JUDICIARY OF ENGLAND AND WALES

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COMMUNITY CONFIDENCE, THE MAGISTRACY AND THE RIGHT TO A FAIR TRIAL

LECTURE TO UNIVERSITY OF HERTFORDSHIRE SCHOOL OF LAW, ST ALBANS

9 FEBRUARY 2010

Introduction

As a local magistrate - someone who is not a lawyer - I asked myself what perspective from the first rung of the judicial ladder I could offer that you had not heard - or will not hear - in great depth and intellectual novelty from senior judges and from practitioners appearing before them.

Or, what I could say to you as aspiring practitioners - and perhaps aspiring judges - that you did not know already? Not a great deal, I concluded. Then the flaw in that conclusion became all too apparent. By sub-consciously scooping up all the dramatis personae of the magistrates' court as a single entity rather than focussing on magistrates themselves I should be guilty of falling into the very trap I wish to avoid.

I should be failing to convey accurately some fundamental points about the magistracy from a magistrate's perspective. And that failure would mean, in turn, that I would not demonstrate why our community has every reason to be confident in what magistrates do.

As we are all aware, the press and other parts of the media routinely carry reports of cases that they consider to be newsworthy. But coverage in its entirety is not as extensive as I believe it should be. Moreover, not so routinely - indeed rarely - is the judicial structure on which those reported cases is based explained to the public.

Perhaps there is a tacit assumption that people know how it all works. Or that they do not need to know. Or that they have no wish to know. If there is that assumption, then I believe that it is a mistaken one; and one that has consequences. These are points I shall come back to.

Let me also quote the Lord Chief Justice. He was responding to a question at a press conference last October about his aims during the remainder of his office.[1] He said, '*I think my first ambition is to increase or restore public confidence in the administration of criminal justice. The criminal justice system affects every single person in the country. It*

[1] Press conference, The Royal Courts of Justice, London, October 20th 2009.

affects them as victims, it affects them as witnesses, it affects them as defendants. If I read my newspapers correctly, public confidence has been damaged or reduced.

I want to suggest to you that what happens behind the scenes within criminal justice now needs some constructive limelight because if the system were understood more widely it would help to repair some of the damage to which the Lord Chief Justice referred.

But, since a large proportion of the population seldom, if ever, comes into contact with the justice system, experience has shown me that there is widespread and regrettable ignorance - a word I use in its purest sense of a lack of knowledge - about it.

However, experience tells me also that people's ignorance is matched by an appetite - not least in this university - to learn how it all works. Or certainly an appetite to get a working grasp of it. I make that claim based on talking over many years to groups about our work.

So for the next few minutes I'd like to explain some of the things that we do at the heart of our communities and how they fit into the wider judicial structure: things which offer reassurance that, while no system conceived and operated by man can claim properly to be faultless, they show a commitment, a care, and a value to society, which may not be apparent to the casual observer.

I believe I shall show you that when the system is exposed to that limelight for the community to see, it is completely worthy of confidence. For example, I want to explain how a concept as fundamental as the rule of law is as relevant and present on the magistrates' rung - the *volume crime* end of the market - as it is with those cases that are relatively small in number, but whose notoriety attract the greatest attention.

I am sure that you will not infer from my use of the term *volume crime* any flippancy or desire to understate the distress, damage and danger that these crimes cause. My colleagues and I hear from too many victims of that offending not to recognise the impact these crimes have. I use the term simply to distinguish them from the most serious offending.

In short, the processes for dealing with those charged with, or summonsed for, say, assault, shoplifting, drug misuse and motoring offences in the magistrates' courts are applied to the same standards and with the same integrity as they are in the Crown Court and beyond for those indicted for, say, murder, rape and terrorism.

Next, it is no accident that I refer to *community* confidence rather than to the more usual expression *public* confidence. So I need to make clear what I mean by community and what I mean by confidence.

I draw a distinction between us as individual members of the *public* - walking in the street or as customers in a shop - and us, together, making up a *community*. A hugely diverse community, with different traditions, aspirations and expectations, but a community, nevertheless, bound by some common values.

My certainty of that distinction is reinforced in numerous ways, but particularly through the pleasure I have of being one of those who gives a formal welcome to new British citizens who have chosen make their homes in Hertfordshire.

Hearing their stories - where on the globe they have come from; the contribution they are making to their new country - and the value they attach to being full and active members of the Hertfordshire population underlines for me the notion not simply of *the public*, but of *the community*.

Here, I shall quote a few words from the speech that we give at the welcome ceremonies, which take place just down the road in Hatfield. We refer to the principles '*...of liberty and democracy; tolerance and free speech; fair play and civic duty*.' They are words that I happened to spot in a 2007 green paper,[2] *The Governance of Britain*.

They struck a powerful chord with me because they reflect so well the sorts of things that I feel that we believe are important as citizens of the United Kingdom, but more significantly as members of our local community. And they are all things that we can bring to life and operate ourselves.

Let me pick on just two of them - fair play - and observe that that principle lies at the heart of what my magistrate colleagues and I are committed to practising in every case that comes before us. It is a principle that we apply not simply as members of the public with a particular role, but as part of a community where such things matter a great deal to each of us.

Let me clarify now what I mean by confidence. As with the term *community*, the notion of *confidence* is also susceptible to numerous interpretations. I use it here alongside the word *trust* because in this context the two are linked. If there is trust then there is likely to be confidence. By confidence and, therefore trust, I mean that people should be confident that cases - whether they are involved with them or not - are dealt with justly and efficiently.

That they have an implicit trust that magistrates will give people a fair deal. That those who have broken the law will receive a penalty commensurate with their crime. That those who have not broken the law will leave court with their reputations unblemished. That justice has been done. But we cannot assume that simply because those of us in judicial roles know that that is precisely what does happen, that everyone else will, too.

To underline the point I mention an opinion poll published last October. It reported that only 13 per cent of the sample questioned trusted politicians to tell the truth and only 22 per cent trusted journalists to do so.[3] I offer no observations on the justification, or lack of it, for people's perceptions. I merely put it forward as evidence that confidence is a pretty visceral concept and must be fought for vigorously.

I should say also that of the same sample eighty per cent trusted judges to tell the truth; up two percentage points on 2008. The results that I have read don't include magistrates. It is tempting to allow us to hang on to the judges' coat tails, but I feel that might be an assertion too far. We must plough our own confidence furrow!

Surveys like this have their limitations. It may be no coincidence that those in occupations whom people trust to tell the truth may well be those where there is an individual relationship, like judges dealing with specific cases. Or doctors, who get the top score - 92 per cent - dealing with individual patients, unlike politicians and journalists whom we tend to observe expatiating on issues of public policy generally. Nor is there any distinction drawn in the survey between local and national politicians and journalists.

But however much - or little - store we set by trust tables and what people's thoughts about magistrates would be, if they were sought, I think it is unarguable that trust - and confidence - in those providing important services for the community are absolutely fundamental to an orderly society.

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[2] The Governance of Britain, page 57, paragraph 194, CM 7170, July 2007,

[3] Ipsos MORI *Trust in People* survey, 2,023 respondents aged 15+ across Great Britain, published October 2009.

Now, a brief recap: quite simply, my proposition is this: magistrates' courts are part of the fabric of our way of life. We were described by the Lord Chancellor recently as the *backbone of the justice system and the public face of the courts*[4]. But alongside that important status there is a substantial lack of understanding about what we do. There is, if you like, a confidence gap that can, regrettably, give respectability to false assertions that we are too lenient or that we are out of touch.

So we need to do a great deal more to explain to our communities that they have every reason to be confident in, and proud of, our system of magistrates' courts - and why. Indeed, we have an extensive programme of community engagement: going round to groups and organisations to explain what we do - and, critically, asking people about their concerns, thereby improving magistrates' awareness of issues, but without interfering with judicial independence in individual cases. My presence this evening is part of that initiative.

So let me continue with further explanation: an account of who magistrates are, what we do and how we do it.

The magistracy

First, the scale of the magisterial machine. It has been around in one form or another since 1195 when King Richard I commissioned knights to preserve the king's peace in unruly areas; a sort of early police force.

The title, justice of the peace, first appears in the Justices of the Peace Act of 1361[5] which ordained that three or four *of the most worthy* people in each county should be assigned to keep the peace and to arrest and punish offenders.

Over the centuries we have had a range of duties, many as part of local government, as well as judicial matters. Our present judicial role has evolved largely since the nineteenth century. It feels sometimes that have had more mutations over the years than even Dr Who!

Today there are about twenty nine thousand[6] magistrates, Justices of the Peace, JPs for short, from all walks of life and with a fairly even male/female split. We are local people, unpaid volunteers, sitting in about 300 local magistrates' courts, across England and Wales, which are open most days of the year. We each sit on a rota basis for at least twenty-six half-day sittings a year. In Hertfordshire there are nearly five hundred of us.

We are split into four local justice areas - we call them benches - which are based in Hertford, St Albans, Stevenage and Watford. There is court at each location, plus two more: Hatfield and Hemel Hempstead. We work nationally with about six and a half thousand qualified legal advisers and administrative staff[7] and deal with about two million cases a year. That is about ninety five per cent of all criminal cases. We handle in Hertfordshire with about fifty thousand cases a year.

Magistrates can be appointed from the age of 18 and retire at 70. Recruitment is carried out by local advisory committees which comprise magistrates and non-magistrates. The committees are chaired by each county's Lord Lieutenant - the sovereign's representative - thereby creating a link with the Crown, a point to which I shall return.

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[4] Speech by The Right Hon. Jack Straw MP, Lord Chancellor and Secretary of State for Justice, Magistrates' Association annual meeting, November 13th 2009.

[5] Justices of the Peace Act 1361 Chapter 1 34 Edw 3

[6] Figures at April 2008, Ministry of Justice, October 2009.

[7] Her Majesty's Courts Service Activity Based Costing (Magistrates' Court) consultation paper, November 30th 2009.

The aim of the recruitment process, importantly, is to ensure that the overall composition of each bench reflects the community it serves. If local people are to dispense justice to, and on behalf of, other local people, then confidence and credibility demand that bench composition mirrors, as far as is practicable, the community within which it operates. Here it Hertfordshire, it does. So vacancies are advertised widely with the aim of attracting as diverse a pool of candidates as possible from across the community.

Applicants must show through searching interviews and objective assesment that they meet six criteria: *good character; understanding and communication; social awareness; maturity and sound temperament; sound judgement;* and *commitment and reliability*.

Success leads to appointment by the Lord Chancellor, on behalf of the sovereign, with advice from the committees. The average age of magistrates nationally is around 57 and there is constant effort to recruit younger magistrates.

New appointees attend a formal swearing in ceremony which, in Hertfordshire, takes place at St Albans Crown Court, generally each May. They take two oaths or affirmations; the same ones, incidentally, that judges take.

First, there is the oath or affirmation of allegiance to the sovereign, *' I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law*. These twenty two words are a clear personal commitment of loyalty to the sovereign.

Then there is the judicial oath or affirmation. To an extent, that also explains itself. It commits the new magistrate '*...well and truly (to) serve our Sovereign Lady Queen Elizabeth the Second in the office of Justice of the Peace and (to)...do right to all manner of people after the laws and usages of the realm without fear or favour, affection or ill will.*' It expresses in just a few words the fundamentals of the responsibilities which the office of magistrate entails.

Although reference to the oaths or affirmations is popping up part way through my address this evening, both, from the instant that we take them, are central to all that we do throughout our magisterial careers. Indeed, despite their brevity, both commitments warrant further consideration if we are to appreciate fully their permanent potency.

Here, I hope that His Honour Judge Michael Baker, QC, Resident judge at St Albans Crown Court, will forgive me if I draw on observations he made in his address[8] in 2006 to my home bench at Stevenage. In my view, his analysis cannot be bettered - certainly not by me!

The first, he reminded us, is a justice's expression of loyalty to the Queen as the embodiment of the State and to her heirs and successors. It is not, he said, a loyalty to '*...a parish, or county, nor the government or even to the community*. '*...allegiance is... offered to the State and not to any part of it, however grand or important or politically powerful it may be.*'

That commitment, he continued, is reflected also in the second. In these words, said Judge Baker, '*...can be discerned the element of independence which is so important to the magistracy - independence from any particular organ of the State but pledging allegiance to the State itself.*'

Judge Baker then went on to look at the practical meaning of the other elements of the judicial commitment. Here I hope I shall keep faith with his sentiments, by adding to them a

[8] *The Oath and the Good Magistrate,* address by HHJ Michael Baker, QC, to North Hertfordshire bench quarterly meeting, April 20th 2006.

personal observation. I cannot recall how often I have been asked what being a magistrate involves, or how often in reply that I have quoted from it the phrase. '*I will do right to all manner of people*'.

Judge Baker said that the phrase '*...captures the obligation as well as it can be in what is sometimes a very complex process.*' Hear, hear seems a feeble endorsement. So let me add that I consider this commitment is the most powerful part of the entire judicial oath. I interpret it as a personal undertaking to be fair to all those who appear before my colleagues and me.

Being appropriately speedy, having a proper focus on victims and witnesses and having regard to specific problems in the community - and anything else required of us, within the law, to do the right thing. And, as Judge Baker says, it is sometimes a very complex process.

Into court

Having given those solemn undertakings and having received initial judicial training about our role, new magistrates start to sit in court alongside more experienced colleagues. I should add that training and appraisal are permanent features of every magistrate's career.

None of us is required to have any legal qualification. We are given advice on the law by qualified legal advisers, but the judicial decisions we take are ours alone. And we are thoroughly trained to do that job.

I end this section by observing simply that to my knowledge no magistrate takes either commitment lightly. Or without realising the trust that they vest in us to dispense justice on behalf of the community.

So far I have set out set out two relatively simple propositions:

- that there is widespread ignorance about how the justice system works and in the present context ignorance of how it works in magistrates' courts;

- and that, as a result the community's confidence in it needs bolstering.

My talk this evening, therefore, seeks to describe those aspects which, when known more widely, do indeed, justify confidence. I move now from background to court. I shall take this in three strands: first an outline of how things work in practice; next a little digression to set the outline in its wider context; and third, I shall bring both strands together.

Now, the first strand. With a couple of exceptions hearings are in public, as the law requires. This means, as the old saying has it, that justice can be seen to be done. The exceptions are cases heard in the youth courts, which deal with defendants under 18, and family courts, which deal with cases involving, typically, family disputes and applications by local authorities to take children into care. Even here, though, some media coverage is permitted. However, there is a wider aspect to how much 'seeing' is actually done. It is a point I shall return to.

Magistrates usually sit in tribunals of three. I should add that district judges (magistrates' courts), who are legally qualified, sit on their own. They tend to deal with particularly complex or long cases. We make independent judgements on fact and on law, with advice from our legal advisers as necessary. We deal with cases where defendants admit their wrong-doing and where they deny it. And we do so increasingly efficiently. In recent years,

the time we take from start to finish has dropped significantly: further grounds for confidence.

Where offending is denied, our independence means that we consider written and live evidence and arguments from the prosecution and the defence, which we then analyse through a careful and structured process. If we are sure - a conclusion reached *solely* on the evidence before us - that the defendant has broken the law, we find him guilty and convict him. But if we are not sure he will be found not guilty and will be acquitted.

We pass sentence on those we convict following guilty pleas or if we find them guilty, using sanctions based on the seriousness of their offending.

The sanctions range from the absolute discharge - a penalty that might be regarded as a judicial rebuke - to the power to deny individuals their liberty by sending them to prison. We have an array of greater and lesser sanctions in between. I shall explain more on this point later. And we have the power, too, to decide if those who have not been convicted of any offence should be freed on bail or remanded in custody, pending trial; as we do, where necessary, with those we convict, but who are awaiting sentence.

Moreover, we always give the reasons for our decisions in open court for anyone to hear, a point to which I shall also return. But for the moment I suggest merely that openness and independence are important further reasons why the community should have confidence in what we do.

I should add a couple of small qualifications. For all their volume, as I have said, magistrates' courts do not deal with the most serious offences, other than for the first appearance in court of defendants who face them. We do, though, take decisions - except in murder cases - on whether or not to grant bail pending their appearance at the Crown Court. Nor do our decisions in individual cases set precedents. These are the province of the higher courts.

However, these qualifications do not dilute my points about the scope and, consequently, the impact of the magistracy on the community and our contribution to the maintenance of a peaceable society for every citizen, by imposing just penalties on those who offend. In this context l should mention here briefly one other initiative which also helps to indicate the breadth of what magistrates do. Hertfordshire is a pilot area for problems-solving courts.

From March, magistrates will be taking an active role in steering offenders - who have committed low-level offences - towards organisations which can help them to deal with problems such as alcohol misuse or debt before they escalate into serious offending. This initiative will be of benefit not only to the individuals concerned, but also to the community as a whole.

I must also make clear that, although I my focus tonight is the magistrates' role, we do not work in isolation. As well as our partnership with our legal advisers we have an <u>inter</u>dependent relationship with other participants. They include the prosecution, usually the Crown Prosecution Service, Her Majesty's Courts Service, which runs the courts, the National Probation service, which advises magistrates on appropriate sentences, defence advocates who represent defendants' interests and the witness service. Each participant, and others beside, is essential.

Again, let me recap. Even in summary I would hope that the longevity, openness and independence of the magistracy would be sufficient to promote confidence. But I think I should go beyond that to consider the evolution of today's practices, because an understanding of that will contribute further to confidence.

Legal framework

That brings me to the second strand, which I tackle with some trepidation, because I am no expert in constitutional law. I am simply an amateur, who is taken with the notion that it is possible to trace the process for dealing with someone facing the most basic of allegations, such as common assault, right back to Aristotle two and a half thousand years ago. And I'd like briefly to share my interest with you!

Even if Aristotle did not conceive the notion, he was certainly one of the earliest proponents of the principle of the rule of law: that the law must govern and not, if you like, the caprice of individuals. Others in the eighteenth and nineteenth centuries developed the concept, which is now so fundamental to western thinking.

However, as we know, there is, even now, no statutory definition of the rule of law, as Lord Bingham points out in his seminal lecture on the subject in 2006[9]. But if I may paraphrase a line from the lecture he reminds us that the core of the principle is that everyone is entitled to the protection of the law and is also bound by it.

I guess that the nearest we get to a statutory description of the principles underpinning the rule of law is the Human Rights Act 1998[10]. The Act provides a set of basic human rights - Articles - that all people can expect. Each one requires what we might term a standard of 'performance' by the state. For magistrates' courts, Articles five, six and seven are of particular relevance:

- Article 5. The right to liberty and security - the right not to be arrested or detained, even for a short time, other than on a proper legal basis, such as following conviction by magistrates.

- Article 7. No punishment without law: the right not to be convicted for an act that was not an offence at the time it was committed. For example I mention a case that colleagues and I dealt with last month - the right not to be convicted of breaching a dispersal order under the Anti-social Behaviour Act 2003 if a direction under the order was not lawful at the time it was given.

It is Article 6, though, that resonates with me each time I sit. Section 1 refers to the right *to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*. This describes precisely what magistrates do.

Section 1 of Article 6 includes another fundamental obligation: the requirement for judgements to be pronounced publicly. From that and from case law have developed the practice of giving reasons in open court for virtually all our decisions. The extent of those reasons will depend, of course, on the complexity of what we have been considering.

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[9] *The Rule of Law*, lecture by The Rt. Hon Lord Bingham of Cornhill KG, Centre for Public Law, November 16th 2006.
[10] Human Rights Act 1998

Explanations for all to hear about why we have found someone guilty or not guilty; why we have imposed a particular sentence, why we have given someone bail or why we have not, and so on. And there are other advantages.

Explanations also help to clarify why those appearing for similar offences end up with different outcomes, thus avoiding seeming arbitrary. For magistrates, these explanations help to ensure clarity and precision of thought.

Each feature contributes to the culture of open justice - and to promoting confidence in what we do. Having said that, I think I must accept that Aristotle and Article six of the Human Rights Act may not be uppermost in the mind of the person facing the common assault allegation as he appears before the bench!

But - and here I am about to return from my digression - the fact that his entitlement to be dealt with fairly, according to law, applied impartially, has such an ancient provenance and is practised and expressed so clearly today is further evidence of grounds for confidence in the system.

Criminal Procedure Rules

I move now to the third strand of this section as I attempt to draw the two others together. I need to explain a couple of other features of the machinery which we operate because both bear significantly on what we do. They, too, ensure consistency of judicial approach thereby contributing to the core values of fairness and judicial independence - the obligation in the judicial oath or affirmation *to do right to all manner of people without fear or favour, affection or ill will.*

The first feature is the Criminal Procedure Rules. They arose from a review[11] published in 2001 by the Appeal Court judge, Sir Robin Auld. He was asked to look at criminal court procedures with a view to making them more efficient. He found considerable inefficiencies. So the Courts Act 2003 set up a Criminal Procedure Rule Committee[12] with the job of producing Rules so that the:

- *the criminal justice system is accessible fair and efficient and...*
- *the rules are both simple and simply expressed.*

The Committee produced its first Rules in 2005[13]. They have been amended twice a year since. In April 2010 they are being consolidated into a single set of Rules. There are just over seventy parts to the Rules, divided into sections reflecting the main stages in criminal cases.

Each Rule, which flows from powers in numerous criminal justice related acts, makes clear when it applies, how and to whom. It sets it out in a logical step by step sequence, in plain English for anyone to understand, including unrepresented defendants.

I'll mention just one or two of them because they capture, again, some of the fundamentals of what we do in court. The first part explains what is termed the overriding objective: to deal with criminal cases justly. It goes on to explain that,

[11] Review of the criminal courts of England and Wales, the Rt Hon Lord Justice Auld, October 2001
[12] Courts Act 2003, s69 et seq.
[13] Criminal Procedure Rules 2005 (SI 2005/384).

'*Dealing with cases justly includes,* among a number of provisions –

(a) acquitting the innocent and convicting the guilty
(b) dealing with the prosecution and defence fairly
(c) recognising the rights of defendants, particularly those under Article 6 of the European Convention on Human Rights...'

So it continues with straightforward and simply expressed obligations on the criminal courts. Next is a group of Rules about case management, also expressed straightforwardly. It explains how courts must manage cases actively in furtherance of the overriding objective and lists a number of steps we must take, such as '*the early identification of the real issues*'

That is a requirement, normally in preparation for a trial. It is the magistrates' job at that stage to get to the bottom of what a defendant does not accept about the prosecution's case, so that the trial will focus on those issues. That early clarification is intended to ensure that court time is not wasted and that only those witnesses who are <u>really</u> required are asked to attend.

That point leads me to mention a Rule in the *case preparation and progression* section. Since last October, a Rule has placed on the courts a specific duty to do all they can to ensure that witnesses who are needed turn up, viz. *Rule 3.8 (4) In order to prepare for the trial, the court must take every reasonable step to encourage and to facilitate the attendance of witnesses when they are needed.*

That Rule came about because figures showed that the progress of about a thousand trials a month in magistrates' courts across the country was being frustrated because prosecution witnesses were not attending.

There have been major strides in recent years to enable witnesses who are vulnerable or who are experiencing intimidation to give their evidence, without being face to face with the defendant. Where the court decides that what are known as special measures would be likely to improve the quality of witness' evidence, they can give it, for example, from behind a screen or via a video link.

These arrangements are often used where we deal with domestic violence cases. Another example, I should point out, where the system has responded to a particular need - and further grounds, therefore, for community confidence. Equally available in magistrates' courts is the special measure which enables witnesses to give their evidence via an intermediary.

The Rules governing special measures are also very clear. But, of course, in the interests of fairness any applications for them can be challenged in open court for magistrates to take an impartial decision.

So, a set of Rules setting out succinctly the procedures for courts to follow themselves, or to apply to the parties, as necessary, clearly and to ensure compete fairness - and to enable magistrates *to do right to all manner of people*. Consistency and clarity: further grounds for community confidence.

<u>Sentencing guidelines</u>

The second feature is our set of magistrates' court sentencing guidelines. They provide an objective structure, identifying the relevant factors to take into account in deciding the appropriate sentences, individually, for each case.

Originally, there was voluntary version of the guidelines. Then the Criminal Justice Act, 2003 established the Sentencing Guidelines Council[14] - the SGC. It produces sentencing guidelines for offences enabling courts to approach decision-making from a common starting point, thereby promoting sentencing consistency. The Council is responsible also for promoting an awareness of sentencing matters and public confidence.

With the enactment last November of the Coroners and Justice Act[15], the SGC and the associated Sentencing Advisory Panel are to be succeeded from April by the Sentencing Council. Its brief will be wider than the bodies it replaces. As well as producing sentencing guidelines, the new Council will also be required to assess:

- the impact of sentencing practice and non-sentencing related factors,
- the impact of policy and legislation proposals, when requested.

These additional functions provide a mechanism for anticipating the possible impact of proposed new sentences and for measuring the effect on existing or new sentences on correctional resources - such as prisons and probation.

Additionally, the new Council will be seeking to make much clearer to the public what sentences mean. Under the new Act courts '*...must...follow any sentencing guidelines...*' I shall explain in a moment how the guidelines work at present.

Again, a short recap: I have explained the background of the magistracy and the community confidence context. I have explained the commitments we make and the constitutional and legal framework within which we work, encompassing the Human Rights Act, Rules and guidelines.

Drawing those strands together, I want to turn now to how we apply all of that to individual cases. As you will know well it is Parliament's sovereign role to decide what conduct constitutes an offence and to decide what sentences and maximum penalties should be available to deal with them. Parliament has also expressed the purposes of sentencing[16] which, in summary, are *Punishment; crime reduction, including by deterrence; reform and rehabilitation; public protection and reparation.*

You will know, too, that there are <u>three</u> categories of offence:

- *Summary offences*, such as low value criminal damage, which magistrates deal with.
- *Either way* offences, such as theft or higher value criminal damage, dealt with either by magistrates, or on indictment - a formal accusation - at the Crown Court.
- *Indictable only* offences, such as murder, which can be dealt with only at the Crown Court.

You will know also that there are <u>four</u> types of sentence available to the courts:

<u>1. DISCHARGES</u>

[14] Criminal Justice Act 2003, s172
[15] Coroners and Justice Act 2009 s125
[16] Criminal Justice Act 2003 s142(1)

- *Absolute discharges* for offences where a person is guilty of an offence, but the offending is minor and no penalty is warranted. That's what I termed earlier as the judicial rebuke.

- *Conditional discharges* also for minor offending where it is not necessary to impose a penalty there and then, but where it is right to keep the prospect of one hanging over someone for a period as a reminder not to re-offend. About eight per cent of offenders receive discharges.

2. FINES are the most frequently imposed penalty in a magistrates' court, generally up to £5,000, typically for motoring offences or, perhaps, low-value theft or possession of a small amount of cannabis for personal use. Offenders who are fined also have to pay a £15 victim surcharge. The money funds victim services across the country. About seventy per cent of offenders are fined.

3. COMMUNITY SENTENCES are imposed for offences, such as more serious violence or dishonesty or disorder. There are twelve types of community order. The appropriate type is selected to match the offence and the offender as closely as possible, such as an alcohol or a drug treatment requirements, or attendance at a programme to address offending such as domestic violence.

Offenders on drug treatment requirements have to return to court regularly so that magistrate can asses their progress. The best known community sentence is Community Payback - compulsory unpaid work for the benefit of the local community. But all community orders restrict offenders' liberty and make them face up to what they have done. About fourteen per cent of offenders are given community sentences.

4. PRISON SENTENCES, generally up to six months, can be imposed for the most serious offences, such as significant violence. If magistrates decide that an offence warrants prison, but not immediately, it can be suspend the sentence.

During the suspension the offender may serve a community penalty, such as compulsory unpaid work. If they comply and do not re-offend they will not go to prison. About four per cent go to prison immediately and prison sentences for about a further two per cent are suspended.

Where offenders commit *either way* offences which the magistrates decide are too serious for six-month sentences, they can send them to a judge at the Crown Court, which has greater powers.

Magistrates can order offenders to pay compensation to their victims, generally up to £5,000. They usually also have to pay towards the prosecution costs. We also make orders, such as ASBOS or restraining orders.

In addition to being fined, motoring offenders are likely to have their licences endorsed with penalty points. Or they may be banned from driving for a period.

Sentencing decisions

That in summary, then, is the sentencing framework: the purposes of sentencing; types of offences and the sentences available. Using the sentencing guidelines, the magistrates' job is to weigh up the factors in each case from the evidence they have heard and decide on the appropriate sentence.

As I touched on earlier, the initial task is to identify the seriousness of each offence. The step by step process in making that assessment involves looking first at how culpable -

blameworthy - an offender is and then at harm that he or she has caused. The sentencing guidelines give examples of factors which make offences more or less serious.

Taking the earlier example of the person charged with common assault, features that would make him more culpable might include the involvement of others, or an element of planning. Features indicating a greater degree of harm might include causing injury or the particular vulnerability of the victim.

Features that might make a defendant less culpable could include provocation, or an impulsive action, or causing no injury. Magistrates will also bear in mind any statement made by a victim about the impact an offence has had, such as the effect of an injury, or making him/her anxious. Such statements are read out in open court in the presence of offenders, part of the process of facing them with the consequences of their decisions to offend.

Magistrates then reach a preliminary view about the sentence before looking at other aspects which may modify that decision, such as an offender's genuine remorse, or admissions to police in an interview.

Having taken into account these, any other relevant factors, such as previous convictions and an offender's means, if a fine is being contemplated, and advice from the legal adviser, magistrates then decide on the most appropriate sentence from the range indicated in the guidelines. The ranges are based on Court of Appeal judgments and on wider sentencing practice. For young offenders there is a range of different sentences which have regard also for their welfare.

If offenders plead guilty at the earliest opportunity their sentences may be reduced by up to one third. Magistrates may also pass sentences which fall outside the guidelines if the case makes that just. If so, they will also explain why in open court.

So in the example of common assault, if there was no injury, the offender would be likely to be fined. Where there was one 'aggravating' feature, such as head butting, a community order would be likely, or, for the most serious, up to six months in prison.

Because each case is different, every sentencing decision is made individually. That is why sentences for what appear to be same offences may not be the same for each case. However, the approach will always be the same and will be based on the seriousness of the offence, assessed through the guidelines with the aim of reaching a fair decision - a just sentence. And, as I have said, it will be explained in open court.

There you have it. I hope I have given you in summary an account of the philosophy, culture and practice that drive the magistrates' court system. Of course, I cannot claim that all parties will agree with the decisions taken. Plainly, they won't. But I hope that the account has conveyed the integrity of the process and, therefore, the justification for my assertion that the community has every reason to be confident in the magistracy.

Seeing justice done

Much of my talk so far has been an explanation from the inside. But, as I said earlier, justice must be seen to be done. The fact that the saying has become a cliché is because it reflects a fundamental truth. An independent judiciary - that people can watch in action for themselves - is a hallmark of our democracy.

Subject to restrictions on access to youth and family courts that I have mentioned, anyone over the age of 14 can pop along to their local court and see happening in real life the things I

have described: from the relatively mundane sentencing for a speeding offence, to the drama of a trial as a court searches for the truth through the adversarial process.

All cases are important, but few people have the time or the inclination to sit in the public gallery for hours on end on the off chance of catching the truly dramatic. Instead, they rely, as they have done for years, on their local paper to do the waiting and watching, reading the fruits of that from the comfort of their armchairs.

But things have changed. As I mentioned when I began, there is rather less fruit about. By that I mean that fewer papers send reporters to court these days. I hope that here I may be allowed, an '*It wasn't like that in my day*' moment. When I began as a cub reporter on a local paper in the nineteen seventies I was just one of an army of trainees up and down the country sent by their papers to court to learn the craft of reporting everything that happened there.

And learn you certainly did, usually at the knee of an experienced reporter who knew the system and the community inside out. Woe betide you if you misspelt a magistrate's name, or failed to write a fair and accurate account of the case - consistent with the paper's house style, down to the last comma.

I was on the Harrogate Advertiser which, for decades, had reported each case that came up. It meant that week in week out, Harrogate citizens could read who had appeared before the bench, why and what happened to them. It was the essence of open justice and, with hindsight, an important contribution to community confidence, although such terms were not used in those days.

I do not suggest that that practice is extinct, far from it. Indeed, the Harrogate Advertiser still has a court round up section and local papers in Hertfordshire also carry extensive reports. Long may they do so. But there is little argument that the practice has declined. I think our communities are the poorer for it.

However, there are some encouraging signs that the consequences of this change are recognised. Recent reports, such as the Casey Review[17] *Engaging Communities in Criminal Justice*[18] and *Redefining Justice*[19], by Victims' Champion, Sara Payne, and a short report from the Office of Criminal Justice Reform[20] recognise the importance of better information for the public about the system and its outcomes.

In December, the government issued guidance[21] for agencies themselves, such as the police and the courts service, on publishing results of criminal cases, including via the internet. Copies of all court results and lists of future hearings are now available free of charge to the media. Local authorities publish details of cases they are involved with, such as fly-tipping. The Hertfordshire police website now carries the results of some Crown Court cases.

I sincerely hope that people will surf the net for results with the same enthusiasm that they devoured the Harrogate Advertiser court pages all those years ago. And I hope, too, that this new attention will put right a myth, so loved of newspaper headline writers, to make it clear that offenders who receive sentences in the community do *not* walk free from court. Their liberty is curtailed and they are held to account for their wrong-doing.

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[17] *Engaging Communities in Fighting Crime* (the Casey Review) Cabinet Office, June 2008
[18] *Engaging Communities in Criminal Justice,* CM 7583, April 2009
[19] *Redefining Justice,* Sara Payne, MBE, 102 Petty France, London SW1H 9AU, ref 297995, November 2009
[20] *Publicising Criminal Convictions ,* Office of Criminal Justice Reform, December 2009
[21] *Publicising Sentencing Outcomes,* Office for Criminal Justice Reform, December 2009

I end this point by reference to an apposite quote in a new edition of guidance[22] to the media about court reporting. In describing the principle of open justice, it says, '*...The public has the right to know what takes place in the criminal courts and the media in court act as the eyes and ears of the public enabling it to follow court proceedings and to be better informed about criminal justice issues...*'

No argument with that. But making it happen needs renewed will by the media itself as well as by the machinery of the state. It is essential that people feel that justice is being done and not that they are being done by justice.

I hope I have conveyed something of what we do as magistrates; something of how we do it; and as a result, something about our contribution to our justice system so that you, like me, recognise that that elusive notion - community confidence - is not simply about the outcome of individual cases.

It also about the entire system which enables those outcomes to be decided fairly and openly; and that when it is understood as a whole it is something in which the community has very good reason to be proud – and confident.

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[22] *Reporting Restrictions in the Criminal Courts*, a joint publication by the Judicial Studies Board, the Newspaper Society, the Society of Editors and Times Newspapers Ltd, October 2009