custody.

Therefore, it would appear from the observations that, in line with the official work allocation policy, District Judges did dominate the "main" remand court and that the greater part of the remand hearings dealt with in this courtroom involved defendants who had already been remanded into custody by the court on a previous occasion, contested bail applications and remands into custody. However, it should be noted only 33 of the cases observed in courtroom one overall involved a formal bail application and only 12 of these were contested. Therefore of all the cases dealt with in courtroom one, only just under one-fifth (17%, n=12) involved a contested remand hearing. As was mentioned at the start of this chapter, contested remand hearings are uncommon in magistrates' courts. It was clear from the observations that in Provincial Court I, the bulk of these were allocated to and heard in the "main" remand court where District Judges were undoubtedly a dominant presence. It appears that this was sufficient to fuel the lay magistrates' impression that they were being marginalised from the serious remand work – even though this type of work was, in itself, scarce.

On the other hand, all of the six sessions observed in the "additional" remand court were presided over by a lay bench. Although lay benches appeared to dominate the "additional remand" court the majority of cases dealt with in this court could have been considered to be of lesser seriousness. They were mainly uncontested applications for defendants in police custody (the majority of which resulted in unconditional bail) or overnight remand cases where the defendant pleaded guilty and there was no application for bail at all. It cannot be argued that this was the result of an implicit allocation policy which ‘favoured’ District Judges, as was suspected by those lay magistrates who expressed a grievance in respect of a lack of ‘serious’ remand work. This is because it was an explicit court policy to allocate District Judges to the "main" remand court for a considerable number of court sessions per week. However, it could be argued that the "additional" remand court was imbued with sense of being there to deal with ‘left overs’ from the more serious remand work. It carried no official court list because it effectively dealt with the "surplus" work from the "main" remand court. This meant that it dealt with a high proportion of "overnight" police remands as
described above. This argument was further supported by the pattern of work allocation in the two dedicated remand courts in Provincial Court II, to which we now turn.

Provincial Court II

As in Provincial Court I, the main remand court at Provincial Court II was in courtroom number one. However, unlike Provincial Court I there was no official policy of allocating District Judges to this court. In addition to the “main” remand court in Provincial Court II, there was a court that dealt with overnight remands from the police station (courtroom number 6). This court was officially called “New Business Custody Cases”

The lack of any official policy with regard to the “main remand” court appeared to be reflected in the observation data which tended to show that District Judges and lay benches dealt with an equivalent share of court sessions and contested remand hearings in courtroom number one. Of the four court sessions observed in courtroom number one, District Judges dealt with two and lay benches two. Two-thirds (64%, n=18) of the 28 bail applications observed were heard in courtroom number one, 10 of which were contested. Three contested hearings were dealt with by District Judges and seven by lay benches. As in Provincial Court I the majority of defendants appearing for a remand hearing in courtroom one had already been remanded in custody by the court and the majority were remanded back into custody. There appeared to be no significant differences between the work of lay benches and District Judges in this courtroom that would indicate an unofficial policy of allocating ‘serious custodial’ remand work to District Judges.

However, the observation data relating to the “New Business Custody Cases” court demonstrated a clear unofficial allocation policy. Like the “additional remand” court in Provincial Court I, this court was usually presided over by a lay bench. Five sessions were observed in this court and it was presided over by a District Judge only once. This court was particularly busy, especially on Monday mornings where the police had made several arrests over the weekend. It was also observed that the court tended to be ‘slow’; mainly because solicitors had to visit

19 This court also tended to deal with defendants who had breached their bail conditions and had been arrested.
clients in the cells. A total of 42 cases were dealt with over these five sessions, only 10 of which involved a formal bail application; this was because the majority of the defendants pleaded guilty and were sentenced immediately, mostly for minor matters of public order. Of the 10 bail applications dealt with by a lay bench in this court, half were contested (50%, n=5). All of these were in respect of defendants that had been arrested on a warrant. Of those that were uncontested all resulted in the granting of unconditional bail. This mirrored in some respects the allocation of lay magistrates to the "additional remand" court in Provincial Court I. Both courts tended to deal with overnight remands and uncontested applications resulting in unconditional bail. As previously suggested, it could be argued that this type of remand work would be considered less serious and it was clear that this type of remand work at both provincial courts was being allocated to lay magistrates, not District Judges.

Support for this argument was found during an informal discussion with an usher at Provincial Court II, while observing the "New Business Custody Cases" court. The usher stated that, because of the high volume of cases, the ushers and court clerks had pressed for a District Judge to be allocated to the court. However, their request had been "refused" and had caused some considerable resentment. According to the usher the "general feeling" was that it was "ridiculous" to allocate a lay bench to this court. Therefore, although there appeared to be little difference between the quantity of 'serious custodial' remand work allocated to lay benches and District Judges at Provincial Court II, there was clearly a discrepancy in the allocation of the less serious custodial remand work. It was not clear from the discussion with the usher exactly who had refused the requests for a District Judge to be allocated to the "New Business Custody Cases" court or the reasons why the request was refused. However, given the heavy listing in this court it was apparent that pragmatism was not the major consideration. Either this type of remand work was considered unsuitable for the professional skills of District Judges or there was concern that the lay magistrates would consider the allocation of this court to a District Judge as a further attempt to marginalise them from 'custodial' remand work, even of the less serious variety.
Summary

District Judges and lay benches across all three courts dealt with an equivalent share of remand hearings overall. However, when this work was examined in more detail, it was found that the complaints of the lay magistrates with regard to the dominance of District Judges of the more serious remand work were not without foundation. There was a clear distinction in both provincial courts between different types of ‘custodial’ remand work, and lay magistrates in both courts were invariably allocated to deal with ‘overnight’ remands and defendants in police custody as opposed to defendants previously remanded by the courts. The observation data indicated that the remand hearings in the former type of ‘custodial’ remand work were more likely to feature less serious offences, uncontested bail applications and guilty pleas.

There was also evidence that pragmatism was not the first consideration in the allocation of remand work to lay magistrates and District Judges. The courts were not overwhelmed with contested remand hearings or with formal remand hearings generally. It was clear that many of the cases heard in courtroom one at Provincial Court I did not involve a bail application at all. Therefore, as far as Provincial Court I was concerned there was no apparent benefit, in terms of efficiency, of allocating District Judges to the “main” remand court so often. The consideration might therefore have been a legal one: perhaps District Judges were considered the best qualified in terms to deal with what few ‘serious’ contested remand hearings there were, particularly custodial ones. There was however a third possibility. The discussion with the usher at Provincial Court II and the tendency of both provincial courts to allocate ‘less serious’ remand work to lay magistrates suggested that it was the status of District Judges as ‘legal professionals’ - rather than their legal skill or considerations of pragmatism – that lay behind allocation decisions.

Finally, it was important to note that even if District Judges and lay benches appear to deal with an approximately even share of a particular type of work; this has the inevitable consequence of a reduction in the amount of that work for individual lay magistrates. It is therefore inevitable that the perception among lay magistrates that they are being marginalised from serious remand work can only
burgeon as the number of District Judges increases; assuming the current allocation policy is sustained.

**Sentencing**

This section will examine the sentencing work of District Judges and lay magistrates at each of the three courts. A reduction in sentencing work was the second most popular complaint of the lay magistrates who considered that the scope of their work had been negatively affected by the presence of District Judges. The writers of the Venne Report (1996) were clearly reconciled to the fact that sentencing was one of the areas in which District Judges would inevitably come to dominate:

> In many courts the Stipendiary or Stipendiaries will deal with a disproportionately large amount of sentencing. This is inevitable given that they will be sitting much more frequently than their lay colleagues.

(Lord Chancellor’s Department, 1996:13)

Of the 835 cases recorded from the court registers, 266 involved a sentencing decision. Table 3.9 below shows how these 266 sentencing decisions were distributed between lay benches and District Judges at each of the three courts.

**Table 3.9: Number of Sentencing Decisions taken by lay benches and District Judges at each Court.**

<table>
<thead>
<tr>
<th></th>
<th>Provincial Court I</th>
<th>Provincial Court II</th>
<th>London Court</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Lay n</td>
<td>%</td>
<td>DJ n</td>
<td>%</td>
</tr>
<tr>
<td>Number of Sentencing Decisions</td>
<td>95</td>
<td>35</td>
<td>41</td>
<td>33</td>
</tr>
<tr>
<td>All Cases</td>
<td>274</td>
<td>100</td>
<td>126</td>
<td>100</td>
</tr>
</tbody>
</table>

(Source: Court Registers)

Table 3.9 shows that, overall, and in each court, lay benches took a greater share of sentencing decisions as a proportion of all the cases they dealt with, than District Judges; 34% (n=176) and 29% (n=90) respectively. In both provincial courts the proportional difference between lay benches and District Judges was small. Sentencing accounted for about one third of the overall caseload of both lay
benches and District Judges. In the London Court however, lay benches took a similar proportion of sentencing decisions as their provincial colleagues, but District Judges took significantly fewer sentencing decisions, as a proportion of their overall caseload than both lay benches at the London Court and the District Judges in the provincial courts. Therefore, despite the assumption expressed in the Venne Report, it appeared that a similar proportion of sentencing decisions were being taken by lay benches and District Judges in the provincial courts and that in the London Court lay benches were dealing with a higher proportion than District Judges. Consequently, in light of this finding the question to be considered was why lay magistrates felt marginalised from sentencing work.

Notwithstanding the argument (discussed already in relation to remand work) concerning the implications of largely equivalent shares of a particular type of work for individual lay magistrates, it is suggested that the explicit policies of the two provincial courts of allocating District Judges to 'dedicated' sentencing courts must have contributed to this perception. It is argued that, like remand work, the grievance expressed by the lay magistrates was related to notions of seriousness, rather than all sentencing per se. In order to place any analysis of seriousness into context it was necessary to determine whether lay benches and District Judges were passing sentences where the level of ‘case seriousness’ was comparable. Therefore, the data in Table 3.9 was examined further in order to establish whether District Judges were, in reality, dealing with the “more serious” sentencing work. This analysis was approached in two ways. Firstly, the sentencing decisions taken by lay benches and District Judges in the dedicated sentencing courts in the two provincial courts were considered. These courts were designed to cater for adjourned sentencing cases, the circumstances of which had been deemed serious enough to require the preparation of a pre-sentence report. Secondly, the sentences passed by lay benches and District Judges in the context of the class and type of offence committed were examined.

Pre-sentence Reports and Dedicated Sentencing Courts

It has already been noted that at both provincial courts there were dedicated sentencing courts specifically allocated to District Judges. Of the 66 court sessions observed across all three courts for the present study just over one fifth (21%, n=14) were ‘dedicated’ sentencing courts. Nearly three quarters of these (71%,
n=10,) were presided over by District Judges. These sentencing courts accounted for nearly one quarter (24%, n=41) of all the court sessions observed that were presided over by a District Judge. This is in comparison to sentencing courts accounting for less than one fifth (16%, n=25) of the observed work of lay benches. The vast majority of the cases listed in these courts were adjourned sentencing cases, meaning that they had previously been ‘put off’ for the preparation of a pre-sentence report. The fact that a pre-sentence report had been requested was indicative of the previous bench’s inclination towards either a community or custodial sentence and therefore was a reasonably useful measure of offence seriousness.

Of course sentencing decisions were not taken only within courts purposely designated for them. They also occurred often within plea and mixed business courts and early first hearings, typically following guilty pleas for less serious offences that were not considered to require the preparation of a pre-sentence report. Arguably, a consequence of allocating District Judges to the ‘adjourned’ sentencing courts was that they tended to pass the sentences that were at the higher end of the tariff, which possibly accounted, at least partly, for the commonly held view and research suggesting that District Judges sentence more harshly than lay magistrates (Diamond, 1990). However, it was appreciated that the reasons for the preparation of a pre-sentence report were also based on individual facts in each case and the circumstances of the defendant and therefore it was by no means an exact gauge of the level of seriousness. It was also important to note that it was possible that in the most serious cases a lay bench or District Judges might decide not to order a pre-sentence report and proceed to sentence immediately on conviction or the entering of a guilty plea. Previous research suggests that District Judges are much more likely to take this course than a lay bench (Charles, Whittaker and Ball, 1997).

Therefore adjourned sentencing cases inevitably carried a nuance of gravity. The pre-sentence report courts allocated to District Judges at both provincial courts were also particularly heavily listed. This was explicit in the case of Provincial Court I where the very name of the “double sentencing” court made this clear. This title also conveyed a sense of “exclusivity” in respect of this court – it was most clearly considered the “District Judge’s Court”. In Provincial Court II the
pre-sentence report court was not exclusively allocated to District Judges, but it was clearly stated on the court rota that twice as many cases were listed on the days when District Judges were allocated to the court. Lay magistrates at both provincial courts could therefore be forgiven for believing that District Judges were allocated more sentencing work than they were and, in addition, more sentencing of the ‘serious’ cases that required the preparation of a pre-sentence report.

The court registers at all three courts recorded whether a sentence had been passed following the preparation of a pre-sentence report. It was therefore possible to collate data from the court registers regarding the number of sentencing decisions taken by lay benches and District Judges at each of the three courts following the preparation of a report.

Of the 266 sentencing decisions made at all three courts, just over one-quarter followed the preparation of a pre-sentence report (27%, n=73). Nearly half of these reports were prepared for motoring offences (44%, n=32). The next largest offence group was theft (21%, n=15) followed by offences against the person (16%, n=12). Overall, when compared to lay benches, a significantly higher proportion of the sentencing decisions taken by District Judges were taken following the preparation of a pre-sentence report. Nearly half of the sentencing decisions taken by District Judges followed the preparation of a report (40%, n=36) compared to one-fifth of those taken by lay benches (21%, n=37). This finding suggested that District Judges tended to sentence more of the more serious cases.

Despite their similar policy with regard to the allocation of heavily listed pre-sentence report courts to District Judges, the data demonstrated a significant difference between the two provincial courts. At Provincial Court I there was a large discrepancy between the proportion of sentencing decisions taken by lay benches and District Judges, following the preparation of a pre-sentence report; 16% (n=15) and 37% (n=15) respectively. This finding reflected the inclusion of the “double sentencing” courts in the District Judge’s rota at Provincial Court I and perhaps gave credence to the complaints of the lay magistrates at this court in respect of a reduction in the amount of ‘serious’ sentencing work. The Deputy
Clerk to the Justices at Provincial Court I identified a reduction in sentencing work as a particular cause of justified discontent among lay magistrates:

...they complain that District Judges are doing more sentencing than they are which is, in actual fact, true. But the fact is they’re here full-time aren’t they? It would be very poor management not to take advantage of that resource.... They can read reports in advance of the court unlike lay magistrates who have to go in cold, as it were.

(Deputy Clerk to the Justices, Provincial Court I, Interview Transcript)

The District Judges themselves fiercely defended this particular aspect of the allocation policy:

... what we regard as fairly *sacrosanct* is our sentencing courts; we do a lot of pre-sentence reports in those. I think sometimes we get through as many as twenty or twenty-two PSRs in that one court which is a lot, but obviously we can get through those and I mean that’s rather a *specialist* role in terms of the amount we get through.

(District Judge, Provincial Court I, Interview Transcript)

These two comments revealed the reasoning behind why these sentencing courts had been devised especially for allocation to the District Judges at Provincial Court I. It was clear that their ability to get through a large number of pre-sentence report cases quickly was at the heart of the allocation policy in respect of sentencing. It was apparent that this assumption arose from the full-time nature of the District Judges’ role, which afforded them the opportunity to be given and read pre-sentence reports in advance of the court. This enabled them to acquaint themselves with the case and form a view on the appropriate sentence. This inevitably meant that District Judges were able to shorten the time needed in court to deal with each case by giving the prosecution and defence an indication of their view and directing them to address them only on points that the District Judge considered relevant. On the other hand, lay benches did not have the benefit of this advance preparation. When the necessity of consultation and perhaps legal advice was added to this, lay benches were predictably considered able to dispose of fewer sentencing cases per session than District Judges. There was no mention of this type of sentencing work requiring a high degree of legal skill on account of the higher degree of seriousness. It was essentially a pragmatic exercise and one
that that this District Judge, at least, viewed as an ideal opportunity for them to make a contribution to getting the work of the court done. This policy therefore reflected the assumption of the Venne Report, as outlined at the beginning of this section. Despite this, several of the lay magistrates both in interview and during canvassing for the questionnaire suggested that the lay bench had been successful in claiming back sentencing work for themselves:

When stipes first sat here they took nearly all of the important sentencing work, but the lay bench has successfully challenged that and now they are not quite so dominant in that area.

(Lay Magistrate, Provincial Court I, Interview Transcript)

Although lay magistrates may have succeeded in partially redressing the previous imbalance, the data as described above demonstrated that, if pre-sentence reports were to be considered a viable measure, a certain degree of disparity still remained. Moreover, the observations at Provincial Court I lent support to the court register data. All of the dedicated sentencing courts observed at Provincial Court I were presided over by District Judges. Unlike Provincial Court II, where lay magistrates were allocated to the sentencing court in the same courtroom on the days when District Judges were not sitting in it, no such provision was in existence at Provincial Court I.

Although there was no ‘exclusive’ sentencing court for District Judges in Provincial Court II, the practice of listing twice the number of cases in the court on a day when a District Judge was presiding was indicative of a similarly pragmatic strategy to that employed at Provincial Court I. However, the data from Provincial Court II indicated that lay benches and District Judges took an identical share of sentencing decisions where a pre-sentence report had been prepared; 60% (n=39 and n=21) respectively. This finding suggested that, beyond the explicit allocation and listing practices in respect of sentencing in this court, there was no evidence of any additional, unofficial listing practice of allocating pre-sentence report cases to District Judges.
In respect of the District Judges at Provincial Court II, the allocation strategy with regard to adjourned sentencing cases did not appear to be regarded as a formal policy by the District Judges themselves. All of the District Judges canvassed at Provincial Court II stated that they were unaware of any local policy in respect of the allocation of work between themselves and the lay magistrates. However, nearly a third (30%, n=9) of the lay magistrates canvassed at Provincial Court II considered that there was a formal policy in place with regard to the allocation of work between themselves and District Judges. This could simply have been a matter of differing ideas of what constituted a ‘formal policy’. Since lay magistrates were also allocated to sit in the same sentencing court in Provincial Court II on some days of the week, it was possible that District Judges did not consider their allocation to this court as amounting to a formal allocation policy. Whatever the reason, in respect of Provincial Court II it is suggested that a significant proportion of the lay magistrates took the contrary view to the District Judges and regarded the allocation of particular sentencing courts to be a formal policy. This could therefore have been the source of their impression that District Judges had more than their fair share of sentencing work. Moreover, when the actual sitting patterns of the District Judges and lay magistrates in Provincial Court II were examined more closely it was possible to identify how this impression may have been fuelled.

Of the cases recorded from the court registers at Provincial Court II, nearly one-fifth (19% n=23) of the total number of cases dealt with by District Judges were dealt with in the dedicated sentencing court. This was compared to only 3% (n=6) of the cases dealt with by lay benches. This finding reflected the fact that the dedicated sentencing courts over which District Judges presided were considerably more heavily listed than those presided over by lay benches. This suggested that a higher proportion of sentencing decisions were taken by District Judges in the dedicated sentencing court compared to lay benches. However, it did not tally with either the findings in respect of pre-sentence reports (as described above) which indicated that the same proportion of lay benches’ and District Judges’ sentencing decisions were made following the preparation of a pre-sentence report. Furthermore, when the lay magistrates at Provincial Court II were asked to assess the frequency of their engagement in sentencing nearly three-quarters (73%, n=22) of lay magistrates claimed they undertook sentencing
‘often’ or ‘very often.’ This appears contrary to the view expressed by some that they have experienced a reduction in sentencing work. An explanation for this may have been that lay benches presided over the majority of Early First Hearing courts where there were, by nature, a large number of guilty pleas, not all of which would require a pre-sentence report and therefore sentencing took place immediately.

In summary therefore, contrary to the view of the lay magistrates at Provincial Court II that their share of sentencing work had been adversely affected by District Judges, a significant number acknowledged by their responses to the questionnaire that they undertook sentencing work regularly. It would appear that the main source for their discontent was the explicit allocation of District Judges to a thrice-weekly dedicated sentencing court that was more heavily listed than their own. In addition the fact that these sentencing courts were designed explicitly for cases where a pre-sentence report had previously been ordered, furnished them with a sense of ‘seriousness’. So, in the eyes of the lay magistrates at Provincial Court II, not only did District Judges have their own sentencing court three times per week, they were sentencing the most serious cases. However, this is notwithstanding the argument pursued earlier in this chapter concerning the distinction that must be drawn between individual lay magistrates and lay benches.

As with remand work, it was difficult to draw any conclusions in respect of sentencing based on the small numbers available from the London Court. The data available reflected that in Table 3.9. A higher proportion of the sentencing decisions taken by lay benches, when compared to those taken by District Judges, were taken following the preparation of a pre-sentence report. One reason for this may have been the different ways in which the court work was organised in the London Court and provincial courts. Unlike the provincial courts, the London Court did not have specific types of work allocated to particular courtrooms on a regular basis. There was therefore no court to which adjourned sentencing cases would be allocated. Instead a mixture of work would be listed in the two main courtrooms, one of which was invariably presided over by a District Judges and the other a lay bench. The limited data available suggested no evidence of any
unofficial practice of allocating adjourned sentencing cases to the District Judge courtroom at the expense of the lay bench courtroom.

It was clear that the explicit policy of both provincial courts of allocating District Judges to courts that were heavily listed with adjourned sentencing cases was based on expeditious considerations, rather than, as the lay magistrates complained, notions of seriousness or legal complexity. However, rather ironically, this pragmatic approach had the inevitable consequence of making lay magistrates feel marginalised from the more serious sentencing work of the court. In Provincial Court I, where the “double sentencing” courts were a central part of the District Judges rota, it undoubtedly reduced the opportunities for lay magistrates to take sentencing decisions in cases where the offence was thought serious enough to warrant a pre-sentence report. Although it did not appear to be reflected in the number of pre-sentence report cases they dealt with, lay benches at Provincial Court II took a much smaller proportion of their sentencing decisions in the dedicated sentencing courts.

**Sentence Passed: Offence Type and Class**

In addition to pre-sentence reports it was possible to assess case seriousness by examining the sentences passed by District Judges and lay benches. However, looking at sentences passed in isolation would be meaningless without controlling for the type and class of offence being sentenced. It was, however, borne in mind that previous research had suggested that District Judges are more likely to pass custodial sentences than lay benches (Diamond, 1990). So, a case of similar facts may attract a custodial sentence from a District Judge when it would not from a lay bench. Therefore, drawing any conclusions in respect of case seriousness on the basis of sentences passed for different offence types and class was approached with a certain degree of caution. Table 3.10 below shows the class of offences for which District Judges and lay benches were passing sentences overall. This is followed by a closer examination of the type of offence and disposals being used by lay benches and District Judges.
Table 3.10: Number of Sentencing Decisions taken by lay benches and District Judges by Offence Class and Court.

<table>
<thead>
<tr>
<th>Offence Class</th>
<th>Provincial Court I Lay</th>
<th>Provincial Court I DJ</th>
<th>Provincial Court II Lay</th>
<th>Provincial Court II DJ</th>
<th>London Court Lay</th>
<th>London Court DJ</th>
<th>Total Lay</th>
<th>Total DJ</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n %</td>
<td>n %</td>
<td>n %</td>
<td>n %</td>
<td>n %</td>
<td>n %</td>
<td>n %</td>
<td>n %</td>
</tr>
<tr>
<td>Summary Motoring</td>
<td>38 40 15 37</td>
<td>24 37 16 44</td>
<td>1 6 0 0</td>
<td>63 36 31 34</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Summary Non-Motoring</td>
<td>25 26 14 34</td>
<td>16 25 12 33</td>
<td>12 75 5 38</td>
<td>53 30 31 34</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Triable Either Way</td>
<td>23 24 12 29</td>
<td>25 38 8 22</td>
<td>3 19 8 62</td>
<td>51 30 28 31</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>9 9 0 0</td>
<td>0 0 0 0</td>
<td>0 0 0 0</td>
<td>9 5 0 0</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Sentences Passed</td>
<td>95 100 41 100</td>
<td>65 100 36 100</td>
<td>16 100 13 100</td>
<td>176 100 90 100</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Source: Court Registers)

Table 3.10 indicates that, on the whole, lay benches and District Judges tended to sentence similar proportions of the various offence classes. At both provincial courts District Judges sentenced a higher proportion of summary non-motoring offences than lay benches. At Provincial Court I District Judges sentenced a slightly higher proportion of triable either way offences than lay benches. However, the opposite was true of Provincial Court II where lay benches sentenced a rather higher proportion of triable either way offences than the District Judges. As before, the small numbers at the London Court meant that it was not appropriate to draw any significant conclusions, although it was noted that, unlike the provincial courts, the lay benches at the London Court appeared to sentence a higher proportion of non-motoring summary offences than the District Judges, while the District Judges appeared to sentence a much higher proportion of triable either way offences. Table 3.11 below shows the sentences passed by lay benches and District Judges for different types of offence.
Table 3.11: Number of Sentencing Decisions taken by lay benches and District Judges by Offence Type and Court.

<table>
<thead>
<tr>
<th>Offence Type</th>
<th>Provincial Court I</th>
<th></th>
<th>Provincial Court II</th>
<th></th>
<th>London Court</th>
<th></th>
<th>Total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Lay DJ</td>
<td>n</td>
<td>%</td>
<td>Lay DJ</td>
<td>n</td>
<td>%</td>
<td>Lay DJ</td>
<td>n</td>
</tr>
<tr>
<td>Motoring</td>
<td>38 40 15 37</td>
<td></td>
<td>24 30 16 44</td>
<td>1 6 0 0</td>
<td></td>
<td>63 36 31 34</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Order</td>
<td>26 27 9 22</td>
<td></td>
<td>10 15 9 25</td>
<td>2 12 3 23</td>
<td></td>
<td>38 22 21 23</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theft</td>
<td>8 8 9 22</td>
<td></td>
<td>17 26 4 11</td>
<td>2 12 6 46</td>
<td></td>
<td>27 15 19 21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theft</td>
<td>8 8 3 7</td>
<td></td>
<td>2 3 4 11</td>
<td>0 0 3 23</td>
<td></td>
<td>10 6 9 10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theft</td>
<td>9 9 1 2</td>
<td></td>
<td>3 5 0 0</td>
<td>1 6 0 0</td>
<td></td>
<td>13 7 1 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property</td>
<td>4 4 10</td>
<td></td>
<td>3 5 1 3</td>
<td>1 6 0 0</td>
<td></td>
<td>8 5 5 6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property</td>
<td>0 0 0 0</td>
<td></td>
<td>0 0 0 0</td>
<td>8 5 0 0</td>
<td></td>
<td>8 5 0 0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property</td>
<td>2 2 0 0</td>
<td></td>
<td>4 6 0 0</td>
<td>1 6 1 8</td>
<td></td>
<td>7 4 2 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Burglary</td>
<td>0 0 0 0</td>
<td></td>
<td>2 3 2 6</td>
<td>0 0 0 0</td>
<td></td>
<td>2 1 2 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Sentence</td>
<td>95 100 41 100</td>
<td></td>
<td>65 100 36 100</td>
<td>16 100 13 100</td>
<td></td>
<td>176 100 90 100</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Source: Court Registers)

Table 3.11 indicates that, compared to lay benches, a significantly higher proportion of the sentences passed by District Judges were for offences of theft. This was perhaps reflected in the fact that District Judges sentenced a higher proportion of triable either way offences at Provincial Court I and the London Court. Of the 27 theft cases sentenced by lay benches, over three-quarters of defendants were dealt with by way of a fine or conditional discharge (78%, n=21). Only one defendant convicted of a theft offence was sentenced to immediate custody by a lay bench. This was for the maximum period for a single count of six months. Of the 19 theft cases sentenced by District Judges, just over one-third resulted in a fine or conditional discharge (37%, n=7). However, in comparison to the lay benches, one-fifth were sentenced to immediate custody (21%, n=4); two were sentenced for eight months, suggesting more than one count. One of these eight month custodial sentences, imposed by a District Judge at the London Court, was imposed without the preparation of a pre-sentence report. There was therefore some evidence to suggest that District Judges tended to deal with the more serious offences of this type.
Table 3.11 shows that, overall, lay benches and District Judges imposed a similar proportion of sentences for motoring offences. However, when the sentences passed were examined, a distinct difference was identified between lay benches and District Judges. Of the 63 motoring cases sentenced by a lay bench, over three-quarters of defendants received a fine (79%, n=50). In four cases (6%) lay benches imposed an immediate custodial sentence, only one of which was imposed without the preparation of a pre-sentence report. Of the 31 motoring cases sentenced by District Judges, nearly half (45%, n=14) were disposed of by way of a fine; a considerably lower proportion than lay benches. One-fifth of the sentences passed by District Judges for motoring offences were immediate custodial sentences (20%, n=6). Four of these six defendants were sentenced to immediate custody without the preparation of a pre-sentence report which was, in itself, suggestive of the fact that they were offences of significant seriousness. In conclusion, although overall District Judges sentenced a similar proportion of motoring offences to lay benches, the pattern of disposals suggested that District Judges tended to deal with a higher proportion of the more serious motoring offences. However, as pointed out above, it is possible that District Judges simply tended towards harsher sentences and were more likely to pass such sentences in the absence of a pre-sentence report.

District Judges sentenced a slightly higher proportion of violent offences than lay benches. Of the 10 violent cases sentenced by lay benches, three were sentenced to immediate custody, for an average length of three months. A further three defendants were conditionally discharged and one fined. District Judges did not conditionally discharge or fine any defendant convicted of a violent offence. Of the nine violent offences sentenced by District Judges, two resulted in an immediate custodial sentence of eight months. Both of these defendants were facing more than one count of violence against the person and this was reflected in the eight month sentences. In both of these cases a pre-sentence report was available. Whilst this may have been indicative of District Judges passing more severe sentences than lay benches, it may also have been indicative of their sentencing the more serious cases.

20 This was for an offence of driving under the influence of alcohol and was the defendant’s third such offence.
There were only 14 sentences passed for drugs offences across all three courts. This was because most serious drugs offences were either tried or sentenced in the Crown Courts, rather than the magistrates' courts. The majority of those cases sentenced in the magistrates' courts were for personal possession or small scale dealing of cannabis. The majority of drugs offences were sentenced by lay benches, over three-quarters of which received a fine (77%, n=10). There was only one occasion, at Provincial Court I, of a sentence being passed by a District Judge for a drugs offence. The defendant received a conditional discharge for having a small amount of cannabis resin for personal use. It would appear drugs offences sentenced at the magistrates' courts were at the lower end of the seriousness scale, which was reflected in the lack of any pre-sentence reports prepared in respect of them and the sentences passed by both lay benches and District Judges. The fact that lay benches dealt with the majority of these cases reflected the finding discussed earlier that lay benches tended to sentence a higher proportion of cases where there was no pre-sentence report.

There was no apparent sentencing pattern within the offences for public order to indicate a trend of allocation of the more serious cases to District Judges. A similar proportion of sentences passed by lay benches and District Judges were for public order offences. Of the 38 defendants sentenced by lay benches for public order offences, one half were either conditionally discharged or bound over to keep the peace (50%, n=19). A further 14 defendants were fined (37%). The remainder were sentenced to community penalties, all following a pre-sentence report. Of the 21 public order offences dealt with by District Judges, over three-quarters (76%, n=15) of defendants were bound over or conditionally discharged, compared to the half similarly sentenced by lay benches. One defendant was sentenced to immediate custody by a District Judge at the London Court for a period of eight months. This particular defendant was a “May Day” protester. The remainder received community penalties.

**Summary**

There was some evidence to support the contention that District Judges dealt with more of the ‘more serious’ sentencing work than lay benches. This was most apparent in the provincial courts where there was an explicit policy of allocating District Judges to heavily listed courts designated to deal exclusively with
adjourned sentencing cases. However, it appeared that this allocation policy was founded on pragmatic considerations as opposed to notions of legal complexity or seriousness. There was limited evidence that District Judges tended to sentence more serious offences. However, it was important to insert the caveat that this might have been a reflection of the fact that District Judges were more likely to pass severer sentences than lay benches.

Concluding Comments: Notions of Seriousness and Complexity: The root of lay magistrates’ discontent?

This chapter has examined the role and influence of the District Judges at the three courts in respect of the judicial work they do. It has also explored the notion of ‘cherry picking’ as defined by the lay magistrates in this study and considered the extent to which their concerns were founded. Despite national recommendations to the contrary, only one of the three courts, Provincial Court I, had a comprehensive, formal approach to the distribution of judicial work between District Judges and lay magistrates. Provincial Court II had a limited strategy of allocating a sentencing court to District Judges several times a week and the London Court had no formal allocation policy at all. Where official allocation practices were in place these tended to focus on allocating sentencing and remand work to District Judges.

The findings of this study did not depart from the conclusions of previous research that the time spent by District Judges on ‘special’ or unusually complex legal work was negligible. This study found that they dealt with a broad range of court work that, on the whole, did not differ greatly from their lay colleagues. It was also found that there were a large proportion of lay magistrates whose perceptions and views conflicted with this apparent reality. Once it has been established that District Judges tend to deal with a similar range of court business as lay magistrates, previous research has tended to leave the issue of lay magistrates’ contrary perceptions at this point. Morgan and Russell (2000:29) concluded that any suggestions to the contrary were “patently an exaggeration.” This study has endeavoured to venture further than previous research. The task in terms of this chapter has been to consider how the perception of inequitable allocation of work might have developed among lay magistrates. Various possibilities have already been considered above in respect of particular types of
work, including: official allocation policies, informal sitting patterns, an exaggerated perception of the extent of influence exerted over work allocation by District Judges themselves. The issue of perceptions surrounding different degrees of ‘seriousness’ in cases has also been explored. It is this latter issue to which this concluding section to the chapter returns.

It is suggested that whether or not there is little foundation for the lay magistrates’ complaints because District Judges do, in fact, spent most of their time doing a broad range of routine work, rather misses the point. It is argued that the paucity of the unusually complex or lengthy work recommended as suitable for District Judges has afforded courts the opportunity to re-interpret these guidelines. It is suggested that it is the very recommendation that District Judges should conduct a ‘fair share’ of routine court business that has been a cause, rather than a cure, of the lay magistrates’ perception that the amount of ‘interesting’ court work they do has diminished as the numbers of District Judges has grown. It is argued that the rarity of the types of ‘special work’ presumed suitable for District Judges in accordance with their legal skills has meant that the pragmatic justification for their use had come to the fore, in terms of their ability to dispense routine business quickly (Lord Chancellor’s Department, 1996; Narey, 1997). This was apparent in the policy of both provincial courts in this study of allocating heavily listed, adjourned sentencing courts to District Judges. Therefore when previous research, such as Morgan and Russell (2000) and Seago et al (1995, 2000) discusses the respective weighting and division of particular kinds of judicial work between District Judges and lay magistrates it is, in fact, talking about ‘routine’ business. However, it was precisely the allocation of ‘routine’ court business to District Judges, as recommended by the Venne Report as a way of assuaging any feelings of inequitable allocation that caused the concern and resentment of the lay magistrates involved in this study. It would appear then that the attempted solution by those that prepared the Venne Report of encouraging the allocation of a ‘fair share’ of routine court work to District Judges in order to counteract the perception among lay magistrates that there was inequitable allocation, may have backfired. Furthermore, the distinction between the lay bench as whole and individual lay magistrates is essential to different notions of what constitutes a ‘fair share’ of work between lay magistrates and District Judges.
The idea of 'complex special work' coupled with the recommendation that District Judges do a 'fair share' of routine business has led, it is suggested, to the more subtle practice of allocating a greater proportion of the 'more serious routine work' to District Judges for pragmatic reasons. 'Complexity' for the lay magistrates in this study had therefore become synonymous with 'seriousness' and their perception was that it was the 'serious' routine business that was being inequitably allocated. Moreover, the lay magistrates' complaint was not that they had fewer public interest cases or intricate points of law to contend with but that work such as sentencing and contested remand hearings had become scarcer. It was interesting to note that both these types of work involved the explicit exercise of judicial authority and power, both achieved an 'end result' and both were imbued with a significance in terms of 'protecting the public.' This added an element of 'importance' as well as seriousness to this kind of work. This suggested that the efficient throughput of court business was the main consideration in allocating routine work to District Judges. However, it should be noted that any allocation of such work has to involve a balancing exercise where efficiency on the one hand, and sharing out work between lay magistrates as well as District Judges on the other, are both considered. Although it can be argued that pragmatism was integral to of the allocation of work to District Judges, fairness to both District Judges and lay magistrates was also a consideration. As commented by the Deputy Clerk to the Justices at Provincial Court 1, the allocation of work between them involved achieving a balance between expediency and equity.

To some extent the findings of this study supported this impression. District Judges did handle a greater proportion of triable either way cases overall; they also tended to deal with more contested remand hearings where the defendant had previously been remanded in custody by the courts and with more sentencing cases that had been adjourned for pre-sentence reports. In particular, common to both provincial courts was a particular emphasis on the allocation of sentencing work to District Judges. Both courts ran dedicated District Judge sentencing courts, in which as many as twice the number of cases would be scheduled than in similar courts presided over by lay justices. It was found that this was purely because pre-sentence reports could be given to District Judges to read in advance, thus enabling them to familiarise themselves with the cases and prepare for the court. This demonstrated the focus on the allocation of routine court business to
District Judges for reasons of pragmatism rather than peculiar complexity that required specialist legal knowledge.

In conclusion, District Judges dealt with a range of judicial work. However, with a lack of ‘special’ work available it was inevitable that they would be allocated work that took into account both considerations of expediency and the accepted wisdom of the kind of work that was ‘suitable’ for a legal professional.
Chapter 4
Sharing the Same Bench?
The Balance of Power and Approaches to Decision-Making

Introduction

The previous chapter examined the respective roles of the District Judges and lay magistrates, in terms of judicial work, at each of the three courts. This chapter will explore the way in which lay magistrates and District Judges approach their judicial decision-making and compare and contrast their approaches within the context of recent proposals to extend the use of mixed benches. In order to satisfy the many conflicting values and goals in a modern criminal justice process and capitalise on the resources available, recent thinking about the future organisation of summary justice has suggested that magistrates’ courts should “play to the strengths” of the two judicial resources available to them and combine the skills and qualities of both District Judges and lay magistrates on one bench to hear certain types of cases, usually of ‘medium seriousness’ (Auld, 2001; Sanders, 2001).

Although these proposals have differed in matters of detail and, to an extent, in their fundamental rationale, both were based in the belief that the skills and qualities of District Judges and lay magistrates are complementary. That, somehow, combining them together would ‘cancel out’ the negative connotations associated with both types of tribunal, while making proper use of the respective meritorious qualities of District Judges and lay magistrates. Although it is recognised that neither the proposals of Auld (2001) nor Sanders (2001) have been adopted as a matter of policy, it is suggested that the concept of combining District Judges and lay magistrates on one bench has been a recurring theme in academic and political discourse surrounding the future organisation of the criminal justice process and was, therefore, worthy of additional examination in this study.
It is suggested that the extended use of mixed benches would require a significant cultural change within the magistrates’ courts. It was clear from the findings of this study that the idea of District Judges and lay magistrates sitting together was extremely unpopular with nearly all court personnel, especially the lay magistrates and District Judges themselves. This was reflected in the fact that mixed sittings occurred only rarely in all three courts. It is argued that two main reasons lay behind the unpopularity of the concept of sharing the same bench.

Firstly, the differing approaches of lay magistrates and District Judges to the decision-making process, which they didn’t appear to consider as ‘complementary’ but rather equally valid, in their entirety and in their own right. Therefore, a fundamental flaw in the concept of collaborative decision-making between District Judges and lay magistrates lies in the differing skills and qualities on which District Judges and lay magistrates base their authority and ability to make judicial decisions. These differences were found to be deeply rooted in two distinct value bases. Seago et al (2000) have suggested that District Judges and lay magistrates, to a certain extent, share a ‘judicial culture’. However, the lay magistrates and District Judges in this study appeared to have widely disparate perceptions concerning the basis for judicial legitimacy and placed significantly different weight upon the various skills and qualities that were considered necessary to dispense justice.

As would be expected the District Judges pointed overwhelmingly to legal expertise, applied proficiently, as a fundamental skill in the execution of judicial business. Lay magistrates, however, tended to consider the ‘law’ as a restrictive framework within which they had to make their decisions, and on occasion subvert, in the name of ‘common sense’. Furthermore, lay magistrates were, unsurprisingly, ardent advocates of the ‘consensus’ decision, as opposed to solitary decision-making as engendered by District Judges. District Judges, however, considered their autonomy to be fundamental to their role in the magistrates’ courts, in terms of their ability to deal with cases efficiently. Finally, District Judges and other professional court personnel, displayed little reverence for the traditional qualities, such as local knowledge, community justice and amateur status, upon which the lay magistrates validated their judicial power.
It was clear, therefore, that many of the District Judges and lay magistrates included in this study did not consider their different skills and approaches to decision-making to be complementary. Furthermore, when the models of hybrid tribunals that have been proposed were examined in this context, it was apparent that while appearing to extol the values of the lay magistracy as important symbols of participatory democracy and community justice, such models would significantly reduce their role - particularly in more serious cases. This suggests that mixed benches would result in the prominence of the ‘professional’ approach to decision-making as embodied by District Judges. It is argued that the current modernisation and professionalisation agenda has already caused a shift in emphasis within the magistrates’ courts from a long established culture of judicial authority centred on the values of civic duty and community justice, typified by lay magistrates, to one focused on professionalism and consistency, as offered by the increased use of District Judges. Therefore, it would seem that any attempt to combine the differing approaches to judicial decision-making of lay magistrates and District Judges on one bench would inevitably contribute to a greater emphasis on legal skills, encompassed by the ‘professional’ approach of District Judges. This would serve only to further marginalise the lay magistracy.

Secondly, there were concerns, particularly from lay magistrates, surrounding the inequitable balance of power that would result from the combination of lay magistrates and District Judges on one bench. Although the idea of a more integrated working relationship between District Judges and lay magistrates, as the collaborative models advanced suggest, are attractive, they actually propose a division of labour that, it is argued, would fundamentally alter the balance of power both on the bench itself and within the magistrates’ courts as a whole.

This chapter will begin by giving a brief overview of the extent to which collaborative decision-making is currently used in the criminal justice process in England and Wales and in the three courts. This is followed by a brief outline of the recent proposals for the extended use of mixed benches and the concept of complementary skills. These will then be discussed in more detail, in the context of the views of the participants of this study towards working collaboratively.
Combined Decision-Making - Current Arrangements

The most obvious illustration of combined decision-making in the criminal justice process can be found in trial by a Judge and jury, as occurs in the Crown Court. Sanders (2001:1) comments that trial by Judge and jury is generally regarded as the superlative arrangement because: "it combines legal expertise with participatory democracy." Such hybrid arrangements, that incorporate both lay and professional decision-makers, are also extensively used in other jurisdictions, in a variety of ways, in the lower tiers of the criminal courts, (Doran and Glenn, 2000, cited in Morgan and Russell, 2000:100; Sanders, 2002). It was noted in Chapter 3 that, unlike other jurisdictions that incorporate both lay and professional decision-makers in the equivalent tier of their criminal justice process, there is no official statutory organisation with regard to the respective roles of lay and professional decision-makers in the magistrates' courts in England and Wales - despite the presence of both requisite parts of the equation in District Judges and lay magistrates.

The idea that lay magistrates and District Judges in England and Wales should share decision-making by sharing a bench is not novel (Davies, 1996, Sanders, 2001). As long ago as 1948, the Royal Commission on Justice of the Peace recommended that the practice should be extended, although it never has been to any significant degree. Until 1998, District Judges were unable to sit alone in the youth courts and were obliged by statute to sit with lay magistrates. In some courts, District Judges and lay magistrates also occasionally sat together in family courts (Seago et al, 1995:110). It is interesting to note, in the context of this chapter, that following the recommendations of the Narey Report (1997), the Crime and Disorder Act (1998) legislated to allow District Judges to sit alone in the youth courts, in order to assist in reducing and preventing delay. Therefore, it appears that in this instance, where efficiency was the key issue, separation, rather than integration, was considered the best way forward. This point will be returned to later in this chapter. Notwithstanding their partial application in the youth and family courts, mixed benches are simply not a feature of the summary courts in England and Wales. This was confirmed by the views of those canvassed for this study.
Table 4.1: Do Lay Magistrates and District Judges Ever Sit Together?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>%</th>
<th>Never/Rarely</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lay Magistrates</td>
<td>11</td>
<td>11</td>
<td>87</td>
<td>89</td>
<td>98</td>
<td>100</td>
</tr>
<tr>
<td>District Judges</td>
<td>1</td>
<td>9</td>
<td>10</td>
<td>91</td>
<td>11</td>
<td>100</td>
</tr>
<tr>
<td>Total</td>
<td>12</td>
<td>11</td>
<td>97</td>
<td>89</td>
<td>109</td>
<td>100</td>
</tr>
</tbody>
</table>

(Source: Questionnaires)

Table 4.1 indicates that mixed bench sittings were a rare occurrence in all three courts. This finding concurred with that of previous research, which has also found that it is not a common practice within the magistrates’ courts (Morgan and Russell, 2000:110). Only one mixed bench was observed in all of the three courts. This was at Provincial Court I, in one of the dedicated “double sentencing” courts, usually presided over by a lone District Judge. Further enquiries revealed this to be a “one off observation exercise” for the benefit of two relatively new lay magistrates. It was not part of any official training programme and although the lay magistrates were observed to ask questions of the District Judge throughout the court session, the bench did not retire and the lay magistrates appeared to have no substantive input into the sentencing decisions made.

Morgan and Russell (2000:99) note that disparity between different jurisdictions with regard to their use of mixed benches in the lower court tiers is the result of three core elements: “constitutional history, political development and cultural tradition.” It has been mooted that the development of the magistrates’ courts system in England and Wales has been arbitrary and has resulted in an incongruous situation, characterised by skewed values - particularly in relation to role of lay decision-makers within the criminal justice process:

If we value lay justices for the legitimacy their lay status confers on the verdict and sentence, why do we leave the cases of medium seriousness to be dealt with by lone stipendiaries when we use lay jurors for serious cases and lay justices for the rest of summary business? The answer of course, is that, like everything else in the English (non-) system, there is not a shred of principle or thinking behind our weird hierarchy of decision makers.

(Darbyshire, 1997a: 640-641)
Penny Darbyshire has long been a proponent of extending the use of hybrid panels within the magistrates' courts. However her appraisal, as given above, does not seem to recognise that there is no official policy that states that District Judges should deal with cases of “medium seriousness.” However, as was discussed in Chapter 3, this study has found some evidence to support the contention that, despite the absence of any statutory distinction between the allocation of cases to District Judges and lay magistrates on the basis of ‘seriousness’, individual courts did tend to allocate a greater proportion of the ‘more serious’ routine work to District Judges. However, it was also noted in Chapter 3 that the key considerations in such practices appeared to be pragmatic, both in terms of efficiency and the protection of District Judges’ professional sensibilities. It is clear that the historical, political and cultural development of the magistrates’ courts in England and Wales has not been conducive to the notion of a combination of professional and lay decision-makers on one bench. However, given the absence of any official policy with regard to the division of labour on the basis of case type or seriousness, the distinct lack of hybrid tribunals is perhaps incongruous with the official Government line in respect of the continued appointment of District Judges, which is bathed in the rhetoric that they “supplement” and more importantly, “complement” the lay magistracy:

The fact that lay and stipendiary magistrates almost always sit separately, the former in panels and the latter alone, might be considered partly to give the lie to the doctrine of complementarity. It suggests that lay and stipendiary magistrates have nothing to learn from each other or to contribute jointly to decisions.

(Morgan and Russell, 2000:110)

The findings of this study suggest that the latter part of this comment is, in fact, largely true. As will be shown, the District Judges and lay magistrates that participated in this study appeared to be of the view that their respective approaches to decision-making, governed by different skills and qualities, were not only incompatible, as opposed to complementary, but distinct and valid in their own right. Before demonstrating this, it is necessary to give a brief overview of the basis upon which the recent proposals for the extended use of mixed benches have been put forward, in particular the notion of “complementarity” (to coin Morgan and Russell’s (2000) phrase) in respect of the skills and qualities of District Judges and lay magistrates. The opinions of the participants in this study
will then be explored, with a view to demonstrating the flaws in the concept of "complementarity" as expressed in recent proposals for extending the use of mixed benches.

Extending the Use of Hybrid Tribunals – The Theory

It is suggested that any proposal that advances an argument for the extension of mixed benches in England and Wales must stem from two common principles. Both of these central premises, although from differing perspectives and relied upon to differing degrees, can be found in the basic rationales of the two most recent proposals for the extended use of mixed benches: Andrew Sanders' study "Community Justice" (2001) and the recommendations that emerged from Lord Justice Auld's "Review of the Criminal Courts" (2001).

The first premise is that the current system, where District Judges and lay magistrates decide the vast majority of summary cases separately is, for one reason or another or indeed several reasons, unsound. It has already been mentioned above that some commentators consider the current practice of lay magistrates and District Judges making judicial decisions independently of each other has developed arbitrarily, with little planning, debate or the application of guiding principles (Darbyshire, 1997a, Sanders 2001). Both Sanders (2001) and Auld (2001) considered that this had led to confusion and a lack of public confidence in the system. However, while Sanders (2001) placed particular emphasis on this, Auld (2001) gave particular consideration to what he considered to be the resulting inefficient deployment of the judicial resources (Auld, 2001: Chapter 4).

The second central premise is that, the flaws in the system, whatever they are deemed to be, can be resolved by combining District Judges and lay magistrates together on the same bench. The idea being that the respective skills, qualities and approaches of District Judges and lay magistrates are complementary; and hybrid tribunals will, in effect, ensure equilibrium, by making the best use of the meritorious skills and qualities of District Judges and lay magistrates, while, at the same time, counterbalancing the disadvantages associated with both. District Judges sitting on a panel, where consensual rather than autonomous decisions would be made, would help satisfy those who are troubled by the unique power
Currently afforded to District Judges as sole arbiters of law, fact and sentence. It would also offset the effects of “case hardening” that are sometimes associated with District Judges, which, it is argued, is characterised by cynicism towards defendants and mitigation, leading to the imposition of harsher sentences. In the same vein, lay magistrates would be encouraged in efficiency and provide legitimacy to the process through participatory democracy, while being appropriately guided on the legal elements of decision-making which would contribute towards consistency. Finally, such hybrid tribunals would satisfy public opinion which prefers panel decisions but also welcomes the input of a legal professional.

Having briefly outlined the theory behind the extended use of mixed benches, the next section considers the views of this study’s participants concerning the idea of mixed benches and the validity of the notion of “complementarity” within the context of the proposals outlined above.

**Extending the Use of Hybrid Tribunals – Problems in Practice?**

The views of the participants involved in this study were canvassed about whether they felt that mixed benches should be utilised more often. Defence solicitors and court clerks were also asked to respond to this question. Their responses are summarised in the table below:

<table>
<thead>
<tr>
<th></th>
<th>No</th>
<th>%</th>
<th>Yes</th>
<th>%</th>
<th>Don’t Know</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lay Magistrates</td>
<td>81</td>
<td>83</td>
<td>7</td>
<td>7</td>
<td>10</td>
<td>10</td>
<td>98</td>
<td>100</td>
</tr>
<tr>
<td>Court Clerks</td>
<td>18</td>
<td>90</td>
<td>2</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>20</td>
<td>100</td>
</tr>
<tr>
<td>Defence Solicitors</td>
<td>15</td>
<td>88</td>
<td>2</td>
<td>12</td>
<td>0</td>
<td>0</td>
<td>17</td>
<td>100</td>
</tr>
<tr>
<td>District Judges</td>
<td>9</td>
<td>82</td>
<td>2</td>
<td>18</td>
<td>0</td>
<td>0</td>
<td>11</td>
<td>100</td>
</tr>
<tr>
<td>Total</td>
<td>123</td>
<td>84</td>
<td>13</td>
<td>9</td>
<td>10</td>
<td>7</td>
<td>146</td>
<td>100</td>
</tr>
</tbody>
</table>

(Source: Questionnaires)

It is clear from Table 4.2 that an increase in the use of mixed benches was far from a popular idea, either with the lay magistrates or District Judges themselves, or those that work in court with them. Lay magistrates were almost unanimous in their rejection of the idea. District Judges also displayed a palpable lack of enthusiasm for working more closely with their lay colleagues. This was a view that was consistent across all three of the courts. It also accorded with the views
expressed by court practitioners in previous research (Seago et al, 1995; Morgan and Russell, 2000). The possible reasons behind the apparent unwillingness of the lay magistrates and District Judges in this study to increase joint sittings were explored in more detail and considered in the context of the two most recent proposals put forward to extent joint sitting by Sanders (2001) and Auld (2001).

It is argued that at the core of the opposition to the idea of shared benches was the rejection of the notion of “complementarity” and issues surrounding power and control of the bench. Both District Judges and lay magistrates posed questions about who would or should be “in charge” in a mixed tribunal setting. Both drew on the dichotomous foundations upon which they based their judicial authority and approached decision-making, such as: the relative weight of decisions grounded in legal principles and those guided by ‘common sense’, made by people that represent the community. Tied into this overarching issue were arguments, on both sides, concerning the relative costs and benefits of consensus versus individual decisions. It is argued that the inescapable inference to be drawn from the findings of this study is that both lay magistrates and District Judges wished to be left to dispense justice in their own way. They did not appear to believe that their skills or approaches to decision-making were complementary and attempts to integrate them by sharing the same bench did not appeal to either lay magistrates or District Judges, if the consequence for either was a loss of power or influence on the bench.

Consensus versus Autonomy in Decision-Making

This section will consider the issues associated with consensus versus autonomous decision-making and discuss whether or not the extended use of hybrid tribunals would, in practice, address the difficulties associated with both, namely: ‘case hardening’ and delay. It will also consider the consequences that hybrid tribunals would bring for both District Judges and lay magistrates, in terms of their power and influence on the bench.

The distinction between collective and individual decision-making is the most obvious and has, therefore, arguably been the most contentious issue that surrounds the decision-making of lay magistrates and District Judges. The most obvious and therefore, controversial, aspect of the role of District Judges is the
fact that they sit alone to decide questions of law, fact and sentence – a degree of autonomy is unique in the criminal justice process:

We are the only one-man court in England and that of course creates tremendous responsibility... the stipendiary magistrate in many ways has a greater responsibility than any other member of the judiciary, certainly a greater responsibility than the Circuit Bench, because we have no-one to consult, we have to make every decision alone, questions of guilt or innocence are not decided by a jury, they are decided by us, and our decision is never a compromise. It is not a compromise, as frequently happens in the case of a lay bench, sitting... with a Chairman and two others.

(Bartle, 1995:242)

The fact that District Judges sit as full-time and lone arbiters of law, fact and sentence, has been criticised, as not only inherently wrong (providing, as it does, a uniquely powerful position within the criminal justice process) but also as leading to ‘case hardening’. ‘Case hardening’ refers to the risk that District Judges may develop a degree of cynicism or “accumulate prejudices as to who is credible” (Morgan and Russell, 2000:8). But it is difficult to establish any means of assessing whether such a phenomenon exists. The case hardened magistrate may be one who simply works more efficiently than others. Panel decisions, it has been suggested, contribute to delay, while efficiency is best served by legally trained professionals, who sit alone (Jackson, 1946; Rickard, 1975; Narey, 1997). Efficiency and case hardening can therefore be seen as two sides of the same coin.

An unavoidable corollary of any model that recommends the extended use of hybrid tribunals is, not only, that the skills of lay magistrates and District Judges are complementary, but also that collective, as opposed to autonomous decisions, are more desirable (Sanders 2001:3). The non-court worker respondents in Morgan and Russell’s study (2000) expressed a preference for panel decision-making as opposed to single judges. However, they also favoured professional decision-makers over lay ones. Morgan and Russell (2000) point out that, if public opinion was to be the guiding principle in the future organisation of the magistrates’ courts, then considerations of cost would necessitate the continued extensive use of lay magistrates. A definite and unsurprising divergence characterised the views of the lay magistrates and District Judges in the present study, when they were asked about the benefits and drawbacks of three people making a decision as opposed to one. The essential belief expressed by lay
magistrates as to the benefits of a panel decision took the form of rhetoric surrounding the advantages of 'coming to an agreement' and the 'consensus decision.'

... it goes to the heart of what the lay magistracy is about. The argument is that just like court clerks DJ's become institutionally cynical. They do it everyday, they do it on their own. The argument is that lay justices work down or up or along to a consensus position and that by there being three of them they do, probably take a slightly better view of human nature and one that is more in tune with the common man or woman on the street.

(Chairman of the lay bench, Provincial Court II, Interview Transcript)

This reflected the findings of previous research. Worrall (1987) noted that lay magistrates viewed their role as an experience that was centred on consensus. Gelsthorpe and Loucks (1997:39) concurred with this view. They concluded that, for lay magistrates, decision-making was: "as much about diplomacy and negotiation as about judgment." However, the idea of the 'consensus decision' was unceremoniously dismissed by one District Judge at Provincial Court I as representing "the lowest common denominator." Other District Judges agreed, but in less derogatory terms:

... because we sit alone I think we make more even-handed decisions. What I mean by that is that you can find lay benches who go over the top on something and will be way too soft on the other. It is a problem to be expected when there are three opinions that have to be merged, and if one says "hang him" and the other says "give him a conditional discharge" the third one is going to find a middle way on which they can all agree.

(District Judge, London Court, Interview Transcript)

As one District Judge commented:

Because most of the time we sit on our own we subconsciously must develop a technique of dealing with cases. Of course, most of the time ones mind is never fully made up until one has heard everything but it would be foolish to pretend that one's mind isn't constantly formulating. So, when the time for the case to end comes you immediately know what your decision is and that is a particular process. Lay justices don't work like that, they hold themselves in suspense, they look for guidance before coming to a conclusion. Therefore if you had a mixed bench, you have got a bench that would have to be very different in its approach and I, as would most professional magistrates I expect, would find that very uncomfortable and difficult to deal with intellectually.

(District Judge, London Court, Interview Transcript)
For some the notion of the cosy ‘consensus decision’ was viewed as an unrealistic outcome from a bench of three people, one or more of whom was bound to be dominant. Also, one dominant personality may interfere with what should be a majority decision:

In my experience having three together causes confusion. There will always be one dominant person and people are easily dominated. It’s logical to think that if there were three people of equal strength and equal force of character they would never come to a decision. So most of the time I would say, rather than a consensus, the weak ones just agree with what the strong ones want to do.

(CPS Lawyer, Provincial Court I, Interview Transcript)

and:

I think sometimes there are acquittals because basically people can’t decide and it’s normal, isn’t it, for people to disagree? If two people are saying “not guilty” and one is saying “guilty” then the fair decision would be one of “not guilty”. But often I think, as with all things, it depends on personalities. If the one “guilty” person is very vociferous it will throw doubt on the others. If you get a vociferous “not guilty” person who refuses to back down then I think more often than not there will be an acquittal because the strong person will make the others doubt themselves and they’d rather ‘play it safe’ and acquit.

(CPS Lawyer, Provincial Court II, Interview Transcript)

Others took the view that the decision of a single District Judge was equivalent to a single lay magistrate who may or may not have to cast the deciding vote in the event of a disagreement:

I don’t necessarily agree that three heads are better than one because at the end of the day, even if three people are sitting and they agree, it’s highly likely that one person sitting on their own would have come to the same decision. If on the other hand they don’t agree it’s still down to the decision of one person to make up the majority. So each individual member of a bench of three is making their own decision, so there’s no reason why one person with the required experience and knowledge can’t make and equally fair and viable decision alone.

(District Judge, Provincial Court II, Interview Transcript)
For lay magistrates the 'consensus decision' guarded against what they viewed as the idiosyncrasies of individual District Judges. The magistrates in this study appeared to consider the accord reached between three magistrates as a positive means of eradicating individual foibles and ensuring fairness:

I think we are actually much fairer, because some [District Judges] do have bees in their bonnets and if you happen to have a bee in your particular bonnet there’s two other people to get rid of it.

(Chairman of the Lay Bench, London Court, Interview Transcript)

This view was also expressed by a court clerk at Provincial Court I, who suggested that although some individual District Judges may offer a form of 'internal' consistency because of the way they approached decision-making, as a group District Judges offered little more consistency then lay benches.

They’re different sorts of people... it’s possible to predict what one might do on a case after you’ve known them a while but then another one will do something completely different...it can be a bit of a lottery.

(Court Clerk, Provincial Court I, Interview Transcript)

Some District Judges acknowledged the benefits of being able to share the burden of making difficult decisions without accepting that solitary decisions were in anyway inferior. The emphasis was placed very firmly on the burden of the decision rather than in the actual reaching of it:

Undoubtedly it could be helpful. I suspect it is more helpful in the sense of sharing the burden of reaching a difficult decision rather than actually sharing the reaching of the decision. Because sometimes one has to reach conclusions that are very hard for people.

(District Judge, London Court, Interview Transcript)

Collective Decisions as a solution to ‘Case Hardening’

One of the recurrent criticisms or disadvantages expressed about the autonomous role of District Judges is that their legal training and full time position, i.e. the 'professional approach' as referred to above will lead to a 'case hardening' effect that has no place in a community based court system where 'natural justice' has been the tradition. The outward expression of such case hardening, it is suggested, is that District Judges become cynical which in turn means they are more likely to
pass custodial sentences (Diamond, 1990). This was reflected in the views canvassed for this study, as outlined in the table below:

Table 4.3: Who is more likely to pass a custodial sentence?

<table>
<thead>
<tr>
<th></th>
<th>District Judge More Likely</th>
<th>Lay More Likely</th>
<th>Neither More Likely</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>Lay Magistrates</td>
<td>57</td>
<td>58</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Court Clerks</td>
<td>15</td>
<td>75</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Defence Solicitors</td>
<td>13</td>
<td>76</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>District Judges</td>
<td>9</td>
<td>82</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>94</td>
<td>64</td>
<td>4</td>
<td>3</td>
</tr>
</tbody>
</table>

(Source: Questionnaires)

It is clear from Table 4.3 that the majority of respondents to the questionnaires (64%, n=94) considered that District Judges were more likely to pass custodial sentences than lay magistrates, including the District Judges themselves. District Judges were also considered by the majority of respondents to be less likely than lay magistrates to seek more information about a defendant by requesting a pre-sentence report (53%, n=77). Defence solicitors in particular appeared to subscribe to the “District Judges are harsher” viewpoint. One defence solicitor commented on their questionnaire that District Judges were more likely to make “extreme decisions”, suggesting perhaps that District Judges’ sentences are not tempered by compromise because they sit alone. This view was further confirmed by the majority of defence solicitors canvassed stating that they would warn their client that their sentence would be likely to be higher up the tariff (n=8, 67%) if they were facing a District Judge. However, although the general view was held that District Judges were more punitive, it was also clear that their knowledge of individual District Judges’ attitudes to different types of offences was also influential and could lead to proactive attempts to get certain cases before a particular District Judge, rather than away from them. Some examples of such comments are given below. 1

One of the stipendiaries is generally sympathetic on sentence but will always impose a custodial sentence on police assaults. The other is one to avoid on sentence at all costs!

(Provincial Court I)

1 Written comments on questionnaires.
As a rule the stipes won’t send first time DWD\(^2\) down, but [name of District Judge] takes a particularly hard line with persistent shoplifters.

(Provincial Court II)

One of the stipendiary magistrates is well known for being lenient with women shoplifters who have severe drug habits and another takes a particularly dim view of public order offences where drinking has been a key factor or the defendant has been involved in a large-scale public disorder such as the May Day protestors.

(London Court)

Despite these individual exceptions, in particular circumstances, the overall view of defence solicitors was clearly that a custodial sentence was more likely in a court presided over by a District Judge. In light of this it is not difficult to understand why some defence solicitors in this study admitted to being proactive in trying to manipulate the courts in which their clients were to be sentenced. This tactic was not one that went unnoticed by other members of the courtroom workgroup, particularly court clerks:

Undoubtedly defence solicitors will generally try to get a sentencing case where they think custody is likely moved away from a stipe. They try all sorts of things including ‘disappearing’ shortly before the case is called on, hoping that it will be put over to the afternoon and a probably put in front of a lay bench. They don’t get away with it very often though...they do it because they think that stipes are harsher and more aware of Crown Court judgments that might indicate that custody is appropriate.

(Court Clerk, Provincial Court I, Interview Transcript)

It is interesting to note that the clerk quoted above seemed to be of the opinion that it was the District Judge’s legal knowledge, in terms of case law, that might lead them to pass custodial sentences. Therefore rather than the ‘professional weariness’ suggested by the case hardening argument, an alternative explanation might be that District Judges took a ‘professional’ approach, based on legal precedent, that tended to lead to more custodial sentences being passed.

Individual District Judges interviewed for this study were aware of the commonly held view that they generally tended to sentence more harshly than lay magistrates. However, the inevitability attached to the ‘case hardening’ hypothesis was not a view that the District Judges in this study subscribed to. In fact, those

---

\(^2\) Driving Whilst Disqualified

135
that were interviewed tended to consider their legal training to be a safeguard against case hardening, rather than a contributor to it:

Of course there's a risk that stipendiaries may become case hardened but it's one that we are very much aware of and something that our training helps us guard against. I always apply the 'so serious' test and think things through carefully. I start with the facts, compare them to other cases I've dealt with, apply the personal mitigation and, most importantly, the law and come to a fair decision.

(District Judge, Provincial Court II, Interview Transcript)

Some District Judges considered that the general perception of them as harsh in their decisions was caused by comparisons to lay magistrates, who, they suggested, could be too lenient. It was suggested that lay magistrates found it difficult to send people to prison when they should be doing so:

I don’t say that sending people to prison is easy; I think you have to steel yourself on occasions and I think the problem with the lay bench is they haven’t always got the moral strength and the guts to actually go through and do what they should be doing ... They talk hard in sentencing exercises but put a body in front of them and they won’t actually do it ... our training and confidence in the law allows us to make these kind of decisions with much more self-belief I think.

(District Judge, Provincial Court I, Interview Transcript)

This reflects the findings of Rumgay (1995:205) who described lay magistrates as having a “strong consensual antipathy to custody”. However, Rumgay (1995) also argued that despite the reluctance of lay magistrates to pass custodial sentences they did not view this as a weakness or due to a lack of “moral courage”. Rather it was considered as a viable sentence, if a last resort. Any reluctance in its application was a reflection of ‘enlightenment’ in terms of the actual long-term value of custodial sentences. The lay magistrates in this study appeared to reflect this view:

I think we're very aware of the general publics' perception about sentencing and we do realise that there is a certain view, fuelled by the press I might add, that we don’t send enough people to prison... Speaking for myself and, certainly for most of my colleagues, I think we always consider custody if it’s there as an option. But it is a last resort certainly... it might be that in particular circumstances it’s just not the best way forward.

(Lay magistrate, Provincial Court II, Interview Transcript)
It can be hard explaining to one’s friends that aren’t on the bench that custody really isn’t always the best way to go.

(Lay magistrate, London Court, Interview Transcript)

These views found support from one District Judge, whose opinion on passing custodial sentences was contrary to that of their provincially based colleague quoted above:

I tend to the view that any fool can send people to prison, it’s an easy decision. The thing that takes time, concentration and effort is to see whether there are proper circumstances in which to avoid sending someone to prison because whatever anybody may say prison doesn’t achieve anything other than to put somebody out of circulation for the length of time they are in prison.

(District Judge, London Court, Interview Transcript)

When the proposals of Sanders (2001) and Auld (2001) are looked at in more detail it can be seen that having a hybrid panel, does not necessarily mean that all decisions in a case would be taken collectively. Sanders (2001:4) envisaged a model where all contested cases and sentencing would be decided by a mixed tribunal of one District Judge applying the law, and the two lay magistrates deciding fact. Auld (2001) also anticipated a hybrid tribunal where decisions on law would be made solely by the District Judge on the bench, and in some situations, they alone would decide sentence. Therefore, both proposals would reduce the role of lay magistrates to fact-finders in some cases, while retaining the autonomy of District Judges in matters of law and sentence. It is hardly surprising therefore that these proposals have been met with considerable hostility by the lay magistracy at the time (Magistrates Association, 2001). Moreover, such tribunals would formalise the trend, as noted in Chapter 3, of District Judges dealing with a disproportionate amount of sentencing. It is hard to see, therefore, how such a tribunal would counter the concerns surrounding ‘case hardening’ – at least in terms of sentence. District Judges would, in fact, have a formal and increased role in sentencing, with inevitable consequences for the prison population (Bridges, 2001).
The Balance of Power

Morgan and Russell (2000:104) note that the relative status of lay and professional decision-makers in hybrid tribunals in other jurisdictions was various. In some cases the lay participants had an equivalent role in the decision-making to that of their professional colleagues. In others lay adjudicators were limited to the consideration of the facts and excluded from matters of law. Research evidence concerning the extent to which lay decision-makers are dominated by professional Judges on hybrid benches is limited; and the evidence that is available is conflicting (Morgan and Russell (2000:104). Part of Sanders (2001:4) proposal was that, in matters of fact, the one area where lay magistrates retained an input, the District Judge, as the chair, would have a casting vote in the event of a disagreement between the two lay magistrates. In effect, therefore, these proposals, would remove any autonomy of lay decision-makers within the magistrates’ courts.

Although Sanders (2002:13) acknowledges that there is “some risk that lay people will be unduly deferential to professionals” he also considers this risk to be “overestimated”. However, this was most certainly and unashamedly at the core of the objections of the lay magistrates,’ in this study, to the practice. With reference to Table 4.2, of those lay magistrates who did not see the merit in mixed benches (n=81) over half (54%, n=44) gave the reason, in various ways, that the District Judge would dominate the bench, disregard their input if they disagreed with it and overrule them. A further quarter (25%, n=15) cited a ‘clash of cultures’ due to District Judges being accustomed to ‘being their own bosses’. There was a single dissenting voice from a lay magistrate at Provincial Court II who, staggeringingly, appeared proud of the fact that the on the one occasion s/he had sat with a District Judge “S/he was gracious enough to alter one of his/her decisions in favour of my point of view”3

The possibility of such acquiescence in the face of a District Judge on a mixed bench appeared to be at the heart of the concerns of defence solicitors about integrated benches. Of those that expressed a negative view of the practice (n=18) over three-quarters (78%, n=14) cited the likely domination of the District Judge as their reason with nine of these specifically stating that the consequence of this

3 Written comment on questionnaire.
of lay magistrates and their tendencies towards findings of ‘not guilty’ and passing more lenient sentences. Therefore it is clear that there was a widespread concern about the dominance of District Judges

**Efficiency**

Provincial Court II was the only court in this study, where a proactive decision had been taken by the two full-time District Judges to effectively refuse to participate in mixed benches for any purpose. According to one of the District Judges the main reason behind this decision was that it was a waste of resources and result in a “slow down” of cases because of the need to consult:

> In my view, sitting with lay justices on a regular basis would be utterly unproductive. It would completely counter the whole point of us being here, which is to deal with caseloads efficiently.

(District Judge, Provincial Court II, Interview Transcript)

District Judges at the other two courts agreed with this sentiment, as did several court clerks:

> I can see why the idea is attractive, but it’s also impractical and wouldn’t be, in my opinion, a sensible use of resources. The stipes are here because they can get through cases quickly and the reason they can do that is because they sit on their own... cluttering them up with lay magistrates either side might look good but it would slow everything down.

(Court Clerk, Provincial Court I, Interview Transcript)

and:

If the ‘Powers That Be’ decided that we had to get much more involved with sitting with lay magistrates on a formal level then that would be a senseless way forward. What would be the point of it? It would just a slow things down which is the opposite of what we, as professionals, are here to do... I think it would be quite wrong to put the appearance of justice over and above the practice...of course it’s important that the public have confidence in the system but that should come from an efficient and fair system. No one is saying that just because we are efficient we are unfair are they?

(District Judge, London Court, Interview Transcript)
Previous research has indicated that the prevailing view within the magistrates’ courts was that to make extensive use of hybrid tribunals would be a waste of resources; mainly because it would fetter the speed at which District Judges, sitting alone, can deal with cases (Seago et al, 1995:110; Morgan and Russell, 2000:110). Sanders (2001) and Auld (2001) both justified their proposals on the basis of efficiency. However, each attached different weight to its importance. Auld (2001) proposal to extend the use of hybrid tribunals in a new ‘middle tier’ of criminal jurisdiction was part of an overall plan for the reorganisation of the criminal courts a whole. Unlike Sanders’ (2001) model, Auld (2001) proposed the retention of the magistrates courts as the lowest ‘court tier’ in which lay magistrates and District Judges would continue to operate as they do now. Sanders (2002:12) dismissed these proposals, stating that they appeared to have, “no principled or theoretical starting point other than a vague concern for efficiency.” It would seem that a wider concern for efficiency in the criminal justice process as a whole lay at the heart of Auld’s proposals. However, in practice, both the proposals of Auld (2001) and Sanders (2001) would increase the influence of District Judges in case management, rather than reduce it.

Common Sense, Legal knowledge, and ‘Community Justice’

Both Sanders (2001) proposals and the proposals of Lord Justice Auld (2001) for the establishment of the ‘middle tier’ were based on the notion of complementarity - that it would combine the legal skills and expertise of a Judge, with the community representation of lay magistrates. Sanders (2001) envisaged re-defining the role of lay magistracy to one that is equivalent with the jury, thus affording the courts legitimacy through public contribution. Sanders (2001) identified three groups of skills necessary to dispense justice fairly and efficiently: legal, social and administrative. He attributed these skills to lay magistrates and District Judges in varying degrees; the central premise being that the social skills of lay magistrates satisfy the principle of participatory democracy, and that the legal and administrative skills of District Judges (and to some extent court clerks) fulfil the need for legal exactitude and efficiency. In an effort to offset the (arguable) weaknesses inherent in both, he suggested various tribunal configurations for different types of judicial decisions that would harness the symbolic functions of the lay magistracy and amalgamate them with the pragmatic and legal skills of District Judges. The combination of both of these, he
argued, would satisfy the most important principle on which magistrates’ courts should be judged – fairness.

Auld (2001) proposed a division of roles between the lay magistrates and District Judges in the ‘middle tier’ that mirrored, in one respect, the roles of a Judge and a jury in the Crown Court in that all matters of law would be decided by the District Judge in the absence of the lay magistrates and that District Judges alone would be responsible for sentence. Yet, unlike Judges in the Crown Court, the District Judge would retire with the lay magistrates to decide factual issues and the verdict.

Morgan and Russell (2000:100) note that England and Wales is the only jurisdiction in which such a high proportion of criminal cases are decided by lay people, without the participation of professional Judges. The current arrangements, therefore, afford lay magistrates in England and Wales a considerably more extensive role in judicial decision-making, in cases of both low and medium seriousness, than many of their counterparts in other jurisdictions. Common to both of the proposals of Auld (2001) and Sanders (2001) was the idea that hybrid panels should be utilised for cases of "medium seriousness." In the case of Sanders (2001) he also suggested that "technical matters of law" should be decided by District Judges sitting alone. Therefore lay magistrates would be involved only in cases where ‘social’ as well as ‘legal’ matters needed to be considered i.e. factual considerations. Therefore, both sets of proposals would eliminate lay magistrates from decisions of ‘law’.

However, it was clear from the findings of this study that the skills and qualities lay magistrates and District Judges thought essential in the decision-making process were a reflection of what each considered to be the basis for their judicial power. The most obvious distinction to arise was the application of common sense, on the part of lay magistrates, as opposed to the dispassionate application of legal rules, or the ‘professional approach’ of District Judges. This section will therefore argue that lay magistrates considered a ‘common sense’ approach to be as good as, if not better, than a “purely legal” approach to decision-making.
Common Sense as the Antithesis of Legal Knowledge

Previous research has suggested that the shift towards the professionalisation of summary justice has long been accompanied by the fear that an increased emphasis on legal expertise will inevitably lead to an insidious change in the qualitative nature of summary justice to one that will be based solely on the "dispassionate application of the rule of law" (Morgan and Russell, 2000:7). Over forty years ago, Dawson (1960:145, cited in Seago et al, 2000:642) was arguing that the key factor in the endurance of the lay magistracy was a suspicion of centrally paid, legal professionals: "...not merely distrust of central Governments but distrust of lawyers as such". In accordance with this, from their inception lay magistrates have traditionally considered their amateur status as a potent symbol of their independence and indicative of their ability to make sound judicial decisions:

Determining guilt was merely a matter of exercising common sense, and deciding punishment a question of applying moral values. Specialised training was wholly unnecessary.

(Lewis and Hughman, 1975:13)

Therefore, as Worrall (1987:109) observes the ideology of amateur justice, "requires the absence of legality and expertise". The essential defence against a professionalised system of justice is the assumed quality of what Burney (1979:87) referred to as the 'decent honest citizen', namely: common sense:

It consists of all those crude, unrefined and challenging statements which are unanswerable within expert discourse... Common sense may thus be portrayed comfortingly as the safeguard of the criminal justice system, the champion of freedom, the check on expert power.

Worrall (1987:110-11)

The notion of common sense amongst lay magistrates, it is suggested, is that it is their tool, by which they can challenge the ascendancy of experts and expert knowledge. This was reflected in the findings of this study. Questionnaire responses (indicated below) and subsequent interviews with lay magistrates, and others, highlighted a recurrent theme that the notion of common sense and legal expertise were perceived by many lay magistrates to be mutually exclusive. Participants in the present study were asked to indicate whether lay magistrates or District Judges were more likely to possess common sense and legal knowledge.

142
Table 4.4: Are lay magistrates or District Judges more likely to possess Common Sense?

<table>
<thead>
<tr>
<th></th>
<th>District Judges More Likely</th>
<th>Lay Magistrates More Likely</th>
<th>Neither More Likely</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>Lay Magistrates</td>
<td>0</td>
<td>0</td>
<td>65</td>
<td>66</td>
</tr>
<tr>
<td>District Judges</td>
<td>4</td>
<td>36</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Court Clerks</td>
<td>10</td>
<td>50</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Defence Solicitors</td>
<td>5</td>
<td>29</td>
<td>3</td>
<td>18</td>
</tr>
</tbody>
</table>

(Source: Questionnaires)

It is clear from Table 4.4 that the majority of lay magistrates considered common sense to be an attribute more likely to be held by themselves than District Judges. The majority of the remaining respondents viewed it as something that neither lay magistrates nor District Judges were more likely to possess. This suggests that for most court personnel, other than lay magistrates, common sense was a general quality likely to be shared by most people and not something that was dependent on the absence of legal training or exclusive to the concept of the ‘ordinary person’ in the way that lay magistrates appeared to perceive it.

Table 4.5: Are lay magistrates or District Judges more likely to possess legal knowledge?

<table>
<thead>
<tr>
<th></th>
<th>District Judge More Likely</th>
<th>Lay More Likely</th>
<th>Neither More Likely</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>Lay Magistrates</td>
<td>90</td>
<td>92</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>District Judges</td>
<td>11</td>
<td>100</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Court Clerks</td>
<td>20</td>
<td>100</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Defence Solicitors</td>
<td>17</td>
<td>100</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

(Source: Questionnaires)

Table 4.4 indicates that nearly all the respondents for this study agreed that District Judges were more likely to possess legal knowledge. This was unsurprising. The vast majority of lay magistrates acknowledged that District Judges were more legally knowledgeable than themselves. However, when the two tables are considered together it is evident that, unlike the majority of lay magistrates, the majority of District Judges appeared to view common sense as a quality that was compatible with their legal expertise. This would appear to concur with the view of Seago et al (2000) who concluded that lay magistrates and District Judges shared a similar view as to the role of common sense in judicial decision-making. However, this conclusion does not seem to take into account the weight placed on these two qualities by lay magistrates and District
Judges. An analysis of the data gleaned from this study demonstrated that this was far from equal. It is argued that this difference in weight was implicit in the divergence of opinion between lay magistrates and District Judges over the mutual exclusivity of common sense and legal knowledge. Evidence as to the differing significance placed on these qualities and skills, in terms of judicial decision-making, was found in the interviews held with lay magistrates and District Judges, as well as other court practitioners. Some typical comments from lay magistrates are given below:

I think the most important quality that we bring to the job is common sense. That is what is unique about the lay magistracy. It's what makes our approach human in a way... our decisions are more relevant to the ordinary person on the street because we approach it from the same perspective that they probably would.

(Lay magistrate, Provincial Court II, Interview Transcript)

and:

Having trained lawyers make decisions is all very well, they are probably more consistent in their thinking because they have been trained to think in a particular way... but because we are just members of the public what we are able to do is something different, we're able to think in a way that's more flexible I suppose, we tend to take the common sense approach. The training we do have is more about procedure and shouldn't be about trying to make us into lawyers. I think that would defeat the point of having us here.

(Lay magistrate, London Court, Interview Transcript)

District Judges and court clerks were dismissive of the view that being professional lawyers had somehow diluted or restricted their ability to apply their common sense:

I was a solicitor and spent thirty years of my life helping people like lay justices in their ordinary lives, running a practice. One isn’t a lawyer operating in some airy fairy remote area, one is a human being ... one plays in the local football team, one gets around on the high street, you know, all those things one does makes one as close to the ground as any so-called lay justice, one doesn’t live in a rarefied atmosphere. One has seen it all, done it all and it is simply not a notion to be tolerated that one lacks common sense.

(District Judge, London Court, Interview Transcript)

and:
There’s an assumption amongst lay magistrates that when people go to law school they have their common sense sucked out of them and of course it’s not true. It’s a bizarre idea. What the lay bench mean by ‘we’ve got common sense and ‘they’ve got legal knowledge’ is ‘we can ignore the law and do what we want, follow our gut instinct and do what we think is right’ rather than what it technically correct.

(Court Clerk, Provincial Court 1, Interview Transcript)

Perhaps more important than the lay magistrates perception of their ‘ownership’ of common sense was the emphasis they placed on it in terms of being a basis for sound judicial decisions - at the expense of the application of legal principles. A recurrent argument has been that lay magistrates fail to appreciate the fundamentals of jurisprudence or lack understanding in some of the more complex areas of legal practice, such as the rules of evidence and abuse of process arguments (Roberts, 1995; Darbyshire, 1997c).4

Those who are not legally qualified may have little sympathy with traditional legal principles or ideologies.

(Roberts, 1995:785)

However, lay magistrates tended to consider themselves superior decision-makers, expressly because they were not bound by legal knowledge and thus were able to usurp the law, when necessary, if ‘gut instinct’ or ‘common sense’ demanded it:

... of course the law is important, very important, of course it is and we always give due regard to it...we would never do anything illegal. But we are here because we can apply the law in a common sense way and to take the most sensible and fair-minded approach to a decision that we can. If that means that we don’t always jump through every legal hoop when actually reaching a decision then that doesn’t mean it’s not the right decision... if that happens in any particular case, and I’m not saying it happens often, then we can tailor our reasons as necessary with the help of the clerk.

(Lay magistrate, Provincial Court II, Interview Transcript)

and:

4 It should be noted that Darbyshire (1997c) also argues that although many of the professionals working in the magistrates’ courts considered themselves versed in the legal rules of procedure, many readily accepted their own ignorance of the rules of evidence. No such admissions were made by the court clerks or District Judges interviewed for this study.
I believe that most people really respect the decision-making approach we adopt and I think we, as lay magistrates, are proud of it. I mean it’s as old as the hills. Some people say that lay magistrates make the right decision for the wrong reason and there is a lot of truth in that because I think we are here to apply the common sense of the ordinary man on the street. Of course we have to have *regard* for the law. But the main point is to make the right decision.

(Chairman of the Lay Bench, Provincial Court II, Interview Transcript)

Although the lay magistrates involved in this study tended to fully acknowledge that the law, in terms of the statutory powers that bound them, their job (as they saw it) was to apply ‘common sense’ *within* the rule of law rather than be governed by the dispassionate application of it. For lay magistrates what appeared to matter was that their decisions were ‘right’ and reached through a process of consultation governed by common sense. When necessary, the reasons for their decisions could be modified and justified, in line with the rule of law - for example when giving reasons for bail or sentencing. This suggests that the ‘law’ is a device - there to sanction the lay magistrates’ ‘common sense’ decisions. Some lay magistrates therefore acknowledged the argument that they were less able to apply the laws of evidence rigidly, as a positive advantage in judicial decision-making.

However, ‘common sense’ has not necessarily always been viewed as a benefit in terms of judicial decision-making. Easton (1998:114) has commented that although a reasoned approach based on ‘common sense’ may be superficially persuasive, common sense is “unreliable, impressionistic and unsystematic” and therefore “a curious model for the law to follow”. Raine (1989:74) also observes that there is a fundamental flaw in the presupposition of lay magistrates that a reliance on common sense is an advantage in judicial decision-making: “[it assumes that] what is self-evidently true to them is true to everyone else.” For example, Gelsthorpe and Loucks (1997:58) point out that a reliance on common sense, which is not tempered by the objectivity of legal training, often means a dependence on a common sense that is based on stereotypes and non-verbal cues. This can lead to discrimination and inconsistency of approach.
Some of the District Judges interviewed for this study apparently equated the extolling of common sense with the lay magistracy’s tendency, whether it be purposeful or not, to circumvent the law and demonstrate palpably the virtues of a non-professional approach to decision-making. Proponents of lay justice (as well as the lay magistrates themselves) argue that this injects humanity into the administration of justice (Rickard, 1975; Humphrys, 2001). Conversely, this approach has been considered by professionals to be wholly inappropriate, leading to decisions of considerable import being “arrived at by muddled thought processes and extraneous issues” (Haynes, 1987:506). It seemed that some of the District Judges interviewed with this study agreed with this view and equated the lay magistrates’ inclination to rely on common sense with a reliance on ‘gut instinct’. This is a connection that has been noted in previous research (Gelsthorpe and Loucks, 1997).

I will acquit the worst cases because I will always mentally check not just whether I think he is guilty but if the evidence shows he is guilty. I don’t think justices adopt that approach. I think they prefer to go by gut instinct which usually means going off in all sorts of inappropriate directions and considering issues that aren’t relevant...they prefer to go their own way rather than being told how to do it by interfering professionals who are trained to apply the law properly.

(District Judge, London Court, Interview Transcript)

and:

When I was a Clerk to the Justices I found it very difficult at times to persuade lay magistrates that despite their, very strong, and probably right, instinct to give a guilty verdict that there was a gap in the actual evidence...they are not good at actually analysing that the evidence is sufficient and think that applying common sense is enough and will somehow miraculously result in natural justice.

(District Judge, Provincial Court I, Interview Transcript)

However, some of the lay magistrates themselves appeared to believe that it was common sense itself that kept more basic instincts in check:

... your gut reaction to something might not be correct and common sense is essential to temper that.

(Chairman of the Lay Bench, Provincial Court I, Interview Transcript)
Sometimes you can take an instant dislike to a defendant which can make you leap to the conclusion that they guilty as sin or that they deserve a harsh sentence...it would be very easy to let that instinct take over, but you’ve got to be really careful about that and always remember to stand back and apply your common sense to the facts that you’re hearing.

(Lay magistrate, Provincial Court II, Interview Transcript)

In addition to doubts concerning the benefits of common sense, as a quality in itself, in respect of decision-making, there is also a view that dispensing justice has simply become too complex to be based on common sense (Morgan and Russell, 2000:7). On the contrary, it requires the objective employment of legal rules, a skill that lay magistrates not only appear to be lacking, but also appear reluctant to embrace as essential - especially when they have the services of a legally trained clerk:

We are there to make the decision, to use our common sense. Matters of law are for the clerk... It’s their job to advise where appropriate but it’s not something we need to be worrying about all the time. We concentrate on making the right and sensible decision... if there are legal issues that need to be dealt with the clerk will tell us and take us through it.

(Lay magistrate, Provincial Court I, Interview Transcript)

In addition that the emergence of the managerialist ethos has led to an added emphasis on the importance of professional training, which helps to ensure efficiency and consistency (Raine and Willson, 1993a). This does not sit comfortably with the established notion of “layness” embodied by lay justices; for whom paucity in professional legal training is considered to be an advantage (Fitzpatrick et al, 2001:116). This view was reflected in the views of some of the District Judges interviewed for this study; the historic ‘common sense’ approach attributed to lay magistrates had been overtaken by the complexity of the law and was no longer viable. Their comments summed up neatly the ascendant place now held in the lower courts by the ‘professional’ approach to decision-making, based on legal knowledge and expertise:
It’s no longer the robust common sense approach of old. It’s too simplistic in this day and age... You either make the system less complex, train lay magistrates more thoroughly or replace them with professionals.

(District Judge, Provincial Court II, Interview Transcript)

and:

The law is increasingly complex, even for the likes of me, so that when you are asking lay justices to decide, for example, whether there has been an abuse of process they don’t even know what the expression means. How can you expect them to make a valued decision on something which they don’t understand. They have to refer to their clerk and then it becomes the clerk’s decision as a question of law.

(District Judge, London Court, Interview Transcript)

However, it would be wrong to conclude that the value of common sense was rejected outright by District Judges and other legally trained court personnel, as a useful element in the decision making process. In fact, during one interview, at the conclusion of a long and involved account about a lay bench that had imposed an excessive fine, a District Judge commented:

...absolutely ridiculous state of affairs that was, I don’t think any stipendiary would have made an order like that. Completely devoid of common sense.

(District Judge, Provincial Court I, Interview Transcript)

Others went further by expressing the view that those incompatible approaches would lead to an unacceptable level of compromise when it came to the outcome of decisions. This concern was not limited to the need for consultation. At its heart was the notion of ‘incompatible approaches.’ There appeared to be a sense of disquiet, among some District Judges, that their ‘legally’ sound decisions would be tainted by the need to indulge lay magistrates’ inability to treat evidence correctly and in effect lead to them having to assimilate lay magistrates’ natural ‘human’ tendencies into any joint decision:

I don’t believe integrated benches would lend themselves to a good outcome, because you would so often have to end up compromising approaches and, in effect, compromising decisions in order to accommodate people whose ways of doing things and thinking about things are just different. That’s not to say that they way lay magistrates do things is necessarily wrong, it’s just different, essentially different.

(District Judge, Provincial Court I, Interview Transcript)
and:

I have found on the few occasions I have sat with lay justices that I have the ability to exclude things from my mind that I ought not to include evidence wise. Lay justices find that very difficult despite having training. They are human beings, as I hope I am too [laughs] but without the professional experience to stop themselves saying "I think what happened was..." That's a very human thing to do, hear the evidence and then reconstruct what you think happened, but a lawyer would never do that. I can imagine having arguments with lay justices about that kind of thing if we had to sit together and on the few occasions that I have done we have fallen out over it. They jump the gap... say to each other and me "well we all know he did it". I find that a very uncomfortable idea.

(District Judge, London Court, Interview Transcript)

Interestingly, rather than expressing it as a reason not to utilise mixed benches some court clerks expressed the view that mixed benches were the ideal forum in which to train lay magistrates to take a more 'legalistic' view of the evidence:

Lay justices should sit with stipendiaries on trials in order to get guidance on considering evidence. This might help prevent them from considering irrelevant issues.  

(Court Clerk, Provincial Court II, Interview Transcript)

The use of mixed benches for training purposes was expressed by both District Judges at Provincial Court I as their only legitimate function and then only at the express request of lay magistrates. No proactive steps were taken by the District Judges at Provincial Court I to encourage the practice. However, the lay magistrates at Provincial Court I appeared to be aware of this opportunity and of those at this court that felt that mixed benches should be used more often, the majority viewed it as an exercise in observation only, either when training to become a Chairman or for newly appointed magistrates. As mentioned above, the District Judges in Provincial Court II had effectively brought a halt to any possibility of sharing their bench with their lay colleagues. Although, as explained above this was justified on the basis of efficiency, it was also clear that incompatibility of approach with regard to the application of the law was also a factor in this decision:

5 Written comment on questionnaire.
Although there was an established tradition that stipendiaries would be willing to sit with lay magistrates we’ve now decided that we shouldn’t. Partly because there is a risk that it’s seen as a training exercise and we’ve decided that it is unfair to a defendant to be on the receiving end of someone being trained. But also, and most importantly, there is a risk of conflict in legal views. Technically the lay bench are required to follow the legal advice of their clerk, but no one is responsible for or feels the need to advise us. The potential for embarrassment in the event that we take a different view to the law than the legal advisor and the possibility of being overruled, we believe militates against the argument that we should sit with them on an equal basis.

(District Judge, Provincial Court II, Interview Transcript)

This quote is not only indicative of the influence the District Judges at Provincial Court II have in bringing to a halt an “established tradition” but may also be the most honest expression of what is at the centre of the reluctance of professionals to ‘share’ the judicial decision-making process with their lay colleagues. Despite the emphasis on the incompatibility of methods and the waste of resources it is arguable that at the heart of the objections was a power struggle for control of the bench.

In summary, it was clear that lay magistrates and District Judges had very disparate views on the importance of legal knowledge in the process of judicial decision-making. This belies the notion of “complementarity.” Lay magistrates believed the application of ‘common sense’ to be equally valid to the dispassionate application of legal knowledge. Therefore, excluding them from ‘purely legal’ matters, as was proposed by Sanders (2001) and Auld (2001) would be, and in fact was, deemed an unacceptable division in the judicial roles of lay magistrates and District Judges.

Community Justice

Morgan and Russell (2000:100) noted that research findings from other European jurisdictions revealed that the association between democracy and lay involvement in judicial decision-making was far from simple and depended on the cultural and political tradition in any one jurisdiction. In England and Wales, the link between traditional values and the practical skills and qualities associated with lay magistrates is perhaps best epitomised by the concepts of local knowledge, participatory democracy and community justice (Bankowski et al, 1987; Raine, 1989). As Fitzpatrick et al (2001:105) point out: magistrates’ courts
are “conventionally conceived as being rooted in locality and as being possessed with an ability to respond sensitively to the needs of the community they serve.” Brown (1991:111-112) has commented that: “a threat to the community becomes a threat to the magistracy and vice versa.”

Fitzpatrick et al (2001:109) comment that: “Lay magistrates do seem to regard themselves as ‘the custodians of the community’…” and this idea was clearly articulated by the lay magistrates in this study. Local knowledge was valued both as a pragmatic tool and on a symbolic level. Their “localness” justified their right to dispense justice in the community and to dispense justice on behalf of the community. Many also considered that practical local knowledge of the community could assist in coming to sound and sensible judicial decisions:

Lay magistrates think you are criticising them if you point out to them that they are not the ‘peers’ of the ‘ordinary’ person on the street or the person standing in front of you in the dock. They are intended to be betters not equals. That’s why the court stands when they walk in and they don’t stand when a jury walks in. It’s a fundamental misunderstanding that they have in their minds as to what they are. They think they are there to represent the community, to make decisions on their behalf based on ‘common sense’, but they are not…. They are members of the judiciary. They think that the opposite of professional is lay, but the opposite of professional is amateur and I don’t know any other sphere in life where you would trust an amateur to do this sort of job.

(Court Clerk, Provincial Court I, Interview Transcript)

Therefore, according to that particular court clerk, lay magistrates should embrace, rather than fight against, their ‘judicial’ status and cease from adopting the view that they are analogous with a jury. Both Auld (2001) and Sanders (2001) justified their proposals for the extended use of mixed benches with reference to the crucial role of the lay magistracy in representing civic involvement in the criminal justice process. Sanders (2001) wanted his hybrid models to extend the lay magistracy to more closely resemble the jury, while Auld (2001) envisaged the hybrid benches in his ‘middle tier’ as working as a mini judge and jury, with lay magistrates retiring when matters of law arise. This jettisoned the idea, envisaged by Sanders (2001) that lay magistrates could fulfil the role of the jury, on account of their “largely unrepresentative nature” (Bridges, 2001:11). The lay magistrates in this study however, were keen to promote this view, for example:
Of course when we sit we *are* the jury, we are akin to the jury.

(Chairman of the Lay Bench, Provincial Court I, Interview Transcript)

and:

You only have to look at the long history of the jury to see where the idea for lay magistrates came from. We’re like a replica mini jury really, a way of expanding the principles associated with it.

(Lay magistrate, London Court, Interview Transcript)

and:

We are here to represent the community, like the jury in the Crown Court. ... it’s important for public understanding and confidence in the system that there are ordinary people involved otherwise it would just be a place for *professionals*, for lawyers and judges.

The effect of the Sanders (2001) ideas would be to limit the role of lay magistrates to that of the jury. The Auld (2001) proposals would go further still. Lay magistrates in the proposed ‘middle tier’ would have a lesser role to play in the decision-making process than the jury, whose deliberations on the facts of a case are generally unfettered by judicial intervention (Bridges, 2001:11). In view of the fact that many of the lay magistrates sought to equate their role with that of the jury and the emphasis placed on the importance of their symbolic role as well their practical one, the vehemence of the rejection of Sanders’ ideas seem surprising. It seems incongruous that lay magistrates should resist a jury-like role and want to be responsible for deciding points of law and passing sentence in the way that the jury do not have to. It would appear that although lay magistrates were more than willing to associate themselves with the social and symbolic aspects of the jury, this affinity did not stretch as far as wanting to mirror the more limited power of the jury as fact finders only.

According to Raine (2001:118) the notion of “local justice” has been transformed by the closure and merger of many of the smaller petty sessions, in the name of efficiency, since the late 1980’s. This has led to the erosion of the “physical and symbolic link between localities and magisterial justice.” (Fitzpatrick *et al* 2001:109). However, Raine (2001:118) concedes that there is little consensus about the “strengths and weaknesses of ‘local justice’ as a concept and in reality ... its suitability for contemporary life.” Seago *et al* (2000:648-649) consider the
notion of local justice to be “troublingly vague” and question its relevancy to “good quality justice” in both a pragmatic and figurative sense.

Notwithstanding their view of the concept itself, Seago et al (2000) concluded that, a joint appreciation of the validity of local knowledge and experience was an element of the shared judicial culture of lay magistrates and District Judges. However, it was abundantly clear that, of those that were involved in this study, only lay magistrates considered the notion of ‘local knowledge’ as having any symbolic or practical merit. In terms of practical application, the professionals in the courtroom considered it as largely irrelevant and that when lay magistrates did attempt to ‘bring it into play’ it tended to hamper, rather than inform, their judicial decisions. ‘Local justice’ was seen by professionals within the courts as a ‘by-phrase’ or excuse for inconsistency in the decisions of lay magistrates and that a modern and professional court should be more concerned with fairness and standardisation. In particular it was felt that lay magistrates endeavoured to apply their local knowledge to cases as a mere demonstration of their possession of it, rather than because it was material to the facts of the case:

I suppose most lay magistrates bring a local knowledge and experience which stipendiaries appointed from outside the area may not have, but it’s so rarely an important feature of the decision-making in an individual case that you know that particular road or you know that particular shop, it’s very very rarely of any importance.

(District Judge, Provincial Court II, Interview Transcript)

and;

It’s highly unlikely but if it does become important you can always suspend proceedings and go and have a look [laughs]...Sometimes it becomes a hindrance when lay magistrates try to demonstrate their local knowledge and bring it to bear in a case and then get confused if they think something different about an area which the evidence is presenting and it can become a real problem and even embarrassing in some cases because someone may refuse to believe that they may actually be wrong.

(CPS Lawyer, Provincial Court II, Interview Transcript)

Some lay magistrates also held this view:
I think for some magistrates displaying your local knowledge is all part of the ‘this is why we are here’ game. Having local knowledge is one of those defining qualities of the lay magistracy and there are those who feel the need to actually demonstrate it... “Yes we do all know where the red light district is and where to find Big Issue sellers” But when it’s so obviously a display it appears like a kind of worldliness, a rather tired worldliness rather than an attempt to demonstrate how to use this knowledge in an objective way in the courtroom.

(Lay Magistrate, Provincial Court 1, Interview Transcript)

As far as the concept itself was concerned, it was considered by many courtroom professionals interviewed to be an anachronistic idea, one court clerk stating in interview: “I’m sure it was a nice concept once, long ago [laughs]”. They were also generally dismissive of the idea that lay magistrates represented the local community or that their presence inspired public confidence. It can be argued that the true worth of ‘local’ justice to the modernity agenda is reflected in the decision to give District Judges commission throughout England and Wales, by virtue of the Access to Justice Act 1999. However, as has been argued ‘local knowledge’ and therefore the ability to dispense ‘local justice’ have been considered to be the sole territory of lay magistrates. Professional magistrates have never laid claim to it.

Concluding Comments
This chapter has sought to assess recent proposals to extend the use of hybrid tribunals where lay magistrates and District Judges would sit together. The differing perceptions of lay magistrates and District Judges of the skills, qualities and values deemed necessary for judicial decision-making, were shown to be largely incompatible. For example, the vast majority of lay magistrates and some District Judges in this study demonstrated a mutual emphasis on the quality of ‘common sense’, as was also noted by Seago et al (2000). However, many lay magistrates also viewed common sense as the preserve of ‘ordinary people’, at best lacking in, or at worst incompatible with, those who had been legally trained

It has been demonstrated that the proposals for mixed tribunals of both Sanders (2001) and Auld (2001) do not amount to truly combined decision-making. In both models District Judges largely remained sole arbiters of law and sentence, while having a equal or ‘deciding’ role to lay magistrates in factual
considerations. This left lay magistrates to be arbiters of fact and to act as 'symbols' of civic justice, with a lesser role than the jury has now.

In conclusion, the decided lack of enthusiasm for mixed benches on the part of both lay magistrates and District Judges supports the contention that they consider themselves to have distinct judicial cultures in the way they make decisions, and that their respective skills and qualities are neither complementary nor easily combined to the satisfaction of both. Lay magistrates appear to take the view that the legal authority of District Judges would effectively render them powerless on a shared bench and District Judges clearly feel that the possibility of being outvoted by two lay magistrates would be an unacceptable position in which to operate professionally. Seeking to address the concerns associated with the decision-making of lay magistrates and District Judges, and seeking to redefine their respective roles in the generally anomalous organisation of the magistrates' courts, by basing the future organisation of the magistrates' courts around the concept of combined benches would be unlikely to be successful, or indeed solve the problems associated with each type of tribunal. It fails to take into account the fundamental shift in the power relationship between District Judges and lay magistrates that it would necessitate. Furthermore, such a solution to the problem of the anomalous organisation of the magistrates' courts would add to the redefinition that has already been gradually taking place of the skills and qualities required to dispense summary justice in a modern criminal justice process. The growth in the numbers and sphere of influence of District Judges has been both a manifestation of and contributory factor in this re-definition.

Therefore, although the proposals of Auld (2001) and Sanders (2001) took two different standpoints on the relative roles of the lay magistracy and District Judges; it would appear that both of these recent excursions into the realm of mixed tribunals would result in a lesser, or at least different, role for the lay magistracy. Conversely, they would not only require a significant increase in the numbers of District Judges, but also extend their power over the conduct of cases, legitimise the view that they should deal with the more serious cases and afford them an influence over lay magistrates that they currently do not enjoy.
The District Judges in this study took the view that mixed benches would have the effect of limiting their role in terms of efficiency and also the power afforded them as lone decision-makers. However, it has been argued that although the theory behind mixed tribunals is centred on “complementarity” and balance, the models recently proposed would, in practice, have the effect of significantly reducing the input of lay magistrates while increasing the numbers, and extending the power and influence of District Judges. It would also formalise the already informal practice (outlined in Chapter 3), of allocating more of the ‘more serious’ work to District Judges. This would result in the ascendancy of the “professional approach” to decision-making. The overall consequences for both parties were neatly summed up by the comments of this District Judge:

There appears to be moves afoot to recommend that we sit with lay justices for certain cases. I would be totally dishonest to say that we would want it and I don’t think the lay justices would want it either. I can see that it has a nice symmetrical, theoretical… feel to it, but in practice I think we would dislike it intensely. I do sit with lay justices in the Crown Court… some are very good and a pleasure to sit with…but could I do the job just as well and more efficiently on my own? Of course I could. As for the lay justices… it really is a vote of complete no confidence in them to say that they should sit with professionals…

(District Judge, London Court, Interview Transcript)
Chapter 5
The Non-Judicial Role of District Judges: Recommendations and Realities

Introduction

Seago et al (1995) classified the non-judicial work of professional magistrates into two areas; training and administration. This chapter will evaluate the role of the District Judges, at the three courts studied, in both of these areas. For their purposes Seago et al (1995:125) focused on “formal” training, such as direct instruction of lay magistrates, having considered joint sittings as part of their examination of judicial work. Administrative work was categorised into a number of discrete areas such as research, correspondence, warrants, summons and liaison with lay justices (Seago et al, 1995: 130). For the purposes of this study the examination of training included joint sittings (for training purposes as opposed to general use of mixed tribunals), and administrative work has been more broadly defined in terms of the District Judges’ general contribution to policy committees and other bodies involved in the day to day running of the court.

The Venne Report (Lord Chancellor’s Department, 1996) focused on non-judicial work as an area that was ripe for the fostering of mutually respectful relationships between professional and lay magistrates and areas in which the skills of professional magistrates should be utilised to the full. It made several recommendations as to the role of professional magistrates in both training and committee work within the court. The extent and nature of the role of the District Judges at the three courts in the present study, in both training and administration, were considered and compared to the recommendations of the Venne Report.

The findings of this study demonstrated that the role of District Judges in training and administration was limited at all three courts; their input falling far below the recommendations in the Venne Report. This was clearly reflected in responses to the questionnaire. When asked to rate the influence or impact of District Judges in

---

1 This view was echoed more recently by Lord Justice Auld (2001). He suggested that District Judges’ involvement in the training of lay magistrates would help overcome the perceived barrier between them.
these two areas, court clerks, lay magistrates and the District Judges themselves acknowledged their influence in training and administration was minor. With regard to administrative functions nearly half of the lay magistrates (45%, n=44) \(^2\) felt that District Judges had a neutral impact on this area, suggesting an indistinct role, if any. None of the clerks considered District Judges as having a major influence in court administration. Taken together, over 85% of court clerks (n=17) and nearly three-quarters of lay magistrates (72%, n=71) thought the administrative role and influence of District Judge’s to be, at best, neutral but also minor or unimportant.

The view taken of the role of District Judges in training was similar. A significant majority of the lay magistrates (90%, n=88) and three-quarters (75%, n=15) of the court clerks considered that District Judges had a neutral, minor or unimportant impact or influence in this area. These views were in stark contrast to those on the importance of the District Judges’ role in judicial work. Over three-quarters of court clerks (85%, n=17) thought that District Judges had a major or important influence on judicial work. However, only one-third (29%, n=29) of lay magistrates across all three courts felt that District Judges had major or important influence on judicial work; a indication perhaps of their entreaty to be considered on at least an equal par with their professional colleagues as far as effective judicial decision making is concerned.

The reported views of lay magistrates and court clerks were consistent with the views of the District Judges themselves. None rated their administrative and committee work as an important contribution within the court. Only one District Judge and one Deputy District Judge, both from Provincial Court II, considered training lay justices to be one of their most important contributions to the court; albeit something that they did not, on closer inspection, appear to engage in very often. Notwithstanding this, their views seemed to be consistent with the ostensive overall philosophy of Provincial Court II towards the utilisation of District Judges in a training capacity.

---

\(^2\) Data obtained from Questionnaires.
Therefore, the findings of this study with regard to the overall views of court practitioners as indicated above, were consistent with those of Seago *et al* (1995:80) who concluded that:

> The work of the stipendiary is viewed as overwhelmingly judicial in nature. Their possible training or administrative functions are not seen as important or valuable, save for some minor acceptance of their role as trainers.

The causes of this lack of participation were various and, it is argued, dependent upon three main factors working in unison but each with differing degrees of prominence at individual courts. First, the ascendancy of the court clerks in the organisation of training and administration (particularly case management) within the courts. Second, the reluctance of the lay bench training committees (or equivalent) to receive input from District Judges. Third, the low level of interest and enthusiasm for non-judicial work on the part of the District Judges themselves. Seago *et al* (1995:126) acknowledged that the “lesser nature” of non-judicial work meant that their “inquiries were much less detailed” than for judicial work. However, for the purposes of this research, it is suggested that the extent of the District Judges’ non-judicial functions within their court, particularly training, was indicative of the culture of individual magistrates’ courts and their attitude towards the role of professional magistrates.

This chapter begins by examining the extent of the training role of the District Judges at the three courts and goes on to discuss the various reasons for its limited nature. This is followed by an analysis of their role in administration, before some final conclusions are drawn.
District Judges and Training – An Overview of the Three Courts

After the Royal Commission of 1948 and the Justices of the Peace Act 1949, all the new Magistrates' Courts Committees were required to administer schemes of instruction for lay magistrates in accordance with arrangements approved by the Lord Chancellor. The application of this first statutory proviso for the training of lay magistrates differed greatly between the courts, some affording excellent schemes and others making minimum effort to fulfil their training responsibilities (Skyrme, 1979:65).3

The tone of the Venne Report with regard to the involvement of professional magistrates in the training of their lay colleagues could be described as aberrantly resolute. Indeed, the chapter presented on this issue stands apart from the mild and rather passive mode of expression employed in the rest of the report. It states categorically that their remit, and therefore their recommendations, did not encompass the overall arrangements made for training in individual courts but that the specific input of professional magistrates into this training was of primary importance. The report highlighted the induction of new lay magistrates, court management skills, chairmanship training, recent statutory developments and the rules of evidence as areas where professional magistrates should be expected to make a contribution to the training programme of lay magistrates.

Our concern is not with the organisation of training but with the contribution which the Stipendiary Magistrate can and should make to its provision... in our view the Stipendiary should be available to make a contribution, as a minimum under each of the following heads and the training officer should expect to be able to commission such contributions from him.

(Venne Report, Lord Chancellor's Department, 1996:22, emphasis added)

The present study assessed the extent to which these recommendations were adopted in the three courts examined. Very simply, they were not. Although this conclusion appears categorical, the evidence in support of it was overwhelming and came, in the main, from the District Judges and lay magistrates themselves.

As previously stated the overwhelming majority of lay magistrates surveyed for the present study felt that District Judges had little role in, or influence on, the training of lay magistrates.

3 See Skyrme (1979), Chapter 6, for a full history of the development of magistrates' training.
training in their court. The conclusions of the lay magistrates were confirmed by every District and Deputy District Judge canvassed for this study. At all three courts, they all stated that they ‘rarely’ or ‘never’ engaged in the training of lay magistrates. In addition, none of the District or Deputy District Judges sat on the bench training committee (or equivalent) at any of the three courts. This finding did not concur with that of Seago et al. (1995:126) that the training work of provincial stipendiary magistrates was significant and divided between the face-to-face delivery of teaching and, the more usual informal practice, of asking lay magistrates to join them on the bench. Possible explanations for the lack of the District Judges’ participation in training at the three courts involved in this study will be explored in detail in subsequent sections of this chapter. However, an overview of the philosophies and policies in relation to training provision at the three courts is necessary in order to set the context in which these explanations may be discussed.

Of the three courts that participated in this study it was evident that only Provincial Court II had an inclusive philosophy of involving District Judges in the training of lay magistrates. It was noted earlier in this chapter that only two District Judges, both from Provincial Court II, viewed training as, potentially, one of their most important contributions to the court. The Annual Report (1998) published by Provincial Court II praised the role the District Judges had had in directing a succession of “training conferences” for the bench. The Chairman of the lay bench at Provincial Court II also mentioned this in interview:

One DJ here has rolled up his sleeves and got stuck in with training sessions. I thought he was brilliant and I thought he made a significant impact on our adjournment culture.

(Chairman of the lay bench, Provincial Court II, Interview Transcript)

---

4 Data obtained from Questionnaires.

5 In addition to the reasons explored later in this chapter, the difference between the findings of this study and those of Seago et al, 1995 could be accounted for either by different local court cultures in relation to the provision of training, or by general changes in practice in the intervening period between their research and the current research. However, the respondents in the current study did not refer to either of these factors as contributing to the lack of District Judges' involvement in training.

6 The full reference for this report is not provided in order to protect the anonymity of the court.
In addition, the Deputy District Judge who viewed his potential role in training as important commented that the training of lay magistrates by professional magistrates was an integral part of the future development of the lay magistracy:

There will continue to be an important role for lay magistrates, particularly working with and being trained by stipes. The process should be an evolution not a revolution.7

(Deputy District Judge, Provincial Court II)

These indications about the role of District Judges in training at Provincial Court II were also supported, to a small extent, by the response of court clerks and lay magistrates to enquiries at this court about which personnel provided the majority of training at the court. Those magistrates that were trained as Chairmen or who were relatively newly appointed stated that the District Judges had provided some of the training in areas relating to chairmanship skills and inductions for new justices. In comparison, no lay magistrates or court clerks from Provincial Court I or the London Court identified District Judges as providing training in any area. However, it should also be noted that the vast majority of responses from lay magistrates at Provincial Court II signified that the Clerk and Deputy Clerk to the Justices and court clerks provided the bulk of training in all areas. Even though District Judges had clearly been involved in training in Provincial Court II with some apparent success, they still considered, along with all the other District and Deputy District Judges surveyed for this study, that they never or rarely engaged in the training of lay magistrates. This suggests that although this court was clearly amenable to the involvement of District Judges in training, it was not something that occurred on a regular basis. Therefore, the apparently inclusive philosophy of Provincial Court II in this regard appeared to have limited application.

If the responses from Provincial Court II lent some support to the conclusions of Seago et al (1995) referred to previously, then, by comparison, those from Provincial Court I contradicted them totally. Provincial Court I demonstrated a distinct lack of official policy, but a very explicit philosophy, with regard to the

7 This was a written comment added to the questionnaire. It is not a quote taken from an interview.
involvement of District Judges in the instruction of the lay bench. It was a philosophy that certainly could not be described as positive or inclusive, much to the consternation of one of the District Judges and the contentment of the other. The approach of Provincial Court I to the involvement of District Judges in training was summed up by this comment of one lay magistrate:

I have been a lay magistrate for over 34 years and am pleased to say that I have never observed or sat with a stipe. I have also never had any training, lecture or talk from one!!8

(Lay Magistrate, Provincial Court I)

The extent of the District Judges’ involvement in the training of newly appointed magistrates or those in training to become Chairmen at Provincial Court I, was limited to an informal suggestion that they may request to sit with a District Judge to observe, if they wished to do so. There was, however, some discrepancy of opinion about the degree to which this opportunity was taken up. One District Judge and the Deputy Clerk to the Justices agreed that it was a poorly used resource:

We did make some suggestion that we ought to assist in chairmanship training but the training sub-committee would only go as far as saying that chairmen or trainee chairmen may, if they wish, sit with us so it’s an informal relationship which isn’t greatly taken up, where as in [court name] for example where my pal sits they have to sit with him as part of their appraisal.

(District Judge, Provincial Court I, Interview Transcript) 9

In the view of the Deputy Clerk to the Justices, it was a combination of suspicion, performance anxiety and the very informality of this arrangement that was the problem. However, there was no suggestion that the court should endeavour to remedy the latter by putting the practice on a more formal footing:

---

8 Written comment on questionnaire. Exclamation marks reproduced as in the original.

9 Unless otherwise stated, where italics are used in direct quotations from interviews they indicate the emphasis of the tone of the speaker and are not intended to emphasise certain words or phrases for the purpose of the writer.
... they *hardly ever* take up the opportunity. It's because I think they're frightened that they might be made into *clones* of the stipendiaries. I also think that at that stage they are often quite nervous, so they don't want to look at it being done in a much better way, by someone else, which will highlight their inadequacies. I think the best use of stipendiaries in training of lay magistrates is for newly appointed magistrates who once they've done their initial training and before they sit are given the opportunity to sit with a stipe, but they hardly ever do that either. It's maybe that it's not *promoted* enough here, there's not much of a general enthusiasm for it really, it's on a very informal basis.

(Deputy Clerk to the Justices, Provincial Court I, Interview Transcript)

This view did not tally with the comments made by some lay magistrates from Provincial Court I in interview. When it was suggested to the Chairman of the lay bench that sitting with and observing District Judges was a training opportunity rarely exploited by lay magistrates, the reply was quite categorical: "It happens quite a lot actually." In fact, several of the lay magistrates interviewed said they had taken this opportunity and stated that others had done so too. On the whole they felt that it had been an extremely useful exercise. One commented that he felt it should be more actively encouraged which suggests that the remarks of the District Judge and Deputy Clerk were grounded in truth and that the lay magistrates interviewed for this study were perhaps the exception rather than the rule. Or perhaps, there was a degree of misinterpretation due to a lack of communication between all parties involved and a failure on the part of those responsible, namely the members of the Bench Training and Development Committee, to promote the activity:

I *chose* to sit with a stipendiary, just to see how he operated. I found it very useful. I think it would be a very good idea to try and incorporate it more into training. I know lots of magistrates do it, it's not something I thought of myself and I seem to recall it was suggested to us but it was left to us to take it up. I mean the general opinion about whether stipes should get more involved with training depends a lot on your attitude to stipes.

(Lay Magistrate, Provincial Court I, Interview Transcript)
Whatever the take up of this ‘unofficial opportunity’ might have been, it was still far from conforming to the recommendations of the Venne Report, which stated quite emphatically that, “newly appointed lay justices should sit with stipendiary magistrates as a matter of course and that court chairman should do so as part of their chairmanship training” (Lord Chancellor’s Department, 1996:20).

Responses from the London Court indicated that training provision was simply something that neither the District Judges nor the lay magistrates concerned themselves with. It was clear that training was professionally organised by the people “upstairs” including a dedicated ‘Training Officer’. There was no evidence of any particular policy or view in relation to the involvement (or non-involvement) of District Judges in the training of lay magistrates and there appeared to be no disquiet among the District Judges about their lack of involvement. Similarly, no lay magistrates expressed views in any particular direction concerning the issue:

> Basically I have nothing to do with the training and nor do the lay bench generally. It is organised by the Justices’ Clerk basically. Most training in London is done centrally by the people ‘upstairs’ - the Clerk and the Training Officer. I don’t have any input at all. As for sitting with DJ’s as part of training that doesn’t really happen here, but you can go and observe if you finish your court early I suppose.

(Chairman of the lay bench, London Court, Interview Transcript)

When asked about his involvement in training one District Judge at the London Court replied:

> Well, some might do, I don’t. I have been involved in so many other things as a District Judge that training is something that I never got into… When I first became a stipe there were training days from time to time where the stipes would provide their assistance and advice, but the training section here at the head office upstairs has developed much more and I think they have now professionalised the lay justice training much more so that we are really only around on a sort of ad hoc basis.

(District Judge, London Court, Interview Transcript)
Other London based District Judges supported the view, touched on above, that their training role had declined in London, and that they were utilised on a more informal "ad hoc basis" than previously; as another London Court District Judge remarked: "...we are seen as having a useful function occasionally, perhaps being brought in to help train in a specific subject." This picture is consistent with the finding of Seago et al (1995:138) that the involvement of stipendiary magistrates in training was not common in Inner London. Indeed, the casual practice at Provincial Court I of newly appointed justices and those in chairmanship training sitting with District Judges as part of their training was dismissed quite vehemently by a District Judge in the London Court:

I don’t think it is right for public perception that justices should be seen to be sitting with us as a sort of training exercise because that implies that one’s having a second class bench for that particular defendant, he has one real judge and two people who are in training. So, I don’t think that is right.

(District Judge, London Court, Interview Transcript)

However, Skyrme (1979:69) emphasised the key position that professional magistrates in London had held in delivering training with regard to sentencing and this was an area that was cited by the Chairman of the lay bench at the London Court as one of the few occasions where District Judges did become involved:

Sometimes we have an evening when we do test cases and sentencing. We all split into different groups to come to our decisions and then we’ll come back together to discuss it. The District Judges will be there and they will say what they think and how they would have thought it through. It can be quite useful.

(Chairman of the lay bench, London Court, Interview Transcript)

This overview of the role played by District Judges in training, led to a reasonable general conclusion that training was something that District Judges, by their own admission, played little or no part in. This was despite training being a frequent activity of the lay magistrates at all three courts and an important undertaking on
Therefore the question left to answer, in terms of the present study, was not if District Judges were actively and regularly engaged in delivering training to lay magistrates, but why they were not. The findings, discussed below, demonstrated that despite their uniform assertion that they rarely or never undertook this function the reasons for this were found to be diverse both between and within the individual courts. As well as the disinclination of individual District Judges to fulfil this role, there was evidence of a disparity between the willingness of some District Judges to get involved in this activity and the opportunities they were given in the court to do so by those responsible for organising and delivering training to lay magistrates.

Obstacles to Participation in Training – Resistance and Apathy

Resistance

Skyrme (1979:64) commented that the very term ‘training’, when used in a judicial context, invites misgivings, “…on the grounds that training provides the means of influencing or conditioning the mind of the trainee and when applied to judges could constitute a threat to judicial independence.” However, Seago et al (2000:641) concluded that the role of District Judges in training was “relatively uncontroversial.” The findings of this study indicated that, for Provincial Court I at least, the issue was not only controversial, but also highly contentious.

It is argued that the principal reason behind the explicit philosophy at Provincial Court I with regard to curtailing the involvement of District Judges in training was resistance. Precisely where the seat of this opposition was founded was debatable. It emerged that there were two possibilities. Firstly, the lay bench, both generally and those that represented them on the Bench Training and Development Committee. It was suggested that, amid the current climate of disquiet concerning

---

10 Over two-thirds of lay magistrates (69%, n=68) stated on their questionnaires that attending training sessions was something in which they engaged frequently. In answer to a supplementary question over three-quarters (77%, n=75) of all lay magistrates stated that they were content with the level and frequency of their training as it currently was.

11 Skyrme went on to explain the peculiar “exercise in semantics” which resulted from the discomfort that emanated from the term in the late 1970’s. The Working Party on Judicial Studies and Information (1978) suggested the idiom ‘judicial studies’. However though this is reflected today in the Judicial Studies Board, the vernacular term remains and as Skyrme (1979:64) pointed out “appears exclusively in Statutes.”
the future of the lay magistracy, lay magistrates were extremely reluctant to give up a bastion of control and independence represented by the organisation of their own training. Furthermore, this was a view held regardless of the recommendations of the Lord Chancellor’s Department or the views of their District Judges. Secondly, the court clerks, whose objections were couched in various terms ranging from the political sensitivity of the training issue as far as the lay magistracy were concerned, to their own beliefs as to unsuitability of District Judges for the role. It is argued below that the findings of this study pointed towards both lay magistrates and court clerks as contributors to the culture of resistance. However, the extent to which the latter group influenced the former and the degree to which the stated concerns were genuine, as opposed to smokescreens for other, more fundamental reasons for resistance, was found to be complex.

At Provincial Court I training was certainly regarded as a ‘thorny issue’. Both full-time District Judges and the Deputy Clerk to the Justices considered the paucity of District Judge involvement in training to be a matter of design on behalf of the Bench Training and Development Committee. For one of the District Judges it was a matter that caused him much concern and frustration. In interview he often compared the situation at this court to those of colleagues at other courts:

Many of my colleagues belong to the training sub-committee... We’ve tried to do that but they’ve been very resistant, the training sub-committee... I think in terms of training we’ve got a lot to offer and it’s always been one of my gripes. When I mention it to [name of Clerk to the Justices] who hasn’t been here that long he agrees but he has come back and said there’s a great resistance and there’s a view that “only lay magistrates can understand the training needs of magistrates”, they don’t want us to infiltrate it in any way. We could certainly have a greater role here, the Venne report recommended that we should assist in chairmanship training, where plainly we can have a real role but we have no role at all in that and I think that’s regrettable.

(District Judge, Provincial Court I, Interview Transcript)

In interview, various personnel at Provincial Court I suggested several reasons for the limited participation of District Judges in training. The views of some of the court clerks in particular cast doubt on the explanation given to the District Judge quoted above, a justification he described as “absurd”. On one view it appeared
that the court clerks at Provincial Court I were torn between the valuable input they felt District Judges could provide and what the reaction of the lay bench may be to that input. This was well illustrated by one court clerk, who was particularly experienced in training:

I think there’s definitely a role for stipendiaries in magistrates’ training. How it’s handled is quite a difficult issue because it could do more harm than good. You’ve got this feeling that stipendiaries are better off not getting involved as it will get the magistrates backs up so any value that’s there could be reduced. So from that point of view I don’t think it should be automatic that they be involved. I think there is a role for them but I know there’s an awful lot of politics behind it and I think maybe the damage it would cause wouldn’t be worth it.

(Court Clerk, Provincial Court I, Interview Transcript)

She was supported by one of her colleagues who emphasised the litigious nature of the issue:

I think at the moment it’s probably not politically sensible to have stipes doing too much magistrates training because magistrates wouldn’t take the message very well from a stipe, you know “this is how I run my court and this is how you should be doing it” We’ve used stipes from time to time but at the moment it’s a sensitive issue with the lay magistrates and they tend to resist any efforts made to include the stipes more fully.

(Court Clerk, Provincial Court I, Interview Transcript)

However, on another view of the evidence, it could be argued that the extent of political sensitivity surrounding the training issue was not as pronounced as these court clerks implied. When asked to explain the lack of training input from District Judges, the Chairman of the lay bench cited historical reasons coupled with a lack of time on the part of District Judges, but without a hint of the specific opposition from lay magistrates that, according to the clerks and the District Judge quoted above, was so manifest:
The tradition in this court has always been that training should be in-house and has always been to a very high standard... in the old days the training was done mainly by the benches and the MCC... Its a mixture of national guidelines but locally delivered. The clerks provide nearly all the training. The stipendiaries I think could be used more but again its very difficult as far as their time allows for them, I mean are they more valuable in court or is their time better spent training when a clerk could be doing that... it's not because we think they couldn’t do the job properly or that we don’t want them to it’s just finding time.

(Chairman of the lay bench, Provincial Court I, Interview Transcript)

It could be that the Chairman of the lay bench at Provisional Court I was being careful to appear diplomatic and was reluctant to admit to any opposition to the participation of the District Judges in training provision. However, if the reasons given were taken at face value it could indicate that the staunch lay bench resistance referred to by the court clerks (and reported back to the District Judge) may not have been as pronounced as the court clerks suggested. Despite the court clerks above advancing the view that it was a resistance on the part of the lay bench both generally and through the Bench Training and Development Committee, there was some evidence that the exclusion of the District Judges was a decision taken, at least in part, by the court clerks themselves, without consultation with the lay bench.

In comparison with the court clerks quoted above, several other court clerks at Provincial Court I clearly expressed the view that the District Judges had little or nothing to offer in terms of training that would benefit lay magistrates and therefore, on the whole, it was not in their best interests to be trained by them. Specific objections were generally couched in terms that suggested that there was a danger that lay justices would try to imitate the style of the District Judges. The Deputy Clerk to the Justices put forward this view but emphasised that this was a fear held by the lay justices themselves. Therefore, according to the Deputy Clerk to the Justices, it was their concern, rather than a concern of the clerks, that they did not become 'clones' of their professional counterparts. This is a view echoed by the Venne Report, which commented, “...one can learn a great deal from sitting with a Stipendiary Magistrate but there are dangers in simply attempting to emulate his approach” (Lord Chancellor’s Department, 1996:20).

171
Furthermore, according to some clerks it was not advisable or possible to provide lay magistrates with lawyers' skills in the courtroom. This view resonated with that of Skyrme (1979:73) when he gave the warning that:

A justice cannot become master of all the skills involved in proceedings in magistrates' courts. In particular he cannot be an expert lawyer and he should not be encouraged to think that he can.

One clerk felt that the skills that come naturally to a trained lawyer were not best placed in the hands of lay justices. She suggested that the professional status of District Judges, as lawyers, would be a disadvantage as trainers:

There are areas where stipes are not going to be the best people to train them, like chairmanship training. I mean stipes are more interventionist in court, they are lawyers themselves. It's a totally different ball game to ask lay people to intervene.

(Court Clerk, Provincial Court I, Interview Transcript).

However, this was a view totally at odds with certainly one of the District Judges in Provincial Court I and with the Venne Report, which stated that, "justices derive considerable benefit from sitting with Stipendiary Magistrates, particularly in helping them to develop their own chairmanship skills." (Lord Chancellor's Department, 1996:20). The differences between the accepted wisdom of the three courts on the issue of District Judges and training was very much in evidence when the above quote is compared to that of the Chairman of the Lay Bench at Provincial Court II who stated in interview:

... with regard to training I would have thought that both the DJs and the legal advisors were the perfect people to do it. By watching and listening to DJs you can only improve.

(Chairman of the lay bench, Provisional Court II, Interview Transcript)

It is also interesting to note that the clerk quoted above cited the professional legal status of District Judges as a disadvantage in the delivery of training. Many court clerks are also lawyers, yet the common factor between all the courts was the domination of the court clerks in the delivery of training. If some court clerks were exaggerating the resistance of the lay bench in order to bolster an already
inherent opposition on their own part to the involvement of District Judges in training, then the question remained as to why this was.

According to Skyrme (1979:71) the ascendance of court clerks in the role of trainer was unavoidable, an “inevitable consequence of the localised training established by the 1949 Act”\(^{12}\). Interestingly, the grounds advanced in 1949 for the creation of a localised, as opposed to centralised, training system may go some way to explain the sense of discomfort, coupled with the sense of ownership, with which some of the courts and respondents in this study felt about the involvement of District Judges in training.

Localisation of control also found support on the ground that it was wrong in principle for the executive, in the form of the Lord Chancellor or the Home Secretary, to direct the teaching given to persons holding judicial office.

(Skyrme, 1979:71)

Raine and Willson (1993a) suggest that the provision of training by the court clerks and more particularly the Clerk to the Justices is one of the means adopted to protect the “legal authority” of lay magistrates and is one of the few remaining rituals that denotes the “butler role” of the clerk to “their magistrates” (Home Office, 1989; Raine and Willson, 1993a: 190). However, this is a relationship that has diminished, or at least altered, with the advent of managerialism, and more recently, the rhetoric of modernisation. Therefore, as well as the laudable aim observed above, it is also inevitable that such a monopoly by the court clerks presents the occasion for the dissemination, and therefore maintenance of, particular procedures and practices that advance the aims of modernisation and efficiency (Raine and Willson, 1993a: 136):

... magistrates’ clerks are responsible for the basic training of all members of their Benches and therefore have the opportunity to implant ideas, to suggest practices and advocate policies that they themselves would wish to be adopted... No doubt some of these strategies could also serve to benefit the status of the clerks themselves.

(Raine and Willson, 1993a: 190 & 192)

---

\(^{12}\) Justices of the Peace Act 1949.
It is therefore argued that in citing the political sensitivity of the training issue as a reason to limit the input of District Judges to training, court clerks might be secreting their own objections, which may have a very different basis. Having given up a certain amount of power as 'legal' advisors when in court with a District Judge it is possible that clerks may be preserving what they regard as their other 'professional' domain as indispensable advisors/teachers to the lay magistrates outside the courtroom as well as inside it. It is also possible that clerks were reluctant for lay magistrates to become as confident in their approach as District Judges. This would alter the power balance in the courtroom substantially and the relationship between the clerks and 'their' magistrates. One lay magistrate, who himself was a member of the Bench Training and Development committee, placed the extent of District Judge participation (or rather lack of it) in training firmly at the feet of the court clerks. However it was also clear that there was little appetite on behalf of the committee for a greater involvement of District Judges in training and therefore they were willing to accept the recommendation of the clerks without question:

I think in fact the majority of the lay magistrates are more concerned about the overall providers, in the sense of the experienced court clerks and the training development work that they do, so I think they rely upon them to be the selective ones and if they feel that it isn't a good thing for the stipes to be involved, then I think the majority of colleagues would think that's alright with us, if that's the decision you've made then we'll accept it... if they don't feel it's necessary to involve the stipes we're quite happy.

(Lay Magistrate, Provincial Court I, Interview Transcript)

This suggests that the traditional 'advisor' role of clerks in their 'judicial' relationship with lay magistrates, where their advice on the whole is accepted without question, also extends to non-judicial matters. Furthermore, it can be argued that this is an early influence that can then be reinforced by the permanent presence of court clerks throughout while lay magistrates are court:

... they help to insure against bad decision making by the lay magistrates; to sustain the credibility of the volunteers, and to ensure that the decisions eventually announced in court would be as close as possible to those that they themselves, as qualified lawyers, would have felt appropriate.

(Raine and Willson, 1993a: 192)
Therefore it is possible that the reluctance of bench training committees to increase the input of District Judges in training may have been due in part to the advice from their clerks concerning the benefits of their input. This demonstrates a degree of naivety as to where the loyalty of their clerks might lie in today’s climate in public sector management.

In conclusion, as far as resistance is concerned, the evidence suggested that in Provincial Court I this was almost certainly by design. However, it was unclear whether this attitude stemmed from the lay bench or the court clerks or possibly a combination of both, each citing the views of the other to secure their own apparent end; namely the exclusion of District Judges from training. The Deputy Chairman of the lay bench at Provincial Court I summed up this two-pronged resistance thus:

The lay magistrates have quite a firm grip on the training provision here. The training subcommittee of the MCC is on top of its job... I am not sure that it would be enhanced, beyond what the advisory staff can do, by the stipendiaries playing a part... I'd also be a bit concerned if they did get involved in training on any sort of regular basis that it was taking them out of court where I think they belong. I'd also be concerned because I think it would diminish, in some people's eyes, the status of the court clerks who do that training now. Not least in the eyes of the clerks themselves I would imagine.

(Lay bench Deputy Chairman, Provincial Court I, Interview Transcript)

Apathy

A further variable that emerged as an important contributor to the lack of District Judge participation in training was the personalities and attitudes of the District Judges themselves. At Provincial Court I, the District Judge (quoted in the previous section) who was eager to get more involved in training had little or no support from his other full-time colleague. Their attitudes to their potential training role were dichotomous and were succinctly summarised by one court clerk who remarked:
With regard to the stipes’ involvement in training I think it’s true to say that one doesn’t do any and doesn’t want to do any and the other does some and would like to do more.

(Court Clerk, Provincial Court I, Interview Transcript)

Both the District Judges themselves, and other court personnel, explained their divergence of opinion on this matter to be a result of their differing professional backgrounds. One District Judge had spent many years as a Clerk to the Justices and had therefore spent the majority of his career overseeing the training of lay justices. It was particularly noted in the Venne Report that former Justices’ Clerks were more likely to have attained the relevant skills necessary to provide an input into magistrates’ training (Lord Chancellor’s Department 1996:22). However, it was this very background that had led to this particular District Judge’s lack of interest. As was commented by one court clerk “…he’s spent his life doing magistrates’ training…”

It is a possibility therefore that, despite the recommendations of the Venne Report and the apparent enthusiasm of one District Judge, training is not an issue that invokes much interest on the part of District Judges generally. This could go some way to explain the evident lack of involvement of the District Judges in this study. Indeed the stance of the District Judges at the London Court seemed indifferent. Training was a task that they would perform if asked but not something they actively pursued.

District Judges and Administration

The Venne Report was keen to emphasise the importance, in its view, of professional magistrates playing a significant role in the various policy and other committee’s responsible for various aspects of the day-to-day running of their court:

Magistrates’ courts are able to function as well as they do largely because of the committees of various kinds which direct their business and to which the lay bench give so freely of their time. We believe that is Stipendiary Magistrates [sic] are to play an integral part in the affairs of the bench they, too, should be expected to contribute some of their time to such work. It is important in our view that such committees make full use of all the talents available to them, no matter whether these are to be found on the Stipendiary or lay benches.

(Lord Chancellor’s Department, 1996: 11)
Furthermore the Venne Report characterised what it called the ‘tripartite’ relationship between the professional magistrates, the Clerk to the Justices and the Chairman of the lay bench as “the most sensitive but potentially most productive relationship in the context of the Magistrates’ Courts [sic]” (Lord Chancellor’s Department, 1996: 9). It recommended, initially rather vaguely, that there should be regular meetings between them to discuss “the business of the court generally” before going on to specify the following matters that may arise in these discussions:

Thus we would expect discussions to take place about sentencing problems and sentencing guidelines, the identity of any new lay justices and the arrangements for their induction, sittings-in member of the lay bench...attendance at user groups, contributions towards any training events and any other similar matters of common interest.

(Lord Chancellor’s Department, 1996: 10)

It has already been established that the role of the District Judges at the three courts in the training areas of this list was very limited. However, some of the District Judges appear to have been slightly more involved in the administrative side of their courts, particularly in developing sentencing policy and guidelines. However their role was by no means extensive, and in some cases, apparently non-existent. There was also little indication of any regular meetings between the members of the ‘tripartite’. One District Judge at the London Court indicated in interview that she did attend such meetings – but only twice a year. Where a regular role was being played by a District Judge in various aspects of administration, it was only after a decided effort to overcome initial resistance. Therefore, as with training, similar barriers to the more widespread role as envisioned by the Venne Report were identified, namely initial resistance coupled with a lack of endeavour on the part of many District Judges to overcome it.

General Committee Involvement

Despite the attitude of Provincial Court I with regard to the involvement of District Judges in training it would appear that this resistance was not as unyielding with regard to other non-judicial functions. Although there was initial opposition both District Judges sat on what was termed the ‘General Purposes
Committee'. The same District Judge that had been so frustrated in his efforts to contribute to the training at the court explained:

There was no out of court role for us at all at the start, I mean like the General Purposes Committee you know things that affect the whole bench get discussed there, if there are worries or problems that's where they're discussed and the bench's views are aired and get taken back to the management. In my view it was essential that we were part of that. We are now but we, or at least I, had to fight for it.... this was one of the gripes earlier on that we said well shouldn't we be members of this, you know, decisions get made there that affect us and we're the people that sit the most...

(District Judge, Provincial Court I, Interview Transcript)

Although neither of the District Judges at Provincial Court I were on the MCC, one lay magistrate commented that although he had never sat with or been trained by a District Judge he had sat with them on the advisory sub-committee. He felt that this had "enabled me to become familiar with the stipes' style and expertise." Therefore it is possible, as the Venne Report had hoped, that knowledge and understanding can be gained through the District Judges' administrative, as well as their judicial, role. In addition, according to the Deputy Chairman of the lay bench, attending administrative meetings with the District Judges also enabled the fostering of a mutually respectful relationship between professional and lay magistrates:

The billed stipendiaries are members of the General Purposes Committee. That, obviously, has meant a change to our constitution since we've had stipendiary magistrates... But I think, it's very important that they should be seen at such committees and we should see them at such committees because, I for my part, and I wouldn't be the only person to say this, but I place a very high value on colleagueship, and we are all colleagues together and so their presence at the General Purposes Committee is a manifest sign of our colleagueship together.

(Lay bench Deputy Chairman, Provincial Court I, Interview Transcript)

13 Written comment on questionnaire.
It appears that there may have been some truth in the above statement. It was certainly evident that, in terms of popularity, the District Judge who was keen to attend as many committees as possible, be involved with court open days and contribute to training was, overall, a more popular figure than his colleague who did not see this 'extra judicial' role as within his remit at all. Ironically, the latter District Judge was more in tune with those among the lay bench who felt that the place of the professional magistrate was within the courtroom not the 'board' room:

Now, in fact, my colleague here, who you know comes from private practice, is much more a threat to the clerk or the administration than I am because I have been there, I have done it, I have got the t-shirt. My colleague hasn't, he loves to write circulars, be involved in committees and having spent my last six years as a justice clerk never having a lunch hour, always in meetings, always training magistrates, advisory committee, interviewing people who want to be lay magistrates, doing courts here and there, running the magistrates courts committee and so on, the last thing I want to be in is a committee. I am here to do courts, I am a full-time member of the judiciary and I am prepared to make decisions, hunch decisions, I am prepared to reason, to give reasons, to convict or acquit and sentence and that is my job, not in committees. My colleague perhaps hasn't had that experience and, therefore, likes to be involved in the committee work and that is his choice and I respect him for it.

(District Judge, Provincial Court I, Interview Transcript)

The dichotomy of opinion between the two District Judges at Provincial Court I was a fascinating example of the significance of the individual District Judge's personality and background and the bearing this had on the relative impact and influence they had on their court in terms of non-judicial work. As was demonstrated with regard to training, the attitude of the District Judges at the London Court was untroubled, almost nonchalant, as far as attending or getting involved in the administrative committees of their courts was concerned.

We are not on any committees here as a group. You know court groups vary greatly from one place to another and there are mixed views as to where the judicial input should be, so we are not on that. As to the local court they have bench meetings, and to be fair we are always invited to them, but you don't attend unless they specifically want you to, then they can talk about us (laughs), so they can let off steam. I have only been invited on a couple of occasions to speak to them.

(District Judge, London Court, Interview Transcript)
Involvement in Sentencing Policy and Guidelines

The main area in terms of 'out of court functions' that were attributed to District Judges was in contributing to the development of local sentencing guidelines. Even the majority of respondents to the questionnaire at the London Court indicated that there was a sentencing committee that included lay magistrates, District Judges and court clerks. Furthermore, one District Judge at the London Court stated that there was a specific committee comprised of District Judges and lay magistrates who dealt with the development of sentencing guidelines for "problematic offences". The one exception was Provincial Court II where, it was clearly expressed that sentencing was conducted in accordance with National guidelines. This demonstrated the differing cultures between the courts. Provincial Court I in particular prided itself on what the Deputy Clerk to the Justices termed its "questioning culture:"

They’re adjusted [National sentencing guidelines] really because, this is going to sound arrogant, but we don’t necessarily think that they are right. The trouble is that we’ve always been slightly out of line with the Magistrate’s Association round here. So if we’re obliged to follow the complete guidelines it would be a complete culture change for the magistrates because the approach that they adopt is not the same as is in the guidelines at all.

(Deputy Clerk to the Justices, Provincial Court I, Interview Transcript)

Although it can be argued that this is a semi-judicial function, for the purposes of this chapter it is classed as an administrative task. It was acknowledged by both lay magistrates and District Judges, at all three courts, that District Judges played some sort of role in determining sentencing guidelines. However the nature and extent of this role was a source of some disagreement, particularly at Provincial Court I. According to one court clerk the sentencing committee was configured thus, "...the two stipes, the chairmen of all the benches in the county, the clerk to the justices and the liaison judge" (Court Clerk, Provincial Court I, Interview Transcript).

Despite it being widely acknowledged that a sentencing committee existed, which included the two District Judges, several lay magistrates felt their influence upon decisions made there was minimal. One of these expressed his reasons thus:
As you probably know our sentencing guidelines come down from the Crown Court from the liaison Judges and it's actually probably the better way of doing it because they are able to put into context our sentencing in terms of the more difficult and serious cases that they deal with. I think stipendiaries, like us, are limited to what we deal with in the lower courts. That would be a limiting factor for the contribution made by the stipes, in my opinion.

(Lay Magistrate, Provincial Court I, Interview Transcript)

This view placed a greater importance on the input of the local Crown Court Liaison Judge in the development of magistrates’ sentencing guidelines. However, although the Liaison Judge undoubtedly had a role to play, the majority of the opinions expressed in interview were that the District Judges had a significant, official input into this area. The quote below from one lay magistrate below was fairly typical:

Stipendiaries have a lot of influence in things like sentencing, you know. The sentencing committee with the local liaison Judge, Clerk to the Justices and the two stipendiaries would probably be the determining body on the thinking points.

(Lay Magistrate, Provincial Court I, Interview Transcript).

According to the Chairman of the lay bench the above view was the correct one. Despite the majority of lay magistrates interviewed at Provincial Court I for this study taking the same view, she felt that many lay magistrates at the court were unaware of the extent of the influence the District Judges had with regard to the production of sentencing guidelines:

I do think the stipendiaries have more influence on the day-to-day workings of the court then a lot of lay magistrates realise, mainly because of their work on sentencing committees. Their views are very much taken into account I think and most of them don’t realise that they have this input.

(Chairman of the lay bench, Provincial Court I, Interview Transcript)

However, there was also evidence that the apparent meaningful participation of the District Judges was, in the view of the senior management at Provincial Court I, principally cosmetic. It was certainly considered by the Deputy Clerk to the Justices to have been a means of satisfying the clamour for increased input,
particularly since the appointment of their second District Judge, and the only way in which to ensure compliance on the part of the District Judges in terms of sentencing:

Guidelines will be initiated here, within the clerk’s or my office but then we try to ensure that the stipendiaries are consulted about them because if they’re not then they don’t feel they own them and what they will sometimes do is to decide that because they weren’t involved in them they’re not going to follow them, so I think its politic to involve them in the first place, at the beginning to make sure that they will go along with these things.

(Deputy Clerk to the Justices, Provincial Court I, Interview Transcript)

Concluding Comments

The data presented in this chapter, both confirmed and contradicted previous research. Seago et al (2000:641) summed up the non-judicial role of District Judges thus,

For their part, stipendiary magistrates can only be very remotely defined as potential administrative policy-makers or managers for the courts. In the provinces, stipendiary magistrates may well attend local bench meetings...But our research revealed that the stipendiaries’ most significant function within the management of the courts is the relatively uncontroversial role of training the lay bench, both at conferences and by inviting lay magistrates to join them on the bench, particularly in the provincial magistrates’ courts.

The findings of this study concurred with the conclusion that it is the judicial, rather than non-judicial, work of District Judges that dominates their time and is viewed by the majority of court personnel, including the District Judges themselves, as their most important contribution to the court. However, the personal crusade, against obvious resistance, of one District Judge in Provincial Court I to increase his input into other areas of court life, suggested that non-judicial functions are important in the eyes of at least some District Judges and controversial enough to create some political difficulty for the management of the court – particularly training.
To the consternation of some and design of others, the District Judges at all three courts had a limited input into the training of their lay colleagues. This was due, in differing degrees, to the history, culture, politics and personalities of clerks, lay benches and District Judges at each of the courts. It has been demonstrated that considerably different norms and cultures existed between the three courts examined in this study. The organisation and delivery of training at each court was markedly different, the common factor being the relatively sparse use of District Judges and, instead, the ascendancy of court clerks, despite the urgings of the Lord Chancellor’s Department that “the practice of sitting-in with a Stipendiary Magistrate should be extended” (Venne Report, Lord Chancellor’s Department, 1996:21). It can thus be concluded that the courts, at least those in this study, were not utilising what is officially viewed centrally as a much-lauded resource. Again, as the Venne Report (Lord Chancellor’s Department, 1996:22) stated “If a Stipendiary is not involved with such training then, in our view, the courts are not using him to best advantage.”

Although none of the District Judges, at either provincial court, played a great role in training, the bases for this low level of input were quite different. In trying to answer the question of why District Judges are not more involved in the training of lay justices it can be seen that there are a combination of factors at work and that these are largely founded in the historical provision of training, and its effects on the attitudes of the court clerks and the bench committee responsible. Firstly, there is the simple explanation, so well illustrated by one District Judge at Provincial Court I and to some extent those at the London Court, that there was a general lack of enthusiasm or interest for this kind of work on behalf of the professional magistracy. Secondly, there was the reluctance of powerful lay magistrates, namely those on Bench Training and Development Committees (or equivalent), to involve District Judges. This was apparently based on the view that training is their own territory, something they had managed on their own for many years and the last bastion of an institution many lay magistrates believed to be under threat. Thirdly, the resistance of the lay bench might be perpetuated by the influence of their clerks, who may be similarly reluctant to surrender any part of this area of professional ascendancy outside the courtroom to their professional
colleagues, in the same way that they have to capitulate the same ascendancy when inside the courtroom with District Judges.

In conclusion, non-judicial functions were shown to be largely the territory of court clerks. The extent to which they were open to sharing that territory differed between all three courts. Where there was resistance coupled with apathy, the majority of the District Judges were happy to leave the non-judicial side of the court to the clerks. Where attempts were made to overcome resistance, as in the case of one District Judge at Provincial Court I, these efforts were thwarted or minimised to such an extent that their contribution was considered cosmetic as opposed to concrete.
Chapter 6
Court Conduct and Exchange Relationships

Introduction

Previous chapters have reviewed the role and influence of District Judges in terms of their judicial and non-judicial work within the courts as a whole. This chapter will focus on the narrower sphere of the courtroom itself and explore the impact of the presence of District Judges on the management and conduct of court business. This chapter challenges the simplicity of the conventional notion that District Judges offer a speedier dispensation of justice than a bench of lay justices. It is suggested that the time differential between the two forms of tribunal is minimal and is, to a certain extent, a product of a reciprocal relationship between both the assumed and actual conduct of District Judges within the courtroom and consequential adaptations in the behaviour of other courtroom actors. It is argued that such adaptations are the result of a combination of contested positions within the courtroom legal hierarchy and symbiotic relationships between different members of the regular courtroom workgroup.

Relationships with others in the courtroom has been acknowledged by other commentators to be a factor in District Judges’ ability to propel cases forwards more speedily than their lay colleagues (Narey 1997; National Audit Office, 1999; Morgan and Russell, 2000). The basis for this reasoning has often been centred on the confidence of District Judges, which, it is contended, derives from their legal knowledge and previous experience of legal practice. Therefore, unlike lay magistrates, they are more questioning, more robust and less liable to manipulation by other lawyers in the courtroom, because they “know all the tricks.” This chapter seeks to expand this argument, not to rebut it, by taking into account the importance of relationships in the courtroom rather than focusing on the individual skills of District Judges. It is suggested that the speed with which District Judges are able to dispose of cases is not purely due to individual District Judges, their legal knowledge or even their confidence in court management. It is argued that it is more complex than this and that the ability of District Judges to deal with cases and other court personnel more effectively than lay magistrates,
involves the complicity, rather than control, of others in the courtroom who engage in mutually beneficial practices in order to maintain professional credibility. It is suggested that it is legal authority that is the crucial element in courtroom relationships rather than legal knowledge. The influence of the District Judges in this regard is compared to that of lay magistrates in order to demonstrate the importance of legal authority and familiarity both to ‘membership’ of, and the degree of status within, the courtroom workgroup. It is argued that the nature of the relationships between judicial decision-makers and others in the courtroom workgroup was governed by what each type of magistrate had to offer in return by way of professional status and mutually agreeable and beneficial working practices to the group as whole. In this regard the legal authority and regularity of place within the courtroom workgroup held by District Judges meant that the benefits of fostering reciprocally agreeable working practices with them far outweighed anything that could be yielded, both professionally and communally, from similar relationships with lay magistrates.

The findings of this study demonstrated that the dynamics of the workgroup within a courtroom are not stable and fixed, but changeable. The status, influence, and input of all those within the courtroom were shaped by expectations and assumptions about the behaviour of others within the workgroup and their relationships with each other; in particular with the person or persons sitting on the bench.

The Courtroom Workgroup and Exchange Relationships

The social interaction that occurs in the courtroom has been described in a variety of ways. One of the most popular metaphors has been that of the courtroom as a battleground or forum for a multiplicity of ‘games’ between the various court personnel (see Blumberg, 1967; Carlen, 1975, 1976; Raine, 1989). The common theme has been one where court routines and practices have developed that tend to serve the purposes of both individual regular courtroom actors and overall efficiency in terms of the disposition of cases, as opposed to “justice” for the defendant or the determination of guilt or innocence (McConville et al, 1994).
... within the courtrooms of the magistrates' courts the ideal of adversary justice is subjugated to an organisational efficiency...

(Carlen, 1976:20)

Pat Carlen's intricate and detailed study of the situational dynamics within the courtroom revealed both the significance and subtlety of courtroom relationships. She describes the social situation in the courtroom thus:

... all participants make alliances with each other, trying to appear as if they are operating under the auspices of their professional ethic, whilst simultaneously managing inter-professional alliances whose very existence demonstrate that they are doing no such thing.

(Carlen, 1976:348)

The effectiveness of these alliances between regular courtroom participants is judged on the achievement of two objectives, firstly 'getting justice done', which, in practice, means getting through the cases and secondly, making sure justice is 'seen to be done'. The latter refers not to justice for the defendant but to preserving the professional credibility of those 'doing justice.' Research has suggested that practices and relationships in the courtroom are configured in such a way as to achieve these objectives; the maintenance of professional credibility within the court being the most important (Carlen, 1976; McConville and Baldwin, 1981; Raine, 1989; McConville et al, 1994). As one solicitor in Carlen's study stated, "You have to be very careful in courts; there is so much at stake, your job, your reputation, your competence" (cited in Carlen 1976:43).

Cole (1979) developed the concept of the "courtroom workgroup" as a unit where its members cultivate mutually beneficial relationships with each other, which contribute to the attainment of both individual and collective goals. Cole (1979) concurred with Carlen (1976) that in order for the courtroom workgroup to operate at the optimum level the forming and nurturing of alliances between its members was essential. Cole (1979) termed the relationships that exist between different members of the courtroom workgroup 'exchange relationships'. These exchange relationships are symbiotic, in the sense that each party can provide something that is perceived as of some benefit to the other and to the overall goals of dispensing judicial work efficiently. Lipetz (1980) presented an analysis of the dynamics of the relationships and goals of those who comprise a regular courtroom workgroup. Drawing on the work of Eisenstein and Jacob (1977) and
Nardulli (1978) she concluded that routines originally developed in order to dispense and attain the goal of justice, metamorphose into practices and reciprocal relationships designed to advance the alternative goals of efficiency, ease, professional credibility and status. The *synergic* character of these relationships is the crucial element in obtaining both personal and organisational goals:

> Court personnel come to court daily to do their work, to manage their caseloads, to process defendants, to dispose of cases and not specifically to dispense justice... courtroom workgroups emerge when personnel have ongoing relationships and must rely on one another to accomplish their goals.

*(Lipetz, 1980: 48)*

This chapter will demonstrate the nature of the exchange relationships between District Judges and other court personnel, within the three courts included in this study. Furthermore, it addresses the question of how these symbiotic relationships contributed to the development of common practices within the courtroom and, in turn, to what extent these practices were a factor in the speed with which District Judges dealt with cases. The findings of the current research identified various forms of exchange relationships between members of the courtroom workgroups observed at the three courts. This chapter demonstrates how these relationships were governed by the "hierarchy of credibility" (Becker, 1967) in a magistrates’ courtroom, which, it is argued, was inextricably linked to legal authority. It is suggested that the position occupied by the various legally qualified members of the courtroom workgroup in this hierarchy of legal authority was not fixed but dynamic. This resulted in changes to the balance of power within their exchange relationships with each other. It is argued that the most important determining factor of the position held, by all members of the courtroom workgroup, in the ‘legal hierarchy’ was whether the court was presided over by a lay bench or a District Judge.

> Although all teams in court need to make alliances with each other in order to maximise their gains or to minimise their losses, the paramount need of all of them is to maintain credibility with the magistrate/s.

*Carlen (1975:354)*

188
In essence, the contention of this chapter is that District Judges were considered regular, individually familiar, members of the courtroom workgroup. They were also viewed as having legitimate authority by virtue of their ‘legal professional’ status. In comparison, assumptions about the abilities of lay magistrates, compounded by the inequitable nature of their exchange relationships with other court actors, rendered them virtually powerless within the courtroom. They were viewed and treated largely as ‘outsiders’. Routines and practices within the courtroom developed around the regular ‘insiders’ in such as way as to provide the workgroup with the maximum possible gain in terms of the long term goals of professional status and beneficial working relationships. The District Judges’ influence on court behaviour and management outstripped those of lay magistrates (Raine and Willson, 1993a).

The two main factors, which, it is argued, shape the courtroom workgroup, will be examined in turn: familiarity and the hierarchy of legal authority. This is followed by a closer examination of how the dynamics of the courtroom workgroup operated in practice and the impact it had upon the conduct of all those in the courtroom and the throughput of cases.

The Importance of Regularity and Familiarity for the Courtroom Workgroup

Previous research has endeavoured to develop an organisational theory in relation to the dynamics of courtroom relationships. This has focused on the existence of courtroom workgroups that function by the fostering of exchange relationships between its members (Eisenstein and Jacob, 1977; Cole, 1979; Nardulli, 1978). However, the validity of the notion of courtroom workgroups has been challenged by more recent research. McConville et al (1994), in their study of the work of defence solicitors, accepted that, in general, there was a “harmonious” element in the working relationships within a courtroom, characterised by a lack of adversariness. However, they suggested that the very nature of magistrates’ courts meant that the personnel within them were too varied and changeable to amount to any form of fixed unit, capable of developing such symbiotic interactions with each other:
... we found no evidence for the existence of 'courtroom workgroups'. Indeed, the very basis for such workgroups—a stable group of individuals interacting with each other on a regular basis—is missing in most magistrates' courts. Not only is the bench of magistrates (itself a continually changing entity) detached from the activities of the lawyers, but also the composition of the lawyers themselves is in no sense fixed.

(McConville et al, 1994:186)

McConville et al (1994) appear to have taken a fairly narrow view of what constitutes a courtroom workgroup. The current study argues that familiarity and legal authority are the essential elements in the concept of the development and dynamics of a courtroom workgroup. The observations held at all three courts demonstrated that there was clearly a sense of familiarity between those that worked regularly within the courts. The courtroom workgroup, therefore, can be defined more widely, to encompass a variety of combinations of different, but recurrent, court actors. This study does concur with one aspect of the observations of McConville et al (1994), namely that it is the 'continually changing' nature of lay benches that prevents lay magistrates becoming fully integrated into any form of courtroom workgroup; together with their lack of legal authority (which will be the focus of the following section). Some individual lay magistrates may become familiar to regular members of the courtroom workgroup, but their individuality is diluted by the fact they sit on a bench of three and the fact that individual lay magistrates may only sit in court for one session only once or twice a week, or even once every two weeks. This is in sharp contrast to District Judges who sit alone and, in the case of full-time District Judges, usually all day and every day of the week.

All the defence solicitors canvassed for this study stated that they faced a District Judge more than once a week and over half reported that they appeared before them daily. Similarly, nearly three-quarters (n=14) of the court clerks canvassed disclosed that they worked in court with a District Judge at least once a week, with one-third stating that this occurred more than once a week.¹ In comparison, court clerks and defence solicitors are unlikely to work, with such regularity, with particular lay magistrates. It is therefore arguable that the majority of individual lay magistrates are relative 'outsiders' to the regular participants that constitute a

¹ It should be noted here that these figures do not include court clerks from the London Court. See Chapter 2.
courtroom workgroup. Instead of identifying this as a difference between insiders and outsiders, Raine and Willson (1993a) adopt the terms “visitors” and “residents”. This notion was captured perfectly by a lay magistrate interviewed for this study:

I suppose really, when you think about the people that work in the courts day in day out, it’s the lay magistrates that change while everyone else, including stipes, stay the same. So I suppose that it’s inevitable that they will develop ways of doing things and routines that we are not really privy to, or part of, and just accept as the norm.

(Lay Magistrate, Provisional Court 1, Interview Transcript)

According to Sanders (2001:16) the perception of many offenders, and members of the general public, is that personality plays too great a part in the courts. However, the participants in Sanders’ study did not distinguish between lay magistrates and District Judges in this respect. Throughout the observation sessions completed at all three courts, the personality, reputation and ‘track record’ of the District Judge (or occasionally individual lay magistrates) featured heavily during pre-session discussions in the courtroom. The observations and interviews conducted for the current study also suggested that, while the courtroom workgroup viewed the idiosyncrasies of District Judges as highly important, lay magistrates were generally seen as a homogeneous group with largely indistinguishable characteristics. As one clerk noted on their questionnaire:

The lay bench is too large to know lay magistrates and their styles individually.

(Court Clerk, Provincial Court II, Interview Transcript)

A CPS prosecutor also remarked in interview:

Stipes you get to know individually, what they do and don’t like... with a lay bench you tend to treat them all the same. There are one or two who stand out, normally because they’re particularly bullish or outspoken and you remember them... but on the whole one bench of lay mags [sic] is very much like another.

(CPS Lawyer, London Court Interview Transcript)
Both CPS prosecutors and defence solicitors expressed the view that knowledge of the mode of tribunal was important in both their preparation of a case for court and their presentation of a case once in court. Over half (53%, n=9) of the defence solicitors that responded to the questionnaire stated that finding out whether they were before a lay bench or District Judge was a priority on arrival at court. When asked to expand upon their reasons for this, they indicated that a different style of advocacy and level of preparation was required and that this was dependent both on whether they were before a lay bench or District Judge, and on which particular District Judge it was:

Finding out whether I have a DJ or lay bench is always a priority because you will nearly always approach a case differently. It is even more important to find out which DJ I’ve got because it will affect the points I stress or omit.

(Defence Solicitor, London Court, Interview Transcript)

and;

One particular DJ is very fond, at the plea before venue stage when a not guilty plea has been indicated and Crown Court elected, of asking what the ultimate issue will be. If I find out I have got him I make sure I have a prepared answer; even though, strictly speaking, it is not a matter for the DJ.

(Defence Solicitor, London Court, written comment on questionnaire)

It was also clear that the nature and amount of information that was given in court was often dependent on the interpretation by solicitors of what would be viewed as plausible or relevant by different magistrates:

You might know that one of the magistrates on the bench is a hawk and the other might be a dove but knowing how they’ll interact and who will be the winner in the struggle that goes on in the retiring room is not easy to say, so I can’t inform the advocates, as easily or confidently, about the best way to proceed like I can with stipendiaries. Not that they really need me to tell them about the stipes, most of them know for themselves and don’t need me to tell them.

(Court Clerk, Provincial Court I, Interview Transcript)
The importance of familiarity with different working practices and personalities of judicial decision-makers has been demonstrated by previous research. In particular it has been identified that both defence solicitors and probation officers tailor mitigations and pre-sentence reports to individual magistrates (Carlen, 1975; McConville et al, 1994). McConville et al (1994:191) also found that defence solicitors will present their ‘insider’ knowledge of individual magistrates to their clients in order to prepare them for the level of sentence they are likely to be given and also to encourage them to enter guilty pleas. In their study, McConville et al, (1994) found that defence solicitors presented their knowledge of individual lay magistrates, as well as District Judges, as “hard” or “soft” in an attempt to manipulate the pleas of their clients, for the sake of expediency. Although the current study did not explore this particular point, it is argued that the individuality of District Judges makes this easier, more plausible and more likely to occur when the solicitor is before one of them, than before a bench of lay magistrates. It is possible, therefore, to suggest that an increased presence of District Judges in the magistrates’ courts generally, could lead to an even higher number of guilty pleas than are currently entered in summary courts.

The presentation of cases and behaviour in court in the current study appeared to be tailored, both generally to a professional bench and to individual District Judges, whose methods had become predictable to a certain degree:

The stipendiaries definitely have reputations as to style. One has a very idiosyncratic style and will do what he thinks is going to achieve the right result whether or not the law technically allows him to do it. Whereas the other one is a bit bookish and is very thorough.

(Defence Solicitor, Provincial Court I, written comment on questionnaire)

Several of those interviewed during the course of this study felt that combined with the fact that they sat alone, the personalities and idiosyncrasies of District Judges could cause problems for the courtroom workgroup. For one Deputy Clerk to the Justices, predictability of method could not compensate for unpredictability of mood:
The main problem with stipendiaries sitting alone is that their personalities are going to come out more. They can be moody and if they are not in the best spirits on a particular day then you are walking on eggshells when you’re with them and I think that is terrible and one of the main difficulties with a stipendiary bench. They have got to realise how their personality can dominate the courtroom and influence it. Even if it doesn’t influence the decisions at the end of the day it can influence the atmosphere in the courtroom and you’ve got to be really careful about that.

(Deputy Clerk to the Justices, Provincial Court I, Interview Transcript)

District Judges were observed to reinforce their status as ‘individuals’ and verbally assert their control of the courtroom in two main ways: firstly, by the way they dealt with defendants; secondly, by their comments and methods on particular types of cases. During the course of the court observations carried out for this study, District Judges were seen, on numerous occasions, to personalise their comments to defendants.\(^4\) They often couched their exchanges with defendants in terms of taking a personal interest on their behalf. For example, comments such as “I have faith in you, don’t let me down” and “I am taking a personal interest in this case and if you let me down you will be back to face me and I will come down on you like a ton of bricks”. Several of the District Judges informed court clerks, in open court, that they wanted to “keep a close eye” or “a tight rein” on particular cases or defendants. These ‘deals’ with defendants were often regurgitated when they appeared back before the same District Judge and their success or failure was referred to in a quasi-intimate way such as:

I gave you an opportunity to get rid of this nasty habit and sort yourself out, you’ve let me down and I am very disappointed in you.

(District Judge, Provisional Court I)

District Judges also cultivated their own reputations by making outspoken comments about their views on certain offences. One District Judge at Provincial Court II gave a lengthy homily to the court about his reasons for refusing to sentence a defendant, convicted of assaulting his wife, without a pre-sentence report, “I’m afraid I don’t much like men who hit women”. District Judges at both Provincial Court I and the London Court offered similar discourses in open court

\(^4\) All these comments were noted verbatim in observation diaries.
about young women with drug problems and public order offences, respectively. This demonstrated how easy it was for other members of the courtroom workgroup to develop a knowledge base about the attitudes and methods of individual District Judges and tailor their behaviour accordingly. As one District Judge based at the London Court acknowledged:

'It must be inevitable that one's own personal idiosyncrasies and tendencies are noted by advocates because, let's face it, one of the real skills of advocacy is to know your tribunal and most of us aren't shy about making it obvious what we do and do not like and will and will not accept.'

(District Judge, London Court, Interview Transcript)

In comparison the lay magistrates observed in this study were more verbally passive than District Judges. As a result, the opportunity for lay magistrates' to make their presence felt in the courtroom, in a similar way to District Judges, was limited. It will be argued later in this chapter that the limited, or possibly restricted, verbal contribution of lay magistrates to proceedings, served to sustain the authority and power of the other members of the courtroom workgroup by purposefully preserving the perception of the homogeny of the lay bench.

The importance of familiarity was demonstrated by the fact that any unexpected alteration to the 'known' workgroup was observed to lead to a degree of consternation among the regular court actors. This was noticeable when unfamiliar, (usually visiting) District Judges presided over a court, where it was manifested in the court personnel's eager efforts to accommodate them. It was also observed when an unknown agency prosecutor appeared in court, inviting comments such as "he is not one of us" and disquiet about the fact that they would be unaware of "the way we do things here". However, these comments were tempered by those that indicated that newcomers would "soon learn the ropes". This demonstrated the importance of stability within the courtroom workgroup, but also highlighted the difference in the reaction to unfamiliar personnel and unfamiliar District Judges. Previous research has also identified how 'new' or unfamiliar members of a courtroom workgroup can lead to deviations from the norm and risk upsetting the successful operation of the courtroom workgroup and the routine disposition of cases (Lipetz, 1980:53). Lipetz argues that 'new' regular
members of personnel are quickly assimilated into the current norms of the workgroup. However, the identity of the judicial decision-maker was extremely important to the development of routines and norms. A change in the judicial decision-maker was one of the few situations to which the workgroup would adapt their practices:

The court is a judge-dominated organization. A change in judicial assignments can bring a lasting change in the court as the court adjusts to norms or legal style imposed by the judge.

(Lipetz 1980:53)

Lipetz (1980) focused on American courts and therefore did not address whether the courtroom workgroup reactions to changes in lay and professional judges were different. However, it is argued in this study that the 'permanence' and familiarity of District Judges made them more likely to influence the routines and practices of the court than lay magistrates.

The Hierarchy of Legal Authority among the Courtroom Workgroup

Research has suggested that within all organisations there are 'hierarchies of credibility' based on the nature of the various alliances formed between regular personnel (Becker, 1967 cited in Carlen, 1976:44). The very nature of 'a profession' involves the maintenance of a monopoly of knowledge (Dingwall, 1983); resulting in the conferral of “status and prestige on its members” (Starie, Creaton and Wall, 2001:76). At the same time, citizen involvement in the justice system has been viewed as important in order to offset the endeavours of lawyers to “mystify their profession” (Sanders, 2001:19). Therefore, the absence of in-depth legal training of lay justices has traditionally been promoted as a virtue rather than a weakness, not only in academic and political circles, but also by lay magistrates themselves (Bankowski et al, 1987; Seago et al, 2000). However, lay magistrates have been formally trained for the last thirty years and have been referred to, rather unflatteringly, as “half-baked professionals” (Burney, 1979:216) as well as “semi-amateurs” (Sanders, 2001:13). Therefore the argument that their strength is inherent in their legal ignorance is, to a certain extent, unsound. Ironically, it is an argument that appears to have little validity within the confines of the practical operation of the courtroom workgroup. This research demonstrated
that any legal or procedural knowledge now held by lay magistrates continued to be negated and their amateur status reinforced as a negative quality.

The legal professionals in the courtroom continued to view lay magistrates as essentially disadvantaged and rendered less capable by what they saw as their non-legal status:

...with a lot of lawyers there is a slightly patronising or condescending view of non-lawyers. They think lay magistrates don't really understand anything... But I suppose we’re right about that most of the time.

(CPS Lawyer, London Court, Interview Transcript)

Another CPS prosecutor commented:

With lay magistrates you are in a position of power. You know infinitely more than they know and they can try and put you on the spot but you can always come back because you know a great deal more than them and they know that. If you start talking about law and procedure you become all powerful and so you are never really intimidated by them.

(CPS Lawyer, Provincial Court I, Interview Transcript)

Rueschemeyer (1983:38) identified the importance of expert knowledge and its deployment. He recognised that it is used as a “resource of power and a basis of privilege”. Similarly, Raine and Willson (1993a:189) cite French and Raven (1960) in order to distinguish between ‘legitimate power’ and ‘expert power’. In terms of legal knowledge, they accept that lay magistrates enjoy the former, but have little of the latter. This is in contrast to the majority of the other members of the courtroom workgroup. Raine and Willson (1993a:188) argue that, in the light of this deficit, the primary role of the court clerk is to “protect the authority” of the lay bench. However, they also note that respect for the lay magistracy has declined in the last 20 years, since the advent of managerialism and the accompanying professionalisation of the magistrates’ courts. They argue that the culture and norms of the workgroup have since developed in line with the wishes of the growing number of professionals. This is because the term ‘professional’ carries with it a nuance of superiority:
It is inevitable... that the relationship between the professional and the laity in criminal justice is affected by the assumption that the professional comes first.

(Raine and Wilson, 1993a: 182)

They label this need of professionals to manipulate the workplace and relationships within it for personal, as well as organisational, goals “satisficing” (p.183). Therefore the comfort of the lay magistracy is no longer a priority for the court clerks and efficiency has become paramount. Legal knowledge and authority is therefore a fundamental basis for power and prominence within the confines of a courtroom workgroup. It is also the common denominator between the ‘professional’ members of the courtroom workgroup:

... the strongest professional relationship is between the stipe, the lawyers and the clerks, because it’s this lawyers club isn’t it

(District Judge, Provincial Court I, Interview Transcript)\(^3\)

The following section will demonstrate that the members of this ‘lawyers club’ are not held in equal regard and that legal knowledge and authority is a form of currency in the courtroom, with a value that fluctuates depending on whether a District Judge or lay bench is presiding. For court clerks it is their chief bargaining counter in their exchange relationship with the lay bench. The following section will argue that the court clerks observed in this study benefited, by way of an advance in their own status, from keeping the lay magistrates held in low regard within the courtroom workgroup and by exploiting the reliance of lay magistrates on their clerks for legitimacy and confidence. Rather than protecting the legal authority of lay magistrates, clerks relegated their knowledge and skills in order to assume the legal authority for themselves. A legal authority that was largely denied them when District Judges formed part of the courtroom cadre.

\(^3\) The italics indicate an emphasis in the tone of the speaker, not an added emphasis on behalf of the writer.
The Position of the Court Clerk in the Legal Hierarchy

The courtroom observations and interviews undertaken for this study demonstrated that the most fluid position in the legal hierarchy of the courtroom was that of the court clerk. At one end of the scale, they had delegated powers to conduct some courts entirely alone, arguably making judicial as well as administrative decisions about cases. At the other end, sitting in court with District Judges, they were more often than not reduced to a function that was purely clerical. The findings of this study indicate that the court clerks held very different exchange relationships with lay magistrates and District Judges and that this led to marked differences in their role and influence within the courtroom.

The relationship between the court clerk and lay bench has been called “a true partnership”; the essence of which is in a mutual understanding of the other’s role and the avoidance of trespassing on the other’s ‘territory’ (Norman, 1996:42). According to Norman (1996), magistrates should be seen to have “the conduct of the court and be in control” (p. 42). The findings of this study were that although a partnership indeed existed, it was not an equitable one in terms of being mutually respectful or beneficial. The exchange relationship between the lay bench and court clerk was weighted in favour of the court clerk. In terms of power and legal authority, a court clerk sitting with a lay bench occupied a significantly higher position in the legal hierarchy among the courtroom workgroup. The nature of this exchange relationship necessitated the repudiation of the lay magistrates’ legal knowledge and skills; in exchange for which the lay magistrates were able to rely on their clerk as a source of confidence and to legitimise their judicial decisions (Bankowski et al, 1987). Because of their sphere of influence over the lay bench, clerks attained “power without acknowledged authority or responsibility” (Williams, 1955:290 cited in Darbyshire, 1984:3). The clerks’ relationship with the District Judges was very different. In order to maintain their

4 On the recommendation of Martin Narey (1997) and enshrined in the Crime and Disorder Act 1998. Court clerks are able to carry out “administrative case management” alone in an effort to reduce delay. This was a controversial development and was criticised as diminishing the role of magistrates. It was argued that many of the “administrative” functions were in fact judicial in nature (see Darbyshire, 1999).

5 For an amusing, anecdotal illustration of the relationship between the court clerk and lay magistrates see Crowther (1998).
own legal authority, District Judges, in effect, did to clerks what clerks did to lay magistrates. Their presence rendered the legal knowledge and authority of the court clerk unnecessary, reducing the clerks’ role to a largely administrative one with a lower status than the practising lawyers, and with little influence over proceedings. Each of these relationships will now be explored in more detail drawing on the data collected from the three courts examined in the course of this research.

Court clerks have dual goals within the courtroom. Their loyalties are divided between preserving their own status within the courtroom workgroup within the legal hierarchy, and in fostering managerialist concerns for efficiency. If the exchange relationships described above existed, it was likely that court clerks would prefer to work with lay benches, where their power and status was at its highest. Clerks at the three courts were canvassed with regard to which type of bench they preferred to sit with. Half of them (n=10) expressed a preference for sitting with lay benches. Only three clerks out of the remaining ten expressed a similar preference for sitting with District Judges. There were various possible reasons for the partiality shown; for example, friendships with, and individual experiences of, particular magistrates. In order to explore these preferences in more detail, the stated reasons for their preference were examined.

Those clerks that expressed a preference for lay benches overwhelmingly gave as their reason the opportunity to use their legal knowledge and the professional and personal challenge it afforded them, as lawyers. One clerk summed up the sentiment by commenting that working with lay magistrates allowed them to “do the job I was trained to do”.6 Two clerks, both of whom were relatively new to the job, remarked that they found lay benches “less scary” 7 than District Judges. Therefore, for the clerks involved in the current research, working with lay benches empowered them both professionally and personally. Firstly, in the sense that they felt they could utilise and display their legal training and knowledge and secondly, for some, it was less daunting than working with District Judges. This suggested that they felt more self-assured when working with a lay bench. It was

---

6 Written comment on the questionnaire.
7 Written comment on the questionnaire.
noted that other court personnel, when before a lay bench, considered the abilities of the clerk to be a crucial factor:

If you’ve got a lay bench then it is massively important who the clerk is. They are the ones in control of that court.\(^8\)

(CPS Lawyer, Provincial Court II)

Therefore, when in court with a lay bench, court clerks appear to be afforded power and status by other members of the courtroom workgroup. In return, lay magistrates have access to a source of confidence. They feel that the presence of the clerk ‘legally legitimises’ their performance and decision-making (Bankowski et al 1987:99). Therefore, this is the exchange that takes place in the relationship between clerks and lay magistrates. It is argued, however, that this is not necessarily an exchange that truly benefits both parties. To achieve the power and status afforded them by working with lay magistrates, clerks appeared to need to cultivate and foster the views of other legally qualified members of the courtroom workgroup, that lay magistrates were largely inept and lacked confidence. A lack of faith in the ability of lay magistrates was a regular feature of observations at the three courts.

The relationship between legal knowledge and confidence within the courtroom was a recurrent theme during the interviews conducted for this study. Legal knowledge and skill has already been referred to as a form of currency and basis of power within the courtroom. Lay magistrates were unable to take advantage of this for two main reasons. Although they are trained to a greater extent than ever before, they are still not professional lawyers. As one court clerk commented in interview:

They must feel like outsiders. That is inevitably going to make you less confident if everyone around you knows more than you do.

(Court Clerk, Provisional Court II, Interview Transcript)

One lay magistrate, at Provincial Court I, talked about their lack of “legitimately viewed legal or procedural knowledge” being an “artificial barrier” to their conduct in court:

---

\(^8\) In private conversation with the author.
I've confidence in what I do but I don't stray beyond my remit as it were and legal matters are the job of the clerk.

(Lay Magistrate, Provincial Court 1, Interview Transcript)

This was echoed by a District Judge, also from Provincial Court I, who felt lay magistrates had difficulty “exuding justified confidence” (District Judge, Provincial Court 1, Interview Transcript). Another lay magistrate put it in these terms:

What I’m very anxious about personally, for others, and myself is that we shouldn’t be overconfident in our abilities or in any way at all because if we are overconfident we are likely to overreach ourselves. If you are overconfident you will overreach legally or otherwise.

(Lay Magistrate, London Court, Interview Transcript)

A District Judge, also based at the London Court, spoke in interview about their previous role as a Clerk to the Justices. They emphasised the importance of the presence of court clerks for lay magistrates; who felt they needed clerks to legally sanction their decisions:

The more complex court work becomes the more it undermines their [lay magistrates] confidence in what they are doing, it deskills them and that is not fair and that is why, as a Justice’s Clerk I impressed on court clerks the need to provide the very best legal advice. I used to say to clerks to empower the justices and really give them confidence in their decisions because they were just so easily thrown by legal argument. If anybody said ‘trust justice’ they panicked.

(District Judge, London Court, Interview Transcript)

However, as will be discussed in due course, the irony lies in the little practical relevance of legal knowledge and ability within the courtroom, where routines and practices have been developed in order to maximise efficiency and professional status rather than due process or justice (Lipetz, 1980; McConville et al, 1994). In fact the ‘currency’ of legal knowledge had little real value otherwise:
A lot of it is all show - the stipes, the clerks and the lawyers - it’s just looking like you know what you are doing and you’re in control. It’s how you appear, not what you know.

(Court Clerk, Provincial Court I, Interview Transcript)

A CPS prosecutor from the same court reinforced this view:

Legal knowledge may add to confidence but it is more than that, it’s understanding the dynamics and performances in the court. It’s about coming across as confident not necessarily knowing ‘Stones’ back to front.

(CPS Lawyer, Provincial Court I, Interview Transcript)

Maintaining legal authority over the lay bench necessitated the undermining of the skills of the lay bench as a whole. This was frequently witnessed and noted during courtroom observations and manifested itself in a number of ways. Clerks recurrently referred to lay magistrates in derogatory terms to others in the courtroom. In both Provincial Courts I and II, clerks sporadically informed the court that the magistrates allocated to that particular court session were an “awful lot”, “bench of bunglers” and one chairman was referred to as “Tim Nice but Dim”. On one occasion at Provincial Court II, the expected District Judge was replaced at the last minute by a lay bench. The clerk who brought this news to the courtroom apologised profusely for “dumping” the court with lay magistrates and was met with consternation from the other court personnel. This denoted a general lack of regard and respect for the abilities of lay magistrates, or their status as judicial decision-makers and reinforced the power and status of the clerk.

Secondly, a frequent comment made by clerks in interview was that they equated lay magistrates’ level of understanding of proceedings with that of the defendant. This indicated that lay magistrates were equated with the ultimate ‘outsiders’ in the courtroom – the defendants:

9 Comments noted in observation diaries.
When I’m talking to a defendant I’m very aware that in explaining things to the defendant I’m also explaining them to the lay bench and so when I introduce a case for example I will be giving the mode of trial spiel to the defendant and that’s not really for his information because his solicitor will already have told him, it’s for them [the lay magistrates] behind me.

(Court Clerk, Provincial Court I, Interview Transcript)

and:

If you’re reading the mode of trial guidelines to the defendant you’re very aware that you’re simultaneously explaining it to the lay bench.

(Court Clerk, Provincial Court I, Interview Transcript)

Thirdly, clerks often expressed an expectation, prior to the start of a court session that the court would take a particular course because of the fact that a lay bench would be presiding. This usually took the form of arranging to transfer cases that it was assumed would not be completed. This perpetuated the view among those in the courtroom that lay magistrates were slow and largely incapable of completing a list and occurred to different degrees at all the courts observed for this study. This view appeared to be reflected in the way that some of the judicial work was allocated between lay magistrates and District Judges at the three courts.10 Interestingly, on one occasion at Provincial Court I the clerk anxiously tried to transfer a multi-handed and complex Customs and Excise case. In the end this was not possible and it had to be dealt with by the lay bench presiding over the court. The bench dealt with the case confidently and efficiently. However, surprise and bemusement (led by the clerk) rather than praise pervaded the court at the apparent competency of the bench in this instance.

Morgan and Russell (2000:54) commented that, “[District Judges] currently enjoy the services of a legally qualified advisor” although it was viewed by some as an “unnecessary luxury”. However, 90% (n=18) of the clerks canvassed for the current study reported that they never or rarely advised District Judges on the law and that their role was purely administrative. Three clerks commented that they were largely redundant when sitting with a professional magistrate because “the stipendiary runs the court”.11 This dominance was in evidence during the observations, and it, in fact, went beyond technical legal matters. Some District

10 See Chapter 3
11 Written comments on questionnaires.
Judges invariably took on the role of the clerk completely, at least verbally, asking for confirmation of names and addresses and for pleas on numerous occasions. In this sense then, not only did the District Judges render their clerks' legal knowledge largely redundant, but they also often usurped their administrative role as well:

... once stipes start interfering in the administration of the court, and believe me they do, it can cause confusion.

(Court Clerk, Provincial Court I, Interview Transcript)

This view was not universally held. The Deputy Clerk to the Justices at Provincial Court I felt that court clerks' lack of proactivity with District Judges was counterproductive:

Often court clerks are their own worst enemies, because you need to be just as proactive with a stipendiary in that you need to be managing the court...working that relationship out with the stipendiary can be absolutely vital, because otherwise they will run it for you... If you think the stipendiary has done something wrong you should be willing to have the courage and stand up and say, but they're frightened of them, but if you challenge them they will respect you far more for doing that, but it's almost as if clerks need to have training on how to handle stipendiaries with very dominant personalities.

(Deputy Clerk to the Justices, Provincial Court I, Interview Transcript)

However, the Deputy Clerk to the Justices at Provincial Court I rarely sat as a court clerk and when he did he made a point of only sitting with lay magistrates. Therefore, his knowledge and understanding of the terms of the exchange relationships between the regular court clerks and the District Judges was arguably limited. During the course of the courtroom observations a court clerk was seen to question a District Judge's decision only once. The District Judge, in full view of the entire courtroom, censured the clerk in question vociferously. The incident became common knowledge amongst other clerks and local defence solicitors very quickly and several clerks subsequently expressed anxiety about sitting with this particular District Judge. One clerk specifically expressed that:
We don’t like sitting with him/her, he/she doesn’t treat you like a fellow professional. 12

Therefore in terms of maintaining credibility and status amongst the regular workgroup, challenging a District Judge appeared to hold little benefit for a court clerk and demonstrated the consequences in terms of maintaining unproblematic working relationships. Despite this, there were some clerks interviewed who viewed their working relationship with District Judges as mutually beneficial and several intimated that they felt the District Judges viewed them in as equals in terms of legal knowledge, expertise and status:

If they’ve got a point of law they may well use you as a sounding board and just by the very nature of the fact that they tend to have the more complicated points of law you can find that your legal skills are tested more, but in a completely different way, because if a stipe wants to bounce something off you they’re asking your opinion as a lawyer.

(Court Clerk, Provincial Court II, Interview Transcript)

This is, however, not a view that was shared by many of the District Judges, or indeed court clerks, interviewed for this study. At least two of the District Judges, rather than considering it to be an “unnecessary luxury,” were affronted at the requirement to sit with a court clerk and felt that it was a waste of resources. 13 The majority of court clerks considered that their role with District Judges was purely administrative. Worthy of note is the comment of one CPS lawyer who suggested that the role of clerks with District Judges was almost that of a ‘whipping boy’ for the other lawyers in the courtroom:

Stipes definitely need their clerks too. We have all experienced stipendiary magistrates making basic mistakes in law and you either have to correct them, which they may not take too kindly to, so ideally the clerk will do it.

(CPS Lawyer, London Court, Interview Transcript)

12 In private conversation with the author.
13 In Bankowski et al (1987) several experienced lay justices also expressed the view that they didn’t need their clerk. However no such comments were received from the lay magistrates that took part in this study.
This comment indicated the status held by court clerks in a courtroom where a District Judge presided as far as others in the workgroup might be concerned and the difference between this view and that taken of court clerks when in a courtroom presided over by a lay bench. It also demonstrated the need of other members of the workgroup to retain their own reputations and status before District Judges. This shifting of defence and CPS lawyers up the legal hierarchy, above the clerk, was very much in evidence when observing courts presided over by a District Judge. Discussions over issues in a particular case were often conducted directly between the lawyers in the well of court and the District Judge on the bench, bypassing the clerk completely:

Defence solicitors will sometimes assume things with a stipe; legal things and they will enter far more into a one to one with a stipendiary magistrate above the clerk, especially if it’s a legal point.

(Court Clerk, Provincial Court II, Interview Transcript)

Therefore, in a court presided over by a District Judge, the clerks, because of their lack of influence over the bench, cease to be of use to the defence solicitors or prosecutors after the session has begun. It is, however, important to note the influence of individual personalities and styles on the relationship between the clerks and the District Judges. Many of the answers to questions, posed in interview regarding this relationship began with the phrase “it depends on the stipendiary”. A typical response is given below:

Your role in court differs depending on which stipendiary one is sitting with; one permanent stipendiary does not welcome advice at all, where as the other is happy to discuss legal points.

(Court Clerk, Provincial Court II, Interview Transcript)

Sitting with some District Judges therefore, for some clerks, appeared to result in a form of professional subjugation. As one clerk at Provincial Court I commented:

It’s a completely different job ... your advice is not required and you're not in control.

(Court Clerk, Provincial Court I, Interview Transcript)
In comparison, the other lawyers in the courtroom find themselves considerably higher up the legal hierarchy when addressing a District Judge. This is, however, only in comparison to the clerk. The lawyers and the District Judge did not always appear to have a mutually respectful relationship concerning legal issues. In fact it will be argued later in the chapter that the relationship between the other lawyers in the court and the District Judge involved little legal discussion or performance:

You rarely argue the law with a stipendiary magistrate; you should assume they know it and they might get offended if you don't.

(CPS Lawyer, London Court, Interview Transcript)

This section has argued that the position of the court clerk within the legal hierarchy of the courtroom workgroup is fluid and dependent on the symbiotic nature of their relationships with both lay magistrates and District Judges. It has been suggested that working with lay magistrates affords court clerks the opportunity to enjoy their legally qualified status, whereas the presence of District Judges in the courtroom often prevents them doing so. The next section will examine the dynamics of the courtroom workgroup – governed by familiarity and notions of legal authority – in action and its impact upon the conduct of personnel in the courtroom.

**Speed, Confidence and the Control of Information**

As Morgan and Russell (2000:34) point out, all other things being equal, the single most lauded skill attributed to District Judges, over and above that of their lay colleagues, is their speed. Indeed, in the present study over half of those court personnel that responded to the questionnaire (n = 70, not including the District Judges themselves) felt that District Judges had an important or major impact on reducing delay in the courts. However, as Morgan and Russell (2000:34) acknowledge:

... the issue as to how quickly court business is dealt with is complex, quite apart from questions of quality of decision-making and the perceptions of court participants. It involves more than simply establishing how much time is taken to deal with individual cases/appearances.
The more ‘complex’ reasons for the difference between District Judges and lay magistrates in this respect appear to be obvious, namely the ability to apply legal expertise with little advice, the absence of the need to consult with other decision-makers and the confidence to intervene and take control of case management.

This saving in time arises mainly from the mathematically simple fact that stipendiary magistrates are full-time and more often than not sit alone, rather than in benches of three, hence the decision-making process is quickened by the absence of the need for conferment. Furthermore, stipendiary magistrates are experienced and legally trained professionals, and so tend to spend less time seeking and receiving advice from the clerk and may also be better able to curtail excessive advocacy.

(Seago et al, 2000:638)

Martin Narey, in his “Review of Delay” remarked starkly upon these distinctions between professional and lay magistrates:

...with rare exceptions (lay) magistrates have neither the detailed knowledge of law and procedure, nor the confidence, which enables stipendiaries or professionally qualified clerks to take the type of robust decision necessary to drive the case forward...they [lay magistrates] lack the experience to challenge parties’ requests for adjournments... stipendiaries are vastly more effective in managing the parties in any given case.

(Narey, 1997:25)

This section will examine these arguments more closely and assess the extent to which the exchange relationships between the District Judges and other members of the courtroom workgroup in the three courts, might contribute to the perception that District Judges deal with cases more efficiently than their lay colleagues. It is argued that the complicity of others in the courtroom workgroup, rather than just the dominance and skill of District Judges themselves, play a part in the capacity of District Judges to deal with cases more quickly than lay magistrates. It will also be shown that, in fact, the difference between District Judges and lay magistrates in terms of number of cases dealt with and the time which is taken to deal with them is not as large as might be expected considering the prominence this distinction has been given in common academic and political discourse, particularly in terms of justifying increases in District Judge numbers. However, it is also acknowledged that it is the position held by District Judges, at the apex of the legal hierarchy, which influences the dynamics of their mutually beneficial
relationships with other court personnel, which in turn fosters the speedier throughput of cases.

Morgan and Russell (2000) are quoted above as stating that assessing the speed at which cases are dealt with is more complex than merely calculating the time lay magistrates and District Judges take to process cases. It is, however, a good place to start. In Chapter 3 it was demonstrated that, on average, the District Judges across all three courts dealt with a fifth (19%) more cases per court session than lay benches. It was also found that there were differences between the three courts in their rate of case disposal per court session. This analysis was based on data from the court registers. In order to analyse the speed of case throughput more closely this issue was further scrutinised, for the purposes of this chapter, by examining the observation data to assess the time taken to complete individual cases. This approach was similar to that taken by Morgan and Russell (2000).

Like the number of cases dealt with per court session, the findings of this study in terms of the time taken per appearance, were also similar to those of Morgan and Russell (2000:370). Overall, across all courts and all types of tribunal the average time taken to deal with each case was 12.07 minutes. District Judges spent an average of 10.89 minutes on each case, compared to 14.46 minutes spent by lay magistrates. Therefore, across all three courts, the differential between the average length of time taken per case revealed that District Judges were a third faster than lay benches (32%). However, the differences between the individual courts were pronounced. For example, at Provincial Court I the average time taken by District Judges and lay magistrates, per case, was virtually identical. However, at Provincial Court II District Judges were, on average, 44% faster than lay magistrates. In order to examine these differentials more closely it was necessary to analyse what else was going on in the courtroom during court sessions when

---

14 Not all cases in any particular court session were recorded during the courtroom observations. This was due to the logistical difficulties of a single researcher recording cases in sufficient detail, by hand. It was decided that cases involving multiple defendants would not be recorded. This applied in all courts and therefore it is felt that the figures used are still representative and valid.

15 Seago et al (1995:114-115) also examined the issue of speed and asked their respondents to assess how many extra lay magistrates would be required to execute the existing judicial workload of the stipendiary magistrates in their courts. Estimates varied and it was concluded that one stipendiary magistrate was equivalent to approximately 23 lay magistrates in London and 30 lay magistrates in the provinces.
presided over by both lay magistrates and District Judges and to identify where, how and why these disparities might occur.

Four main areas were explored: the overall efficiency of the courtroom; the frequency and purpose of retirements; the frequency and purpose of adjournments; and, finally, the control of information through intervention. This latter area included the nature and degree of verbal intervention by lay magistrates and District Judges both in the sense of the interventions they made themselves and their resistance to the verbal interventions of other members of the courtroom workgroup. All these elements, it is argued, were influenced by the differing configuration of power and exchange relationships within the courtroom workgroup when presided over by lay magistrates and District Judges. Central to this argument are issues revolving around confidence, respect and the degree of proactivity displayed by lay magistrates and District Judges in the courtroom.

**General Efficiency**

During the numerous courtroom observations undertaken for this study, the most palpable difference between courts presided over by District Judges and lay magistrates was the more pressing concern for efficiency in a courtroom where a District Judge was presiding. It has already been mentioned that members of the courtroom workgroup appear to collaborate in fostering a perception that lay magistrates are inefficient and that their courts will invariably be slow and subject to delays; the exact opposite was true of District Judge courts. CPS prosecutors were frequently observed to express concern about reading their files and getting them in order because they “had a stipe”. Defence solicitors were rarely late and the court clerks were often keen to organise the cases listed to ensure that they flowed more readily. In interview, the Deputy Clerk to the Justices at Provincial Court I was unimpressed with this deferential attitude towards District Judges:

Everyone behaves completely differently. It’s sickening because they creep to the stipendiaries and are much more willing to deal with cases there and then.

(Deputy Clerk to the Justices, Provincial Court I, Interview Transcript)
This suggested that the very presence of a District Judge - not just what the District Judge actually did - contributed to a faster work rate. As shall be discussed with regard to interventions below, it seems that the reputation gained by District Judges for speed may, in part, be due to the actions of other members of the courtroom workgroup. This was particularly evident in one observed court session, presided over by a District Judge at the London Court. The court clerk was evidently anxious to run an efficient court for a particular District Judge and had several pre-session discussions with the usher, defence solicitors and CPS prosecutors, regarding the importance of a steady flow of cases. Despite this advance preparation, the cases dried up. Under pressure from the District Judge, the clerk called on an un-represented and somewhat difficult defendant from the cells. After a lengthy and fractious exchange with the defendant the District Judge announced that they were not prepared to continue and walked out of court, with over an hour of the session left. After the District Judge had departed the clerk publicly castigated the usher and also left the courtroom, while those members of the courtroom workgroup left behind broke into animated debate about the consequences for the clerk in terms of difficult future dealings with that particular District Judge.

This particular event was interesting for several reasons. It demonstrated that there was a concerted effort, certainly not as perceptible in lay courts, to push cases through for a District Judge and ensure an efficient court. It was also indicative of the role of the clerk within this particular court and shows the position of court clerks within the legal hierarchy when sitting with District Judges. Rarely required to act as a legal advisor, clerks are left only with their administrative function to offer as part of their exchange relationship with the District Judge. When this goes awry, it impacts upon their credibility with both the District Judge and the others in the courtroom workgroup. In this case the clerk held the usher responsible for the incident, the only person left lower down in the hierarchy.
Retirements

In interview, one District Judge from the London Court stated confidently that: "the speed of a stipendiary comes from the fact that he doesn’t retire". The need for lay benches to retire to discuss decisions was also viewed by Martin Narey as detrimental to effective case management in the magistrates’ courts:

The need for a Bench of three lay magistrates to reach agreement between themselves is not conducive to decisive action.

(Narey, 1997:25)

In the responses to the questionnaire, the retirement of lay justices was cited as 'Very Often' or 'Always' the cause of unnecessary delay by just under one-fifth (16%, n=23) of all respondents to the questionnaire. This was second only to defendants arriving late. However, it was clear that the attitude of the lay magistrates towards the frequency and length of their retirements was disparate from the other members of the courtroom workgroup. This suggested that the perception of what was 'necessary' and 'unnecessary' delay differed between various court personnel. A large majority of lay magistrates, across all three courts (93%, n=92), stated that their retirements 'Rarely or Never' caused unnecessary delay. This was in comparison to the other court personnel, nearly half of whom (48%, n=23) responded that the retiring habits of lay justices accounted for unnecessary delay either 'Very Often' or 'Always.'

Analysis of the observation data revealed that, as might be expected, lay benches retired more often than District Judges.16 Across all the three courts, and in proportion to the overall number of cases they dealt with, District Judges retired in only ten cases (3%), compared to just over one-quarter of the cases (27% n=42) dealt with by lay benches. This large difference was significant when taken at face value. However, when the average time differential between lay benches and District Judges for dealing with each case is taken into account (12.07 minutes and 10.89 minutes respectively) it appears that the frequency and length of retirements

16 A retirement was recorded when a lay bench or District Judge left the courtroom in order to consider an issue or decision in a case. It is noted that retirements also occurred for other than decision-making, such as at the suggestion of the court clerk when cases have temporarily 'dried up'.
was not as detrimental to the speedy throughput of cases as the questionnaire responses or observation data suggests. For example, one Deputy District Judge at Provincial Court I was observed to spend a sizeable amount of time considering a decision or case, but did so within the courtroom itself. Furthermore an analysis of the length of time spent by lay benches and District Judges in retirement produced a surprising result. Although District Judges retired a lot less frequently than lay magistrates, on average they retired for longer periods, 10.7 minutes and 7.8 minutes respectively. Given that they sit alone, the question why District Judges chose to retire at all, needed to be considered.

In order to examine this further the circumstances of the retirements were examined more closely along with the views expressed by District Judges, lay magistrates and other court personnel about the practice. This revealed that retiring was considered by lay magistrates and District Judges to have two functions – it was both a symbolic and pragmatic exercise. However, it also unveiled a picture of largely diverse views between lay magistrates, on the one hand, and District Judges and other members of the courtroom workgroup on the other, in respect of the importance of the symbolic relevance of retiring from the courtroom and the actual necessity of doing so.

For the majority of lay magistrates retiring fulfilled both a symbolic and pragmatic function. These two functions were viewed as inextricably linked and equally important. This was reflected in their overwhelming view, apparent from the questionnaire responses, that retiring was not a source of ‘unnecessary’ delay. Instead they viewed retiring as an important function which, not only allowed them the facility to approach decisions communally, but also to demonstrate to the general public and the defendant that a considered, collective approach had been taken to any decision. A fairly typical view is given below:
It's not always necessary and sometimes I suppose that it can look as if we are doing it at every point where we want to have discussion, which must be tedious for others I suppose... Sometimes it's possible to discuss things in the courtroom but personally, I mean not only can that be awkward practically, but personally I also think it looks bad. Going out to discuss a decision just looks better, it looks like we're going to sit down properly, without the distractions of the courtroom and think through the decision carefully. I think that must be give the right impression, of justice being seen to be done and all that...

(Lay Magistrate, Provincial Court II, Interview Transcript)

However, for the District Judges, who rarely retired and did view the frequent retiring of lay magistrates as a needless impediment to the flow of cases, the main function of retirement was a pragmatic one and, more often than not, to enable them to call security to take a defendant down to the cells following the passing of a custodial sentence. The symbolic element of retirement was viewed by some District Judges as an advantageous by-product, rather than as an equally desirable corollary of the practice:

I hardly ever retire, there's just no need really, there's no one for me to discuss the decision with is there?... I do go out sometimes of course maybe to read over some document that you've only just been given or something but it's not often. Retiring can be useful when you are about to send a defendant down and you need to call security up. I suppose as well that in a serious case... if the arguments have been quite, you know, complex or there's been some serious opposition in the case of a bail application or whatever. Although, I've obviously taken everything into account I wouldn't want to appear glib in those circumstances, you know, where the arguments have been put forcefully or where the issues are clearly difficult...

(District Judge, Provincial Court II, Interview Transcript)

Other District Judges regarded the importance of the symbolic aspect of retirement, in respect of public perception, to be over-rated and misconceived. In fact, for these District Judges it was not retiring from the courtroom that was 'symbolic'; symbolic that was of their authority and confidence as members of a professional judiciary. Rather than demonstrating a considered decision (as lay magistrates believed) retiring, to some District Judges, was a sign of indecision and weakness. The fact that they didn't need to retire was an advantage they held
over lay justices and the speedy throughput of cases combined with confident, assured and direct decisions was more important in demonstrating professional and efficient justice to the general public, the defendant and, most importantly, their colleagues in the courtroom workgroup:

I don’t tend to go out [retire] if I can help it. It slows everything down for everyone and it’s unnecessary because I’ve normally made my mind up and if one is swayed by arguments on either side one can decide pretty quickly what other sentence or decision to take... I think that’s what people want and expect from us [District Judges] you know, quick decisions with no messing about. We can do that because we’ve got the confidence and experience to know that it’s the right decision without having to discuss or think about it for too long and they’ve got the confidence in us to do that... by they I mean one’s colleagues in the courtroom and of course the defendant and the public. If I do go out then it’s usually on a case that’s particularly serious and if you’ve decided on a custodial sentence then it’s useful so that you can call who you need to arrange for the defendant to be escorted down to the cells.

(District Judge, London Court, Interview Transcript)

Of the ten cases where District Judges retired, over half (60%, n=6) were prior to passing immediate custodial sentences. However, this only represented about one-quarter of all the cases in which District Judges were observed to pass immediate custodial sentences (23%, n=26). This suggested that, even in the ‘serious cases’ mentioned above, and for whatever reasons, practical or ‘symbolic’ (in the lay magistrates’ sense of the word), District Judge retirements were exceptional.

It is interesting to note that none of the full-time District Judges were observed to retire before passing an immediate custodial sentence.17 In comparison, of the 15 custodial decisions made by Deputy District Judges, over half (n=8) were announced after a retirement. Four of these retirements were comparatively lengthy at 10 minutes or over. One reason for this, it is suggested, is the slightly different position occupied by District and Deputy District Judges within the courtroom workgroup. Deputy District Judges are not as regular or familiar within the courtroom workgroup as their full-time colleagues. They are therefore,

17 Full-time District Judges passed 8 out of the 26 custodial decisions taken by District Judges overall.
arguably, relative ‘outsiders’ from the regular courtroom workgroup, which means they may not have the same level of confidence and authority among the courtroom workgroup as that enjoyed by full-time District Judges. This argument is supported to a certain extent by the fact that none of the well-established, full-time District Judges observed at the London Court retired at all, for any reason. In fact, the announcement of decisions were so immediate at this court that it suggested a distinct culture among the regular workgroup, where the power and control of the District Judges was so absolute, as to render the need for the symbolic function of retirement (in lay magistrate terms) totally unnecessary. This was also highlighted by the observation of one District Judge in his capacity as both a full-time District Judge at Provincial Court I and also as a visiting District Judge at Provincial Court II. He did not retire prior to passing custodial sentences at his regular court, but did on both the occasions where he handed down prison terms as a visiting District Judge at Provincial Court II. It would appear then that full-time District Judges who occupy the apex of the legal hierarchy within the courtroom have little regard for what Carlen (1975:357) terms:

... both the symbolic and consequential importance, as well as the situational meaninglessness of the plausible performance of justice.

However, the simpler explanation may be found in the purely pragmatic function of retirement mentioned previously, that is it affords the opportunity to make security arrangements to escort defendants to the cells. Important in this regard are the commonly understood ‘signals’ among a regular workgroup. Carlen (1975:365) identifies the importance of “… an elaborate system of signalling [that] has developed between regular court officials.” There was evidence from the present study that this status with regard to signalling within the courtroom also extended to professionals who do not form part of the regular workgroup. This can obviate the need for retirement in most cases.
Deputy District Judges and peripatetic District Judges might have only retired, in the main, prior to passing a custodial sentence, because they needed to summon security officers to remove a defendant to the cells. It is arguable that their status as relative ‘outsiders’ meant that they lacked the detailed knowledge of the courtroom workgroup to make use of the informal, but well-established signals (in this instance to the usher or clerk) that full-time District Judges would use. This was particularly obvious in the provincial courts where security officers were not present in the courtroom at all times. It was therefore necessary for the District Judge to retire in order to request security personnel to attend the court in the privacy of the retiring room. However, as has been established, full-time District Judges did not appear to need to retire in order to indicate that they required security officers.

A particularly good illustration of the importance of tacit signals was observed at Provincial Court I during a court session presided over by a visiting Deputy District Judge. Prior to the court session the usher was observed to discuss his concerns with the clerk that he didn’t know what the unfamiliar Deputy District Judges’ “signals” were. His concern was seen to be relevant when confusion arose over a defendant whom the Deputy District Judge had sentenced to custody. Security guards had not been summoned and there was a delay, post-sentence, while the usher and clerk organised for them to attend. The visiting Deputy District Judge apologised profusely at the end of the court session for “not knowing the drill”. A CPS prosecutor in interview confirmed the importance of familiarity with such signals:

You get used to certain groups of people and certain signals just by looks or gestures and that applies to everybody whether that is a defence solicitor, a magistrate, stipe or clerk. Once you get an alien body coming in it’s different for them and it is hard for us to pick up on the signals they are giving out and exactly what they want.

(CPS Lawyer, Provincial Court I, Interview Transcript)

---

18 At the time the research was undertaken the stipendiary bench, as it then was, had not yet amalgamated. In amalgamating the bench the Access to Justice Act 1999 also removed the need for courts to expressly request ‘visiting’ or peripatetic professional magistrates when caseloads required. All District Judges are now entitled to sit in any court in England or Wales, without the need for a special request.
Summary

In summary, for lay magistrates, retirement had both a symbolic and pragmatic function, but in their case these two elements were integrated. Withdrawing from the courtroom was viewed as both necessary to facilitate discussion and also to give the appearance of ‘considered’ justice. Lay magistrates felt that retiring to consider their decisions increased their status in the courtroom. However, unlike District Judges, who were more concerned with their appearance to their fellow professionals, the lay magistrates were more concerned with their appearance to the general public and the defendant - in other words those outside the courtroom workgroup. The appearance of justice to outsiders is highlighted as the paramount concern for the criminal justice process by Morgan and Russell (2000:42) who state:

If greater throughput of appearances involves injustice or discourtesy, or if parties to proceedings do not feel that they have been heard properly, then the court has not delivered the service it exists to provide. If victims, witnesses or defendants...leave the court dissatisfied or aggrieved then the purpose of the exercise has been undermined and the legitimacy of the criminal court system damaged.

However, the concern of lay magistrates for the perception given to outsiders was to the detriment of their position within the courtroom workgroup and served to further diminish the workgroup’s respect for them. This was clear from the questionnaire responses, which demonstrated quite clearly that others in the courtroom workgroup viewed the retiring habits of lay magistrates to be a major cause of unnecessary delay. This was due to two main reasons. Firstly, from the point of view of the other court users it created unnecessary delay in the attainment of the goal of ‘getting justice done’. Secondly, and most ironically considering the impressions that lay magistrates believed themselves to be giving, it demonstrated a lack of confidence, professionalism and competence:

They think they are giving an impression of being fair, of deliberating fully, but as far as the professionals in the courtroom are concerned it smacks of incompetence, indecisiveness, relying too much on their clerk and not knowing what to do. No one would quarrel with retiring before giving a verdict, difficult bail decisions, maybe even a difficult sentence, but it does them no good at all to be seen to do it on every decision they make and it irritates everyone else because it slows things down.

(District Judge, London Court, Interview Transcript)
District Judges on the other hand simply rarely retired at all. Where they did retire it was largely for pragmatic reasons and that this in turn is arguably related to their position in the courtroom workgroup at the time and their familiarity with tacit signals. It was also suggested that District Judges were more concerned with the symbolic relevance of not retiring to their authority and position. However, in terms of actual speed, it was noted that the relative infrequency of District Judge retirements was not dramatically reflected in the time differential between them and lay magistrates when it came to the average time taken to deal with each case. This indicated that the actual exercise of retirement, and the appended perception of delay, was an influential factor in the development of the argument that District Judges’ speed was inherent in the fact that they rarely retired.

*Adjournments*

Over half of all the questionnaire respondents (58%, n=85) stated that lay magistrates were more likely to grant adjournments, including nearly half (44%, n=43) of the lay magistrates themselves. However, it was necessary to try and ascertain the views of the members of the courtroom workgroups about how often these adjournments were the cause of unnecessary delay and the impact that District Judges may have had upon the adjournment culture of the court. Raine and Willson (1993a) and Church (1982, 1986) argue that what is considered by individual courts to be *undue* delay is something that emerges after a process of negotiation and is dependent on the establishment of local norms and practitioner practice in individual courts. This negotiation was apparent in the three courts included in the present study. Different timescales were accepted as ‘normal’ and routine for the same purpose. This was highlighted in the practice of different courts concerning adjournment periods and reasons. For example, adjournments for Pre Trial Reviews (PTR) simply did not occur at the London Court. Although both provincial courts did make use of PTR’s over half of all in respect of this were observed to occur at Provincial Court I. This reflected the well-documented variance of opinion over the efficacy of PTR’s in reducing delay (Whittaker *et al.* 1997).
The views expressed on the questionnaires by, and about, lay magistrates causing delay by granting unnecessary adjournments presented a quite different picture to the one that denoted the views on retirements. Not least due to the fact that a large proportion of the lay magistrates themselves (79%, n=78) appeared to accept that they frequently granted adjournments that caused unnecessary delay. This accorded with the views of the majority of court clerks (85%, n=17) and District Judges. However, there was a commonly held dissenting view among the defence solicitors that responded to the questionnaire, with well over three-quarters (85%, n=15) indicating that the granting of adjournments by lay magistrates rarely or only occasionally caused unnecessary delay.

This might have been indicative of a symbiosis between lay magistrates and defence solicitors in relation to this specific issue. It has already been determined by their attitude towards retirement that the symbolic importance of justice appearing to be done is important to lay magistrates and that this can be linked to a lack of confidence. It was therefore possible that lay magistrates might grant applications for adjournments from the defence in order to maintain the appearance of fairness, even though they themselves acknowledged that a large number of these are probably unnecessary and cause delay. Baker (1991), in an advisory article for lay magistrates, suggests that the professionals in the courtroom will often request adjournments, with little legitimate explanation, because lay magistrates are too deferential to professionals and too eager to sanction their requests without the appropriate degree of scrutiny. This rather enforces the view of lay magistrates as lacking in confidence and as ‘outsiders’ in a courtroom workgroup comprised of legal professionals:

The attitude when hearing an application to adjourn should be one of enquiry... Justices should never feel that because an application is being made by a solicitor the court must automatically endorse the view of the professional: an application should be properly explained. Do not let the professionals used tired token words ‘to review’ ‘to prepare’, to ‘take instructions’ or ‘awaiting a file’ unless the situation is clear. A simple question such as “What exactly is involved” may sound naive but a public naivety may be what is required in open court where spectators often sit bemused as to the real reasons for adjournments or the courts apparent lack of control.

(Baker, 1991:70)
It is interesting to note that Baker’s advice appears to be, not that lay magistrates should seek to challenge the professionals on their own level, but rather that they should attempt to demonstrate their control of the court with an explicit ingenuousness. Martin Narey (1997) had no doubt that lay magistrates’ tendency to grant an adjournment was injurious to the efficient throughput of cases. He appears to take the view that such tentative questioning as advised by Baker (1991) was not a robust enough foil for the professionals within the courtroom:

At present there is little or no expectation that contested cases will make any real progress when they come to court; adjournments are granted too freely and for excessive periods. This is in part because lay magistrates lack the experience to challenge parties’ requests for adjournments, and (sitting as a tribunal of three with no continuity between hearings) are not well placed to take decisive action, or to follow it up subsequently.

(Narey: 1997:1)

To explore this further it was necessary to look at the actual practice within the courtroom of requesting and granting adjournments. If the above contention were correct one would expect to see a marked difference in the number of adjournment requests made of lay magistrates than of District Judges. To this end, the data were examined in order to establish the extent to which lay magistrates and District Judges were asked for and granted adjournments. Adjournments recorded during the observations at the three courts were categorised into those that were procedurally necessary, such as putting a case off for trial or committal, and those that involved an element of discretion. This included applications to the lay bench or District Judge for any other reason, such as waiting for information, illness etc or those adjournments that were decisions of the magistrates or District Judges themselves.

Adjournments occurred in 310 (66%) of the cases observed at all three courts. Considering the overwhelming view, apparent from the questionnaire responses, that lay magistrates were more likely to grant adjournments than District Judges the difference between them was not particularly large. Lay magistrates adjourned 113 cases in total and District Judges 197. As a proportion of all the cases they were observed to deal with this represented 73% and 65% respectively. However, the important point in terms of this argument is whether lay magistrates were more likely to grant adjournments that were not procedurally necessary. Of the 310
cases adjourned across all three courts, the division between those that were classed procedurally necessary and those that were discretionary was approximately half and half (152 and 158 cases respectively). The observation data revealed that lay magistrates adjourned over half of cases (56%, n=64) for non-procedural reasons while District Judges adjourned just under half (48%, n=94). Lay magistrates, therefore, adjourned more cases for non-procedural reasons than District Judges. However, the difference between lay magistrates and District Judges was not as pronounced as one might have expected in light of the questionnaire responses. Notwithstanding this smaller than expected differential, in simple terms, lay magistrates adjourned more cases on the basis of an application, as opposed to procedural necessity, than District Judges. In order to examine the extent to which this was due to more applications being made to lay magistrates, the reasons for these discretionary adjournments were explored.

Closer examination of the observation data showed that the variation between the number of applications for adjournments made to lay benches and District Judges by defence solicitors was small (26 and 35 cases respectively, representing 41% and 37% of the total number of cases that each adjourned for non-procedural reasons). This small difference did not markedly support the contention that defence solicitors are much more likely to apply to a lay bench for an adjournment than a District Judge. However, when the reasons for these applications and the number of times they were granted were taken into consideration, broad verification for the assertion was found. Although it is noted that the numbers involved were small and it was therefore difficult to come to any generalised conclusions.

Lay magistrates granted all but one of the requests made by defence solicitors, whereas District Judges turned down over one-tenth of such requests (14%, n=5). Furthermore, of the 26 adjournment requests made by defence solicitors to lay magistrates, half were for the case to be put off for some form of pre-sentence report (50%, n=13). However, only 4 out of 35 such requests were made of District Judges, which represented only 11%. This suggests that defence solicitors might have exploited the reluctance of lay magistrates to pass sentences without reports (see Chapter 3). In terms of the length of adjournment, lay magistrates
granted the time asked for in all cases; whereas District Judges granted one week less than that requested in two cases and two weeks less in another. One other noticeable difference was that the court clerk advised adjournments in two cases when sitting with lay magistrates, but never when sitting with a District Judge. In summary, it would appear that although defence solicitors were only slightly more likely to request adjournments from lay magistrates than District Judges, the difference in outcomes indicated that lay magistrates were more easily persuaded towards granting the requests. This view of the malleability of lay magistrates will be discussed in more detail in the next section.

The importance of negotiation within the courtroom workgroup in deciding what is an ‘acceptable’ delay as suggested by Raine and Willson (1993a) and Church (1982, 1986) was supported by examining the reaction of both lay magistrates and District Judges, to joint and unopposed applications for adjournments. All such requests were granted by lay magistrates and only refused once by a District Judge, at all courts. A court clerk at Provincial Court I explained this practice thus:

Very often of course you get this conspiracy between the prosecution and the defence to ask for a joint adjournment or at least they agree not to oppose the other’s request. For example the prosecutor knows that on the next occasion they’re going to want an adjournment because the file won’t be ready and that if the defence agrees they will invariably get it and vice versa so they don’t oppose each other. When lay magistrates have heard no opposition they don’t feel able to resist. Stipes are more likely not to fall for that sort of thing, a lot of them have been there and they know the games that people play because they’ve played them themselves... But then again an application that is agreed by both sides is hard to resist, even for stipes, because it’s something that both sides want and that means that both sides want more time so refusing it will annoy both the defence and the CPS and probably cause delay later on.

(Court Clerk, Provincial Court I, Interview Transcript)

In addition to this, the length of times viewed as acceptable for different adjournments was indicative of the informal routines developed by regular members of the courtroom workgroup. This was apparent when a Deputy District Judges at Provincial Court II enquired of a defence solicitor “I don’t know the drill here, how much time do you normally get?”19 During the observations there was

19 Noted in the observation diaries.
little discussion over adjournment times and as has been shown above the times
asked for were largely accepted rather than requested.

**Passivity vs. Proactivity: The Control of Information through Intervention**

The third essential element that affected the speed of case throughput was
manipulation of the type and amount of information presented in the courtroom.
It has been acknowledged in previous research that defence solicitors view lay
magistrates as ‘fair game’ for employing tactics that cost time and money in order
to further their clients’ advantage (Morgan and Russell, 2000; National Audit
Office, 1999). Conversely, it is contended that District Judges’ knowledge and
experience make them ‘better equipped to resist such ploys’ (National Audit
Office, 1999, paragraph 4.62, cited in Morgan and Russell, 2000; Sanders,
2001:21). As a lay magistrate at Provincial Court II described them:

> ... they [District Judges] know all the tricks of the trade don’t they and its
poachers turned gamekeepers.

*(Lay Magistrate, Provincial Court II, Interview Transcript)*

One full-time District Judge at Provincial Court II considered his most important
influence in the court had been “setting standards and expectations for
advocates.” The following two comments made by District Judges echoed this
view:

> If you sit on your own and you sit everyday, if you know law and
procedure and you’ve been a practitioner yourself, you’re going to have
that greater confidence, but more than that the advocates are going to know
that and so they’re going to be far more likely to toe the line because of
what they know about you.

*(District Judge, Provincial Court I, Interview Transcript)*

and:

> We can identify issues quickly, we are not bamboozled by the prosecution
or defence, we are much more inquisitorial. I hope we are not rude but we
are taxing, we test people. It is very obvious that people are much more on
their toes because they know us, and know that they have to justify to us
their excuses.

*(District Judge, London Court, Interview Transcript)*

---

20 Written comment on questionnaire.
The observations carried out for this study demonstrated the difference in the presentation of information and the conduct of solicitors and others before lay magistrates and District Judges. It is contended that these differences were based on assumptions and entrenched attitudes about the strengths and weaknesses of lay magistrates and District Judges, and the formal and informal organisation of the court (Crowther, 1983; Mungham and Thomas, 1979; Brown, 1991). In addition the element of familiarity, as discussed at the beginning of this chapter, was essential:

The effective advocate...accomplishes his task by pursuing whatever arguments are likely to be effective in the tribunal before which he [sic] is appearing.

(Pannick, 1992)

It follows that assumptions and knowledge about lay magistrates and District Judges generally, and about individual District Judges in particular, played a vital role in this context. It is suggested that the position of District Judges within the courtroom workgroup, and the nature of their exchange relationships with other court users, enabled them to control the type, and limit the amount, of information presented to them. The main way this was achieved was to verbally intervene during the course of the information being presented in a proactive manner. Some District Judges also employed a tactic of pre-emptive intervention; in effect curtailing the mitigation speech, or sometimes the facts of the case, by prescribing parameters for the communication of material that the District Judge felt to be necessary. This sometimes took the form of asking a series of specific questions of defence solicitors or prosecutors rather than affording them the occasion to talk freely.

Conversely the findings of this research indicated that lay magistrates were much more passive in the courtroom in terms of their verbal contribution to proceedings and were more reluctant to intervene. It will be argued that this lack of proactivity was due mainly to a lack of confidence and the desire to appear fair. Not only did this affect their ability to control the information exchange within the courtroom, but also fostered the view that lay magistrates were more malleable and credulous; thus directly affecting the length and content of mitigation speeches. In addition, it is suggested that there may have been a further factor that explained their
passivity: that they were actively discouraged from displaying the kind of idiosyncratic behaviour displayed by many of the professional magistrates as illustrated earlier in this chapter.

Morgan and Russell (2000:46) concluded that courts presided over by District Judges were significantly more “questioning and challenging” than that of lay magistrates:

The observational data show conclusively that whereas stipendiaries run their own show, lay magistrates rely heavily on their legal advisors to probe and challenge.

This was supported by the observational data gleaned for this study. Viewed as a proportion of the cases they heard, across all three courts, District Judges intervened, commented or asked questions in over half of those cases (53%, n=162). This was over twice as often as lay magistrates who did so in just over one-fifth of the cases they dealt with (23%, n=35). The observation of District Judges in the courtroom during this study supported the perception that they are more proactive presence than lay magistrates. Several interviewees confirmed this finding and offered a variety of reasons for the apparent variation in this regard between lay magistrates and District Judges. For example:

Stipendiary magistrates tend to be more proactive from the point of view of asking you things whereas lay magistrates will just sit there and wait for the clerk to say something... spontaneous direct questions from a lay bench are rare.

(CPS Lawyer, London Court, Interview Transcript)

and:

It’s to do with having the confidence I think and whether or not you’re assertive enough to put your mark or your stamp on the proceedings. Of course it’s harder for a lay bench because there are three of them so it’s harder to break ranks and speak out without having to go through the chairman. I think they worry about looking divided...but sometimes you do get the odd maverick chairman that goes off on a soliloquy, which can be a bit embarrassing for everyone.

(Court Clerk, Provincial Court II, Interview Transcript)
Lay magistrates themselves acknowledged and reinforced the view that the confidence needed for that kind of proactivity was once again centred on their perceived lack of legal knowledge and, therefore, authority:

I know stipes are probably more proactive with defence solicitors but the backing they have for that is that they are trained solicitors or barristers. I don’t feel that I have the knowledge to take them on. Many magistrates are frightened of the knowledge they think solicitors have got.

(Lay Magistrate, Provincial Court I, Interview Transcript)

In addition to a lack of confidence in their own legal authority it has been suggested that lay magistrates’ verbal contribution in the courtroom is purposefully kept to a minimum, with routine phrases and passages written down on cards for them to read, and that this was a measure by which the courts were endeavouring to protect the legal authority of the lay bench, by preventing maverick comments which may be legally incorrect (Raine and Willson 1993a:190). Lay magistrates were also criticised for “indulging” in the kind of personalised homilies often displayed by District Judges:

We are advised not to cut in because that could be viewed as prejudiced. We’re told to stick to the words that are provided so that it’s all standardised rather than making individual comments.

(Lay Magistrate, Provincial Court I, Interview Transcript)

and:

We’re always being told that we’re not there to lecture people or act out a part... we’re just there to listen and make the decisions according to the proper criteria. It could look terribly unfair if we were allowed to reprimand a defendant in ways that wasn’t in keeping with the issues we were supposed to be considering... if you see what I mean?... having it written down to remind us of the correct language is very helpful, it stops you going off at tangents or missing an important bit out.

(Lay Magistrate, London Court, Interview Transcript)
During this research, it was noted at all three courts that, although major decisions were almost exclusively pronounced by whoever was on the bench, the explanations relating to those decisions were provided largely by the court clerk when a lay bench was presiding. The one exception to this general division of verbal contributions was the explanation of mode of trial and plea before venue. In Provincial Court II this was an explanation given to the defendant by the Chairman of the lay bench, usually reading from a prepared card. In both Provincial Court I and the London Court the court clerk addressed the defendant on these matters. At all courts, the District Judges gave their own truncated version of the mode of trial options to the defendant. However, throughout the interviews conducted for this study it was repeatedly said that reading from a prepared rubric in these situations was one of the lay magistrates’ worst practices:

...it’s dreadful when they read from the bench book.

(Court Clerk, Provincial Court I, Interview Transcript)\(^\text{21}\)

and:

It can be excruciating sometimes when a Chairman or sometimes even a winger tries to pronounce a sentence or whatever and they read it off those cards or from their folder. It just looks so, well, unprofessional doesn’t it? ... if they stumble or stutter or get confused and say the wrong thing I think it makes the whole process look kind of amateurish.

(CPS Lawyer, Provincial Court II, Interview Transcript)

So, such devices, intended to protect and instil self-confidence in the lay magistrates, merely served to further isolate them from the courtroom workgroup, many of whom appeared to disapprove of both the use of the devices and any attempt by the lay magistrates to act on their own initiative. The contribution of lay magistrates in the courtroom was therefore actively discouraged and reinforced both their status as outsiders and the combined power of the ‘legal clique’ in the courtroom. It is suggested that it was particularly beneficial in terms of status for court clerks to maintain the dependency of lay magistrates. This outcome is, in the end, acknowledged by Raine and Willson (1993a:192), but only as a by-product of the desire of clerks to sustain the authority of the lay bench.

---

\(^{21}\) The italics indicate an emphasis in the tone of the speaker, not an added emphasis on behalf of the writer.
This view, however, ignores the effect of the clerks’ influence over an insecure lay bench, which situates them as the highest legal authority in the courtroom, over and above both the defence solicitors and CPS prosecutors. The defence and CPS may accept this in return for the malleability, predictability and leniency that are viewed as common characteristics of all lay benches. It is therefore debatable whether other court actors would consider that lay magistrates should be encouraged to develop their confidence in the courtroom.

In terms of individual courts the District Judges at Provincial Court I were found to be the most proactive, intervening or asking questions in two-thirds of all the cases they presided over (65%, n=87). This was in comparison to just over a third (37%, n=38) of cases in Provincial Court II and just over half (54%, n=37) at the London Court. One CPS lawyer offered an explanation for the differences between the courts, namely that different District Judges had different styles and requirements. This further enforced the importance of familiarity where District Judges were concerned:

I think stipes as a whole are more inquisitive and like to make their presence known by asking for more information or stopping you mid-sentence if they decide they’ve heard enough...but some stipes will let you have your say...it depends on the stipe really I think, I mean they are all individuals with their own way of doing things. There’s quite a variation between them as to how much information they want and you soon get to know what type each one is.

(CPS Lawyer, Provincial Court II, Interview Transcript)

The nature as well as the frequency of interventions was important. With both types of magistrates, questions/interventions from the bench were aimed most frequently at defence solicitors. Questions by lay magistrates referred most commonly to clarifying personal information about the defendant. However, the nature of the interventions by District Judges was very different. Lay magistrates did not interrupt the prosecutor when giving the facts of an offence at all, although District Judges cut several short, stating that they had heard enough of the facts in several cases. This often occurred when the case was one that the District Judge themselves had adjourned for reports and they were aware of the facts of the case from the previous hearing. In several cases, District Judges intervened, either prior to or during, the defence solicitor’s speech in mitigation. This was usually to give
an indication of whether or not they were inclined to follow the recommendation contained in a pre-sentence report and, on a number of occasions, also to give an indication of the sentences they already had in mind. This was rarely seen to occur with lay benches. On one occasion a District Judge interrupted a defence solicitor’s mitigation and reprimanded them for merely repeating the contents of the pre-sentence report:

... you seem to repeating everything that’s in here [the pre-sentence report] which, as you are quite aware, I have already read. If that’s all you’re going to do then you might as well not have wasted my time and the time of the court.”

(District Judge, Provincial Court I, noted in observation diary)

As was demonstrated with retirements, it seemed that for some District Judges, the decision whether or not to interrupt defence solicitors mid-way, or even before, mitigation depended on the kind of decision being made:

If the PSR has recommended custody and I think he’s going down I will say “you need to address me fully” and I will not cut him short if I am thinking of custody because that wouldn’t look right. His client must know that he has had every opportunity to put his case. It can get a bit repetitive but I don’t mind wasting a bit of time if they are fighting for bail or a non-custodial sentence. If they persuade me halfway through then I will cut them off. I think this is something that lay chairmen find very difficult to do.

(District Judge, London Court, Interview Transcript)

In contrast, one of the District Judges at Provincial Court I, saw no need to “put on a show” if he agreed with the PSR recommendation:

If I’ve read the report and I agree with it I’ll tell them and they needn’t say anything. I’ve sentenced many defendants without the defence solicitor saying a word apart from telling me that their client can pay their costs at eight pounds a fortnight, I mean that’s probably all they should ever say.

(District Judge, Provincial Court I, Interview Transcript)
Whilst there was little doubt that the confidence and status of District Judges allowed them to intervene in a more proactive way than lay magistrates, the nature of their relationships with the other court users, particularly defence solicitors, meant that they were rarely placed in a position that actually required their intervention:

It's rarely necessary to cut people short; if they come here often they will tailor what they have to say to the tribunal and won’t waste your time. It’s not worth their while in the long run if they insist on trying to waste everyone’s time by getting into silly detail in terms of the circumstances of the offence or in trying to present longwinded sob stories the like of which I’ve heard a hundred times... a solicitor would only try to do that once with me.

(District Judge, London Court, Interview Transcript)

It is argued that the exchange relationship between defence solicitors and District Judges was one where, in return for brevity and allowing District Judges to uphold their image as speedy, ‘no nonsense’ professionals, defence solicitors need employ very little legal argument. Carlen (1976:348) acknowledges this trade off and refers to it as a “legal compromise in order to safeguard courtroom efficiency”. Brown (1991:83) argues that two things govern the construction and presentation of mitigation prior to sentence. Firstly, the defence lawyers’ knowledge and predictions about how different magistrates will react to particular elements and, secondly, the solicitors’ self-interest in upholding themselves as “credible professionals”. Previous research by Williamson (1980) and Parker et al (1981) also advocated this view.

Many mitigating arguments bear little resemblance to the offenders’ true circumstances and appear to be no more than a technical construction of points which the solicitor believes will be effective before certain magistrates.

(Williamson 1980:48)

In presenting mitigation or bail applications, defence solicitors were frequently observed to use language that distanced themselves from their clients. According to Carlen (1975:355) this is in order to maintain credibility within the professional courtroom workgroup.
...any appearance of allying oneself with (as opposed to speaking for) the defendant reduces both the credibility and plausibility of one's arguments. Such an alliance is seen as a betrayal of the ideal of the professional construction of justice.

This argument is supported by McConville et al (1994) who considered the relationship between defence solicitors and their clients and the role of the defence solicitor within the courtroom. They argued that routine court practices and the relationships between regular actors within the courtroom served to reinforce a non-adversarial and laconic culture within the magistrates' courts, in the interest of efficient case throughput. McConville et al (1994) illustrate their argument by examining the construction of mitigation speeches by defence solicitors:

In seeking to understand how speeches in mitigation are constructed, it is necessary to realise that defence solicitors often have to strike a balance between three different, and often contradictory, objectives. First of all solicitors have to legitimate themselves in the eyes of their clients by being seen to speak on behalf of their client. Second, as practitioners dependent upon legal aid, they need to generate volume business and to turn cases around quickly so that other cases can be handled in the interests of economic viability. Third, as courtroom regulars, they need to retain credibility with the court itself in order to continue as effective workers in the daily business of processing defendants.

(McConville et al, 1994:201)

According to McConville et al (1994:207) the third objective as stated above renders defence solicitors “captives” of the court; leading them to make negative mitigation speeches on behalf of their clients in order to maintain credibility. This can have implications for the defendant, as one court clerk interviewed for this study explained:

Some solicitors, if they know they've got a stipendiary won't bother making a bail application or giving a heartfelt mitigation speech; they won't try their luck, whereas it's worth a gamble with a lay bench. So it's very much a lottery for a defendant. You often hear “it's a stipendiary, oh well I won't bother then” whereas they think that however dubious their request there's always a chance with a lay bench.

(Court Clerk, Provincial Court II, Interview Transcript)
The disclaimers made by many defence solicitors prior to and during mitigation speeches and bail applications highlighted the importance of maintaining their position within the workgroup through verbal signals to the other professional members, over and above their duty to the defendant. A particularly good example of this occurred during observations at Provincial Court I. A District Judge dealt with a defendant in custody and granted him bail, without his solicitor present. The solicitor was busy in another court and when he appeared and was told that his client had been dealt with in his absence he expressed profuse thanks to the District Judge. When this incident was mentioned to the prosecutor who was present in the courtroom at the time and was later interviewed, the following rationalisation was offered:

Well the stipe knew the solicitor well enough to know that he would have been asking for bail anyway so just went ahead. The defence solicitor didn’t take umbrage because he got the outcome he wanted and there was no point in making a fuss about representation for the defendant and all that, it would have upset the stipe and that’s never a good idea.

(CPS Lawyer, Provincial Court I, Interview Transcript)

The courtroom observations carried out for this study revealed very clearly that the passivity of lay magistrates afforded defence solicitors the opportunity to pursue points that they may never have embarked upon with some District Judges; thus giving the impression to their client of a much more concerted effort on the part of their solicitors:

With a lay bench all you have to say is that in the interests of justice it wouldn’t be fair and look at them appealingly. Somebody once said to me ‘what is the collective noun for justices – a conscience of justices’ you can prick their consciences like that [clicks fingers]. I went as a visiting stipendiary to [name of a court] and was appalled by the way defence solicitors treated the lay magistrates... they threatened them with judicial reviews at every turn. The lay bench had lost the battle for control of their court.

(District Judge, London Court, Interview Transcript)

The main tenet of this argument is that the defence solicitors observed in this study sought to manipulate lay magistrates whom they viewed as more ‘persuadable’. Defence solicitors endeavoured to manipulate and perpetuate the
lack of confidence of lay magistrates and their desire to appear fair and just. As with court clerks, however, this exchange relationship was inequitable. The common view among defence solicitors and other members of the courtroom workgroup that lay magistrates were malleable was clearly considered a fault, not a virtue:

Lay magistrates are easy to persuade, stipendiaries have much more moral courage.

(Defence Solicitor, London Court, Interview Transcript)

The reputation of lay magistrates suffered by this acquiescence, whereas defence solicitors had the chance to 'perform' mitigation to the full and possibly achieve a 'lenient' sentence for their client, which enhanced their own reputation within the criminal and legal fraternity. However, lay magistrates and clients, despite the status rewards of 'winning cases' as mentioned above, offered solicitors little in terms of their status within the courtroom workgroup.

Behaviour before the District Judges was quite different. It is suggested that, in front of District Judges, defence solicitors were aiming for a different kind of credibility. They wanted to be seen to contribute to the speedy dealing of cases by not wasting time and tailored the content and style of their submissions accordingly:

Advocates are more realistic with stipes, they know that they will not be so easily influenced by non-essential mitigation.

(Court Clerk, Provincial Court II, Interview Transcript)

According to one District Judge:

In front of me or any other stipe the skills of advocacy have no real place. Defence solicitors know that very well so most of the time they won't waste time and won't bother trying to be too clever...they'll wait to be told what information I want to hear...it saves time in the long run and lets me get through the list, which is better for everyone all round.

(District Judge, Provincial Court I, Interview Transcript)
A defence solicitor also summed up the differing payoffs in their relationship with lay magistrates and District Judges:

> On the whole it is better for an advocate to be before a stipe. You don't have to say much which means the job gets done much quicker, the decision is often a more logical one, even if it is disadvantageous to my client. Everyone is happy. But a lay bench is essential for a trial. They're more easily persuaded and let you do your stuff.

(Defence Solicitor, London Court, Interview Transcript)

Defence solicitors were also observed to use another tactic in an attempt to take advantage of the lack of confidence of lay magistrates. On numerous occasions they referred to a previous decision or comment made by a District Judge who had presided over an earlier hearing in any particular case. This tactic, however, was not lost on the lay magistrates themselves:

> It jars when a defence solicitor says “well of course on a previous occasion the learned stipendiary thought this” or “as I recall on the last occasion your learned colleague Mr so & so was clearly of the view that.” etcetera etcetera. That goes down like a lead balloon, as does the confidence we had built up in our minds as to our decision.

(Lay Magistrate, Provincial Court II, Interview Transcript)

By using this verbal device, defence solicitors were effectively challenging lay benches to reverse or alter decisions made by someone higher up the legal hierarchy. They were using the presence of District Judges in the court as a whole as a tool to achieve their desired outcome. Even when a District Judge was not in the courtroom, their power and influence could still be wielded via others in the courtroom workgroup. However, during one observation session at the London Court, circumstances were reversed and a District Judge found themselves bound by a previous decision made by a lay bench, with which they clearly did not concur. The District Judge gave a lengthy lecture to the entire courtroom, negating responsibility and implying that they would have made a different decision, but his/her “hands are tied”. This was only observed on one occasion; and it is to be noted that the District Judge actually spelt this out, thus maintaining authority,
whereas the lay magistrates invariably bowed to the decision or indications of those higher up the legal hierarchy without making such comment.

In a similar vein, when pricking the consciences of lay justices failed or was unsustainable during mitigation, defence solicitors often reverted to "blinding them with the law." An excellent example of this was observed at Provincial Court II. A defence solicitor was arguing for bail for their client. They focused almost exclusively on the statute of the Bail Act and reminded them constantly of the need to have substantial grounds for refusing bail, hinting that a decision to remand their client in custody would be dubious legally.

**Concluding Comments**

The legal/authority hierarchy was starkly different in courtrooms presided over by a District Judge. The clerk's role was nearly always purely administrative and the skills of advocacy largely pointless. In a lay court both the manipulation of legal knowledge and a sense of 'performance' by the legal professionals in the courtroom were very much in evidence. In a District Judge court, their status as the highest legal professional within the courtroom resulted in his/her leading of the courtroom workgroup and the manipulation, both explicitly and implicitly, of the behaviour of others. Knowledge of particular District Judges and the differing methods and attitudes of, and towards, lay magistrates and District Judges generally have been shown to affect the actions of others in the courtroom.

This chapter has argued that, despite being a more professionalised body than in the past with increased training and the support of the Magistrates' Association, lay magistrates were still viewed largely as relative outsiders to the courtroom workgroup and at times were equated with the defendant both in terms of their understanding of the proceedings and the level of verbal contributions they are able to make to proceedings in the courtroom. Sanders (2002:13) argues that the increased level of training undertaken by lay magistrates has resulted in a shift in their status within the criminal justice process: "Unlike the jury they are no longer outsiders but insiders." However, the observations and interviews conducted for this study indicated that, within their own courtrooms, the other members of the workgroup largely negated the extended legal training and knowledge possessed
by lay magistrates. In order for other court actors to maintain power and status within the courtroom workgroup, the lay magistrates' legal knowledge and training was deprecated. This was done in a number of ways. Legal knowledge was often 'mystified' by those trained in law when before a lay bench (McBarnet, 1981). A lack of professional legal training was portrayed as a major drawback in the capabilities of lay magistrates and used to destabilise their confidence. However, legal knowledge itself was found to have little practical application within the courtroom; in terms of both advocacy and acquaintance with statute beyond that required for the routine work of the summary courts.

The majority of the ‘insiders’ of the courtroom workgroup considered it important to develop a beneficial working relationship with the regularly presiding District Judges. It was suggested that in every sphere of the courtroom, lay magistrates did not offer enough in terms of exchange relationships with the other protagonists within the court to enable them to become true insiders and members of the unit. The very nature of their relationships with other court actors has been shown to be inequitable. As Lipetz (1980:55) states:

It is necessary for an individual to be a member of the workgroup or have power over that group to have an effect on the court. ‘Outsiders’ cannot have this kind of impact.

One court clerk at Provincial Court I summed this up perfectly:

There is always that element that lay magistrates feel they are more accountable. They are more likely to be criticised. Stipes can behave in a way that perhaps you would not feel was appropriate and nobody would ever criticise them, because there is always a risk that once you are up before them again, that might impinge on the way they dealt with you. I’m not saying it leads to any bad decisions; it is just a fact of life. They are in a position to get away with things that you don’t realise you are getting away with. Nobody will bring it to your attention because they feel they have something invested in maintaining a working relationship with you that they haven’t got when working with a lay bench.

(Court Clerk, Provincial Court I, Interview Transcript)
Several reasons for the low status of lay magistrates within the courtroom were examined; including the infrequency of their individual presence, assumptions about their malleability and work rate, lack of specified individual characteristics and discouragement from verbally contributing to proceedings. The constant undermining of their legal and procedural knowledge by others in the courtroom rendered them ineffective; it undermined their confidence and encouraged passivity. In this respect the lay benches were doubly disadvantaged in comparison to District Judges, who existed within the comfort zone of ‘legal knowledge’, and thus not only had the practical advantage of that knowledge, but also (and more importantly) had the confidence to control the flow of proceedings in the courtroom. The nature of their exchange relationships with other court actors, contributed, at least in part, to the culture of alacrity that permeated the District Judge courts.

Assumptions made about the traits and abilities of lay magistrates, were reflected in the way clerks and the other lawyers in the courtroom behaved when in court with a lay bench. Negative attitudes towards the skills and abilities of lay magistrates were disseminated by the way they were talked about between regular members of the courtroom workgroup as slow, malleable and predictable. Lay magistrates gained a sense of confidence and legal legitimacy from their clerks, but clerks sometimes sought to weaken the standing of lay magistrates within the workgroup, in order, it is suggested, to uphold their own powerful position as the protector of their legal authority – a position denied to clerks when in court with District Judges.

The relationship between solicitors and District Judges was a particularly symbiotic one, where legal argument was kept to a minimum in order to ensure the speedy throughput of business. The yield of the exchange relationship between the District Judges and the defence solicitor was one of professional credibility. A more subordinate and complicit approach ensured a mutually satisfying working relationship with an individual and familiar decision maker that they worked with on a regular basis. This then had an impact on the District Judge’s working speed. Both CPS and defence lawyers were briefer when in front of a District Judge and more willing to experience and accede to interruptions and indications. Therefore,
cases progressed quicker, in accordance with the assumptions about and reputations of professional magistrates. This is the pay off for the District Judges: they can adhere to their presumed qualities and play to their audience.

Similar relationships between lay magistrates and defence solicitors were less common, mainly because as individuals they fell outside the familiarity of the regular workgroup and instead ‘lay magistrates’ were assigned characteristics as a homogenous group. This exchange relationship was based on the commonly held assumptions about the malleability, predictability and lack of confidence of lay magistrates generally. Defence solicitors took advantage of lay magistrates’ lack of proactivity and confidence within the courtroom. They sometimes attempted to use legal arguments in an effort to manipulate their decisions by undermining their confidence. The relationship was a symbiotic in the sense that lay magistrates felt that they had given a fair hearing and the impression of justice being done and in exchange, defence solicitors achieved beneficial results on behalf of their clients that increased their own reputations among both the court and criminal fraternity. Appearing before lay magistrates also gave them the opportunity to ‘perform advocacy’, a skill rarely employed in front of a District Judge.

Raine and Willson (1993:183) suggest that:

...the challenge for the professionals, is to agree not to collude, but to use their influence to welcome and support the laity. Instead of equating the laity with amateur, conscript and labouring classes, the professionals must grant them the respect of colleagues, customers or, best of all, equals.

In light of what has been discussed throughout this chapter, this would appear to be a rather naïve viewpoint, highlighted by this comment:

Here are these well-meaning people who earnestly believe that because they have had a couple of days training that they are able to cope with it, but manifestly they can’t and that is where they lack confidence. They are totally unfamiliar with what is really going on and how things are organised day to day. I find it irritating when lay justices seek to talk as if they are equals. It is bizarre to me that lay people can walk into a professional situation and expect to operate on a status of equality.

(District Judge, London Court, Interview Transcript)
Conclusions

This overall aim of this study was to explore the role and influence of District Judges in three magistrates’ courts. This research took place over the period of greatest growth and consolidation of the professional magistracy since its inception in the mid 18th century.

In the last 20 years the formerly “odd appendix” of a small number of legally trained decision-makers, in the traditionally local and ‘lay’ magistrates’ courts system has been steadily growing, and, in recent years has been transformed. What has materialised is a newly unified corps of the judiciary, operating within the magistrates’ courts, with national jurisdiction. These changes have taken place within the context of the drive for efficiency and move towards professionalisation within the criminal justice process as a whole, which, it has been argued, has had a considerable impact upon the organisation and culture of the magistrates’ courts (Fitzpatrick et al, 2001; Raine 2001). District Judges, who are legally trained, sit alone and can use their professional knowledge and status to manage large caseloads more efficiently than lay magistrates, have been considered a ripe resource for cultivation in these circumstances (Narey, 1997; Seago et al, 2000).

The growth and consolidation of the professional magistracy has led to the re-opening of historic debates surrounding the functioning of the magistrates’ courts and the underlying values upon which they operate; namely the principle of local participatory democracy, where the vast majority of cases are dealt with by lay volunteers, whose strength rests in their lack of professional legal training. Questions have been asked about the wider impact of the drive for efficiency, reflected in the increased and newly consolidated role of District Judges, upon working relationships within the magistrates’ courts and the nature of the justice they dispense (Raine and Willson, 1993a; Seago et al, 2000).

The objectives of this study were to explore two broad areas. Firstly, the nature and scope of the role undertaken by the District Judges in the magistrates’ courts, both in terms of judicial and non-judicial work. This was in order to consider the way in which District Judges were used as a resource within the courts and the extent to which this reflected the assumptions made, both by themselves and
others, about the benefits, skills and qualities they can bring to the administration of justice. This also allowed some conclusions to be drawn about the degree of influence District Judges were able, or wished, to exert over their own role and enabled an assessment of the evidence for the common concerns of the lay magistracy about the usurpation of their own role within the court.

Secondly, this study explored the working relationships between District Judges and other courtroom personnel, particularly the way in which these might differ from their relationships with lay magistrates, and the impact of these relationships upon the conduct of court business. This allowed conclusions to be drawn about the ability of District Judges to manage courtroom workloads more efficiently than lay magistrates, by having the confidence to exert control over the conduct of others in the courtroom.

Overall, it was found that the influence of District Judges over the macro arena of the court, in terms of training and administration, was negligible. The District Judges in this study had little direct input into non-judicial work within the courts for a variety of reasons, thus their opportunities for influence in this regard were limited. Therefore, it is concluded that any influence District Judges had on the culture of the magistrates' courts in which they sit was more likely to derive from the micro arena of the courtroom itself, which in turn, had wider implications for the culture of magistrates' courts as a whole.

The increase in the numbers of District Judges has been justified on the basis that, because they sit alone and have a higher level of confidence, afforded them by their legal training, they are able to deal with cases more quickly and manage court business (including other court personnel) more effectively than lay magistrates. The findings of this study supported both these contentions. The actual time differential, between lay magistrates and District Judges, in the dispensing of cases was minimal. However, it was argued that this difference was largely a result of modifications in the behaviour of others within the courtroom, who were complicit in the ability of District Judges to manage the courtroom, rather than simply controlled by them. The very presence of a District Judge appeared to alter both the overall alacrity in the courtroom and, more subtly, the dynamics of working relationships within the courtroom; both of which influenced the speed at which cases were dealt with.
It was suggested that the relationships between regular members of the ‘courtroom workgroup’ were symbiotic and revolved around familiarity with each other and a ‘legal hierarchy’ that denoted status. Individual members of the regular courtroom ‘workgroup’ shifted up and down the legal hierarchy, depending on whether a District Judge or a lay bench was presiding over the court. Lay magistrates were, for the most part, viewed by regular members of the courtroom workgroup disparagingly - as ‘outsiders’ and on the bottom rung of the ‘legal hierarchy’. In a system where symbiotic relationships were key to the efficient throughput of business, it was argued that lay magistrates had little to offer in return for the complicity of other courtroom personnel. Court clerks however, in their role as legal advisers to the lay bench held a powerful position in a courtroom where lay magistrates were presiding.

District Judges on the other hand occupied the pinnacle of the ‘legal hierarchy’ when presiding over a court. A culture of alacrity prevailed and District Judges were able to manipulate, both explicitly and implicitly, the behaviour of others in the courtroom. Of particular importance was the personalities and idiosyncrasies of individual District Judges, which along with their permanent presence (compared to individual lay magistrates), cultivated a sense of familiarity between them and others in the regular courtroom workgroup. It was concluded, therefore, that the micro sphere of the courtroom itself afforded the greatest opportunities for District Judges to influence the conduct of court business by capitalising on a combination of their status as legal professionals, their permanence and visibility as individuals within the courtroom workgroup and their role as the ultimate decision-maker.

In terms of their judicial role, the work allocated to and undertaken by District Judges largely reflected pragmatic considerations, rather than legally complex ones. However, it was also concluded that the growing presence of District Judges (albeit still a small one compared to the lay magistracy) had caused and facilitated a shift in the underlying values of many of those that work within the magistrates’ courts. A system where judicial authority and ability has historically been based on altruistic local participatory democracy, community representation and common sense, has now shifted focus to one where the skills of professional, legally trained decision-makers are considered to provide a superior basis for judicial authority.

243
Although there is no statutory distinction between the types of judicial work that should be undertaken lay magistrates and District Judges, the recommendations contained within the Venne Report (Lord Chancellor’s Department, 1996) as work that was ‘suitable’ for District Judges was based on both pragmatic and professional considerations: i.e. that District Judges can undertake particularly ‘complex’ judicial work that might arise within the magistrate’s courts legal and also be expected to expedite the disposal of ‘routine’ court work. Furthermore, the recommendation of the Venne Report (1996) that District Judges should conduct a “fair share” of routine court work sought to appease the common complaint of the lay magistracy, and indeed the lay magistrates that participated in this study, that the influence exerted by District Judges over the work allocated to them had had the effect of diminishing their own role in certain areas of judicial work.

In line with previous research, District Judges were found, in this study, to undertake a broad range of routine judicial work, and rarely undertook the “special” or “complex” work deemed suitable for legally trained professionals. However, the lay magistrates clearly undertook a more even spread of high and low level work. In the London Court in particular, the work of the District Judges was skewed significantly towards the ‘top end’ of court business.

Variation was found in the extent to which the courts formally allocated work to District Judges. The London Court was found to have no official policy with regard to allocating work to District Judges. The findings of this study suggested that, where an allocation policy did exist, even a partial one as in Provincial Court II, pragmatic considerations were at the heart of the allocation of judicial work to District Judges. In the provincial courts where work was specifically allocated to District Judges (albeit to differing extents) sentencing work dominated the District Judge’s schedule. The heavy listing in these courts, compared to similar courts presided over by lay magistrates, suggested that District Judges were largely considered to be a pragmatic, rather than a legal resource. This was apparent in the fact that although the sentencing work specifically allocated to District Judges tended to be, the more serious, adjourned sentencing cases it was the permanence, rather than the legal skill, of District Judges that was the justification behind the allocation policy. Being, on the whole, full-time they were able to read reports in advance of the court, which in turn meant that they were able to deal with more sentencing cases per court session than lay magistrates. However, in contradiction
of this logic, other busy courts, such as traffic or overnight custody courts, were not allocated to District Judges. This suggested, therefore, that deferral to the professional sensibilities of District Judges as legal professionals in terms of work that was 'suitable' or of sufficient weight for them, sometimes took priority over pragmatic considerations in terms of the allocation of judicial work. In addition to formal allocation policies, analysis of courtroom sittings and actual work carried out by District Judges demonstrated that informal patterns of allocation existed also in some courts. It was argued that these might have contributed to the perception of the lay magistrates that there was inequitable allocation of certain types of work.

As mentioned previously, the findings of this study indicated that, with the exception of the London Court, District Judges and lay magistrates tended to deal with a similar breadth of judicial work. However, this study has gone further than previous research on the issue of the perception among the lay magistracy that a greater proportion of the more serious and interesting judicial work is inequitably allocated or undertaken by District Judges. It was argued that this perception stemmed mainly from the very attempts that had been made to prevent it; that is the idea that District Judges should conduct their “fair share” of “routine work”. It was suggested that the lack of ‘complex’ work deemed suitable for District Judges has led to a compromise, where emphasis has been placed on allocating them a large quantity of the “more” serious “routine” work, such as remand and sentencing, that they are able to dispense more quickly than lay magistrates, while also taking account of their assumed legal skills. Lay magistrates are therefore left with the impression that, although District Judges may undertake routine, rather than “special” work, they do not take an equitable share of all routine work. Moreover, this study has suggested that the ratio between the District Judges and lay magistrates in any particular courts is central to any future consideration of the allocation of judicial work between lay magistrates and District Judges, as is the distinction between lay benches and individual lay magistrates. Even if, proportionately, lay benches and District Judges deal with the same amount of, for example, sentencing or remand work, this inevitably means that individual lay magistrates will be doing this type of work less often than they used to. Therefore, if the number of District Judges continues to grow then this is a perception that can only develop among the lay magistracy.
This study has also addressed the role of District Judges in non-judicial as well as judicial work. It was advanced by the Venne Report (1996) that the benefits District Judges can bring to this particular sphere of the magistrates' courts is the dissemination of their legal knowledge and professional court management skills, through training. They should also contribute to the development of sentencing policies through liaison with the circuit judges. However, the findings of this study indicated that, notwithstanding some partial involvement in the development of sentencing policy, the District Judges at the three courts had a very limited role in terms of non-judicial work. There were several reasons advanced for this. Training was seen very much as the domain of the lay magistrates that organised it and court clerks that both arranged and delivered it. District Judges that wanted to get involved in this area met with considerable resistance. Therefore the opportunities for District Judges to influence newly appointed lay magistrates or impart wisdom in respect of court management were limited. Other District Judges were simply apathetic about becoming involved with non-judicial work and viewed their role as wholly judicial in nature.

This study has examined the different skills and qualities which District Judges and lay magistrates consider they offer to the administration of justice and has endeavoured to discuss their respective relevance in today's magistrates' courts. The findings of the current research concur with those of Seago et al (2000) insofar as lay magistrates and District Judges sharing a similar belief in the value of common sense. However, they depart from Seago et al, (2000) in their conclusion that lay magistrates and District Judges share a judicial ideology. This study has suggested that the recent ascendancy of legal professionalism in the magistrates’ courts has led to a re-definition of the skills necessary to make judicial decisions and led to a further maligning of the virtues associated with the lay magistracy. District Judges are and represent an explicit 'expert' decision-making presence within the courts that implicitly erodes the value of the inherent qualities and symbolic importance on which the lay magistracy have traditionally based, and continue to base, their authority. It is argued that the growth in the professional magistracy has both contributed to and become a consequence of a shift in the underlying values of the magistrates’ courts as whole to one where legal expertise and professional efficiency are considered paramount. The findings of the present study suggest that, as a result, the value placed upon the skills and
qualities associated with District Judges by the majority of the insiders in the courtroom workgroup now far outweighs the value placed on the ‘traditional’, inherent qualities of lay magistrates. This is the case both in terms of legal expertise as a legitimate basis for judicial authority and as an essential, rather than merely desirable, part of the ‘mix’ of skills required to make sound and speedy judicial decisions.

The official rhetoric that has been employed to soothe the fears expressed by the lay magistracy in light of the growth and consolidation of the District Judge corps, has been one of the “complementary” relationship between the respective skills and qualities that each brings to the administration of justice; the result being a process that is efficient, fair and publicly accountable. However, the findings of this study suggest that the notion of “complementarity” is not one that is widely accepted by either District Judges or lay magistrates. They appear to operate from two distinct value bases and, while appreciating to a limited extent the skills and qualities of the other, each considers their own contribution to the administration of justice, both practically and figuratively, to be independently valid. This, it has been argued, is reflected most clearly in their reluctance to engage in joint sittings.

The fundamental flaw in the concept of collaborative decision-making between District Judges and lay magistrates lies in the differing skills and qualities on which District Judges and lay magistrates base their authority and ability to make judicial decisions. It is argued that these differing standpoints and approaches to decision-making would render any serious attempts to introduce the extensive use of mixed benches pointless – because District Judges and lay magistrates consider themselves to be largely, and simply, incompatible.

It appears that the growth in the numbers of District Judges and their consolidation into a single judicial corps has, in the minds of lay magistrates and the District Judges themselves, resulted in the disintegration, nominally, theoretically and practically, of the separate, yet collaborative, arrangement that was tacitly accepted for so long. Instead, it is concluded, the lay magistrates and District Judges in this study viewed themselves as stand-alone entities, each with a justifiable judicial power and each believing their own approach to the administration of justice to be the more effective. District Judges believed their ‘professional approach’ based on the autonomous, proficient application of legal principles, combined with robust approach to case management was both the most
effectual in terms of reducing unnecessary delays and in maintaining public confidence. Lay magistrates, on the other hand, held that these goals should, and could, be achieved by consensus decisions, based on ‘common sense’, made by ‘ordinary’ members of the public. The findings of this research, however, suggested that the former approach, as embodied by District Judges, was considered by the majority of other professional court personnel to be preferable, representing a shift in the underlying values in magistrates’ courts culture and the increasing ascendancy of the central tenets of managerialism as embodied by the modernisation agenda – efficiency and professionalism.

In light of these findings, the government’s recent resistance to proposals by Lord Justice Auld (2001) and Sanders (2001) to clarify the roles of lay magistrates and District Judges through, in particular, a significant extension in the use of hybrid tribunals, seems prudent on the one hand, given the apparent disinclination of either to share the same bench, and yet surprising on the other, given the opportunity such proposals presented for the escalating the influence of the “professional approach.” It is likely that considerations of cost and practicality were at the heart of the decision not to take these proposals forward (requiring, as they would, a significant increase in the numbers of District Judges). However, it is also possible to conclude that such a considerable alteration to the historical organisation of the magistrates’ courts and the respective roles of lay magistrates and District Judges (such as the proposals of Auld (2001) and Sanders (2001) would necessitate) represented a cultural leap too far for the already beleaguered traditional ideals and organisation of the magistrates’ courts. The government’s highly publicised recruitment campaign for the lay magistracy, launched recently, and continued public assurances to the lay magistracy of their invaluable contribution and certain future, indicates that the current status quo will remain - at least for the time being. It appears that a compromise, albeit an uneasy one, has been reached between the legal professional approach, personified by District Judges, and the rhetoric of civic duty embodied in the lay magistracy.

Given the historic unhurried pace of statutory development within the magistrates’ courts system, as outlined in Chapter 1, and following the impact of the modernisation agenda over the last 20 years, it seems unlikely that another attempt will be made to define in statute the respective roles of lay magistrates
and District Judges in the foreseeable future. However, due to the current guiding principles within public policy of efficiency and professionalism, reflected in recent policy trends within the criminal justice process, it cannot be denied that the role of District Judges within the magistrates' courts looks set to continue to grow, particularly in light of the national jurisdiction conferred upon them by the Access to Justice Act 1999. This study was therefore valid at the present time. It can be seen as having supplemented and added to other recent efforts, both within academic and political fields, to clarify and assess their contribution to and impact upon summary justice.
Appendix A

COURT OBSERVATION PRO FORMA - MACRO

MACRO REFERENCE:
(Initial of court followed by macro number 00, number of observation day 00 and court number 00)

<table>
<thead>
<tr>
<th>Session:</th>
<th>AM</th>
<th>PM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Day:</td>
<td>M</td>
<td>T</td>
</tr>
<tr>
<td>Date:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Court Type (Circle): Plea/Mixed Sentencing Custody Only Other (Specify)

-------------------------

SECTION 1 – Table To Show Activity Outside Court Prior to Session (9.30 – 9.50)

Tally marks denote number of contacts observed between stated participants. When in hearing distance tally marks denote number of contacts concerning specific subjects

Participant Key:
- DL = Defence Lawyer/s
- DF = Defendant
- BIO = Bail Info. Officer
- W = Witness/es
- PO = Probation Officer
- U = Usher/s
- CPS = CPS Lawyer/s
- F = Family/friends of defendant

Subject Key:
- FOC = Facts of case
- P = Plea
- B = Bail
- L = Listing of case
- CP = Court procedure
- S = Sentence
- M = Magistrate/s
- FM = Introduction/first meeting of defendant and defence lawyer
- PU = Personal/unrelated to case/court
- OCO = Observed contact only (subject not known)

Columns and Rows with no headings are left blank to cover other categories which may not be stated and might arise.
<table>
<thead>
<tr>
<th>FOC</th>
<th>P</th>
<th>B</th>
<th>L</th>
<th>CP</th>
<th>S</th>
<th>M</th>
<th>FM</th>
<th>PU</th>
<th>OCO</th>
</tr>
</thead>
<tbody>
<tr>
<td>DL &amp; DF</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DL &amp; DL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DL &amp; CPS</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DL &amp; F</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DL &amp; W</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DL &amp; U</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DL &amp; BIO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DL &amp; PO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPS &amp; BIO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPS &amp; U</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPS &amp; W</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPS &amp; PO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPS &amp; CPS</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DF &amp; F</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DF &amp; U</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DF &amp; BIO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DF &amp; PO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F &amp; U</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F &amp; W</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F &amp; BIO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F &amp; PO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Section 3 – Table To Show Activity Inside Court Prior to Session (9.50 – Start)

**Key:** The next two sections use colour coding to denote the amount of discussion between various parties about various subjects, both before the court session begins and between cases after the session has begun. The amount of discussion and contact is a subjective judgement of the observer and is divided into three categories

1  =  Limited discussion/contact  
2  =  Some discussion/contact, relatively brief  
3  =  A lot of discussion/contact, detailed and in depth for a relatively long period of time  

Each personnel is represented by a diagonal line in the colour given below except for the final three personnel who are represented by a circle. Discussion between two or more people will therefore be denoted by a cross of the two appropriate colours, or a circle with a line through it or alternatively two entwined circles.

Each symbol will be placed in correct place in table according to the subject/issue discussed and the quantity of that discussion. The colour coding for personnel is as below:

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Colour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defence Lawyer/s</td>
<td>Red</td>
</tr>
<tr>
<td>CPS Lawyer/s</td>
<td>Black</td>
</tr>
<tr>
<td>Defendant</td>
<td>Green</td>
</tr>
<tr>
<td>Court Clerk</td>
<td>Blue</td>
</tr>
<tr>
<td>Probation Officer</td>
<td>Black</td>
</tr>
<tr>
<td>Bail Info. Officer</td>
<td>Purple</td>
</tr>
<tr>
<td>Usher</td>
<td>Pink</td>
</tr>
<tr>
<td>Magistrate/s</td>
<td>Silver/Pencil</td>
</tr>
<tr>
<td>Defence Witness</td>
<td>O</td>
</tr>
<tr>
<td>Prosecution Witness</td>
<td>O</td>
</tr>
<tr>
<td>Family/friends/Ass.</td>
<td>O</td>
</tr>
</tbody>
</table>
### SECTION 3 - Table to Show Discussion/Contact Between Parties Prior to Start of Court Session

<table>
<thead>
<tr>
<th></th>
<th>1 (Little)</th>
<th>2 (Some)</th>
<th>3 (Lots)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Listing/Order of Cases</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Issues</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facts of Case/s to Come</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Evidential Issues of Cases to Come</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Witnesses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court Procedures</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plea Options</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sentences</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bail</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personality/record of Magistrate/s</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personality/record of Defence Lawyer/s</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personality/record of CPS Lawyer/s</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personality/record of Court Clerk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal/Unrelated to Cases or Court e.g. social life</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

253
### SECTION 4 – Table to Show General Impression of Activity/Discussion Between Cases

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Listing/Order of Cases</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outcome of Previous Case</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Issues</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facts of Case/s to Come</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Evidential Issues of Cases to Come</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Witnesses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court Procedures</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plea Options</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sentences</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bail</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personality/record of Defence Lawyer/s</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personality/record of CPS Lawyer/s</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personality/record of Court Clerk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal/Unrelated to Cases or Court e.g. social life</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### SECTION 5 – General Atmosphere within Court (Circle)

Very Formal    | Quite Formal | Balanced | Quite Informal | Very Informal

254
## SECTION 6 – Court Personnel Present

**Bench:**

<table>
<thead>
<tr>
<th>Stipendiary</th>
<th>Lay Bench</th>
<th>Mixed</th>
</tr>
</thead>
</table>

**Stipendiary:**

<table>
<thead>
<tr>
<th>Male</th>
<th>Female</th>
<th>White</th>
<th>Black</th>
<th>Asian</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Approx. Age:**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**ID Number:**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Lay Magistrates:**

### a. Male

<table>
<thead>
<tr>
<th>Male</th>
<th>Female</th>
<th>White</th>
<th>Black</th>
<th>Asian</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Approx. Age:**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Chair:**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Seen previously:**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### b. Male

<table>
<thead>
<tr>
<th>Male</th>
<th>Female</th>
<th>White</th>
<th>Black</th>
<th>Asian</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Approx. Age:**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Chair:**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Seen previously:**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### c. Male

<table>
<thead>
<tr>
<th>Male</th>
<th>Female</th>
<th>White</th>
<th>Black</th>
<th>Asian</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Approx. Age:**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Chair:**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Seen previously:**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**The Clerk:**

<table>
<thead>
<tr>
<th>Male</th>
<th>Female</th>
<th>White</th>
<th>Black</th>
<th>Asian</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Approx. Age:**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Seen previously:**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**CPS Lawyer:**

<table>
<thead>
<tr>
<th>Male</th>
<th>Female</th>
<th>White</th>
<th>Black</th>
<th>Asian</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Approx. Age:**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Seen previously:**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Usher/List Caller:**

<table>
<thead>
<tr>
<th>Male</th>
<th>Female</th>
<th>White</th>
<th>Black</th>
<th>Asian</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Approx. Age:**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Seen previously:**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Probation Officer:**

<table>
<thead>
<tr>
<th>Male</th>
<th>Female</th>
<th>White</th>
<th>Black</th>
<th>Asian</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Approx. Age:**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Seen previously:**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Bail Information Officer**

<table>
<thead>
<tr>
<th>Male</th>
<th>Female</th>
<th>White</th>
<th>Black</th>
<th>Asian</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Approx. Age:**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Seen previously:**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

255
Appendix B

COURT OBSERVATION PRO FORMA

Reference:

Court Macro No. Day of Ob. Court No. Defendant No. Case No.

Date:

Case Time:

The Defendant

1. Name: ............................................................

2. Sex: Male [ ] Female [ ]

3. DOB/Age: ..........................................................

4. Ethnicity: White [ ] Black [ ] Asian [ ] Mixed [ ] Other [ ]

5. Previous: Yes [ ] No [ ] Not indicated [ ]

5. Demeanour:

Legal Representation

6. Represented: Yes [ ] No [ ]

7. Sex: Male [ ] Female [ ]

8. Ethnicity: White [ ] Black [ ] Asian [ ] Mixed [ ] Other [ ]

9. Approx. Age: ....................................................

10. Name (if known) ...................................................

11. Firm:

Nelsons [ ] Freeth Cartwright [ ]
Johnsons [ ] Batia Best [ ]
Fletchers [ ] Stephen Burdon & Co [ ]
Jackson Quinn [ ] Burton & Burton [ ]
Andersons [ ] Sheltons [ ]
Fraser Brown [ ] Berryman & Co [ ]
Duty Solicitor [ ] Not Known [ ]

12. Seen Previously: Yes [ ] No [ ]
### 13. The Offence and Plea

<table>
<thead>
<tr>
<th>Violence Against Person</th>
<th>G</th>
<th>NG/P</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attempted Murder (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conspiracy to Murder (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Death Reckless Driving (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Death Careless under Inf (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wounding (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Threats to Kill (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GBH (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ABH (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cruelty/neglect Children (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common Assault (S)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assault PC (S)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Robbery</th>
<th>G</th>
<th>NG/P</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robbery (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assault with Intent to Rob (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Drugs Offences</th>
<th>G</th>
<th>NG/P</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production Class A (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Production Class B (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supply Class A (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supply Class B (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poss with Intent Class A (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Possession B (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poss with Intent Class B (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Burglary</th>
<th>G</th>
<th>NG/P</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burg. Dwelling Viol/Threat (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aggravated Dwelling (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Dwelling Viol/Threat (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dwelling (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Dwelling (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aggravated Non-Dwelling (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Going Equipped (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Motoring Offences</th>
<th>G</th>
<th>NG/P</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dangerous Driving (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forgery of records (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Driving Under Infl.(S)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Careless Driving (S)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Driving While Disq.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No Ins.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Speeding</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to Stop</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Specimen Refusal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Otherwise than in accordance</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sexual Offences</th>
<th>G</th>
<th>NG/P</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buggery (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rape (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attempted Rape (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Incest (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Procuration (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indecent Assault Male (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indecent Assault Female (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross Indecency (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross Indecency Child (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Immoral Earnings (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kerb Crawling (S)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Soliciting (S)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indecent Exposure (S)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Criminal Damage</th>
<th>G</th>
<th>NG/P</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arson End. Life (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arson Not End. Life (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminal Damage (T) or (S)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Public Order</th>
<th>G</th>
<th>NG/P</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affray (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violent Disorder (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Public Order (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D &amp; D (S)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Threat. Behav sec. 4 (S)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Harr/Alarm/Dis Intent sec.4 (S)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Theft &amp; Handling</th>
<th>G</th>
<th>NG/P</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Theft (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theft by Employee (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theft of Cycle (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theft from Vehicle (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theft from Shops (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theft of Vehicle (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aggrav. Vehicle Theft (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Receiving Stolen Goods (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Handling (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other</th>
<th>G</th>
<th>NG/P</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to Surrender (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Possession of Weapon (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intent to Use Firearm Dur. Off</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dog out of Control (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fraud (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deception (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Making Off (T)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pervert Course of Just. (I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Witness Intimidation(T)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 14. Brief Details of Case
SPECIAL NOTE

ITEM SCANNED AS SUPPLIED
PAGINATION IS AS SEEN
27. Table to Show Number and Nature of Interventions, Questions and Comments by the Magistrate/s Whilst Receiving Information

<table>
<thead>
<tr>
<th>Q</th>
<th>I</th>
<th>Q</th>
<th>I</th>
<th>Q</th>
<th>I</th>
<th>Q</th>
<th>I</th>
<th>Q</th>
<th>I</th>
<th>Q</th>
<th>I</th>
<th>Q</th>
<th>I</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clarify info about offence</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clarify info prev. convictions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clarify admin issues</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clarify info about prev. app.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enq/comment on charges</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enq/comment/discuss possible sentences</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State heard enough facts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State intention to follow PSR rec.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State intention NOT to follow PSR rec.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clarify personal info. about defendant</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State heard enough to make a decision</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clarify points of law</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clarify medical or mental health information</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enquire about defendants progress since offence committed</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explain sentencing options</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explain court procedure</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

260
SPECIAL NOTE

ITEM SCANNED AS SUPPLIED
PAGINATION IS AS SEEN
The Pre-Sentence Report

16. Was there a PSR? Yes [ ] No [ ]

17. Sentence Recommendation:
Probation With Conditions [ ] Probation No Conditions [ ]
Community Service [ ] Combination Order [ ]
Fine [ ] Custody [ ]

The Defence Lawyer, Defendant and Mitigation

18. Mitigation speech made: Yes [ ] No [ ]

19. Prior to:
Sentence [ ] Bail Application [ ]

20. PSR directly referred to: Yes [ ] No [ ]

21. Additional info conveyed not in PSR: Yes [ ] No [ ]

22. PSR recommendation:
Argue for [ ] Argue against [ ]

23. Approx. length of mitigation: ........................................

24. Number of times defence lawyer consulted/spoke to client in court: ........................................

25. Consult/speak to clients friends/family: Yes [ ] No [ ]

26. Main reasons for doing so: Clarify information on:
Previous Convictions [ ]
Residence [ ]
Facts of Case [ ]
Income [ ]
Previous Appearances [ ]
Explanation of procedures [ ]
Reassurance [ ]
Other [ ]

..........................................................
## Bail – Information & Application

<table>
<thead>
<tr>
<th>28. Defendant appeared on:</th>
<th>Unconditional Police [ ] Conditional Police [ ]</th>
<th>Unconditional Court [ ] Conditional Court [ ]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Summons [ ] Custody (Warrant) [ ]</td>
<td>Custody (Remand) [ ] Not Known [ ]</td>
</tr>
<tr>
<td></td>
<td>(Colour of tick denotes who gave this information to Magistrate)</td>
<td></td>
</tr>
<tr>
<td>29. Formal bail application:</td>
<td>Yes [ ] No [ ]</td>
<td></td>
</tr>
<tr>
<td>30. Applied for:</td>
<td>Cond. [ ] Uncond. [ ] Alter existing [ ]</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Renewal of existing cond. [ ]</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Remand in Custody [ ]</td>
<td></td>
</tr>
<tr>
<td>31. Application Opposed:</td>
<td>Yes [ ] No [ ]</td>
<td></td>
</tr>
<tr>
<td>32. Reasons given for opposition:</td>
<td>Previous offences committed on bail [ ]</td>
<td>Previous failure to appear [ ]</td>
</tr>
<tr>
<td></td>
<td>Reason to believe witnesses will be interfered with [ ]</td>
<td>Nature and seriousness of offence [ ]</td>
</tr>
<tr>
<td></td>
<td>Likely to re-offend [ ]</td>
<td>On bail when charged with current offence [ ]</td>
</tr>
<tr>
<td></td>
<td>Ongoing enquiries into further offences [ ]</td>
<td>Nature/Number of previous convictions [ ]</td>
</tr>
<tr>
<td></td>
<td>For own welfare [ ]</td>
<td>Check identity [ ]</td>
</tr>
<tr>
<td></td>
<td>Lack of suitable residence [ ]</td>
<td></td>
</tr>
<tr>
<td>33. CPS recommendation:</td>
<td>Cond. [ ]</td>
<td>Uncond. [ ]</td>
</tr>
<tr>
<td></td>
<td>Alter existing cond. [ ]</td>
<td>Renewal of existing cond. [ ]</td>
</tr>
<tr>
<td></td>
<td>Remand in Custody [ ]</td>
<td></td>
</tr>
</tbody>
</table>

### 34. Bail Outcome/Decision

- Extend same conditions due to procedural necessity (no formal application) [ ]
- Renew/extend alteration granted [ ]
- Unconditional Bail [ ]
- Conditional Bail [ ]
  - Residence [ ]
  - Curfew [ ]
  - Report [ ]
  - Surety [ ]
  - No comm/interfere wit. [ ]
  - Surr passport [ ]
  - Restrict movement [ ]
  - Keep away from complainant [ ]
  - Other [ ]
- Remanded in Custody [ ]
## Adjournments – Requests and Reasons

35. Requested by:  
<table>
<thead>
<tr>
<th>Defence Lawyer</th>
<th>Clerk</th>
<th>Probation Officer</th>
<th>Bail Info Officer</th>
<th>Defendant</th>
<th>Procedurally necessary</th>
</tr>
</thead>
</table>

36. Reason/Nature:  
**Case Not Ready to Proceed**  
- Defence not able to proceed  
- Prosecution not able to proceed  
- Defence waiting for disclosure  
- Legal aid problems  
- Solicitor not available  
- Solicitor will not attend due to legal aid problems  
- Witnesses not available  
- Lost file/s  
- CPS not received file from police  
- Awaiting reports  

**Further Information Required**  
- Pre-sentence report:  
  - So serious  
  - Serious enough  
  - All options  
  - Not Indicated  
- Psychiatric reports  
- Medical reports  
- Further info. on previous convictions  
- Info. needed form DVLA  
- Possible discontinuation  
- Further evidence to review  

**Procedural Reasons**  
- Trial date  
- Committal date  
- Pre-trial review date  
- Newton hearing date  
- Heard on same day as other charges  
- Heard on same day as co-defendants  
- Other  

## Adjournments Outcome/Decisions

37. Length suggested by magistrate/clerk?  
<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Length</th>
</tr>
</thead>
</table>

38. Length requested by other personnel?  
(Colour indicates who suggested what)

39. Discussion about length:  

40. Length granted:  

262
### Mode of Trial Application and Decision

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>41. CPS Recommend:</td>
<td>Suitable summary trial</td>
<td>Not suitable summary trial</td>
</tr>
<tr>
<td>42. Response:</td>
<td>Opposed</td>
<td>Accepted</td>
</tr>
<tr>
<td>43. Magistrate/s Decision:</td>
<td>Suitable summary trial</td>
<td>Not suitable summary trial</td>
</tr>
<tr>
<td>44. Defendant select:</td>
<td>Summary trial</td>
<td>Crown Court Trial</td>
</tr>
</tbody>
</table>

### Sentence

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>45. PSR recommendation:</td>
<td>Probation With Conditions</td>
<td>Probation No Cond</td>
</tr>
<tr>
<td></td>
<td>Community Service</td>
<td>Combination Order</td>
</tr>
<tr>
<td></td>
<td>Fine</td>
<td>Custody</td>
</tr>
<tr>
<td>46. Sentence Given:</td>
<td>Fine:£.............</td>
<td>Custody (mnths):</td>
</tr>
<tr>
<td></td>
<td>Com. Serv (hours)............</td>
<td>Probation:</td>
</tr>
<tr>
<td></td>
<td>Driv. Disq (mnths)............</td>
<td>License Endor:</td>
</tr>
<tr>
<td></td>
<td>Bind Over............</td>
<td>Cond. Dis:</td>
</tr>
<tr>
<td></td>
<td>Unconditional Dis:</td>
<td>Compens:£.......</td>
</tr>
<tr>
<td></td>
<td>Costs:£............</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Deferred Sentence</td>
<td></td>
</tr>
</tbody>
</table>

### Retirements

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>47. Magistrate/s retired:</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>48. How long?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49. Was the Clerk sent for?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>50. If not, did Clerk enter retiring room of own volition?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>51. If not, length/nature of Consultation in Court:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Reasons Given by Magistrate/s for Their Decision

#### 52. Decision/s Observed:

- S [ ]
- M [ ]
- A [ ]
- B [ ]

#### 53. Reasons given for decision/s

<table>
<thead>
<tr>
<th>Reason</th>
<th>[ ]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seriousness of offence</td>
<td>[ ]</td>
</tr>
<tr>
<td>Previous offences committed on bail</td>
<td>[ ]</td>
</tr>
<tr>
<td>Family situation of defendant</td>
<td>[ ]</td>
</tr>
<tr>
<td>Previous failure to appear</td>
<td>[ ]</td>
</tr>
<tr>
<td>Previous character of defendant</td>
<td>[ ]</td>
</tr>
<tr>
<td>Believe witnesses will be interfered with</td>
<td>[ ]</td>
</tr>
<tr>
<td>Previous convictions of defendant</td>
<td>[ ]</td>
</tr>
<tr>
<td>Already serving a custodial sentence</td>
<td>[ ]</td>
</tr>
<tr>
<td>Employment situation of defendant</td>
<td>[ ]</td>
</tr>
<tr>
<td>For defendant’s own protection</td>
<td>[ ]</td>
</tr>
<tr>
<td>Previous situation of defendant</td>
<td>[ ]</td>
</tr>
<tr>
<td>Prev. arrested not complying bail conditions</td>
<td>[ ]</td>
</tr>
<tr>
<td>Mental health of defendant</td>
<td>[ ]</td>
</tr>
<tr>
<td>Lack of suitable accommodation</td>
<td>[ ]</td>
</tr>
<tr>
<td>Physical health of defendant</td>
<td>[ ]</td>
</tr>
<tr>
<td>Strength of evidence</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other</td>
<td>[ ]</td>
</tr>
<tr>
<td>Attitude of defendant to current offence</td>
<td>[ ]</td>
</tr>
<tr>
<td>Demonstrate Remorse</td>
<td>[ ]</td>
</tr>
<tr>
<td>Discount for guilty plea</td>
<td>[ ]</td>
</tr>
<tr>
<td>Breach of trust</td>
<td>[ ]</td>
</tr>
<tr>
<td>Effect on victim</td>
<td>[ ]</td>
</tr>
<tr>
<td>Victim public servant</td>
<td>[ ]</td>
</tr>
<tr>
<td>Forcible entry</td>
<td>[ ]</td>
</tr>
<tr>
<td>Confrontation with public</td>
<td>[ ]</td>
</tr>
<tr>
<td>Considerable improvement in lifestyle</td>
<td>[ ]</td>
</tr>
<tr>
<td>Impressive probation report</td>
<td>[ ]</td>
</tr>
<tr>
<td>Exceptional circumstances</td>
<td>[ ]</td>
</tr>
<tr>
<td>Current offence committed on bail</td>
<td>[ ]</td>
</tr>
<tr>
<td>Previous failure to surrender</td>
<td>[ ]</td>
</tr>
<tr>
<td>Severe drug habit</td>
<td>[ ]</td>
</tr>
<tr>
<td>Reason to believe commit further offences</td>
<td>[ ]</td>
</tr>
<tr>
<td>Custodial penalty is likely</td>
<td>[ ]</td>
</tr>
<tr>
<td>Cooperation with police</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

**Details:**

---

264
Appendix C

Questionnaire for Defence Solicitors

SECTION 1 - PERSONAL DETAILS AND CAREER HISTORY

1. Name: (optional) ..........................................................

2. Age: ...........................................................................

3. Gender: .................................................................
   Male [ ] .................................................................
   Female [ ] ..............................................................

4. Ethnic Origin: ..........................................................
   White [ ] .................................................................
   Black [ ] .................................................................
   Asian [ ] .................................................................
   Mixed [ ] .................................................................
   Other (please specify) [ ] ...........................................

5. Please state brief details of your qualifications below.

6. How long have you been at your present firm? ..................

7. If your current position is not your first please state briefly the other firms you
   have worked for previously. Please include the length of time you worked there, the
town or city where the firm was situated and the sort of work you were engaged in. (e.g.
family law, criminal)

8. Have you previously been employed as a CPS prosecutor? Yes [ ] No [ ]
   If yes, please give brief reasons for your move into defence work below.
SECTION 2 – YOUR WORK IN COURT AND THE WORK OF THE MAGISTRATES

9. How are cases allocated within your firm?

10. Do you presently specialise in any particular types of cases/work? Yes [ ] No [ ]

If yes, please give brief details below.

11. Please assess how often you have represented clients/engaged in the following types of work over the last 6 months.

<table>
<thead>
<tr>
<th></th>
<th>Never/Rarely</th>
<th>Twice Monthly</th>
<th>Once Weekly</th>
<th>2/3 Times Weekly</th>
<th>Daily</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult sentencing</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Adults on remand/bail applications</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Adult pleas/mode of trial</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Trials over 3 days long</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Trials completed within one day</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Cases involving complex law</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Old Style Committals</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Licensing/Betting</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Youth court</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Family court</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>
12. How often, in a typical month, might you be in a court presided over by a District/Deputy District Judge (Magistrates' Courts)?

............................................................................................................................................

13. When you arrive at court, is finding out whether you will be in a court presided over by a District/Deputy District Judge (Magistrates’ Courts) or a lay bench one of your main priorities?

Yes [ ] No [ ]

If yes, please explain why below.

14. Which type of bench do you prefer to work in court with?

<table>
<thead>
<tr>
<th>Type of Bench</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A lay bench</td>
<td></td>
</tr>
<tr>
<td>A District Judge (Magistrates’ Courts)</td>
<td></td>
</tr>
<tr>
<td>A Deputy District Judge (Magistrates’ Courts)</td>
<td></td>
</tr>
<tr>
<td>A mixed bench of both lay magistrate/s and a District Judge</td>
<td></td>
</tr>
<tr>
<td>No preference</td>
<td></td>
</tr>
<tr>
<td>Preference dependant of type of case</td>
<td></td>
</tr>
</tbody>
</table>

Please give reasons for your answer below.

15. Does your knowledge of the working practices and characteristics of different lay magistrates or District/Deputy District Judges (Magistrates’ Courts) influence the way you might prepare a case for court?

Yes [ ] No [ ]

If yes, please give details below.
16. Does your knowledge of the working practices and characteristics of different lay magistrates or District/Deputy District Judges (Magistrates’ Courts) influence the way you present a case/mitigation once in court with them?

Yes [ ]

No [ ]

If yes, please give details below.

17. Do you prepare your client differently if you know that he/she will be in front of a District/Deputy District Judge (Magistrates’ Courts) as opposed to a lay bench?

Yes [ ]

No [ ]

If yes, please give details below.
18. In your opinion, who does the majority of the following types of work in the adult court?

<table>
<thead>
<tr>
<th>Lay bench</th>
<th>District/Deputy Judge (Magistrates' Courts)</th>
<th>Approximately equal amounts</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>General mixed list</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Remand decisions</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Pleas/mode of trial</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sentencing</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Traffic Offences</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Betting/Licensing</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Old style committals</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Trials over three days</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Trials within one day</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Multi-handed cases</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Public interest cases</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Complex law</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Complex procedure</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other (please specify below)</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

19. Which types of work do you consider to be the District/Deputy District (Magistrates' Courts) most and least important contribution to the court?

<table>
<thead>
<tr>
<th></th>
<th>Most</th>
<th>Least</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Sentencing</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Adult Remand Decisions</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Adult pleas/mode of trial</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Trials over 3 days long</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Trials completed within one day</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Cases involving complex law</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Old Style Committals</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Licensing/Betting</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in the applications court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in the youth court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in the family court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in a traffic only court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Training lay justices</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Administrative/Committee work</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

20. Which types of work do you consider to be the lay magistrates' most and least important contribution to the court?

<table>
<thead>
<tr>
<th></th>
<th>Most</th>
<th>Least</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Crime work</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in the youth court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in the family court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in the Crown Court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Licensing/Betting</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Training other lay magistrates</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Administrative/Committee work</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>
21. In your opinion, which of the following are more likely to exhibit the qualities/characteristics and skills listed below when carrying out judicial work?

<table>
<thead>
<tr>
<th></th>
<th>Lay Justice More Likely</th>
<th>District/Deputy Judge More Likely</th>
<th>Neither More Likely</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speed</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Efficiency</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal know/expertise</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confidence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effective management of solicitors</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effective management of defendant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leadership</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assertiveness</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court management</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extensive experience</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local knowledge</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Patience</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attentiveness</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Empathy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common Sense</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sense of humour</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intelligence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please specify below)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

22. In your opinion, which of the following is more likely to make the kinds of decisions listed below when carrying out judicial work?

<table>
<thead>
<tr>
<th></th>
<th>Lay Bench Likely</th>
<th>District/Deputy Judge More Likely</th>
<th>Neither More Likely</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grant adjournments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hand out custodial sentences</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hand out community sentences</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjourn for PSR’s</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defer sentences</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reserve cases to themselves</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please specify below)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
23. Which sort of bench is most likely to consult the court clerk on the following in open court?

<table>
<thead>
<tr>
<th>Points of law</th>
<th>Lay Bench</th>
<th>District/Deputy Judge</th>
<th>Neither More Likely</th>
</tr>
</thead>
<tbody>
<tr>
<td>Circumstances of case</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative information</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information about defendant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information about history of the case</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court procedure</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available sentences</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General opinion</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please specify below)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

24. Do you think that more use should be made of mixed benches? (i.e. a bench made up of both lay justices and a District/Deputy Judge)

Yes [ ] No [ ] Don’t Know [ ]

Please give brief reasons for your answer below.

25. Please state any types of judicial work that you think is better dealt with by a mixed bench, giving brief reasons for your answer.

26. Please rate the overall quality of the performance of the following in the court as a whole.

<table>
<thead>
<tr>
<th></th>
<th>Very poor</th>
<th>Poor</th>
<th>Average</th>
<th>Good</th>
<th>Very good</th>
<th>Excellent</th>
<th>Don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPS lawyers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ushers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Probation officers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chairmen/women</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other lay magistrates</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District Judge</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deputy District Judge</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court clerks</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
27. Please state to what extent you think the following cause *unnecessary* delay in court.

<table>
<thead>
<tr>
<th></th>
<th>Never/Rarely</th>
<th>Occasionally</th>
<th>Quite often</th>
<th>Very often</th>
<th>Always</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lay justices retiring</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative errors</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defendants arriving late</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defendants not arriving at all</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defence solicitor late/other courtroom</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defence not prepared</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPS not prepared</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Aid problems</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lengthy mitigation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lay justices granting adjournments</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Obtaining information from police</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Other (please specify below)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

28. How would you assess the overall impact/influence of the District Judges (Magistrates’ Courts) on the following in the court as a whole?

<table>
<thead>
<tr>
<th></th>
<th>Unimportant</th>
<th>Minor</th>
<th>Neutral</th>
<th>Fairly important</th>
<th>Major</th>
</tr>
</thead>
<tbody>
<tr>
<td>Setting sentencing guidelines/criteria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reducing delay</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Execution of judicial business</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

29. Please assess the extent of the influence/impact of the following on the day-to-day working practices and procedures in the court?

<table>
<thead>
<tr>
<th></th>
<th>Major Influence</th>
<th>Important</th>
<th>Quite Important</th>
<th>Minor Influence</th>
<th>Unimportant</th>
<th>Don’t Know/Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Judges</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deputy District Judges</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clerk to the Justices</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Justices Chief Executive</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lay magistrates</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chair of the Lay Bench</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lord Chancellors Department</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ushers/List Callers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local defence solicitors</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local CPS representative</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senior court clerks</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other court clerks</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Listing Officer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other administrative staff</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court User Group</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Magistrates Association guidelines</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Locally produced guidelines for</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>sentencing and other judicial decisions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SECTION 3 – RELATIONSHIPS AND THE FUTURE USE OF DISTRICT JUDGES (MAGISTRATES’ COURTS)

30. How often do you meet with the following personnel on an informal, social basis?

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Never/Rarely</th>
<th>Occasionally</th>
<th>Quite Regularly</th>
<th>Very Regularly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lay magistrates from the court</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The chairman/deputy chairman</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lay magistrates from other areas</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clerk to the Justices</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Justices Chief Executive</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other local defence solicitors</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local CPS lawyers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court clerks</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District Judge</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deputy District Judge</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District Judges based at other courts</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

31. How would you describe the relations between defence solicitors and the following personnel and groups in the court?

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Excellent</th>
<th>Quite Good</th>
<th>Good</th>
<th>Quite Poor</th>
<th>Very Poor</th>
<th>Don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lay magistrates</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bench chairman</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clerk to the justices</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deputy clerk to the justices</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Probation officers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPS prosecutors</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ushers/List Callers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District/Deputy Judges</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

32. Please assess the role/influence of the District/Deputy Judges (Magistrates’ Courts) in shaping the relationship between the court as a whole and the following:

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Very Important</th>
<th>Fairly Important</th>
<th>Not Important</th>
<th>Don’t Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPS solicitors</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local defence solicitors</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Victim support groups</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Probation officers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
33. Should the number of the following personnel be:

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Significantly Increased</th>
<th>Slightly Increased</th>
<th>Remain the same</th>
<th>Slightly Decreased</th>
<th>Significantly Decreased</th>
<th>Reduced to None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deputy District Judges in the court</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
</tr>
<tr>
<td>District Judges in the court</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
</tr>
<tr>
<td>Deputy District Judges in England and Wales</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
</tr>
<tr>
<td>District Judges in England and Wales</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
</tr>
<tr>
<td>Lay magistrates in the court</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
</tr>
<tr>
<td>Lay magistrates in England and Wales</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
</tr>
</tbody>
</table>

34. If you have previously worked as a solicitor in an area other than in London, please state below any differences you have noticed between what were formerly Metropolitan Stipendiary Magistrates and Provincial Stipendiary Magistrates and how this may have effected the way you prepare and present cases.

35. Please use the space below, continuing on the back of the questionnaire if necessary, to provide any further information you think may be relevant or to make additional comments or points about the role and influence of District and Deputy District Judges (Magistrates' Courts).
36. If you would be willing to meet for an interview to discuss the issues covered by this questionnaire in more depth then please state your name and a contact telephone number below. The interview should last between 45 minutes to 1 hour and will be tape recorded. Any quotes used in the final thesis will be totally anonymous.

Name:

Contact Telephone Number:

Finally, thank you very much for taking the time to complete this questionnaire. It is very much appreciated and I am most grateful to you for the information you have provided. If you have any further queries please do not hesitate to contact me.

Bethany Smith (Miss)
Scarman Centre for the Study of Public Order
University of Leicester
154 Upper New Walk Leicester
Telephone: 07801 355516
Appendix D

Questionnaire for District and Deputy District Judges

SECTION 1 - PERSONAL DETAILS AND CAREER HISTORY

1. Name: (optional) ..................................................

2. Age: ................................................

3. Gender: Male [ ] Female [ ]

   Other (please specify) [ ] ..........................................

5. Please state brief details of your educational background and qualifications below.

6. Are you a District Judge or a Deputy District Judge District [ ] Go to Question 8
   Deputy [ ] Go to Questions 7

7. Have you previously served as a Deputy District Judge (Acting Stipendiary Magistrate)?
   Yes [ ] No [ ]
   If yes, for how long? .............................................

8. How long have you been a District Judge (Full time Stipendiary Magistrate)?
   ................................................

9. How long have you been in your current post? .............................................

10. If your current post is not your first as a District/Deputy District Judge (stipendiary
    magistrate) please state briefly the other courts/areas you have been appointed to. Please
    include whether the post was Acting, Permanent or temporary and the length of time you
    were there.
11. Before your appointment as a District/Deputy District Judge (stipendiary magistrate), what was your occupation? (Please tick as many as are appropriate)

<table>
<thead>
<tr>
<th>Occupation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Barrister mainly engaged in defence work</td>
<td></td>
</tr>
<tr>
<td>Barrister mainly engaged in prosecution work</td>
<td></td>
</tr>
<tr>
<td>Solicitor mainly engaged in defence work</td>
<td></td>
</tr>
<tr>
<td>Solicitor mainly engaged in prosecution work</td>
<td></td>
</tr>
<tr>
<td>Clerk to the Justices</td>
<td></td>
</tr>
<tr>
<td>Deputy Clerk to the Justices</td>
<td></td>
</tr>
<tr>
<td>Other (please state)</td>
<td></td>
</tr>
</tbody>
</table>

12. Please indicate which, if any, of the following you had contact with during the selection and appointment process to your current bench.

<table>
<thead>
<tr>
<th>Contact</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairman of the lay bench</td>
<td></td>
</tr>
<tr>
<td>District Judges</td>
<td></td>
</tr>
<tr>
<td>Clerk to the Justices</td>
<td></td>
</tr>
<tr>
<td>Justices Chief Executive</td>
<td></td>
</tr>
<tr>
<td>Other lay magistrates</td>
<td></td>
</tr>
<tr>
<td>Deputy District Judges</td>
<td></td>
</tr>
<tr>
<td>Deputy Clerk to the Justices</td>
<td></td>
</tr>
</tbody>
</table>

If you have selected any of the above, please give brief details about the nature and extent of this contact below.

13. Please indicate if you are a member of any of the following organisations, committees or groups?

<table>
<thead>
<tr>
<th>Organisation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Magistrates Association</td>
<td></td>
</tr>
<tr>
<td>Magistrates’ Courts Committee</td>
<td></td>
</tr>
<tr>
<td>Advisory Committee</td>
<td></td>
</tr>
<tr>
<td>Advisory Sub-Committee</td>
<td></td>
</tr>
<tr>
<td>Magisterial Committee of the Judicial Studies Board</td>
<td></td>
</tr>
<tr>
<td>Youth Panel</td>
<td></td>
</tr>
<tr>
<td>Family Panel</td>
<td></td>
</tr>
<tr>
<td>Court Users Group</td>
<td></td>
</tr>
<tr>
<td>Licensing Panel</td>
<td></td>
</tr>
<tr>
<td>Probation Liaison Committee</td>
<td></td>
</tr>
<tr>
<td>Other (please specify below)</td>
<td></td>
</tr>
</tbody>
</table>

.................................   [ ]

.................................   [ ]
SECTION 2 – JUDICIAL AND NON-JUDICIAL WORK

14. Do you presently serve as any of the following in the Crown Court?

<table>
<thead>
<tr>
<th>Role</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recorder</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deputy District Judge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deputy Recorder</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please specify below)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If you have answered “yes” to any of the above please give some brief details below, including how long you have been serving in this capacity and how often you sit.

15. What input do you have into the courts and cases you are allocated?

Would you like this input to be greater?

16. Are you aware of any specific local guidelines for the following?

<table>
<thead>
<tr>
<th>Topic</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sentencing of various offences</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocation of judicial work to District Judges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocation of training work to District Judges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bail/Remand decisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocation of administrative/committee work</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
If the answer is ‘yes’ to any of the above please give brief details of your role in the production of these guidelines below.

17. Please assess how often you have engaged in the following types of work, in your main base court, over the last 6 months.

<table>
<thead>
<tr>
<th></th>
<th>Never/Rarely</th>
<th>Twice Monthly</th>
<th>Once Weekly</th>
<th>2/3 Times Weekly</th>
<th>Daily</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Sentencing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adult Remand Decisions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adult pleas/mode of trial</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trials over 3 days long</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trials completed within one day</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases involving complex law</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Old Style Committals</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Licensing/Betting</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sitting in the applications court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sitting in the youth court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sitting in the family court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sitting in a traffic only court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training lay justices</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training other District/Deputy Judges</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative/Committee work</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
18. Which types of work do you consider to be your **most** and **least** important contribution to the court?

<table>
<thead>
<tr>
<th></th>
<th>Most</th>
<th>Least</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Sentencing</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Adult Remand Decisions</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Adult pleas/mode of trial</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Trials over 3 days long</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Trials completed within one day</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Cases involving complex law</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Old Style Committals</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Licensing/Betting</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in the applications court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in the youth court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in the family court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in a traffic only court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Training lay justices</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Administrative/Committee work</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

19. Which types of work do you consider to be the 'lay magistrates' most and least important contribution to the court?

<table>
<thead>
<tr>
<th></th>
<th>Most</th>
<th>Least</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Crime work</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in the youth court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in the family court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sitting in the Crown Court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Licensing/Betting</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Training other lay magistrates</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Administrative/Committee work</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>
20. In your opinion, which of the following are more likely to exhibit the qualities/characteristics and skills listed below when carrying out judicial work?

<table>
<thead>
<tr>
<th></th>
<th>Lay Justice</th>
<th>District/Deputy Judges</th>
<th>Neither More Likely</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speed</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Efficiency</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Legal knowledge/expertise</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Confidence</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Effective management of solicitors</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Effective management of defendants</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Leadership</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Assertiveness</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Court management</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Extensive experience</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Local knowledge</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Patience</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Attentiveness</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Empathy</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Common Sense</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sense of humour</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Intelligence</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other (please specify below)</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

21. In your opinion, which of the following is more likely to make the kinds of decisions listed below when carrying out judicial work?

<table>
<thead>
<tr>
<th></th>
<th>Lay Bench</th>
<th>District/Deputy Judges</th>
<th>Neither More Likely</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grant adjournments</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Hand out custodial sentences</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Hand out community sentences</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Adjourn for PSR’s</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Defer sentences</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Reserve cases to themselves</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other (please specify below)</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

22. In your experience, how do you think knowledge about the characteristics and working practices of different lay magistrates or District/Deputy District Judges may influence the way other court personnel, such as defence and CPS lawyers, prepare and present their cases?
23. How often do you sit with lay magistrates? Please include details of how these sittings are organised/arranged?

24. Do you think that more use should be made of mixed benches?
   Yes [ ] No [ ] Don’t Know [ ]

   Please give brief reasons for your answer below.

25. Please state any types of judicial work that you think is better dealt with by a mixed bench, giving brief reasons for your answer.

26. Please rate the overall quality of the performance of the following in your court.

<table>
<thead>
<tr>
<th>Defence solicitors</th>
<th>Poor</th>
<th>Average</th>
<th>Good</th>
<th>Very good</th>
<th>Excellent</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPS lawyers</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Court clerks</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Ushers</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Probation officers</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Lay bench chairmen/women</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other lay justices</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>
27. Please state to what extent you think the following cause unnecessary delay in court.

<table>
<thead>
<tr>
<th>Cause</th>
<th>Never/Rarely</th>
<th>Occasionally</th>
<th>Quite often</th>
<th>Very often</th>
<th>Always</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lay justices retiring</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative errors</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defendants arriving late</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defendants not arriving at all</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defence solicitor late/in another court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defence not prepared</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPS not prepared</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Aid problems</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lengthy mitigation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lay justices granting adjournments</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Obtaining information from police</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please specify below)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

28. To what extent are you involved with the provision of the following kinds of formal training in your court?

<table>
<thead>
<tr>
<th>Training</th>
<th>Never/Rarely</th>
<th>Occasionally</th>
<th>Frequently</th>
<th>Very Frequently</th>
<th>Always</th>
</tr>
</thead>
<tbody>
<tr>
<td>Induction for new justices</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chairmanship skills</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adult court decision making</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Youth court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New legislation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court management skills</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court clerk training</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please specify below)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

29. Please give brief details of the training you received:

   a. upon your first appointment

   b. in the last year
30. In general, how often do you consult with your court clerk when sitting?

<table>
<thead>
<tr>
<th></th>
<th>Never/Rarely</th>
<th>Occasionally</th>
<th>Quite Often</th>
<th>Very Often</th>
</tr>
</thead>
<tbody>
<tr>
<td>In open court</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>In retiring room</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

31. Please assess what these consultations usually refer to.

<table>
<thead>
<tr>
<th></th>
<th>Never/Rarely</th>
<th>Occasionally</th>
<th>Quite Often</th>
<th>Very Often</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal problems</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Complexities of case</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Administrative information</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Information about defendant</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Information about case history</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Court procedure</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Available sentences</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>General opinion</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other (please specify below)</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

32. How often are you approached, informally, by lay bench members for advice on the following?

<table>
<thead>
<tr>
<th></th>
<th>Never/Rarely</th>
<th>Occasionally</th>
<th>Quite Often</th>
<th>Very Often</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management of advocates</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Management of defendants</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>General court management</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sentencing</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Bail</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Granting adjournments</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Mode of trial</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>New legislation</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other (please specify below)</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

284
33. Please assess the extent of the influence/impact of the following on the day-to-day working practices and procedures in your court?

<table>
<thead>
<tr>
<th></th>
<th>Major Influence</th>
<th>Important</th>
<th>Quite Important</th>
<th>Minor Influence</th>
<th>Unimportant</th>
<th>Don’t Know/Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Judges</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Deputy District Judges</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Clerk to the Justices</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Justices Chief Executive</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Lay magistrates</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Chair of the Lay Bench</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Lord Chancellors Depar</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Ushers</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Local defence solicitors</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Local CPS representatives</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Police</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Senior court clerks</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other court clerks</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other administrative staff</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Listing Officer</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Court User Group</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Magistrates Association</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Locally produced guidelines on sentencing</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

SECTION 3 – RELATIONSHIPS AND THE FUTURE USE OF DISTRICT/DEPUTY DISTRICT JUDGES (MAGISTRATES’ COURTS)

34. How often do you meet with the following personnel on an informal, social basis? (i.e. other than in official, court based activities, such as meetings)

<table>
<thead>
<tr>
<th></th>
<th>Never/Rarely</th>
<th>Occasionally</th>
<th>Quite Regularly</th>
<th>Very Regularly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lay magistrates from your bench</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Lay magistrates from other areas</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Clerk to the Justices</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Deputy Clerk to the Justices</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Chairman of the Lay Bench</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Deputy Chairman of the Lay Bench</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Justice’s Chief Executive</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Local defence solicitors</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Local CPS lawyers</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Court clerks</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>District Judges</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Deputy District Judges</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>District/Deputy District Judges</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>based at other courts</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>
35. How often do you meet with the following court personnel on a formal basis? (i.e. in organised court based activities, not including your regular sittings)

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Never/Rarely</th>
<th>Occasionally</th>
<th>Quite Regularly</th>
<th>Very Regularly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lay magistrates from your bench</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lay magistrates from other areas</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clerk to the Justices</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deputy Clerk to the Justices</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chairman of the Lay Bench</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deputy Chairman of the Lay Bench</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Justices Chief Executive</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local defence solicitors</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local CPS lawyers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court clerks</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District Judges</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deputy District Judges</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District/Deputy District Judges based at other courts</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

36. How would you describe the relations between the District/Deputy District Judges at your court and the following personnel or groups?

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Excellent</th>
<th>Quite Good</th>
<th>Good</th>
<th>Quite Poor</th>
<th>Very Poor</th>
<th>Neither good or poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lay magistrates</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Chairman lay bench</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deputy Chairman</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court clerks</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clerk to the Justices</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deputy Clerk</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Justices Chief Executive</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local defence solicitors</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local CPS lawyers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court clerks</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District Judges</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deputy District Judges</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District/Deputy District Judges</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

37. Please assess your role/influence in shaping the relationship between the court as a whole and the following personnel and groups

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Very Important</th>
<th>Fairly Important</th>
<th>Not Important</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPS solicitors</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local defence solicitors</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Victim support groups</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Probation officers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
38. Should the number of the following personnel be:

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Significantly Increased</th>
<th>Slightly Increased</th>
<th>Remain the same</th>
<th>Slightly Decreased</th>
<th>Significantly Decreased</th>
<th>Reduced to none</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deputy District Judges in your main court</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
</tr>
<tr>
<td>District Judges in your main court</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
</tr>
<tr>
<td>Deputy District Judges in England and Wales</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
</tr>
<tr>
<td>District Judges in England and Wales</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
</tr>
<tr>
<td>Lay magistrates at your main court</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
</tr>
<tr>
<td>Lay magistrates in England and Wales</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
<td>[]</td>
</tr>
</tbody>
</table>

39. Please use the space below, continuing on the back of the questionnaire if necessary, to provide any further information you think may be relevant or to make additional comments or points about the role and influence of District/Deputy District Judges (Magistrates' Courts)

Finally, thank you very much for taking the time to complete this questionnaire. It is very much appreciated and I am most grateful to you for the information you have provided. If you have any further queries please do not hesitate to contact me.

Bethany Smith (Miss)
Scarman Centre for the Study of Public Order
University of Leicester
154 Upper New Walk
Leicester

Telephone: 07801 355516
Appendix E

Interview Schedule for District/Deputy District Judges

Background
- Tell me briefly about your educational background career up until the time you applied to be a District Judge.
- Previous occupation?
- Defence or prosecution?
- Mainly crime work?
- Why decide to apply to DJ?
- Career aim or never thought about before?
- Stepping stone to higher judiciary?
- When did you apply?
- Based mainly in London or provinces in previous occupation?

- How long have you been a full time District Judge/Deputy District Judge at this court?
- Is this your first full time appointment? If not, where was your first appointment? Were there already full time District Judges at this court when you were appointed?
- At time of appointment were you aware of any concern expressed by lay bench reps about the appointment?

Work in Court
- Can you tell me about how your judicial work in this court is organised?
- Who allocates judicial work?
- What criteria are used?
- Who decides what courtroom and which clerk will sit with you?
- What input do you have into the cases you deal with and your sitting pattern?
- Would you like to have more input? Why?
- Do you think the work you are allocated reflects the perceived differences in the abilities of lay and professional magistrates?
• Specific courts usually presided over by District Judge.

• **Is your work allocated in line with local guidelines – what account is taken or national recommendation in the Venne report?** e.g. lengthy trials and cases with complex law

• How much of your time is spent on these “special” sorts of work?

• Apart from “special work” how much time is dedicated to doing general routine court work?

• Which sort of judicial work do you enjoy the most?

• Common complaint of lay bench is that DJ not do fair share of routine work – what is your response?

• Do you feel that the work allocated to you makes best use of your skills as a DJ?

• Anything you would like to do more/less of?

• Are you used in an essentially pragmatic way?

• **What sorts of administrative work are they involved in – what does it involve, how much time spent, do they enjoy it as much as judicial work?**

• Does administrative work include developing official local guidelines for various things, sentencing, adjournments, bail, and allocation of judicial and other work such as training?

• **Meet clerk and representative of lay bench often?**

• Liaising with Clerk alone – how often? What about?

• Liase with representatives of lay bench alone? How often? What about?

• **How often in Crown Court? In what capacity?**

• **What is the extent of the role you play in training in the court?**

• Who is responsible for the organisation of training as a whole?

• What role do you play in developing training programmes or guidelines?

• Do you enjoy training?

• Who do you train, how often?

• What do you train them in and how do you train them? Mentoring?

• Any training in court management?

• How important is your role – why?

• **How often do you sit with lay magistrates? For what purpose? Training or every day court work?**

• Are mixed benches particularly useful for training purposes? Why?
• Should they be used more or less?
• Do lay magistrates need to be trained more or less in certain areas?
• Are you asked informally for advice on certain things.
• **What training have you received since your appointment?**
• How often do you attend training sessions?

**Court Management**

• **How important is the ability of magistrates to manage or control the courtroom?**
  - Why? How do you do it?
  - Apply certain rules to court you sit in, both to the way you conduct proceedings or how others conduct themselves?
  - Are others people that are working in the court aware of your rules?
  - Are they explicit or implicit rules – do you state them clearly or do people learn from experience of working with you?
• **Do you think you have a reputation as a magistrate with particular qualities, likes and dislikes etc.**
  - Do you try and cultivate a certain “culture” in your courtroom?
  - How do you think this might affect the information they (other court actors e.g. probation, CPS and Defence present to you and the way they present it?
• **How do you manage defence solicitors?**
  - Do you think lay justices manage them differently, less successfully, rely on clerk?
  - How do you think this might influence them in the way they prepare and present a case?
  - Examples/experiences?
• **Is court management a skill that only professionals have?**
  - If yes, then do the clerks control courtroom when a lay bench is sitting?
• **Do you normally sit with the same clerks?**
  - Use them differently then lay magistrates?
  - Are you using them purely for administrative backup and information or do they provide another professional opinion?
• **Are you aware of there being a “shared professionalism” between you and the other “legal” people in the courtroom – compared to say the defendant or probation officer?**
• Do you think this somehow makes defendant feel removed from the proceedings?
• What do you do to try and address this?
• How do you treat an unrepresented defendant differently?
• Importance of preventing delay?
• How do you go about it?
• Do your methods in court management overall get disseminated to lay magistrates? How?
• Is your authority in court based mainly on your confidence, speed or status as legal professional?
• Expeditiousness seems to be related directly to authority – does this mean that lay magistrates lack authority?
• Is there a culture of transferring routine cases out of your court?

Judicial Decisions
• Though I am aware that every case is different, can you tell me about how you come to your decisions on various things like sentencing, bail decisions and adjournments?
• Do you have a particular set of criteria, way of reaching these decisions?
• Which information is important?
• Do you view input from the various parties differently?
• How important is the way the information is presented?
• Importance of the PSR Why?
• What are you trying to achieve with these decisions?
• Attitude to aims of punishment.
• How important is common sense?
• Does the fact that you have a unique power to decide law, fact and sentence alone concern you?
• Too much power? Advantages of sitting alone?
• Any disadvantages?
• Has been suggested that mixed benches should hear all cases? Views?
• Experience of mixed benches – ever outvoted?
• Advantages and disadvantages of sitting in a group as lay magistrates usually do?
• Does dialogue with others mean that the outcome is somehow "sounder" – democratic?

Qualities of, and Relationship Between, DJ and Lay Magistrates
• There are several common statements made about DJ, particularly that they are quicker and harsher than lay magistrates. What are your views on these assumptions?
• Are they generally true?
• Are you less likely to grant adjournments than a lay bench?
• What are the main qualities a DJ have to offer?
• What positive qualities are lay magistrates providing that is distinct from what you are providing?
• Speed, decisiveness and efficiency and inbuilt requirements of your job – not for lay justices. Does quicker justice necessarily equate with better justice?
• Assumption is that it is your legal knowledge makes you faster?
• How far do you agree with that?
• If it is a case of having skills in court management and confidence couldn’t lay justices be trained more in these respects?
• Do you ever feel that your skills are not used to best effect in your court? Examples/why?
• Are there any sorts of work that are unsuitable for a DJ to deal with or more suitable for a lay bench to deal with?
• What do you understand by the term professional?
• How does this fit into a system where defining quality is “layness” and “non-professional”
• Does focus on legal professionalism denigrate the “lay” quality of justices?
• How would you describe the relationship between yourself and the lay magistrates at your court?
• Make effort to meet regularly? Visit assembly room?
• Formal or informal basis? Where and why?
• Well known that some lay magistrates regard DJ with suspicion – ever had experience of this?
• Should all members of lay bench have a say in whether DJ should be appointed to a court.
• Importance of others in fostering this relationship?

**Future Role of DJ and Lay Magistrates**
• Views on the recent unification of the professional bench and the change in your title?
  - good or bad idea? Why?
• Were you acutely aware of any distinction or difference in status between metropolitan and provincial professional magistrates?
• Did you feel that the distinctions between provincial and metropolitan magistrates were unnecessary? Why? Which distinctions?
• Do you think title more adequately reflects your status?
• Do you think it widens the perceived gap between lay and professional magistrates?
• Create a two-tier system?
• Could it cause confusion for defendants?
• Is it a first step towards increasing the powers and jurisdiction of the professional magistracy?
• Will it affect your ability to develop close working relations with lay benches if you spend more time at various different courts for shorter periods?

• **How do you foresee the future roles of lay and DJ?**
• Number of acting grown quite considerably suggests a large increase in future permanent DJ? Good or bad?
• Will the lay bench be gradually removed altogether?
• Increasing professionalisation of summary justice (clerks as well getting more powers to carry out judicial functions alone)?
• Is there really a role of amateurs at all?
• It has been commented that DJ are an “anomaly” – what do you think?
• Should all courts have at least one full time DJ?
Appendix F

Interview Schedule for Court Clerks

Background
- Start off by telling me how long you’ve worked here and what your job title and role is.
- Qualifications required when applied for job?
- Any qualifications gained on the job?
- Previous legal occupation?
- Defence or prosecution?
- Mainly crime work?
- Why decide to become a court clerk?
- Worked in any other magistrate’s courts? London? Differences in role?
- Based mainly in London or provinces in previous occupation?

Work in Court
- Can you tell me if there is a fixed pattern to the courts you sit in?
- Who allocates your work?
- What criteria are used?
- Who decides what courtroom you will sit in? Is it fairly flexible?
- Does the way the work is allocated mean that it is usually the same clerks that sit with the DJs?
- What input do you have into the cases you deal with and your sitting pattern?
- Would you like to have more input? Why?
- How often do you sit with a DJ?
- More likely to be an acting, visiting or permanent DJ?
- Can you request not to sit with certain DJs?
- Are there certain types of cases/work that is always dealt with DJs in the court? What about lay magistrates, what work is always dealt with by them? Specific “double sentencing” court usually presided over by DJ? Licensing dealt with by lay magistrates?
- Common complaint of lay bench is that DJ not do fair share of routine work – comments?
- Are DJs more likely to transfer routine work out of their court to another one? Examples/experiences of this?
- What sort of work do you normally spend majority of time doing? E.g. adult crime, family, youth? Sentencing, mixed lists etc.
- Which work do you enjoy most?
- Which type of bench do you prefer to sit with? Lay or DJ?
- Why? Examples/experiences
- Do you ever sit alone in court to carry out administrative functions?
- If yes, how often, what does it involve?
- What sorts of administrative work are you involved in? Do they enjoy it as much as court work?
- Does administrative work include any input into developing official local guidelines for various things, sentencing, adjournments, bail, and allocation of judicial and other work such as training?
- Meet Clerk to Justices and representative of lay bench often?
- For what reasons?
- How often might all court clerks meet with DJs?
- What is discussed? If not present do senior clerks meet with them and how is the information disseminated to other court clerks?
- Is it done formally or passed on informally word of mouth?
- Court users group? Involved? Successful or unsuccessful?
- What is the extent of the role you play in training in the court?
- Who is responsible for the organisation of training as a whole?
- Training developed mainly using local or national guidelines?
- If local, what is your and other people’s role in developing these guidelines?
- Who do you train, how often?
- What do you train them in and how do you train them? Mentoring etc.
- Role of DJs in training?
- Any training in court management?
- Does the training of lay magistrates include use of mixed benches – them sitting with a DJ? How often?
- Are they useful – why – used only for chairmanship training?
- Should they be used more or less?

295
• Do lay justices ever sit in the adult crime courts with DJs purely to conduct judicial work or only for training purposes?

• Do you enjoy training?

• How important is your role – why?

• Do lay magistrates need to be trained more or less in certain areas?

• Are you asked informally for advice on certain things e.g. court management, sentencing, adjournments etc? By whom?

• What training have you received since your appointment? How often?

• Views on new rules about qualifications of court clerks? Has t affected you?

Sitting in Court with Lay and DJs

• What are the main differences in your role and behaviour in court with a lay bench and a DJ?

• Do you prepare for court differently depending on whether you are sitting with a lay bench or a stipe? More carefully? More organised? Why?

• What are the reputations of certain magistrates?

• Are they well known for having certain traits or ‘rules’ in their court? Examples/experiences?

• How else might these known traits affect the way you manage the courtroom and the cases?

• Arrange sequence of cases differently? Why?

• Does reputation of individual DJs or individual lay magistrates influence the way you might suggest to defence and cps to proceed with a case in a certain way? Examples/experiences?

• Are you aware of there being a “shared professionalism” between you and the other “legal” people in the courtroom – compared to say the defendant or probation officer?

• Different language?

• Do you think this somehow makes defendant feel removed from the proceedings?

• What do you do to try and address this?

• How do you treat an unrepresented defendant differently?

• What are the main differences between how you are ‘used’ by lay magistrates and DJs?
• When you are consulted, what are the differences in the reasons for this consultation?

• Ever disagreed with a DJ? Both privately and openly when he/she had informed you of their planned action in the retiring room? Is advice normally taken?

• Same for lay benches? Is advice normally taken?

• Ever sat with a mixed bench?

• Ever seen lay magistrates outvote a DJ over an issue

• How important is the ability of magistrates to manage or control the courtroom?

• What are the main differences between how lay and DJs control a court room?

• Do individual magistrates try and cultivate certain cultures in the courtroom?

• Are others people that are working in the court aware of this?

• How do you think this might affect the information they present to way they present it? Defence, CPS and Probation? CPS much more factual with DJs, mitigation shorter? Tailored to known reputation and “rules” of certain magistrates or clerks?

• When sitting with a lay bench do you feel more in control of the court than when you sit with a DJ? Why?

• Do you think you have a reputation? If yes what is it?

• How might this affect the way people behave in court?

• Do you have certain “rules” that you apply to courts you are sitting in? About certain cases or procedures? Examples.

• If yes, are you able to apply them equally when sitting with a lay or DJ?

• Do you try and cultivate a certain “culture” in your courtroom?

• Examples?

• Is court management a skill that only DJs have?

• If yes, then do the clerks control courtroom when a lay bench is sitting?

• How do lay and DJs manage defence solicitors differently?

• Examples/experiences?

• Importance of preventing delay?

• How do you go about it?

• Which parties are most to blame for delay?
• Is having authority in court based mainly on confidence, speed or status as legal professional?
• Expeditiousness seems to be related directly to authority – does this mean that lay magistrates lack authority?
• What do you think the reputation of this court is? Harsh? Lenient?

Judicial Decisions
• (Apart from the obvious that one sits alone and the others in a group.) Do you think there are any differences between the way DJJs and lay magistrates reach their judicial decisions?
• Different sorts of information important?
• Different views of aggravating and mitigating factors?
• Different views on validity of information form the various parties? Who is more likely to believe police version of events for example
• How important is common sense in making judicial decisions?
• Which type of magistrate has more of it? Why? Examples?
• Do you think DJJs are harsher than lay benches?
• Are they harsher of different types of offences?
• Individual magistrates (lay and DJ) particularly harsh or lenient on certain types of offences or offenders? Particularly responsive to certain mitigating or aggravating factors?
• Are DJJs less likely to grant adjournments than a lay bench?
• Does the fact that DJJs have a unique power to decide law, fact and sentence alone concern you?
• Should anybody sit alone to make judicial decisions?
• Too much power? Advantages of sitting alone?
• Any disadvantages?
• Has been suggested that mixed benches should hear all cases? Views?
• Advantages and disadvantages of sitting in a group as lay magistrates usually do?
• Does dialogue with others mean that the outcome is somehow “sounder” – democratic?
• Experience of mixed benches – ever outvoted?
• In their response to the consultation paper some DJJs felt that “positive harm” could arise if two lay justices outvoted a DJ on a mixed bench – agree? Why?
Qualities of, and Relationship Between, DJ and Lay Magistrates

- What are the main qualities DJs have to offer?
- What positive qualities are lay magistrates providing that is distinct from what DJs are providing?
- Speed, decisiveness and efficiency and inbuilt requirements of DJs job – not for lay justices. Does quicker justice necessarily equate with better justice?
- Assumption is that it is that it is their legal knowledge that makes them faster?
- How far do you agree with that? Isn’t court management a more important skill?
- If it is a case of having skills in court management and confidence couldn’t lay justices be trained more in these respects?
- What do you understand by the term professional?
- How does this fit into a system where defining quality is “layness” and “non-professional”
- Does focus on legal professionalism denigrate the “lay” quality of summary justice?
- How would you describe the relationship between the DJs and the lay magistrates at your court?
  - Make effort to meet regularly? Visit assembly room?
  - Formal or informal basis? Where and why?
  - Well known that some lay magistrates regard DJs with suspicion – ever had experience of this?
  - Should all members of lay bench have a say in whether DJs should be appointed to a court.
- What about the relationship between court clerks and DJs?
  - Make effort to meet regularly? Visit assembly room?
  - Formal or informal basis? Where and why?

Future Role of DJ and Lay Magistrates

- Views on the recent unification of the professional bench and the change in their title?
  - Good or bad idea? Why?
  - Do you think title more adequately reflects their status?
- Do you think it widens the perceived gap between lay and DJs? Create a two-tier system?
- Could it cause confusion for defendants?
- Is it a first step towards increasing the powers and jurisdiction of the professional magistracy? Views?
- How do you foresee the future roles of lay and DJs?

- Number of acting grown quite considerably suggests a large increase in future permanent DJs? Good or bad?
- **Will the lay bench be gradually removed altogether? Do you think it should?**
- Increasing professionalisation of summary justice (clerks as well getting more powers to carry out judicial functions alone)?
- Is there really a role for amateurs at all?
- Gradual erosion of “non-professional” and “local” features of summary justice in name of efficiency?
- **It has been commented that DJs are an “anomaly” – what do you think?**

- Should all courts have at least one full time DJ?
- **What is the overall impact/influence of the DJs at your court on every day working practices?**
Appendix G

Interview Schedule for Lay Magistrates

Background

- Can you tell me how long you have served on your current bench?
- Tell me how and why you became a lay magistrate?
- Current occupation? Retired?
- Any legal/criminal justice background?
- Why decide to apply?
- Who suggested? Friend, advert, always wanted to do it?
- Application and appointment procedure?
- Been magistrate on any other bench?
- If yes, for how long?
- Are you trained to be a bench chair?
- Are you a member of the youth or family panel?
- Were there any full or part time DJs in the court when you were first appointed to the bench?
- If yes, has number increased? Views?
- If no, notice any marked differences since DJs appointed?
- Are you a member of the MCC, Advisory Committee or Magistrates Association?

Work in Court

- How often do you sit in court?
- Who allocates judicial work/courtrooms?
- What criteria are used?
- What input do you have into your sitting pattern?
- Would you like to have more input? Why?
- Do you tend to sit with the same lay magistrates? How is it organised?
- What sort of judicial work do you think you spend the most time on? Adult crime, youth, family, licensing?
- How often do you do lengthy trials or old style committals?
- Work in the crown court?
- Are you involved in anyway with administrative tasks in the court, other than judicial work?
  - If yes, does this mean less time in court?
  - How do they feel about that? Enjoy or not non-judicial work?
  - What sort of work most and least enjoy?
- Do you think the way work is allocated reflects the perceived differences in the abilities of lay and DJs?
  - Specific courts usually presided over by DJ?
- Are you aware of any local guidelines governing the allocation of judicial work between lay and DJs?
  - If yes, details, who develops them? Role of chair and others? Any role for wider lay bench?
- Do you think having DJs in the court affect your court work?
• If yes in what way?
• Do you think that the DJs do their fair share of routine work?
• Are you aware of any dissatisfaction or concern of the lay bench about this issue?
• Are you aware of any courts/types of case that the DJs in your court particularly hear?
• How do lay magistrates make their feelings known about an issue?
• Go through Chair of Bench? Meetings, suggestions box, memos?
• Do you or other lay magistrates, apart from the bench chair have an input into developing official local guidelines for various things, sentencing, adjournments, bail, and allocation of judicial and other work such as training?
• Tell me about the training you receive, both when you were first appointed and since?
• Who is responsible for the organisation of training as a whole?
• What role do you play in developing training programmes or guidelines?
• Who trains you, in what issues, how often?
• What does the training usually involve? Mentoring, observation, lectures, seminars written material?
• If mentoring, who? Clerk, DJ, other lay magistrate?
• Role of clerks and DJs in training?
• Any training in court management?
• Have you ever sat with a DJ?
• Are mixed benches useful – why – used only for chairmanship training?
• Should they be used more or less?
• Do DJs and lay justices ever sit together in the adult crime courts purely to conduct judicial work or are mixed benches only used for training purposes?
• If yes, how is this arranged?
• Are you aware of any local guidelines that govern the use of mixed benches?
• Do you enjoy the training you receive?
• Is it useful? More or less on certain issues?
• How important is the DJs role – why?
• Do you ever approach clerks or DJs or other lay magistrates for informal advice?
• If yes? What on?
• How often do you attend training sessions?

• Court Management
• How important is the ability of magistrates to manage or control the courtroom?
• Why? How do you do it?
  • If chair trained Do you ever sit alone to perform certain functions?
  • If yes, how often and which ones?
  • If chair trained Do you try and cultivate a certain “culture” in the courtroom whenever you are sitting as chair of the bench?
• Do you think lay magistrates tend to rely on their clerks to manage the court?
  • If chair trained Do you consider yourself to be particularly proactive in managing the court when you are in the chair?
• Do you think you have a particular reputation as a magistrate?
• If yes what is it?
• Aware that any of the DJs have reputations?
• How might the reputation of a particular lay or DJs affect the way other people might behave in court?
• How do you make the other people that are in the courtroom aware of your rules or how you want things done?
• How do you think this might affect the information they present to you and the way they present it?
• Are they explicit or implicit rules – do you state them clearly or do people learn from experience of working with you?
• Are DJs better at court management than lay magistrates?
• Why?
• Do you think other court personnel i.e. clerks; defence and cps lawyers or even defendants behave in a different way in a court with a DJ?
• In what way?
• Examples? Is effective court management a skill that only DJs have?
• Do you think that lay magistrates who observe or sit with a DJ might try to copy their style?
• Good or bad idea?
• How do you try to manage defence solicitors?
• Rely on clerk?
• Examples/experiences?
• Use of the clerk? What are main reasons you consult them, both in the court and in retiring room?
• Ever disagreed with or gone against clerks advice on a case?
• Are you acutely aware in a courtroom, of there being a “shared professionalism” between the other “legal” people in the court room? E.g. use of legal language
• Do you think this can sometimes make defendant feel removed from the proceedings?
• What do you do to try and address this?
• How do you treat an unrepresented defendant differently?
• Importance of preventing delay?
• How do you try to do this on a bench?
• Which parties are usually to blame in causing delay?
• Do you think it is harder for a lay bench to present an air of authority in court?
• If yes, why might this be?
• Could it be because lay magistrates can lack confidence because they do not have extensive legal knowledge?
• What do you think the reputation of this court is? Harsh? Lenient?

Judicial Decisions
• Though I am aware that every case is different, can you tell me your experience of how lay benches come to decisions on various things like sentencing, bail decisions and adjournments?
• Do you have a particular set of criteria, way of reaching these decisions?
• Which information is important?
• How important are the Magistrates Association or locally produced guidelines? Examples of these?
• Do you view input from the various parties differently?
• How important is the way the information is presented?
• Importance of the PSR Why?
• What are you trying to achieve with these decisions?
• Attitude to aims of punishment.
• How important is common sense?
• Are lay benches more likely to grant adjournments than a DJ?
• Why do you think this is?
• Does the unique power of a DJ to decide law, fact and sentence alone concern you?
• Too much power? Advantages of sitting alone?
• Any disadvantages?
• Has been suggested that mixed benches should hear all cases? Views?
• Advantages and disadvantages of sitting in a group?
• Does dialogue with others mean that the outcome is somehow “sounder” – democratic?
• This need for discussion is often what makes lay magistrates/benches “slower”
• Does this mean that being quicker is not necessarily better justice?
• Where does leave the defining quality of DJs?
• Experience of mixed benches – ever outvoted/disagreed with a DJ?
• In their response to the consultation paper some DJs felt that “positive harm”
could arise if two lay justices outvoted a DJ on a mixed bench – agree? Why?
• Experience of retiring room discussions with other lay magistrates?
• How often are there disagreements?

Qualities of, and Relationship Between, DJ and Lay Magistrates
• There are several common statements made about DJs, particularly that they are quicker and harsher than lay magistrates. What are your views on these assumptions?
• Are they generally true?
• What are the main qualities DJs have to offer?
• What positive qualities are lay magistrates providing that are distinct from what DJs are providing?
• If it is a case of having skills in court management and confidence couldn’t lay justices be trained more in these respects
• Are there any sorts of work that are unsuitable for a DJ to deal with or more suitable for a lay bench to deal with?
• What do you understand by the term professional?
• How do you think professional magistrates can fit into a system where defining quality is “layness” and “non-professional”
• Does focus on legal professionalism (clerks as well) denigrate the “lay” quality of justices?
• From your experience of being a member of the lay bench and form discussions with other may magistrates, how would you describe the relationship between the lay bench generally and the DJs?
• Make effort to meet regularly? Visit assembly room?
• Formal or informal basis? Where and why?
• Well known that some lay magistrates regard DJ’s with suspicion – experience of this with your bench?
• Should all members of lay bench have a say in whether DJs should be appointed to a court.
• Court users group? Role? Successful?
Future Role of DJ and Lay Magistrates

- Are you aware that DJ bench is now unified and change of name?
- Good or bad idea? Why?
- Do you think it widens the perceived gap between lay and DJs?
- Create a two-tier system?
- Could it cause confusion for defendants?
- Is it a first step towards increasing the powers and jurisdiction of the professional magistracy?
- Views/concerns?
- Will it affect DJ’s ability to develop close working relations with lay benches and dispense truly local justice if they spend more time at various different courts for shorter periods?
- How do you foresee the future roles of lay and DJs?
- Number of acting grown quite considerably suggests a large increase in future permanent DJs? Good or bad?
- Should there be more or less DJs at your court?
- Unification of bench technically means that DJs will have a wider reach – spread influence wider?
- Consequences for lay magistrates?
- Will the lay bench be gradually removed altogether?
- Increasing professionalisation of summary justice (clerks as well getting more powers to carry out judicial functions alone)?
- Is there really a role of amateurs at all?
- Gradual erosion of “non-professional” and “local” features of summary justice in name of efficiency?
- It has been commented that DJs are an “anomaly” – what do you think?
- Should all courts have at least one full time DJ?
- As a whole, how influential are the DJs on the every day working practices of the court?
- In what main areas and in what way?
References


decisions’, in Hedderman, C. and Gelsthorpe, L (eds) Understanding the
Sentencing of Women, Home Office Research Study 170, London: Home
Office.

classical ethnography’, in LeCompte, M.; Millroy, W. and Preissle, J. (eds)
The Handbook of Qualitative Research in Education, New York: Academic
Press, 405-446.

for mixed-method evaluation designs,’ Educational Evaluation and Policy
Analysis, 11 (3): 255-274.

‘Measuring the Pace of Civil Litigation in federal and State Trial Courts’,


151: 505-508.

137-138.

of Trial Decisions and Sentencing, Home Office Research Study 125,
London: HMSO

Behaviour, Avebury: Aldershot.


London: HMSO.


269-281.

Sunday Times, 14th January 2000.


Addison Wesley Longman.

Jick, T.D. (1979) ‘Mixing Qualitative and Quantitative Methods: Triangulation in


Royal Commission on Justices of the Peace (1948) *Report*, (Cmnd. 7463), London: HMSO.


