

MAGISTRACY MATTERS

CJM
CRIMINAL JUSTICE MATTERS

STRENGTHS AND WEAKNESSES OF THE MAGISTRACY

All life is represented in the magistracy. There are men and women from all walks of life and all shades of opinion. Mostly they have given public service and know about the unfortunates of the world: councillors who have been into poor homes; district nurses who have been into deprived families; Samaritans who know about depression. Ordinary folk endowed with common sense, a sense of compassion and a sense of humour. Laymen, not lawyers. Spending most of their time about their daily business, only spending perhaps one day a week in court. They must stand down if they know the accused. They know nothing of any criminal record unless the accused is convicted. They sit in public. They are always subject to appeal to a judge.

Weaknesses

The magistracy exhibits certain undeniable weaknesses that should not be overlooked. The institution is deferential, hierarchical and conventional. Magistrates are ignorant of the law. They may be 'controlled' by a dominating clerk, perhaps a penal minded clerk. Training, too often monopolised by the legal clerks, is not very extensive or thorough and can be too legal and insufficiently psychological. They may be nervous, diffident, poor public speakers. They may lack concentration and the power of rational analysis. Too often decision is given on hunch, not on evidence. Some magistrates are prejudiced, bigoted, quite injudicious, yet they carry on until they are 70.

Reforms

The magistracy needs improvement. Better selection. Better training, especially for chairmanship and a more sensitive awareness of the relevant law and legal language. Videos could more vividly show how

not to be a chairman. Technology could be harnessed much more effectively in training and in assisting in duties — improving the frequently poor acoustics in court rooms, for example. The intolerable delays over the Driver and Licence Vehicle centre at Swansea could be eliminated at a stroke with the direct, computerised and instant access to records by the court clerk, just like the police officer on duty.

One of the greatest weaknesses of the magistracy is, probably, the degree of ignorance of penal institutions; they should have the power to send an offender direct to a penal institution known to be disciplined and effective. At present the only 'help' given is the social inquiry report, invariably recommending against custody, whatever the offence or circumstances and needs of the offender.

Something needs to be done to remove the bad, the injudicious magistrate. All magistrates should be inspected by an inspectorate and subject to (say) five year terms, renewable — but not automatically so.

Institutionally perhaps, the most significant reform that could be made would be the appointment of many more provincial stipendiary magistrates, to preside over a tribunal of legal chairman and two lay magistrates. Such a tribunal could be given much greater jurisdiction, thus relieving greatly the crown court and reducing delays in the criminal justice system.

Jennifer Crisp JP and Alec Samuels JP

A PEOPLE'S COURT?

Criticised by almost everyone, lay magistrates (or Justices of the Peace: the terms are interchangeable) continue to deal with over 95 per cent of the offences committed in this country. Great changes have been made since 1361 in how magistrates try cases, in the way in which they are selected and in the organisation of their courts. Originally, JPs were administrative as well as judicial; little

remains of that apart from the licensing function. Over the years they have administered the Poor Law, performed marriages and fixed wages and prices. One power remaining from 1361 is binding over unruly persons 'to be of good behaviour'.

For centuries, those appointed to the bench were people of great substance whose social and economic power was so strong that their authority went unchallenged. Despite this, the social distribution of JPs widened gradually. The Commonwealth and the Industrial Revolution brought extensive changes; in 1832 a quarter of magistrates were in holy orders.

The changes this century have included: widening those sections of the community from which the magistracy is drawn (the first woman was appointed in 1920); introducing mandatory training in 1966; founding the Magistrates' Association in 1920; introducing a retiring age; confirming in 1968 the Clerk as legal adviser to the Justices and introducing a career structure and training for Clerks.

Trial Training

Today there are almost 28,000 magistrates, of whom nearly 12,000 are women and about 460 are black. They sit on benches of varying sizes; ranging from 12 to 350 people. Great efforts are made to make magistrates truly representative of the communities over which they have jurisdiction. Time commitment in court involves about one day per fortnight, although service on the juvenile panel and in other specialist courts (domestic and licensing) takes more time. All undertake an initial course of training; including lectures on practice and procedure, sentencing exercises, visits to various institutions and court observances. Afterwards they must attend at least the statutory minimum number of hours in-service training for the rest of their years on the bench (magistrates retire at 70). JPs are also required to undertake training for Chairmanship and for service in any of the specialist courts. Despite expenses being paid (including travel, loss of earnings and childminding), it is not easy to find people willing to undertake this work. Many find that

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although their employer may give time off work, promotional prospects are damaged. In addition to the lay magistrate, there are 63 stipendiary (or professional) magistrates 48 of whom sit in London.

The job of finding volunteers to become lay magistrates is given to Advisory Committees that are set up in each area to advise the Lord Chancellor on suitable candidates. Until recently the names of people serving on these committees were kept secret. In June 1988 the Lord Chancellor announced that the committees could go public and that by 1992 they would be obliged to do so. All Advisory Committees in the Duchy of Lancaster went public on 1 January 1989. The name and address

of the of the Secretary can be obtained from any Justices' Clerk. Any person may put forward a name (including his or her own) to the Committee, but nominations from recognised organisations carry more weight usually, as JPs should be people who are known and have worked (voluntarily or otherwise) in the area.

Everyone has prejudices, but because magistrates never sit alone their group decision has the merit of avoiding individual prejudice. Although they are trained, they are not competent to decide intricate points of law and evidence, so they have the help and advice of their legally trained Clerk.

The Magistrates' Association

ensures consistency in policy and sentencing and plays a large part in training. Locally and nationally, it provides a forum in which magistrates can discuss matters of common interest and have some input and influence on current legislation affecting magisterial law and practise.

Some criticisms have rightly been aimed at JPs from time to time; magistrates do not claim to be perfect. Nevertheless, only a small number of appeals from their decisions are successful. The fact that the system has evolved over the centuries means that it now has the capacity, the potential and now the structure to become a true 'People's Court'.

Susan Hartshorne JP

NEWS ROUNDUP

Car Trouble

According to John Patten, Home Office Minister, the overall crime rate would have gone down substantially in 1987 but for a 14 per cent rise in thefts from motor vehicles. He claimed that this is perhaps the most preventable crime, but that one in five people do not lock their car doors and windows. (Are you one of them?). Belatedly, the motor industry is making security an important part of design.

Penal Problems

The publication of 'Criminal Statistics for 1987' (HMSO) shows that the average length of prison sentences for serious offences, including rape and crimes involving firearms, has increased substantially over the past three years. A further cause for concern, according to the Home Office, is regional variations in the use and length of custodial sentences.

Detention Centres and Youth Custody Centres have been replaced by a single sentence of detention in a Young Offender Institution. The change, brought about by the Criminal Justice Act 1988, is intended to allow for more flexible allocation

procedures so that young offenders can be placed nearer to their home areas and make it easier for family, probation officers and social workers to visit. But the new sentence has been called 'Old wine in new bottles'.

Law and Order

There were 161 motions on law and order at the Conservative Party Conference in Brighton last year (well up on the 103 from the year before) and more than twice as many as on any other subject on the agenda. Motions called for included a referendum on capital punishment, stiffer sentencing, introduction of a system of national identity cards and tougher action against football hooligans. Only eight of the motions called for measures to reduce the prison population through non-custodial sentences, including one that linked the demand to a call for the return to the death penalty.

Victims

The Magistrates' Association believes that victims of violent crimes should be paid compensation from a central fund, the amount of compensation

then being reimbursed by offenders. This scheme would mean that victims receive compensation immediately rather than being forced to wait until the offender was able to pay.

Women Judges

The Lord Chancellor, Lord Mackay, has said that more women ought to be appointed as judges within the next five to ten years. Women between the ages of 35 and 50 make up only ten per cent of practising barristers and five per cent of solicitors applying for judicial office. At present four per cent of judges are women.

No Justice for the JP

Lord Mackay, who is responsible for the appointment of lay magistrates in England and Wales, has appealed to employers to allow their staff sufficient time off to serve as magistrates. He said that there had been disturbing indications that magistrates have been made redundant, lost promotion or have had to endure taunts from colleagues about having time off work

Compiled by Alison Liebling.