LORD CHIEF JUSTICE
OF ENGLAND AND WALES

LORD PHILLIPS OF WORTH MATRAVERS

MAGISTRATES' ASSOCIATION ANNUAL GENERAL MEETING

29 NOVEMBER 2007

This is the third time that I have had the pleasure of addressing you as your President on the occasion of your Annual General Meeting. On the last occasion, at Coventry, I said how happy I was that you had joined the judicial family of which I am the head. Sometimes one gets a bit fed up with members of ones family, but that is certainly not the case with you. On my visits to magistrates over the past year I have continued to be impressed by your dedication and enthusiasm in tackling a job which certainly gets no easier. You have, if I may say so, responded very positively to the initiatives that we have been pursuing to get the entire judiciary working together as a team.

What are those initiatives? We now have a Justices Issues Group, whose task is to deal with those areas where there is an interface, or overlap, between administration and performance of judicial functions, including listing. We have an Area Judicial Forum, which is a purely judicial body that addresses problems that the Justices Issues Group has not been able to resolve, and co-ordination between the Magistrates Court and the Crown Court. We appoint Magistrates Liaison Judges, whose role is to provide general leadership, guidance and support to the Magistrates Courts, in accordance with guidance provided by the Presiding Judges.

So I believe that we now have a structure that will enable us to work together and will foster team spirit throughout the judiciary. Just by way of example, the magistracy often works to best effect where a District Judge is working closely with Magistrates. Sometimes the Crown Prosecution Service or the police need a little encouragement to cooperate in making the system work well, and a District Judge can be particularly well placed to take a tough line in respect of case management.

The problems that we are facing are, I believe, familiar to all of you. This is what I found when going around the circuits.

Those who shared responsibility for getting cases ready for trial were not doing their job properly, so that there would be a series of hearings before the trial itself, with adjournments being granted because the police, the CPS or the

defence lawyers had left undone those things that they ought to have done.

It was bad enough to find this was causing lengthy delays in the Crown Court but even more worrying to find a similar picture in the Magistrates Courts. Those courts are, after all, supposed to be courts of summary jurisdiction and I had always understood that summary meant swift.

In one county it was taking up to 12 months to get cases on for trial and in quite a number, over six months. These problems could not fairly be blamed on the Magistrates. They had grown out of the increased complexity both of the agencies involved in criminal proceedings and of our procedural and substantive law.

The insertion into the system of the Crown Prosecution Service and the increase in the number of issues that fall to be resolved in the course of pre-trial preparation – a problem that has been made even worse by the recent changes in the law in relation to hearsay and bad character.

All of these changes had led to a change in ethos under which summary justice ceased to be a fair description of trial in the Magistrates Court. Prosecution and defence – and the CPS in particular – came to expect that if they encountered some problem in preparing for trial all that they would have to do would be to ask for an adjournment and Magistrates, at least in some parts of the country, tended to grant an adjournment in such circumstances almost as a matter of course.

What was needed was a change in culture. With the senior judiciary, I set about considering how this could be achieved. The answer was what has come to be known as CJSSS. 'Criminal Justice: Simple, Speedy, Summary'.
Although the then DCA presented this as if it was all their own work, the thinking behind it was largely that of Lord Justice Thomas, who was then the Senior Presiding Judge.

CJSSS sets out to speed up the process of summary trial so as to deal with cases from beginning to end within a maximum of six weeks and, in the most straightforward of cases within 24 hours. The starting point is that the first hearing in the Magistrates Court should be effective. This requires the prosecution to have served on the defendant and the court all the papers necessary to make plain the case against the defendant and the issues (if any) raised.

I say 'if any' because it is important that at the first hearing where there is really no issue as to the defendant's guilt, the defendant should plead guilty. This is much more likely if his legal adviser has all the papers that he needs to give him informed advice.

Where there is to be a trial, the date for trial should be set at the first hearing, that date being not more than 6 weeks away, and directions given for the resolution of any pre-trial issues, such as admissibility of evidence, at a single pre-trial hearing.
Thus, instead of the series of pre-trial hearings that were taking place – averaging five or six, there would normally not be more than 2, leading to a trial within 6

weeks instead of the 21 weeks which trials were taking to come on on average.

CJSSS is working, as you will hear later when you receive a message from the Senior Presiding Judge. Some of you are already be applying it. All of you will soon be doing so. It is I believe not only going to transform only proceedings in the Magistrates Court, but greatly enhance the job satisfaction of those who sit there.

A word about sentencing. This is a topic in which I take a particular interest, both as Lord Chief Justice and as Chairman of the Sentencing Guidelines Council. Because of the 6 month limit on your jurisdiction, you are much more likely than the judge in the Crown Court to be dealing with cases that are on the cusp between a custodial and a non-custodial sentence. And these very often pose the most difficult sentencing problems. I am opposed to sending people to prison unless there is really no alternative. That, I believe, is the approach that the law requires. And I suspect that all of you share my approach to lesser offences that cross the custody threshold, but not by a great margin.

If there is a real possibility that a community sentence will be effective in preventing the offender from re-offending, then it is worth a try.

I suspect that many custodial sentences imposed by Magistrates are imposed because everything else has been tried, time and time again, without success, and there does not seem to be any avenue that is open except a custodial sentence. There are one or two particular points that I would like to make about sentencing.

1) Do not overlook the fine. The statistics suggest that Magistrates are turning away from the fine in favour of custodial sentences. Please do not do this unless you are persuaded that a fine is not appropriate. I say this because we have limited resources and it is often the case that it is not possible to provide the community disposal that the court would like to impose.

It used to be the case, I know, that fines were not enforced, and for that reason courts were reluctant to impose them. That is no longer the case. Most fines now are enforced, so do not refrain from fining out of concern that the fine will not be collected. A new edition of the Magistrates' Court Sentencing Guidelines is about to go out to consultation. This includes a radically new approach to calculating fines, and I would urge you to respond to the consultation.

2) Suspended sentences. These are not supposed to be imposed unless the court is satisfied that the offence calls for a custodial sentence. The statistics suggest that this sentence has been widely used in cases where, if the court had not had the option of a suspended sentence, it would not have imposed a custodial sentence at all. I believe that it is as a result of this that the new Criminal Justice Bill is removing the power to suspend a sentence in respect of a summary offence.

Let me end by putting in a plea for community sentences, though I suspect that I am preaching to the converted. Keep in touch with what is on offer. Take advantage of what there is. If there are not the facilities for the type of

community sentence that you would like to impose, make a fuss to the appropriate people at NOMS – if NOMS continues to exist- and to your liaison judge.

I believe strongly in local justice. Neither Magistrates nor Judges can be members of the new Probation Trusts. This is because it would be inappropriate for them to be involved in entering into the contracts that will be giving effect to contestability. I must say I am not wholly persuaded of this argument, but would say this. If you cannot be a member of the new Trusts, seek to have representatives at their meetings with observer status and let your voice be heard just as it was before.
The Trusts will undoubtedly need input from those imposing the sentences, and those imposing the sentences will need to know what is going on in the field of offender management.

I have spoken long enough. It remains to wish you a very successful annual general meeting.
