responsibility for himself. The truly depressing figures as to reoffending and reconviction rates of those released from prison underline the need for this. The Prison Service cannot control the behaviour of an offender once the offender has left prison. The Prison Service can and must do what is within its power to ensure the necessary support is in place in the community when the prisoner is released. There needs to be more effective links between the Prison Service and the Probation Service and the other agencies who have to take the primary responsibility as to what happens to released prisoners than they are at present. Again, this important role of the Prison Service would be facilitated by the closer links which a community prison could foster with the community to which the prisoner is to return.

Society needs punishments which will reduce offending. Most objective onlookers recognise the limits of what can be achieved by deterrence and retribution alone. We have to focus more than we have in the past on rehabilitation. Punishment has not only to fit the crime but also must meet the needs of Society. Given the right resources, the voluntary sector could achieve wonders by the provision of education and training. This is what is likely to increase responsibility and with increased responsibility will come a reduction in reoffending. Human rights is all about human dignity. Prisoners are entitled to retain their dignity. To do so they must be treated with decency and the courts and the other agencies involved in the criminal justice system must help the Prison Service in its efforts to ensure that the Prison Service meets its own Statement of Purpose.

Thank you for listening to me so courteously. I have a suspicion which I hope proves justified that I may have been indeed fortunate in being invited to attend the Prison Service conference which will mark a turning point in the Prison Service's history. If the Home Secretary is able to change the prison situation in the way he outlined yesterday that this could mark a new beginning. The cancer from which the Prison Service has been increasingly suffering, overcrowding, could be conquered. If this were to happen with the advantages of modern technology the contribution of the Prison Service to the community could be that which I am sure all its members would like to see. The Prison Service could be a constructive force within society playing its full part in a just an effective criminal justice system supporting and supported by the courts and the Probation Service. This is a truly 'sublime' prospect of which the Mikado would be proud.

# *Prison and the Magistrates' Court*

## *A Case for the Defence*

**Dr Eric Cullen**, *JP and Consultant Forensic Psychologist.*

**I have been invited to record my experiences as a freshly minted magistrate given that I had worked in UK prisons, public and private, for 28 years. My brief is how the latter informs the former. A topical starting point is the current vexatious issue of whether magistrates' use of custody is contributing to the current record prison population.**

Prison overcrowding should never be a reason for changing the policies of the courts, never influence judges toward greater leniency. If the opposite obtained and there were significant drops in prison population, should we be more punitive? All Courts, Crown and Magistrates, should be able to adjudicate free of political, or transient penal, pressures. We are trained, and provided with Structured Guidelines for considering cases and sentencing, in order to best use our judgement independent of bias or wider circumstance. Yet for at least the past century, overcrowding has often exerted undue pressures, from the 1907 Probation of Offenders Act to the Criminal Justice Act of 1997. 'Alternatives to imprisonment' continues to run parallel as the preferred option when an inexorably growing prison population exerts pressures: the Great British Public on the one hand exhorting courts to ever-increasing prison sentences while on the other, the current demands from certain quarters of the police and the 'decarceration alliance' to remove custody from magistrates' options altogether! In between lie variations on the rise and role of alternatives to custody.

### Magistrates' views of prison

Magistrates, at least those in my court, seem to have a generally consistent view of prison and it is almost unreservedly bad. They see prison as the last,

and least positive, option: something to use when all else fails. It is the resort to which we turn when the drug addict or habitual young offender has failed/abused every relevant community-based option. On a procedural point, this may seem appropriate as the Sentencing Guidelines clearly advise magistrates to use custody only when all other options are inappropriate and when the offence 'is so serious that only custody is appropriate'. My colleagues on the bench view prison as an undifferentiated negative environment. That is, they rarely indicate that there are good and bad prisons, or that some prisons offer treatment programmes for offenders with drug, drink, or behavioural problems which might be addressed in the relatively short terms of imprisonment available to them.

Of course to a large extent, they are right; these courses are predominantly for those serving longer sentences. The point is, magistrates in my experience are already reluctant to use custody. It is the behaviour of the convicted offenders which determines the use either because they offend in such severity or frequency to oblige this use or because, having been given non-custodial options, they breach them, failing to complete community rehabilitation or punishment as if to dare the courts to imprison them. This form of contempt for the court's ruling serves to exacerbate the matter and, I suspect, significantly diminish any mitigation the magistrates might have felt towards the defendant.

I sometimes wonder if we have not gone too far in our orientation towards concern for offender rehabilitation at the expense of reparation and punishment. When someone addicted to drugs habitually funds this by theft and burglary, the normal response of the court is to request a report from Probation outlining sentence options where the presumption is to address the addiction rather than punish the offending. While this is understandably appropriate in terms of addressing the apparent cause, it does little to address the *effect* — the costs and damage to the public who must foot the bill.

While their view of prisons may be naive in that it is uninformed, magistrates themselves are not naive or gullible, neither are they liberal or reactionary. In my experience, taken as a group, they possess a refreshingly impressive combination of experience, intellect and judgement. There is also a populist criticism that magistrates are unrepresentative of the public. This too is at least a pinkish herring, as magistrates are selected from those who apply and the people who apply tend to be older, middle-class and white. What they also have in common are a desire to do voluntary, unpaid public service, and the time to do it. I wonder at the logic that says a magistracy that was more representative of the public would be an improvement because they could identify more readily with the defendants. Surely the defendants are, taken as a group, not a model of behaviour we wish to reflect. A surgeon need not have suffered from the condition to know how to operate.

## Magistrates and custodial options — some facts

The longest custodial sentence magistrates can impose is six months or 12 months for two separate offences. Sentencing guidelines indicate that custody would certainly be considered for crimes like affray, assault occasioning actual bodily harm or assault on a policeman, burglary, possession or supply of a Class A drug, indecent assault, possession of a bladed or offensive weapon, wounding and violent disorder. These are 'either way' cases: cases which may be dealt with in either the Magistrates' or the Crown Court. Even if magistrates deal with such cases, magistrates may refer them to the Crown Court if they think their powers of sentencing are insufficient.

In my experience some of the most difficult considerations for magistrates concern remanding in custody. The presumption is that there is a general right to bail. Exceptions to this are when a person is charged with murder or attempted murder, manslaughter, and rape or attempted rape (although even then bail may be granted in 'exceptional circumstances'). Bail may be refused if the court is satisfied there are substantial grounds to believe the defendant would do one or more of the following:

- fail to surrender to custody;
- commit an offence while on bail;
- interfere with witnesses; and/or
- obstruct justice in some other way.

The magistrates may also refuse bail where the offence is serious and the defendant was on bail at the time of the offence, or in circumstances where the defendant should be kept in custody for his/her own protection. The courts must give reasons in public for remanding someone into custody and they have the right to appeal against the decision. The right to bail does not apply to defendants whom magistrates commit to the Crown Court for sentence or breech of their orders, on appeal or when being proceeded against as a fugitive offender. The difficulty for magistrates is in establishing the degree of confidence necessary to justify withholding bail for people as yet innocent in the eyes of the law but where one or more of these conditions would seem probable, that is, the substantial grounds argument.

## A day in the life

The experience of going into court as a magistrate carries with it an appreciation of a venerable tradition. Although the days when the magistrates were the landed gentry overseeing the judicial as well as moral vicissitudes of the local populace are long gone, being a magistrate does carry an element of social status and responsibility. Representing the Crown, visually symbolised by the royal coat of arms over the bench,

magistrates always sit in threes. The central magistrate is the Chair, more experienced and specially trained, with a 'winger' either side. Winger magistrates are mute that is, we do not speak in public court but refer matters to the Chair, who will in turn ask our questions for us. New magistrates must sit for at least four years (in Buckinghamshire at least) before applying to be trained as a Chairman.

A typical day begins about 9.30 am when we arrive to find the day's Listing of cases printed out for us. Occasionally, police officers arrive requesting authorisation for a search warrant, often before we begin our first cases at 10 am. The common listing is adult court, but there are specialist courts as well for Family, Youth and Fines matters. The daily business of the court is run by the Clerk, a qualified solicitor or barrister. The lawyers for the defence and prosecution play other leading roles.

The defendants have, by and large, a non-speaking almost peripheral role. Most, if new to the experience, appear nervous even daunted. There is a large minority however all too familiar with the process. It saddens me to hear so many variations on the apparent theme of offence mitigation but which is all too often a variety of disingenuous attempts to escape punishment by trying to provoke sympathy. Too often defendants' attitudes can best be characterised as defiant, dishonest, desultory or detached. A mercifully small but disproportionately troublesome minority seem to understand the procedures as well as the magistrates and seem actively determined to delay and undermine the process as long as possible. Apart from a directive to consider compensation first where appropriate, the victims can sometime seem the forgotten, and absent, part of the equation.

### Passing Judgement

The reality is that the Criminal Justice System will continue to expand as will the use and range of sentences.

When criminals fail prison, it only affects the public after they are released. When they fail community-based sentences like Community Punishment Orders, Fines and Curfews, they are able also to continue offending. Although it may sound cynical, the past two years in court have confirmed my prison experience of just how dishonest, manipulative and egocentric many repeat offenders can be. Human nature is not at its best in the dock. We modify our legal system to accommodate a more self-centred society at our risk. The quixotic nature of public opinion, especially as 'represented' in popular press, offers a dubious arbiter for a magisterial system which has served us so well for so long. It is a system worthy of our confidence and respect.

# *The Work of the Sentencing Advisory Panel*

*Professor Martin Wasik, Chairman of the Sentencing Advisory Panel.*

### Introduction

**As many readers of this Journal will know, the role of the Sentencing Advisory Panel is to assist and advise the Court of Appeal in producing sentencing guidelines for the criminal courts. Established under statute, the Panel is independent of the Court, and independent of government. Although our remit is confined to sentencing, Panel members are drawn from across the criminal justice system and beyond. Members are appointed to the Panel on a part-time basis, and are a mix of sentencers, sentence providers, academics, and people from outside the criminal justice system. One of our founder members was Sir Richard Tilt, former Director General of the Prison Service.**

The Panel proceeds on the basis of discussion and wide consultation. Our work is therefore an excellent example of different perspectives on criminal justice being brought together, to achieve understanding and consensus in a very important area of policy. We very much welcome the views of both organisations and individuals from within the Prison Service.

### Our work so far ...

The Sentencing Advisory Panel began work in the summer of 1999. I was pleased to address delegates at the Annual Conference of the Prison Service in Harrogate in January 2000. At that early stage the Panel had just submitted its first piece of advice to the Court of Appeal, on sentencing for environmental offences, and we were in the process of consulting on offensive weapons sentencing. Much has happened since then, and a great deal has been achieved. The Panel has now produced six sets of advice for the Court of Appeal, on sentencing for: