

**CENTRE FOR CRIMINAL
JUSTICE STUDIES
NINTH ANNUAL REPORT
1996-97**

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INTRODUCTION

The Centre for Criminal Justice Studies has been established since 1987. Its object, as set out in its Constitution (see *Appendix 1*), is the pursuit of research and study into all

aspects of criminal justice systems. This remit, as undertaken by the Executive Committee (see [Appendix 2](#)), has in practice included the encouragement of postgraduate students and research projects, and the arrangement of seminars and conferences. The Centre's members comprise both lawyers and non-lawyers, and its work is generously assisted by an Advisory Committee, which consists of academics and practitioners in relevant fields of experience (see [Appendix 2](#)).

This Annual Report provides a résumé of some of the activities of the Centre from 1 September 1996 to 31 August 1997. Our activities are, of course, a reflection of the personnel of the Centre, and so I shall record at the outset some of the important changes in the membership of the full-time academic staff of the Centre which have taken place during the review period. As indicated in my last report, two new full-time academic staff (Ben Fitzpatrick and Dr. Jo Goodey) have now completed their first year in post and, as reflected in the contents of this report, have played a full role in the life of the Centre. In addition, Dr Jill Enterkin recently joined the Centre as a research officer to work upon a Nuffield Foundation Funded project on "Victim Contact Work and the Probation Service". There has also been significant advancement within the established staff, with Adam Crawford being promoted to senior lecturer. At the same time, Ian Brownlee, who was Deputy Director from 1990 to 1994 has joined Sheffield Hallam University. I should like to record my gratitude for Ian's contribution to the development of the Centre.

The activities of the Centre have continued to expand every year, and an important innovation during this year has been the development of an undergraduate teaching programme. Added to pre-existing modules in "Criminology" and "Policing", we have two new courses "Crime and Criminal Justice" and "Victims, Crime Prevention and the Media". These will be launched fully in session 1997-98, and we hope to attract a wide variety of undergraduates from within the University as well as part-time, occasional students. Our more established Criminal Justice postgraduate taught course programmes has been further strengthened with a new module in "Victimology" in 1996-97 and a further module in "Gender, Race and Crime" for 1997-98. The quality of our MA scheme has now been validated and confirmed by ESRC recognition and the award of a scholarship from October 1997. As well as taught schemes, we are striving in difficult financial circumstances to maintain our substantial complement of research student numbers.

As ever, the core role for staff within the Centre has been research. This is reflected in a diverse and extensive range of scholarly published output, and every member of the Centre has been engaged in funded project work. I am again pleased to report that our efforts have been reflected in the 4 rating of the Faculty of Law in the 1996 Research Assessment Exercise.

The research activities of the Centre are further reflected in our very full seminar programmes (see [Appendix 3](#)) and in the production of Working Papers (see [Appendix 4](#)), including the important Frank Dawtry Lecture on imprisonment by Lord Justice Kennedy which has been published in this volume rather than next year in view of its currency). One contributor this coming year will be the first Visiting Scholar under our new scheme (see [Appendix 5](#)). Dr George Pavlich from the University of Auckland, New Zealand, will be arriving in November 1997 and will be engaged in a comparative research project, as well as giving a presentation to members of the

Centre of his work. We continue to encourage a wider community to participate in our activities by inviting applications from visiting scholars. Details of the visiting scholar scheme and application forms are available from the Centre's redesigned world wide web pages, along with further details on other matters connected with the Centre and copies of previous annual reports. You can locate us at:

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THE WORK OF THE CENTRE

A Research projects

The following substantial research projects are currently in progress:

Chief Constables

David Wall was funded by the Nuffield Foundation to conduct further analysis of chief constables which he began in 1986 and concluded in 1997. This is the final stage of a long term survey of every appointment of chief constable in England and Wales since 1835 which will be incorporated into a social history of the chief constables which will be published by Dartmouth in 1998.

Commercial Victims and Political Violence

Following the IRA bombings of the City of London in 1992 and 1993, action was taken by the Government to stabilise the insurance market so as to ensure that cover remained available for commercial properties. Clive Walker received a grant from the Airey Neave Trust to research into the working of the arrangements. A full-time research student has been appointed in connection with this project Martina McGuinness. Martina has been mainly researching the reinsurance aspects of the project. Clive Walker has concentrated on the security aspects. The final report of this research has now been submitted to the complete satisfaction of the funding body and we then wish to explore the possibility of a monograph on the subject once the literature research is wholly finished by the end of 1997.

Committals for Trial - An Evaluation in the Magistrates' Courts

The Home Office funded project evaluating the impact of the changes to the system for committals for trial continued. With Clare Furniss we completed the first stage of the fieldwork by visiting a number of Crown Court Centres across the country to gather data relating to those cases previously identified in our survey of Magistrates' courts. This data was collated and analyses during the months October to December 1996 and an interim report was prepared, based on this analysis. The report was submitted to the Home Office RSD in December 1996. An article, "Committed to Committals" co-authored by Ian Brownlee and Clare Furniss based on the early parts of this research was published by the Criminal Law Review in January 1997 ([1997] *Crim LR* 3-16). In view of the abandonment of the original radical proposals for transfers for trials, no further fieldwork is now anticipated.

Comparative Crime Prevention and Community Safety

Adam Crawford is currently researching the contemporary state of crime prevention and community safety in a number of countries. To this end he spent part of 1996/7 in New Zealand and France, the former at the invitation of the New Zealand Ministry of Justice, for whom he produced a report assessing their Safer Community Councils and Crime Prevention Strategy. The research seeks to consider the interconnection between crime prevention strategies and differences in culture and develops upon issues discussed in a book to be published in 1998 as part of the Longman's Criminology series, entitled *Crime Prevention and Community Safety: Politics, Policies and Practices* (Addison, Wesley Longman).

Family Contact Centres and Parents in Conflict

Clare Furniss is engaged in a three year project, funded by the Nuffield Foundation, which aims to evaluate the services provided by different types of family contact centres in England, Wales and Scotland. There are now well over 200 contact centres in this country, run by different organisations in different ways. The main aim of contact centres is to "provide a place where parents can have contact with their parent(s) in a safe, neutral place where no other viable option exists" (NACCC, 1994). In brief, the objectives of this project are: (a) to assess the parents' views of the facilities provided at different types of centre; (b) to examine the reasons for the families' referral to the centre and to reflect upon whether the contact centre's services can help to address or minimise problems lying behind the referral, and which required the attention of other support services; (c) to monitor the changes in contact arrangements following referral to the centre, both in the short term and on a longer term basis, and to ask parents to reflect upon whether the services provided by the centre had any effect on these arrangements; (d) to examine the referral process, looking at referral guidelines, screening policies, and family preparation; (e) to explore resource implications of referral of families to a contact centre and to highlight improvements which could be made in the provision of this service; and (f) to compare the provision of services in England with that in other countries. The project's methodology incorporates both quantitative and qualitative methods. As well as a literature survey, there will also be a postal / telephone data collection to look briefly at the sorts of other services, if any, provided for families with similar problems to those who commonly attend a contact centre.

Female Prison Officers in Men's Prisons

Dr. Jill Enterkin has been working on developing her Ph.D. thesis for publication. The thesis examines the English Prison Service's cross-posting policy that has integrated the previously sex-segregated work of prison officers and whose implementation and progress have remained largely unexamined by researchers. The research consisted of three major components: an analysis of the legal basis of equal opportunities in England and the means by which this has been translated into operational policies by senior Prison Service management; a review of the literature concerning women in previously male-dominated occupations; and an empirical study of English cross-postings in men's prisons. The empirical study conducted in seven contrasting prisons focused on male and female prison officers' motivations and perceptions of themselves and their workplace, relationships between male and female officers, and between inmates and officers, and how such matters combine with operational practices to structure the performance of an integrated officer staff. Analysis revealed that the inappropriately vague direction of the national cross-posting policy, as established in 1988, has resulted in the local and informal implementation of cross-postings, with variation between different institutions. In turn, integration has been strongly influenced by the officer subculture and stereotypes of women, in ways which often contradict the intent of the law. Attempts by the Prison Service to implement and monitor equal opportunities have thus been largely ineffective. Jill is currently writing two articles for submission for publication to a British and an America academic journal.

Police National Legal Database Consortium

A team from the West Yorkshire Police has established a wide-ranging database of legal information for police officers. The Centre for Criminal Justice Studies acts as auditors of the data, and Clive Walker is the principal grant holder, the co-ordinator and the primary researcher. The success of our work has encouraged interest from other police forces, and a similar agreement to provide advice was made in late 1995 with the British Transport Police. Income of over £5000 has been generated. A number of academic papers have arisen from the research for the police, for example, "Internal cross-border policing" (1997) 56 *Cambridge Law Journal* 114-146.

Quality Performance Indicators for Legal Aid Delivery: Client and Practitioner Perceptions of Need

David Wall in collaboration with Hilary Sommerlad and Adrian Wood of Leeds Metropolitan University is conducting research into client and practitioner perceptions of need in relation to quality performance indicators for legal aid delivery. This project is being funded by the Law Society of England and Wales and seeks to compare differences and similarities between practitioner and client perceptions of quality legal services.

Reporting of Criminal Proceedings in Scotland and the Contempt of Court Act 1981

This project was funded by the Leverhulme Trust. The study was directed by Professor Walker with the assistance of a full-time research officer. The aim was to

investigate the frequency and nature of orders under sections 4 and 11 of the Contempt of Court Act 1981 which in some way restrict or postpone the reporting of Crown Court proceedings. A survey of 8 courts was undertaken. A report was prepared, and a full version of the findings has been published. Further fieldwork research is now being carried out in Scotland (where the courts have agreed to keep a record of relevant cases). More recent work has involved study of the new audio-visual media (satellite and internet) and their possible impact on court reporting, and some papers have been published. Wider publication in the form of a book together with Ian Cram has been agreed with Oxford University Press.

The Impact of IT upon the Legal Profession

Since 1995 David Wall and Jennifer Johnstone have been conducting empirical research into the impact of information technology upon the legal profession and the provision of legal services. The research was initially funded by the University of Leeds, Academic Development Fund. The findings of the project have been published in a number of journals including the *International Journal of the Sociology of Law* and the *International Review of Law Computers and Technology*.

The Impact of Race and Racism on Boys' Fear of Crime

Dr. Goodey has successfully completed her Nuffield funded project on "The Impact of Race and Racism on Boys' Fear of Crime". A report was submitted to Nuffield in April 1997. A published paper is forthcoming on the theoretical and methodological problems of doing research in this area. Three other papers, which stem from the Nuffield project, are currently under review with academic journals; these papers were originally presented at the British Criminology Conference in Belfast, the International Symposium on Victimology in Amsterdam and the Law and Masculinities conference in Bristol during the summer of 1997.

The Introduction of CCTV Cameras into Several Areas of Leeds

Nick Taylor is conducting a project considering the introduction of CCTV cameras into public spaces in certain locations in the Leeds area. As part of a postgraduate degree scheme at the University of Hull, Nick Taylor is carrying out research into the installation of Closed Circuit Television Cameras in the Leeds communities of Chapeltown and Harehills. The research will consider the design and operation of these schemes and the question of why such areas have been chosen as sites for CCTV.

The Role and Appointment of Stipendiary Magistrates'

A working party (Chaired by Roger Venne) set up by the Lord Chancellor's Department to consider the relationship between lay and stipendiary magistrates and the number of appointments of stipendiary magistrates outside of the Metropolitan area, invited the Centre for Criminal Justice Studies to research into the role and appointment of stipendiary magistrates. The research was undertaken by Peter Seago, Clive Walker and David Wall at both sample courts and with all permanent, visiting and acting stipendiaries. The report to the Lord Chancellor's Department has now been published as Seago, P., Walker, C.P., and Wall, D.S., *The Role and Appointment*

of Stipendiary Magistrates, (1996). This research is referred to in *The role of the Stipendiary Magistracy: A report prepared by a working party established by the Lord Chancellor*, February 1996.. The full report contains an historical perspective of the development of the magistrates' courts, an analysis of the reasons why stipendiaries have been appointed in the provinces, an analysis of the work they do in court and their relationship with the lay magistrates. It concludes with a discussion of issues which will need to be considered in the future. The LCD have expressed their full satisfaction with our report. For the longer term we have two aims: to publish this very original and extensive research; to extend the research to comparable jurisdictions, especially Northern Ireland and Canada. Clive Walker has presented two papers on this research, one at a very prestigious conference in British Columbia.

Urban Crime Fund

Clive Walker acted as principal grant holder in this project (worth £115,000) which also involved colleagues from the Centre for Criminal Justice Studies, the Department of Geography at Leeds University, the Management Centre at Bradford University and the Institute of Environmental and Policy Analysis at Huddersfield University, evaluated for the West Yorkshire Police Authority the 43 projects which were set up pursuant to the Urban Crime Fund in this area. The study commenced in August 1992, and a full-time research officer, Christina Hart, was appointed. Clive Walker acted as the chair of the team and as chief negotiator with the police. Clive Walker was also the direct supervisor of the full-time research officer. The project team reported in January 1994, when the 13 volumes of findings were delivered to the police. The team is now moving towards the wider dissemination of its findings - Ian Brownlee and Clive Walker delivered a paper at the British Criminology Conference in July 1995, "Towards Community Policing". We have now written a substantial paper which has been accepted for publication in *Policing and Society*.

UK Law Online: The UK Legal System on the Internet

This project has been recently funded by the Hamlyn Trust (£12000). It was conceived by me, but the work is to be undertaken by myself and an assistant (Yaman Akdeniz, who is a PhD student). The main object is the raising of public awareness, appreciation and understanding of the English, Scots and Northern Ireland Legal Systems ("UK Legal System") by use of the medium of the Internet. The project will involve the creation of a world wide web page, initially at the Leeds Law Faculty, and this web site will promote the UK Legal System on the Internet. We will try to educate the public as to the nature and availability of their legal system by providing complex legal information in a comprehensible way. The users will have direct access to our team by electronic mail, but the project is not intended for individual legal advice. Rather we intend to offer generalised education and the improvement of knowledge on important legal issues.

Victims of Crime, the Probation Service and the Impact of Victim Enquiry Reports

Adam Crawford is managing a research project funded by the Nuffield Foundation, Dr Jill Enterkin is employed as the Research Officer. The research team also includes Peter Johnston of West Yorkshire Probation Service and Jean Wynne of Leeds Victim/Offender Unit. The research began on 1 June 1997 and will run for 18 months,

until 31 December 1998. The research is seeking to assess the impact of the requirements under the Victim's Charter and Probation Circular 61/95 for the Probation service to contact victims of life sentenced and serious or violent offenders to keep them informed during the custodial process and to get information from victims as to any anxieties that they may have about the offender's release. In satisfying this new requirement a Victim Contact work is conducted and an enquiry report is compiled. The research will involve interviews with victims, enquirers, throughcare probation officers and other relevant criminal justice personnel. The fieldwork will be based in Northumbria and West Yorkshire Probation services. Both services operate slightly different models of victim contact work. They have given their full co-operation and backing to the research. It is anticipated that the findings from the research will inform future good practice.

Victim/Offender Mediation in Comparative Legal Cultures: England and France

Adam Crawford is conducting ESRC funded comparative research which has also benefited from the support of the Institut des Hautes Etudes sur la Justice, Paris, the Maison Rhône-Alpes des Sciences de l'Homme, Lyon and the Maison des Sciences de l'Homme, Paris. This project is seeking to locate the growth and practice of victim/offender mediation and reparation within a wider cultural framework. It will trace the comparative recent histories, reception, development and prospects of victim/offender mediation in France and England. This it will do through extensive fieldwork including observations and interviews in the two research sites in the different countries under consideration. The French sites are the greater Lyon and Paris areas and include the operation of a number of "Maison de Justice et du Droit" as well as a number of "delegated" associations offering mediation. The English sites are in West Yorkshire involving Victim/Offender Mediation Units and in Northamptonshire, involving the Diversion Units based in Kettering and Northampton. The sites have been chosen in order to reflect a degree of the diversity of the development of mediation in the two countries, as well as for the national recognition that each of the sites has acquired. The fieldwork will be completed by the end of 1997 and a final report will be prepared for March 1998.

B Postgraduate students

(a) Study facilities

There are three postgraduate student annexes (one for taught course students and two for research students, all with computing and social facilities. Within the Law Library, there is a special Criminal Justice Studies Room (including most of the Kenneth Elliott collection), as well as three computer clusters.

(b) Postgraduate research degree schemes.

The Centre wishes to encourage applications from anyone wishing to pursue research into the criminal justice system. This subject may be taken to include, for example, the judiciary, the prosecution system, the police and policing authorities, the prison

and probation services, the courts and the judiciary, criminology and penology, criminal law and terrorism, victims and mediation. Any relevant research topic in these or related areas will be considered. A number of possible areas of research have been considered with our Advisers and can be suggested on request, but applicants are not precluded from devising their own proposals. Comparative studies will be considered. The work of students may be assisted by practitioners in our Advisory Committee or by other contacts in the field. Formal instruction in research methodology is provided as a standard training package, and joint supervisions in interdisciplinary subjects can be arranged. Scholarships may be available, and the Centre has been recognised as a Mode B institution for the receipt of E.S.R.C. scholarships (Mode A application pending).

The relevant degree schemes on offer (all by research and thesis only) are as follows:

Master of Arts (M.A.) - one year full-time or two years part-time;

Master of Philosophy (M.Phil.) - two years full-time or three years part-time;

Doctor of Philosophy (Ph.D) - three years full-time or four years part-time.

The entrance requirements common to all three schemes are that applicants must normally possess a good honours degree, but those with professional qualifications or substantial professional experience will be considered. The detailed regulations governing the above degree schemes are available on request.

(c) Current postgraduate research students

Okoye, Cyril, B.A., M.P.A. - Cross-Cultural Perspectives on the Social Disorganisation of Prisons in Canada and the U.K. (Ph.D., October 1991)

Palfrey, Terry, B.A., - The Development of an Inquisitorial System in Fraud Investigation and Prosecution (Ph.D., April 1993, part-time)

English, James, LL.B., - The Rise and Fall of Unit Fines (Ph.D., September 1993)

Healey, Dominique, B.A. - The Treatment of Criminals in China, with Reference to Chinese and International Concepts of Individual Human Rights and Freedoms (Ph.D., October 1993, part-time)

Gammanpila, Dakshina, LL.B., M.A. - The Police Surgeon: Principles and Practice (Ph.D., October 1994)

McGuinness, Martina, MBA, - Political Violence and Commercial Victims (Ph.D, October 1994)

Pocsik-Haslewood, Ilona, LL.M. - Probation in Transition (Ph.D. December 1994, part-time)

McCracken, Michael, LL.B., - The Banking Community and Paramilitary Money Laundering (M.A., September 1995, part-time)

Mukelabai, Nyambe LL.M. - The Relationship Between Universal Human Rights Doctrine and Basic Rights and Freedoms in Zambia (Ph.D., October 1995)

Matassa, Mario B.A., M.A., Dip. Res. Methods - Unravelling Fear of Crime in Northern Ireland (Ph.D. October 1995)

Barton, Patricia LLB., M.A. - Police Accountability, Consumerism and Commercialism (Ph.D., October 1995)

Ali, Shaukat, LL.M. - Provocation as a Defence to Murder (M.A., October 1996)

Kerr, Iain, LL.B. - Legal Regulation of the Internet (M.A., October 1996)

Demir, Huseyin, The role and treatment of political parties (Prov. Ph.D., January 1997)

Akdeniz, Yaman, M.A. - Governance of the Internet (Ph.D., January 1997)

Toor, Sunita, B.A., M.A. - Social and Criminal Justice Responses Towards Female Juvenile Delinquents from Different Ethnic Groups (Ph.D., October 1997)

McGrath, Linda, LL.B., Hearsay Evidence in Criminal Cases (Prov.Ph.D., October 1997)

(d) Postgraduate research degrees awarded to Centre students in the last 5 years

Shanks, Rachel, LL.B - Freedom of Movement in the U.K. and France and the Prevention of Terrorism with Special Reference to European Community Law (M.A., 1992)

Ford, Lindy C., M.Sc, B.Sc. - Homelessness and Persistent Petty Offenders (Ph.D., 1993)

Acharya, Neena, LL.B. - The Police and Race Relations (M.A., 1993).

Ghosh, Saumya, LL.B. - A Comparative Study of Some Exceptions to the Hearsay Rule with Special Reference to England and India (M.A., 1993)

Harrison, Bronwyn, B.A. - The Development of Juvenile Cautioning and its Implications for Police Practice and Procedure (M.A., 1993).

Davies, David Ioian, LL.B. - Identification Evidence (M.A., 1994)

Moraitou, Areti, LL.B. - The Law and Practice in Relation to Fingerprinting by the Police with Respect to England and Greece (M.A., 1994)

Joliffe, Paul, LL.B. - The Use of Interpreters in Magistrates' Courts (M.A. 1995)

Ogden, Neil, LL.B. - The Private Security Sector (MA, 1995)

Laing, Judith, LL.B. - Mentally Disordered Offenders and their Diversion from the Criminal Justice System (Ph.D., 1996)

Boland, Faye, B.C.L. - Diminished Responsibility as a Defence in Ireland Having Regard to the Law in England, Wales and Scotland (Ph.D., 1996)

Murray, Jade, LL.B. - A Study of Post-Appeal Procedures for Dealing with Miscarriages of Justice (MA, 1996)

Akdeniz, Yaman, LL.B., - The Internet: Legal Implications for Free Speech and Privacy (M.A., 1996)

Gagic, Leanne, B.A. - A Study of Young Women Whose Mothers are in Custody (M.A., 1997)

Wade, Amanda - Children as Witnesses (Ph.D., 1997)

Ellison, Louise, LL.B. - A Comparative Study of the Rape Trial within Adversarial and Inquisitorial Criminal Justice Systems (Ph.D., 1997)

(e) Postgraduate taught courses

The students expected to graduate in December 1997, from the 1996-97 courses will be as follows:

MA Criminal Justice Studies

- Hanson, Robert

- Letcher, Tom

- Robertson, Joanne

- Thompson, Karen

Diploma in Criminal Justice Studies

- Sjoling, Lisen

Certificate in Criminal Justice Studies

- Clark, Ann
- Ghimire, Krishna :

MA Criminal Justice Studies (Full-time)

- Ashley, Theresa
- Manning, Gemma
- Minoura, Satoshi
- Neale, Peter
- Qayum, Sahdia
- Qayum, Zahir
- Sattar, Kaniz Iqbal
- Sprenger, Jason

MA Criminal Justice Studies (Part-time)

- Drewery, Kelly
- Darr, Seema
- Hampson, Sal
- Jordan, Louise
- McNichol, Robert
- McNulty, Bernard
- Meachem, Clare
- Sjoling, Lisen
- Stansfield, Stela
- Sweeney, Adele

Diploma in Criminal Justice Studies

- Singh, Bikram-jit

The programmes offered in 1997-98 are as follows.

M.A. (Criminal Justice Studies)

Objectives: To enable students to acquire new theoretical perspectives on, and wider knowledge about, criminal justice systems as well as a grounding in research methodology and the capacity to undertake research projects.

Duration: 12 months full time; 24 months part time. Note that some of the courses offered can be taken as free standing units with later accreditation.

Entry requirements: A good honours degree in law, social sciences or related subjects.

Contents (to amount to 120 credits):

The compulsory courses are:

1. Criminal Justice Research Methods and Skills (20 credits)
2. Criminal Justice Process (20 credits)
3. Criminal Justice Policies and Perspectives (20 credits)

The optional courses (students must select 20 credits):

4. Policing I (10 credits)
5. Policing II (10 credits)
6. Political Violence and Criminal Justice Systems (10 credits)
7. Victims and Victimology (10 credits)
8. European Aspects of Criminal Justice (10 credits)
9. Forensic Medicine and Forensic Science (10 credits)
10. Theories of Crime and Punishment (10 credits)
11. Gender, Race and Crime (10 Credits)

Plus as a compulsory element:

12. Dissertation of up to 15,000 words (40 credits)

Diploma in Criminal Justice Studies

Duration: 9 months full time, 18 months part time. Note that some of the courses offered can be taken as free standing units and later accreditation can be granted.

Entry requirements: A good honours degree in law, social sciences or related subjects. Persons without degrees but with professional qualifications or experience will be considered.

Contents: Students select from the courses listed for the M.A. scheme. There is no compulsory course or dissertation.

Certificate in Criminal Justice Studies

Duration: 9 months part time. Note that some of the courses offered can be taken as free standing units and later accreditation can be granted.

Entry requirements: A good honours degree in law, social sciences or related subjects. Persons without degrees but with professional qualifications or experience will be considered.

Contents: Students select from the courses listed for the M.A. scheme. There is no compulsory course or dissertation.

C. Papers and publications

(a) Courts, Court Procedure and Court Personnel

Brownlee, I.D. and Furniss, C., (1997) "Committed to Committals", *Criminal Law Review*, 3-16.

Walker, C.P., (1996) "Fundamental Rights, Fair Trials and the New Audio-Visual Sector", *59 Modern Law Review*, 517.

Walker, C.P., (1996) "The impact of new technologies: the right of the individual and the public interest in legal proceedings" in Institute of European Media Law, *Fundamental Rights and New Information Technologies in the Audiovisual Sector*, Munich: Jehle Rehm, 83-105.

Wall, D.S. and Johnstone, J., (1997) "The Industrialisation of Legal Practice and the Rise of the New Electric Lawyer: The Impact of Information Technology upon Legal Practice", *International Journal of the Sociology of Law*, 25, 95-116.

Wall, D.S. and Johnstone, J., (1997) "Lawyers, Information Technology and Legal Practice: The use of information technology by provincial lawyers", *International Review of Law Computers and Technology*, 11, 117-27.

Wall, D.S., (1996) "Legal Aid, Social Policy and the Architecture of Criminal Justice: The supplier Induced Demand Thesis and Legal Aid Policy", *Journal of Law and Society*, 23, 549-69.

Wall, D.S., (1996) "The impact of information technology upon legal practice", Centre for Criminal Justice Studies, University of Leeds, 27 November.

(b) Criminal Law

Akdeniz, Y., (1997) "Governance of Pornography and Child Pornography on the Global Internet: A Multi-Layered Approach," in Edwards, L. and Waelde, C. (eds.) *Law and the Internet: Regulating Cyberspace*, Oxford: Hart Publishing.

Akdeniz, Y., (1996) "Computer Pornography: A Comparative Study of the US and UK Obscenity Laws and Child Pornography Laws in Relation to the Internet," *International Review of Law, Computers and Technology* 10 (2), 235-61.

Akdeniz, Y. (1996) "Section 3 of the Computer Misuse Act 1990: an Antidote for Computer Viruses!" *3 Web Journal of Current Legal Issues*.

Akdeniz, Y *et al.*, (1997) "Cryptography and Liberty: Can the Trusted Third Parties be Trusted? A Critique of the Recent UK Proposals," *The Journal of Information, Law and Technology* 2.

Akdeniz, Y., (1997) "Cyber-Rights & Cyber-Liberties' Response to the DTI Consultation Paper," Comment, 1997 (2) *The Journal of Information, Law and Technology*.

Akdeniz, Y., (1997) "To Link or Not to Link: Problems with World Wide Web Links on the Internet," *International Review of Law, Computers and Technology* 11 (2).

Akdeniz, Y., (1997) "The Regulation of Pornography and Child Pornography on the Internet," (1) *The Journal of Information, Law and Technology (JILT)*.

Akdeniz, Y., (1997) "UK Government Encryption Policy", *Web Journal of Current Legal Issues* 1.

Akdeniz, Y., (1997) "Encryption and International Principles of Human and Political Rights", paper presented at the 8th Joint European Networking Conference, Edinburgh, 14 May.

Akdeniz, Y., (1997) "Regulation of Pornography and Child Pornography on the Internet", paper presented at the SLSA Conference, Cardiff University, 2-4 April.

Fitzpatrick, B. and Taylor, N., (1997) "A Case of Highway Robbery", *New Law Journal*, March, 338-40.

Reed, A., (1996) "Self-Defence: Applying the Objective Approach to Reasonable Force", *The Journal of Criminal Law*, 60(1) 94-100.

Reed, A., (1996) "Joint Participation in Criminal Activity, *The Journal of Criminal Law*, 60(3), 310-25.

Reed, A., (1997) "Excuses to Murder: Salutory Lessons From Recent Jurisprudence In England and the US", *Journal of Transitional Law and Policy*, 6(1), 1-35.

Reed, A., (1997) "The Need for a New Anglo-American Approach to Duress", *The Journal of Criminal Law*, 61(2), 209-25.

Reed, A., (1997) "Provocation: A Concession to Human Frailty - Recent English Developments as a Basis for Reform of US Jurisprudence", *The Journal of Criminal Law*, 61(4), 310-13.

Reed, A., (1997) "The Meaning of Intention", *The Criminal Lawyer*, 70, 1-5.

Reed, A., (1997) "Recent Developments in the Law", *The Criminal Lawyer*, 71, 1-4.

Reed, A., (1997) "Mortgage Fraud", *The Criminal Lawyer*, 72, 1-5.

Reed, A., (1997) "Doli Incapax and Joint Enterprise", *The Criminal Lawyer*, 73, 1-5.

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Taylor, N. and Walker, C.P., (1996) "Bugs in the System", *Journal of Civil Liberties*, 1(2), 105-124.

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Walker, C.P., (1996) "Cybercontempt", SPTL Media Law Group, Univ of Cambridge, September.

Walker, C.P., (1997) "A critique of the system in England and Wales", at the Conference on "Supervising Persons Detained under Anti-Terrorist Laws", University of Ulster, January.

(c) Criminology

Crawford, A., (1997) "*Reinventing The Local Governance of Crime: The Steering State*", British Criminology Conference, Queen's University of Belfast, 16-18 July.

Wall, D.S., (1997) "Review of 'Just Boys Doing Business': Men, Masculinities and Crime", edited by Newburn, T. and Stanko, E.A.", *International Review of Victimology*, 4, 327-329.

Wall, D.S., (1997) "Crimes of the Powerful in the Information Age", conference on "Crimes of the Powerful", University of Northumbria, 22 March.

Wall, D.S., (1997) "The Challenge of Cyber-crime for Traditional Criminology", Division of Sociology, University of Northumbria at Newcastle, 4 March.

Wall, D.S., (1996) "The Internet, Intellectual Property and the Challenge for Criminology", Centre for Criminology, University of Keele, 5 December.

(d) Probation and Penal Matters

Brownlee, I.D., (1997) "New Labour, New Penology", SPTL Annual conference, the University of Warwick, September.

Crawford, A. and Enterkin, J., (1997) "*Researching Victim Contact Work in the Probation Service*", ACOP and Home Office conference on "Probation Work with Victims of Crime", Royal Hotel, York, 16/17 September.

Walker, C.P. and Wall, D.S., (1997) "Imprisoning the Poor: Television Licence Evaders and the Criminal Justice System", *Criminal Law Review*, 173-186.

(e) Policing and Crime Prevention

Barton, P.K., (1996) "The Impact of Local Policing Plans", *The Police Journal*, 69(4), 289-98.

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Crawford, A., (1996) "Crime Prevention and Community Safety in Britain: An Overview and Assessment", public seminar, Ministry of Justice, Wellington, New Zealand, 5 November.

Crawford, A., (1996) "Repeat Victimization and Crime Prevention: Possibilities and Pitfalls", public seminar, Ministry of Justice, Wellington, New Zealand, 13 November.

Crawford, A., (1997) "*Multi-Agency Working - Insights from Research*", workshop in the "Crime the Local Solution" Conference, ESRC/Local Government Associations, Kensington Town Hall, 6 March.

Crawford, A., (1997) "*Crime Prevention and Appeals to "Community" as Dynamics of Social Exclusion*", the International Symposium "Forms and Dynamics of Exclusion", Palais de l'UNESCO, Paris, 23-26 June.

Crawford, A., (1997) "*Delivering Multi-Agency Partnerships in Community Safety*", presented to the "Planning Safer Communities" conference, University of Luton, 7-8 July.

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Wall, D.S., (1997) "Taking Care of Business: Trademarking the Soul of Elvis", *New Law Journal*, 147, 540-1.

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Wall, D.S., (1996) "Lost in Hyperspace: The disembedding of time, space and Elvis", Conference of the International Association for the Study of Popular Music, McGill University, Montreal, Canada, 17 November.

Wall, D.S., (1996) "The Implications of Cyber-crime for University Security," Annual Meeting of the Association of University Security Chiefs, University of Newcastle, 11 September.

Wall, D.S., (1997) "Review of "Core Issues in Policing", edited by Leishman, F., Loveday, B. and Savage, S.", *International Journal of Police Science and Management*.

Wall, D.S., (1997) "Review of "Accountability for Criminal Justice: Selected essays", edited by Stenning, P.", *International Journal of the Sociology of Law*, 25, 186-189.

Wall, D.S., (1997) "Policing Strategies for Cybercrimes", Institute of Police and Criminological Studies, University of Portsmouth, 15 April.

Wall, D.S., (1997) "The Role of Law in the Maintenance of Intellectual Property Values", Department of Law, University of the West of England, 12 February.

Wall, D.S., (1997) "Popular Culture as Intellectual Property", Unit for Law and Popular Culture, Manchester Metropolitan University, 23 January.

(f) Victims, Fear of Crime and Mediation

Crawford, A., (1996) "Review of Merry and Milner (eds.) "The Possibility of Popular Justice: A Case Study of Community Mediation in the United States"", *International Journal of the Sociology of Law*, 24(2), 342-45.

Crawford, A., (1996) "Victim/Offender Mediation and Appeals to Community in Comparative Cultural Contexts: Some Analytical Tools for a Comparative Criminology", Crime and Social Order in Europe Conference, UMIST Manchester, 7-10 September.

Crawford, A., (1997) "La Médiation Pénale en Angleterre et en France: Une Comparaison des Cultures Judiciaires", presentation to the Sociology and Anthropology Department, Université Lumière, Lyon II, 5 May.

Crawford, A., (1997) "La Médiation en Grande Bretagne", presented to the Réseau Médiation Associée, Association Médiation de Lyon and the Bar of Lyon, Centre du Barreau de Lyon, 21 May.

Crawford, A., (1997) "Proximal Justice: Decentralisation and Responsibilisation Strategies in a Managerialist Ideology", presented to the International Seminar "La Justice de Proximité", International Institute for the Sociology of Law, Onati, Spain, 12-13 June.

Goodey, J., (1997) "Boys Don't Cry: Masculinities, Fear of Crime and Fearlessness", *British Journal of Criminology*, 37(3), 401-18.

Goodey, J., (1997) *Doing Research on Fear of Crime, Boys, Race and Masculinities* Law and Masculinity Conference, The Law Faculty, Bristol University, 27-28 June 1997

Goodey, J., (1997) *Racism and Racial Violence: Their Impact on Growing Up Male in Multi-Racial Britain*, British Criminology Conference, The Queens University of Belfast, 15-18 July 1997

Goodey, J., (1997) *Victims of Racism and Racial Violence? Experiences Among Boys and Young Men*, 9th International Symposium on Victimology, Amsterdam 25-30 August 1997

D. Seminars, Conferences and Continuing Education

CENTRE FOR CRIMINAL JUSTICE STUDIES SEMINAR PROGRAMME 1996/7

Wednesday 30th October 1996 - 1.00 p.m.:

"Reflections on Recent Trends Towards the Punishment of Persistence", **John Pratt**, Institute of Criminology, Victoria University of Wellington, New Zealand.

In association with the Northern Branch of the British Society of Criminology

This paper provides an overview of an emerging and important trend in modern penality, the punishment of persistent offending. It argues that what lies behind this new development is a merger of the right to protection (itself and overarching theme of penal policy) and the implications for risk management of shifting political rationalities in the last two decades.

Wednesday 20th November 1996 - 1.00 p.m.:

"What's the Use of Committals?", **Clare Furniss**, Centre for Criminal Justice Studies, University of Leeds.

Committal proceedings, by which defendants are committed to the Crown Court, have been castigated in the past on the basis that they serve no useful, legitimate purpose in the criminal process (see e.g. Runciman Commission, 1993, chapter 6, para. 24 & 25). This widely held view has resulted in calls for their abolition, a step which would have been carried out had the Criminal Justice and Public Order Act 1994 provisions been implemented. This paper, drawing upon data collected as part of a project, *Modified Committal Proceedings*, commissioned by the Home Office, sought to re-examine this criticism and see whether there were indeed legitimate and useful ends served by committal proceedings in their present form.

The paper concluded that committal proceedings did fulfil their primary purpose: that of filtering out weak cases, but only to a limited extent. Reform which increased the evidential standard required to satisfy the Magistrates that the case should be transferred, and also which made the lawyers for the defence and the prosecution more accountable for the thorough examination of their case before the matter was

committed, could improve the effectiveness of the filter. The modified committals procedure though (Criminal Procedure and Investigations Act 1996), would appear to have the effect of weakening the filter still further, something which the ongoing research would investigate.

Wednesday 27th November 1997 - 1.00 p.m.:

"The Impact of Information Technology on Legal Practice", **David Wall** and **Jennifer Johnstone**, Centre for Criminal Justice Studies, University of Leeds.

As we enter the age of the new electric lawyer, information technology is clearly shaping both legal practice and also the legal profession. The rapid commercial, development of the internet and other information technologies is providing a vehicle for lawyers to trade legal services and to even deliver some services in their entirety. Importantly, this capability also provides clients with the facility to seek the best advice wherever it is located. Moreover, in the not-so-distant future, it is possible that the internet may even provide a forum for the determination of some types of justice, say through, through mediated dispute resolution. Our paper draws upon empirical research to explore the impact of information technology upon legal professionalism. It demonstrates that information technology is not the benign force that we are frequently led to believe it is: it does not introduce itself, rather, it is the product of commercial policies that are driven by ideology and pragmatism. Furthermore, by assisting firms to achieve gains in economy, effectiveness and efficiency, information technology accelerates the deskilling of the "intellectual craftwork" of legal practice by dividing, and then sub-dividing, tasks until they eventually become automated. Whilst the enskilling of some tasks, for example, to operate the technologies which perform the newly automated tasks, appear to contradict this view, the stark reality is that all work tasks are eventually broken down into their component parts and are therefore vulnerable to automation. Such an understanding is important for both the future development of legal information technology, the management of legal practice and also legal education. Our findings also contribute to the ongoing debate over the legal profession by suggesting that our conceptualisations of legal professionalism will constantly undergo change and that we should therefore perceive the changes, not as the decline of legal professionalism but, rather, a re-negotiation of the legal profession's relationship with the institutions around it.

Thursday 5th December 1996 - 2.00 p.m.:

"Firearms Theft in New Zealand: Issues for Crime and Injury Prevention", **Reece Walters**, Institute of Criminology, Victoria University of Wellington, New Zealand.

In New Zealand, 250,000 licensed shooters (7% of the population) own an estimated 1.2 million firearms, 16 times more guns per capita than England and Wales. Based on a study of firearm theft in New Zealand, this seminar will discuss the links between insecure storage of weaponry by licensed owners and theft, and the extent to which stolen guns are subsequently used in acts of crime. Furthermore, this seminar argues that tight controls over legal firearms and public education regarding gun security are central to the prevention of gun theft and violence. Finally, this seminar addresses the existing failure of the police to enforce New Zealand gun security laws, and the government's hesitancy to develop firearm education and regulation policies.

Wednesday 11th December 1996 - 1.00 p.m.:

"Policing, Postmodernism and Transnationalisation", **James Sheptycki**, Centre for Law and Society, University of Edinburgh.

The Paper defines the notion of the postmodern by reference to notions of deep historical fissure, as found in the work of Arnold Toynbee and C. Wright Mills. It develops this notion by reference to current and ongoing processes of transnationalisation, with specific reference to the police organisation. Four postulates of postmodern police are identified and described in detail. These are the marketisation of insecurity and social control and the transnationalisation of clandestine markets and policing. These postulates are used to illuminate broad changes to the transnational-state-system, which policing is embedded in. The paper ends in an open-ended manner with reference to the role of academic criminology in these processes which are seemingly beyond "dirigiste" rationalism.

Tuesday 4th February 1997 - 5.30 p.m.:

"Debating the Status of Financial Management Reforms in the Police Service in England and Wales", **Chris Humphrey**, Department of Accountancy and Finance, University of Sheffield.

This paper reviews the application of financial management reforms in the police service in England and Wales. Its analysis reveals a more complex and active history than that suggested by traditional images of the police as the long-standing "dinosaurs" of public sector financial management. The paper questions whether management change in the police should be being led by the Audit Commission and, through a critique of relevant papers published by the Commission and a comparison with earlier initiatives in the 1970s, seeks to encourage more analysis and discussion of the practices and effects of local financial management (LFM) systems in the police service. In particular, it is argued that LFM is raising issues which go the very heart of what is policing, the ways in which policing services should be provided and controlled, and the relationships between the police and other criminal justice and social agencies.

Tuesday 11th February 1997 - 5.30 p.m.:

"Restorative Justice", **Martin Wright**, Department of Legal Studies, University of Sussex and Executive Member of Mediation UK.

Is it possible to remedy the problems of traditional justice by reforming it? Or is a new paradigm needed? Restorative justice is based on assisting victims, holding offenders accountable and requiring them to make reparation, and healing the harm that results from the crime. What are the implications? These are some of the questions considered in an overview and analysis of "restorative justice".

Tuesday 18th February 1997 - 5.15 p.m.:

"The Treatment of Rape and Child Victims as Witnesses of Crime", **Helen Reeves**, National Director, Victim Support.

The Anne Spencer Memorial Lecture

[See full text in [Appendix 4](#)]

Tuesday 4th March 1997 - 5.45 p.m.:

"The Role and Appointment of Stipendiary Magistrates", **Peter Seago, Professor Clive Walker and David Wall**, Centre for Criminal Justice Studies, University of Leeds.

Having recently conducted commissioned research for the Lord Chancellor's Department into *The Role And Appointment of Stipendiary Magistrates*, we seek in this paper to give a flavour of some of the policy debates which affect the realignment of judicial services in the summary courts in England and Wales. In contrast to the long-standing tradition of lay and local justice through justices of the peace, stipendiary magistrates reflect legal professionalism, and their growing numbers, especially outside London, are perceived as a threat to judicial independence. We consider three ways in which they can be alleged to be a threat: by their subservience to, and favouritism of, governmental interests; by their professional, lawyerly allegiances; or by their distance from local interests, experiences and concerns. In each case, we cast doubt on the strength of the challenge to their judicial independence. However, the debate draws attention to tensions which do affect summary justice at this level, namely the impact of new public management on the courts service and also the questioning of the value of local justice. These pressures, together with calls for greater judicial accountability, may all be seen to favour the stipendiary, though ultimately as a supporter rather than a supplanter of lay justice.

Tuesday 29th April 1997 - 5.30 p.m.:

"Anxiety, Risk and the Fear of Crime", **Wendy Hollway**, Department of Psychology, University of Leeds and **Professor Tony Jefferson**, Department of Criminology, University of Keele.

(In association with the Northern Branch of the British Society of Criminology)

Professor Jefferson and Dr. Hollway presented a two pronged approach to the well-researched subject of "fear of crime" with an analysis of their Sheffield based research employing quantitative and qualitative insights. The conclusion of their talk was that "anxiety" is a more useful predictor of fear of crime than is "risk". Fear of crime, they argued, is not a unitary concept, for example it has different meanings for men and women, and in different contexts - "inside" and "outside" the home. Risk they suggested needs to be located within the context of any precautions taken by individuals. Furthermore, we need to appreciate that as well as risk averting behaviour some people engage in risk taking behaviour. By contrast, "anxiety" they defined as (a) always somewhat out of proportion with its source - when worry becomes excessive, (b) anxiety mobilises unconscious defences, and (c) these defences may be displaced onto something else or denied. They illustrated these arguments with in-depth case studies.

Tuesday 12 May 1997 - 5.00 p.m.:

"Copyright on the Internet: Are World Wide Web Links Copyrightable? The Recent Developments and Impact of the Shetland Times Case", Yaman Akdeniz, Researcher Centre for Criminal Justice Studies, University of Leeds.

As the Internet grows so do the legal problems surrounding it. This paper discussed the legal issues related to one essential activity on the Internet, World Wide Web ("WWW") linking. The WWW has become so popular because of its open, distributed, and easy-to-use nature. This paper in two parts discussed whether "linking" may create any copyright infringement and also whether the web authors should be liable for the content of pages to which they link their own web pages. A number of recent incidents can illustrate these issues arising. First, a Scottish online news server (Shetland News) has been stopped from linking to the pages of Shetland Times, a daily newspaper, on the grounds of copyright infringement. Secondly, the publishers of German and Dutch Web pages have been subjected to legal investigation for linking to Radikal, a publication banned in Germany. This followed another online German investigation into Holocaust denial pages earlier in 1996. Thirdly, in the Washington Post complaint, where CNN, and Reuters were among other plaintiffs, an online news server called Total News has linked the plaintiffs web pages into its own web page by using framing technology.

These recent stories and their legal implications were discussed following the initial technical description of the WWW and the various existing "linking" techniques on the web. Linking is encouraged on the Internet because it ties different web pages on related topics and provides an effective system for browsing in the information superhighway. There are millions of web pages on the Internet and it would be quite impossible to find anything without the use of WWW links. Therefore, new modes and models of governance for the Internet should be developed.

The paper concluded that the Internet is still at a transitional period and many questions remain unanswered following the convergence of different services, such as those of publishing (e.g. newspapers), broadcasting (e.g. television and cable channels), and telecommunications services (e.g. BT and Mercury) into a new type of interactive information service with hybrid delivery capabilities provided on a global basis rather than on a national level. It should be technical solutions for the technical problems created by the hybrid nature of the Internet but not the enforcement of existing national laws which may be outdated or may be limited to national boundaries without reaching into "cyberspace". The full paper is published as "To Link or Not to Link: Problems with World Wide Web Links on the Internet" [1997] *Int. Review of Law, Computers and Technology* 11.

Tuesday 3rd June 1997 - 5.00 p.m.:

"The New Golden Rule: Community and Morality in a Democratic Society", Professor Amitai Etzioni, George Washington University, USA.

In association with the ESSL Faculty Research Committee

Professor Amitai Etzioni gave a well received lecture to an audience of over one hundred staff and postgraduate students in University House. His talk drew upon some of the ideas set out in his latest book "The New Golden Rule". Professor

Etzioni, a former White House advisor to Jimmy Carter and former President of the American Sociological Association, is a leading exponent of communitarian philosophy and social policy. Professor Etzioni is a founding member of the communitarian movement, which embraces a "Network" and a Journal, of which he is editor, entitled "The Responsive Community". Etzioni's brand of communitarianism advocates a restoration of social responsibilities and a commitment to community. His work has been particularly influential upon some of Bill Clinton's thinking as well as upon the agenda of "New Labour" in Britain. Professor Etzioni argued that neither a market economy nor democratic politics can thrive without the moral values that come from strong communities. He traced the emergence of communitarianism and concluded that communitarian ideas present a new and radical reconceptualisation of the relations between civil society and the state. He put forward the idea of a "golden rule" where order and autonomy are in equilibrium, where freedom can be reconciled with social control. In so doing, he suggested ways in which his ideas could be applied in practice by the newly elected Blair administration. For further information the Communitarian Network can be contacted via their web site, at: <http://www.gwu.edu/~ccps>

Wednesday June 1997 - 1.00 p.m.:

"Marches In Northern Ireland: Is 'North' The Way Forward?" **Martina McGuinness**,
Researcher Centre for Criminal Justice Studies, University of Leeds.

This paper examined the *Report Of The Independent Review Of Parades And Marches* (commonly referred to as the "North Report") published in 1997. It focused upon the political and social unrest within Northern Ireland which gave rise to the commission before giving a brief summary of its findings and recommendations. The parades issue has been widely described as encapsulating the problems of the province in microcosm. The paper asked whether this was true and whether the North Report adequately confronted the underlying issues. Did the central recommendation of a Parades Commission point the way towards peaceful resolution for the apparent existing impasse? Finally, a look forward was taken towards the summer and the 1997 marching season to ask what the likelihood was of a recurrence of the civil unrest experienced in 1996.

CENTRE FOR CRIMINAL JUSTICE STUDIES CONFERENCES

Magistrates' training, 1996-97:

Annual Court Clerks Conference, Scarborough, 10/11 January 1997 (residential):

About 80 Magistrates' Clerks from all over the North of England attended the Annual Court Clerks Conference in Scarborough at the beginning of January 1997. The programme included specialist workshops combined with plenary lectures. Highlight of the course was a lecture by David Thomas (Cambridge University) on "Current Trends in Sentencing". The conference was organised and directed by Peter Seago in his capacity of Chair of the University Magistrates' Training Committee.

Annual Conference for Senior Magistrates, Scarborough, 28 February - 1 March 1997:

About 60 Magistrates who have been on the Bench for more than 5 years attended this conference in Scarborough. As with the Court Clerk's conference the format was of a mixture of specialist workshops together with plenary lectures which included "an examination of the relationship between Bench and Court Clerk" by David Chandler (Bradford) and "the treatment of witnesses in court by Oaulk Fuirth (Liverpool, Stipendiary Magistrate). The conference concluded with the ever popular sentencing exercises in which His Honour Judge Kamil gave his thoughts n the deliberations of the Justices.

New Magistrates Conference, Leeds

The University ran the usual basic courses for new magistrates. In West Yorkshire all magistrates attend a two day course at the end of both their first and second years. These courses are fairly tutor intensive and have to be restricted to about 30 magistrates per course. This means that each course has to be run three times a year.

Peter Seago has been appointed Chair of the Yorkshire Regional Training Committee, the body which oversees the training of magistrates in North and West Yorkshire.

Forthcoming Conferences:

An International Conference - Integrating a Victim Perspective within Criminal Justice: Possibilities and Pitfalls 17/18 July 1998, College of Ripon and St. John, York.

This conference will bring together academics, policy-makers and practitioners from around Europe to share experiences, ideas and research findings, in relation to issues concerning the desirability, possibility and appropriate means of integrating a victim perspective into criminal justice. The conference will enable the consideration of comparative European experiences and the dissemination or recent British research findings. The conference will consist of a mixture of keynote speeches, themed workshops and research paper sessions. It will of interest to all those working with and for victims.

As numerous academic and political commentators have noted, the implications of introducing a victim's perspective into the delicate balance between state and offender is likely to be a key issue in the future of criminal justice. This conference will seek to address some of the vexed issues posed by the increasing awareness given to a "victim perspective" within criminal justice. It will bring together domestic British and comparative European experiences and lessons in attempting to integrate a victim perspective into criminal justice.

It will also bring together the latest empirical research findings and theoretical insights which relate to the dual questions:

1. how criminal justice systems and processes currently attempt to address the needs and concerns of victims within and around the criminal justice process?
and,
2. whether and how victims should be given greater agency and voice in the resolution of their own criminal disputes?

The conference will include workshops on issues presented by specific groups of victims, such as children, those from ethnic minorities, rape victims and those of life sentenced prisoners, as well as the role of specific criminal justice agencies including the police, prosecution, courts and probation.

The conference is supported by a University of Leeds Academic Development Fund grant.

Plenary Speakers will be:

Andrew Ashworth, *University of Oxford*; **Jan van Dijk**, *Lieden University and the Dutch Ministry of Justice*; **Edna Erez**, *Kent State University, USA*; **Joanna Shapland**, *University of Sheffield*; **Lode Walgrave**, *Catholic University of Leuven*; and **Renée Zauberman**, *CESDIP, France*.

Other Speakers will include:

Peter Johnston, *West Yorkshire Probation Service*; **Andrew Sanders**, *University of Bristol*; **Leslie Sebba**, *Hebrew University of Jerusalem*, **Brian Williams**, *De Montfort University*; **Richard Young**, *University of Oxford*; as well as representatives of *Victim Support, Mediation UK* and other relevant organisations.

Call for Papers

Interested parties are warmly invited to submit an abstract of a paper or workshop for the consideration of the conference committee. Abstracts of 200-300 words must be received by 27 February 1998. Anyone interested in further information should contact Adam Crawford or Jo Goodey. Or via the internet:
<http://www.leeds.ac.uk/law/ccjs/vict98.htm>

A full list of forthcoming seminars can be found in Appendix 3.

APPENDIX 1

CONSTITUTION OF THE CENTRE FOR CRIMINAL JUSTICE STUDIES

(as amended, 1 May 1997)

Object of the Centre

1. The object of the Centre shall be to develop, co-ordinate and pursue research and study into, and the dissemination of knowledge about, all aspects of criminal justice systems.

Membership of the Centre

2.1 Any member of the academic staff of the Department of Law may be a full member of the Centre.

2.2 Other individuals may be appointed to full membership of the Centre by the Council on the nomination of the Executive committee. Membership of the University is not a prerequisite of appointment to full membership of the Centre.

2.3 Associate members may be appointed by the Director on nomination of the Executive committee for a fixed term of up to three years. Membership of the University is not a prerequisite of appointment to associate membership of the Centre. Associate members shall normally be concerned with the pursuit of a programme of research and shall be provided with suitable facilities by the Centre. Any further rights or duties (such as in relation to teaching) shall be the subject of specific agreement.

Administration of the Centre

3.1 The Centre shall be administered by a Director, a Deputy Director and an Executive Committee.

3.2 The Director and Deputy Director, who shall be appointed by the Council on the nomination of the Head of the Department of Law after consultation with members of the Centre, shall each normally hold office for a period of five years, and shall be eligible for immediate re-appointment.

Administration of the Centre

3.3 The Director shall be responsible to the Executive Committee for the running of the Centre and the representation of its interests. The Director shall have regard to the views and recommendations of the Executive Committee and the Advisory Committee. The Director shall be assisted by up to two Deputy Directors.

3.4 The Executive Committee shall consist of the Director and the Deputy Director(s) together with the Head of the Department of Law (ex officio), the Chair of the Advisory Committee (ex officio), and up to six others who shall be appointed by the Director, Deputy Director and Head of the Department of Law.

3.5 The Executive Committee shall meet at least twice a year, with the Director acting as convenor. Special meetings may be held at the request of any member of the Executive Committee. All full members shall be entitled to attend meeting of the Executive Committee.

3.6 Minutes of the meetings of the Executive Committee shall be presented by the Director to the following meeting of the Department of Law.

3.7 There shall be an Advisory Committee appointed by the Executive Committee which shall formulate advice and recommendations and which shall consist of:

(i) all members of the Executive Committee;

(ii) up to three persons who shall be members of the teaching staff of the University of Leeds other than the Department of Law whose activities or interests have relevance to criminal justice studies;

(iii) up to twenty persons who shall be practitioners in criminal justice systems (or other appropriate persons).

3.8 The Advisory Committee shall meet once a year, with the Director acting as convenor. Special meetings may be held at the request of the Executive Committee.

Amendment to the constitution

4.1 This constitution may be amended by the Council (or any committee acting with authority delegated by the Council) on the recommendation of the Department of Law and the Executive Committee of the Centre.

APPENDIX 2

MEMBERSHIP OF THE CENTRE

1. Executive Committee

Professor Clive Walker (Director)

Mr Adam Crawford (Deputy Director)

Mr David Wall (Deputy Director)

Mr Peter Seago (Chair of the Advisory Committee)

Professor Sally Wheeler (ex officio Head of Department of Law)

Mr Paul Eden

Mr Ben Fitzpatrick

Ms Clare Furniss

Dr Jo Goodey

Mr Alan Reed

2. Advisory Committee

Mr Peter Seago (Chair of the Advisory Committee)

His Honour Judge Geoffrey Baker

Sir Lawrence Byford (former Chief Inspector of Constabulary)

Mr Dickie Dickenson (Chief Crown Prosecutor)

His Honour Judge Ian Dobkin

Dr Douglas Duckworth (Chartered Psychologist)

Professor Michael Green (University of Sheffield)

Mr Colin Grimshaw JP (Police Authority of West Yorkshire)

Mr Keith Hellowell (Chief Constable, West Yorkshire Police)

Mrs Penelope Hewitt (Stipendiary Magistrate)

Mr Richard Holland (Chief Executive, Leeds Magistrates' Courts)

Professor Edgar Jenkins (Leeds University)

Emeritus Professor Norman Jepson

His Honour Judge Geoffrey Kamil

Lord Justice Paul Kennedy

Mr Geoff Kenure (West Yorkshire Probation Service)

Mr Peter McCormick (Solicitor)

Miss Anne E. Mace (Chief Officer, West Yorkshire Probation Service)

Spt. Jim Newton (Commandant, W. Yorks Police Training School)

Professor Ken Pease (University of Huddersfield)

Rt. Hon. Lord Merlyn Rees

Professor Carol Smart (University of Leeds)

APPENDIX 3
SEMINAR PROGRAMME FOR 1997-98

TERM ONE 1997/8
***Seminars will be held in the Brian Hogan Seminar Room, Law
Annexe, 21 Lyddon Terrace.***
For further information contact Adam Crawford (0113) 2335045

Tuesday 14th October 1997 - 5.30 p.m.: "Postmodernism and

Politics in the Study of Criminal Justice" Ben Fitzpatrick,
Centre for Criminal Justice Studies, University of Leeds.

Tuesday 4th November 1997 - 5.30 p.m.: In Association with the
Northern Branch of the British Society of Criminology
"Criminology, Critical Genres and Censuring Governance"
George Pavlich, Department of Sociology, University of Auckland.

Friday 7th November 1997 - 5.00 p.m.:* The Frank Dawtry
Memorial Lecture *"The Uses of Custody: A Judge's
Perspective"* Lord Justice Paul Kennedy.

Wednesday 19th November 1997 - 1.00 p.m.: *"The Unforgiving
Eye: The Reality and Prospects of CCTV Surveillance"* Clive
Norris, Centre for Criminology, University of Hull.

Tuesday 2nd December 1997 - 5.30 p.m.: *"Justice de Proximité?:
Victim/Offender Mediation and Localised Justice in France"*
Adam Crawford, Centre for Criminal Justice Studies, University of
Leeds.

TERM TWO 1997/8

*Seminars will be held in the Brian Hogan Seminar Room, Law
Annexe, 21 Lyddon Terrace, unless otherwise stated. For further
information contact Adam Crawford (0113) 2335045*

Wednesday 11th February 1998 - 1.00 p.m.: *"Youth, Fear and
Public Space"* Professor Kevin Stenson, Buckinghamshire
College.

Wednesday 18th February 1998 - 1.00 p.m.: *"Female Prison
Officers in Men's Prisons"* Dr Jill Enterkin, Centre for Criminal
Justice Studies, University of Leeds.

Tuesday 24th February 1998 - 5.30 p.m.: *"The Appointment of
Chief Constables, 1836-1996: A Socio-Legal History"* David
Wall, Centre for Criminal Justice Studies, University of Leeds.

Tuesday 3rd March 1998 - 5.30 p.m.: *"New Labour, New
Penology"* Ian Brownlee, Law Department, Sheffield Hallam
University.

Tuesday 10th March 1998 - 5.30 p.m.: *"Deaths in Police and
Prison Custody: The Politics and Language of Culpability"*
Professor Mick Ryan, Department of Law, University of
Greenwich.

Wednesday 18th March 1998 - 1.00 p.m.: *"Examining the White Racist/Black Victim Stereotype"* Dr Jo Goodey, Centre for Criminal Justice Studies, University of Leeds.

APPENDIX 4

CENTRE PAPERS

**CENTRE FOR CRIMINAL
JUSTICE STUDIES
NINTH ANNUAL REPORT
1996-97**

APPENDIX 4

CENTRE PAPERS

Helen Reeves

**The Treatment of Rape and Child Victims as Witnesses
of Crime.**

The Anne Spencer Memorial Public Lecture.

Mario Matassa

Making Sense of Paramilitary Style 'Rough Justice'.

Lord Justice Paul Kennedy

The Uses of Custody - A Judge's Perspective.

The Frank Dawtry Memorial Lecture.

**"The Treatment of Rape and Child Victims as
Witnesses of Crime"**

The Anne Spencer Memorial Public Lecture, 18th February 1997

Helen Reeves, National Director, Victim Support

Introduction by Professor Clive Walker

May I first of all welcome you to this, the second Anne Spencer Memorial Public Lecture. Anne Spencer was a graduate of the Faculty of Law at this University in 1974. At the time of her death from sudden illness in 1990, she was Reader in Education Management at the Further Education Staff College and an academic editor and author in the field of gender issues with reference to professions. It was with this impressive background in mind that her parents (who sadly could not attend on this occasion) established a fund in her memory, providing a scholarship for a research student and funding for this public lecture, both reflecting Anne's own focus on women's rights and interests. Hence, the particular title of the lecture today: 'The Treatment of Rape and Child Victims as Witnesses of Crime'.

The treatment of victims of crime is now at the very forefront of debate as to what the criminal justice system is for and what it actually achieves. This has been marked in official language and thinking, including:

- *the publication of the first Victim's Charter by the Home Office in 1990, and*
- *better facilities in courts and witness support schemes following the Royal Commission on Criminal Justice in 1993.*

But this interest is distressingly recent, and a number of independent groups and individuals have long argued that victims have been ignored or, even worse, injured by the system which purports to protect them. Most prominent amongst these groups has been Victim Support, which grew as a series of locally based organisations but also formed a National Association in 1979. Since that time it has provided practical support for victims and also has acted as a national lobby group for victims.

What has this work involved and what has it achieved for victims? Is it really possible to reinstate or restore the victim in a way which the system does not do at possible? These questions seem especially vital when dealing with the focus of the talk today, rape and child abuse victims, who have suffered some of the most traumatic crimes possible.

To attempt some enlightenment, I am delighted to introduce Helen Reeves, OBE. Helen has been the Director of the National Association of Victim Support Schemes since 1980, and in that capacity has been at the forefront of shaping policy and influencing government. In that time, the rhetoric in favour of victims' interests has increased enormously. Helen is perhaps uniquely well qualified to tell us whether there is substance behind the rhetoric and what more needs to be done.

Helen Reeves

I am very pleased to be here and before I launch in to the materials I have prepared, I just want to say a word about the title. We had a little bit of discussion about what the title might be and I mentioned that there is new research in several areas including rape and child victims and that I will be drawing upon that when I speak to you today. So really everything I have got to say today is about vulnerability and is about vulnerability in the face of the criminal justice process. Not just people who are vulnerable to become victims of crime as I think we have had quite a lot of research that say that victims are special types of people which may or may not be true. That is not what I shall be talking about today. I will be talking about people who are particularly vulnerable because of the process of criminal justice in this country and some of the assumptions that we make and some of the stereo-types we draw about the crimes that we should be dealing with and how we deal with them. Children, of course, are particularly vulnerable because of who they are: they are young, they are inexperienced. If we don't understand the systems, the strange justice process, it is very unlikely that they will. Wigs and gowns and strange language are all very peculiar indeed. So they are very vulnerable because of who they are.

However, I would just like to make a point at the beginning that there are several other groups who would be equally vulnerable - people with learning difficulties, for example, people with other sorts of disadvantage who might find it difficult to understand the process. There is an increasing body of research which shows that those very vulnerable people are actually failing in the criminal justice process. We are really not providing them with a very good service at all. And the issue about rape - why so many of us talk about it and study it and spend a lot of time with people who have reported these crimes to the police, tell us about their experience - is because it is amongst only one or two other crimes which would make anybody vulnerable. Talking about something sexual that has happened to you - it is not the sort of thing that any of us would treat lightly or talk about generally. Even to our closest friends in many cases, or to our mothers or fathers or whatever, whether male, female, young or old. Reporting sexual crime immediately puts us in a very vulnerable position - it is not something that any of us would particularly want to do and it brings about problems of its own. So I am going to be drawing upon the body of information which is available, mainly about children and women as victims. I will be referring quite a lot to sexual crime, but I would like you to bear in mind that the actual problem is much wider than that. Anybody can be vulnerable in a wide range of circumstances, particularly when they are victims and particularly when they are asked to take part in this rather strange process of criminal justice.

My thesis, if I have one, is that justice is failing to provide a service and the community is failing to provide protection. The more vulnerable you are, the more they are failing, and that I think is a very serious problem that we should all be addressing in the coming years. Now, I am going to start first of all by referring to some research which was first published in 1992. This is not Victim Support research, it was carried out by Richard Kinsey at the University of Edinburgh. Some of you may well have heard of this research. It looks at a wide range of school children - there are over 4,000 children in his study - and he talked to children in four different areas and got them to talk to each other and went into the school to collect his information. He came up with some pretty startling results. His population were aged between 14 and 15 years old, boys and girls, from all types of social and economic backgrounds. What he found was that about a third of his sample reported that they

had been victims of some sort of crime against the person during the last nine months. Girls were more likely to be victims of sexual crime, which might be anything from flashing, as it is commonly known, right the way through to the much more serious crimes of indecent assault and rape. For boys, it was more likely to be some sort of violence involved in their offences. This was a very large population of children and even those who did not report having been immediate victims during that very short period of nine months, most of his sample said they knew someone who had.

So I use this as my starting point because I think it is very important to recognise for the young people in our community who know a lot about crime whether we like to think so or not. They actually have a lot of experience. It is part of their experience of growing up, part of the way they see the world. If we don't deal with it or don't respond appropriately we are storing up a lot of problems for them as individuals and also for us as a society as a whole. I think that was an important piece of research - I am not going to make any comment about the scientific value - I have no doubt there are people here today who could do that better than I can, but I think it gives us a demonstration of how broad this problem is.

Now one of the problems that Richard Kinsey studied is that children normally do not report the crimes against them for a variety of reasons. What they tend to say is 'I thought no-one would believe me', or 'I thought no-one would take it seriously', or even the equally commonly, 'I thought that I would be blamed'. I could give you numerous examples of young people who have gone home to tell their parents that something has happened to them and the first reaction is 'well, what were you doing in that street in the first place? I have always told you to take a different route home, I have always told you that you should take the bus or come with your friends. Why were you carrying our radio out with you? I told you it was better left at home', and things of this sort. This is what we generally call victim blaming, but it does generally tend to happen an awful lot to children. It happens to all of us actually, but children in particular. You frequently hear this response and because they feel guilty and they think it is partly their fault, they prefer not to tell an adult what has happened. So that quite often we just ignore the problems that are going on under our very noses. The effects for children, and I can tell you this from Victim Support experience, are exactly the same as for adults except that they might experience them more deeply because the experiences are new. Anybody experiencing crime is likely to feel great fear - they recognise that they are more vulnerable than they thought they were before - and great anger because of the injustice of somebody doing something against them, either taking their property or hitting them. There is a danger of retaliation and a danger of alienation. In relation to adults this expresses itself in them not being able to tell the authorities, in our cases perhaps getting fed up with the police because they don't seem to take it seriously or getting fed up with the courts. In the case of children it is more likely to be their teachers and their parents.

In Victim Support we were getting more and more concerned about the number of occasions that we would visit a home after a burglary - after a physical offence - and people would tell us that they were deeply concerned about their children. Their children were refusing to go to school, becoming possessive, not going out with their friends - all of the usual problems that you associate with an emotional upset and this appears to be springing directly from the effects of crime. So, back in 1991 in conjunction with the Home Office, we asked for some research to be carried out on

the effects of all crime on children. Most of the literature at that time was about child abuse and child abuse usually occurs within the family centre but that is only a partial definition. I think it tended to blur our vision from the fact that children were getting abused outside their homes in cases that we would describe as rape or serious violence, and it wasn't being treated in the same way and children were also victims of every other type of crime, either within the family or directly against themselves. So the Home Office paid for some research which was carried out at the University of Oxford and published in 1992 by Dr. Jane Morgan. I don't think this research has had nearly enough attention because I think it is extremely important. The researchers collected 800 cases of children who had been victims of crime or very closely associated with crime, for example they have been present when one of their parents was assaulted or something very serious had occurred. But it was extremely difficult to collect the sample. I want to include this in what I have to say because I think it is important in recognising why crime against children is so often invisible, why we know so little about it.

First of all, if you study police records, you will find that very little is said about the victim. You won't get their age, you won't get their family circumstances, you won't get very much about them at all. You are far more likely to get data recorded about the offender because that is where most of our focus has been in the years up to about ten years ago. We tend to know a lot about the race and the age and sex of the offender, not about the victim. In fact you very rarely know the sex of the victim unless it happens to be a sexual offence. So the problems that we have at Victim Support, you can imagine, is not knowing who we are going out to visit or who we are writing to and hence, how to judge our response. So it is very difficult to find children in police records. If children are present in a household, for example in a burglary or a robbery, they are very rarely recorded as such. It is the adults who are recorded as the victims, in other words, their parents. We can't usually get them that way - we don't know who they are. And even the British Crime Survey, the biggest survey in the country, only interviews people of 16 and upwards. They deal with crimes related to people of 16 and upwards, so very little information coming out of that. It is very, very difficult to put the data together.

When we go into the schools, what happens in schools - when crimes are committed and reported to teachers - is that quite often, as far as the young victims are concerned, they are pushed under the carpet. All sorts of very strange things seem to occur in schools. For example, it may well be that the young offender is dealt with by the teacher. Maybe his or her parents are asked to report to the school, but the victim doesn't know what is going on because of confidentiality. But unless the police are called in for an investigation, it would seem to the young victim that nothing has been done at all. And we found this in our research that quite often, although teachers knew about things going on, there wasn't a great deal of response at that time. Quite often cases were not regarded as crimes. I mean the word 'bullying' - I think everybody realises now because there has been a certain amount of publicity about this, but bullying, during the survey we discovered that bullying could be anything from very serious sexual offences to constant cat-calling, harassment and very serious violence and robbery. All sorts of things that if the victims were adults, they would be taken much more seriously than they are against children.

Another problem of course with teachers is that they have some responsibility, not only for the young victim but also for the young offender. There are often times when they feel that they don't want to escalate something that happened in the playground or the school bus into something that does involve police and the courts because they don't want to see a young person who may change his behaviour after one good warning, getting into that very serious system that could affect the whole of his life.

So there are a number of things which seem to be going on to make crimes invisible, even within the schools. So what we actually did eventually, was work with the researchers to use Victim Support to find the cases. With Victim Support volunteers going into so many homes month after month and year after year, we were able to identify where cases did involve children and we assisted in collecting together many of these cases.

The next problem which occurs is an ethical problem. This is something else which makes it very difficult for us to know and understand what is really going on. First of all, what do you do when you want to interview somebody aged 8 or aged 12? And if you have been involved in social work or research, you will have faced this problem. What do you do? You have to ask the consent of parents. This is just considered to be good practice, and yet, there is much questioning about it. That is why research that has gone into schools and talked to people in groups has tended to get much richer information. But generally, if you are trying to be one-to-one and get detailed information, you have to go through parents. So of our 800 cases, just to give you a very quick summary, about 6 out of 10 parents didn't respond to the letter at all; 15% of the total survey responded to say 'no, you can't interview our child' and actually left us with only 27% of the total survey population that we could actually contact. The parents were offered the opportunity to be seen with the child or the child on their own or the parents to be seen on their own. Once again quite a lot of the parents opted to be seen on their own, they didn't think the child should be involved at all. Many of the others wanted to be seen with the child because they didn't want to expose their child to the researchers. The Researchers ended up with only very small number, I think it was 18 children, who were actually allowed to be seen on their own and interviewed on their own for this research.

The reasons are quite interesting - there are two main categories of reason. The first is that parents said 'well actually, our child wasn't affected by it, just something he took it in his stride, you know, he wasn't really badly affected'. Now, this is fine and much of that may be true but what was very interesting was that that group included four cases of relatively serious sexual assault against boys. I think it is very interesting. Those of you who have been involved in crime generally and with child crime in particular, will find it rather surprising that a young boy would not be affected in some way by relatively serious sexual assault by an adult. We can only speculate about what was going on with the parents but I think it is reasonable to suppose that many parents would prefer to believe that the child was affected, but often there is a tendency to believe that the more you talk about it the more you think you are going to reinforce it and therefore people don't tend to engage with a child to talk about what has happened. The child seems to be carrying on going about his or her business. The parents are only too relieved to say well actually, least said soonest mended. So I think there was a certain element of that going on.

The second group of responses was really what I have just said, that they didn't want to reinforce the effects of the crime and they thought that talking about it would make it worse. Again that might be true except that it is quite interesting that throughout this survey, and indeed every other survey that I know about victims, every single research project I know about victims - I know we have got researchers who have been victims, I think, in this room and I hope you will confirm this too - I have never known a survey with a victim who does not enjoy being interviewed. The vast majority of people actually like to think that their crime is being taken seriously and that they have been given a chance to have their voice and say what they have to say about their experiences, their reactions and how they feel about it. Certainly the children in this survey who were interviewed virtually all reported that they valued the experience and even said that they got something out of it. It wasn't intended to be therapeutic but quite a few seemed to think they got quite a lot out of it.

So what are the effects? Well, the researchers in this particular survey were very responsible - they didn't over-dramatise the things that they found. I did find, not surprisingly, that 55% of their total survey of people seen and interviewed were very upset by a whole range of crimes. The worst ones included sexual crimes without a doubt, other physical assaults, particularly the more serious ones. Also some relatively minor crimes that we tend to forget about - the theft of a bicycle for example, which is just given peanuts, you know in a police charge sheet, to a child who might have saved up a long time, its their most precious possession and also their way to freedom and independence, it can be a very important item, rather like a home or a car might be to us perhaps. But anyway, I will put that aside for one moment.

The other group of children who were most badly affected were those whose parents had been victims of physical assaults. A really remarkable finding, I think, is that just as we know parents say that they are more deeply affected by crime against their children, than they are crime against themselves, so we found that children were deeply affected by crimes in which their parents were seen to be vulnerable, were seen to be assaulted or abused by other people. It challenges the whole idea of safety and justice for a young child and it is very difficult to get things back into perspective. And we have quite a bit of evidence on that.

I would just like to tell you about a range of cases. I have selected just three cases to tell you about very, very briefly and they are all in the area of sexual crime. Just to give you an overview of some of the reactions that we found. First of all, a ten year old girl who was sexually assaulted by a neighbour. Now she was reported to be a cheerful, outgoing girl who liked school, had lots of friends, liked to go out with people and so forth. The main effect that her parents had observed as a result of this sexual crime was that she wouldn't talk to anybody about what had happened. She no longer wanted to see her friends. She felt as though a barrier had come up in some way because she was scared that people would ask her about it or that something about it might slip out. So she didn't see her friends any more, she was extremely bitter, particularly with a younger brother she started getting a bit selfish and possessive. She was also bullying younger children which she had never done before, almost as though - here I am speculating - she was passing the violence on. This is possibly a trend that we need to do more research on and find out a bit more about, which is, how much victimisation can cause a reduction in your own values and affect our own behaviour towards other people? It was really a personality change that the

parents were most distressed about. She was a very cheerful, outgoing little girl, who presumably had just been a bit too friendly on this occasion, found herself to be vulnerable, had stopped being friendly altogether and we don't know how long that went on.

In the second case of a boy, this in fact was a 15 year old boy, whose sister was raped, his younger sister was raped by a boy at his school. And again he had been the sort of boy like many boys of that age, who hadn't taken a lot of notice of his younger sister, had preferred his independence, had preferred the company of boys. But after this had happened, and he knew what had happened, he became almost obsessional in his possessiveness about his sister. He followed her around everywhere. He would wait for her after school and take her home, even though she didn't want it and the parents hadn't asked him to. If any boys came anywhere near her, he would literally threaten them to a fight. It changed his behaviour altogether and as time went on - because I think this case had been around for a little while when the research was done - then other boys were beginning to go out in mixed groups and had girlfriends, he wouldn't have anything to do with girls at all. In fact he was adamant that this wasn't the sort of thing that he wanted to get into. So it had also affected his view of what normal sexual relationships were all about, boys and girls becoming friends, getting to know each other. It affected his attitudes to other people really quite substantially, in particular to his own sister. And of course one of the problems with young victims is that over-possessiveness - which is usually felt by parents, but sometimes by other people - can sometimes affect them re-gaining their autonomy and their freedom and getting back out in the community. But you do see his happening very, very often. One thing goes wrong and its: 'Get home on time next time'. Suddenly they lose a lot of the freedom that they already had through their normal private process.

And finally, I think possibly one of the nastiest cases in the whole sample concerns a 7 year old boy who was actually present when his mother was raped. One of the problems with this boy and one of the things that caused his mother enormous distress - bear in mind rape is not something we want to talk about as I said before. This little boy who didn't understand what it was he witnessed - he just knew that it was bad, that his mother was very distressed and he was very distressed - wanted to talk about it all the time. He kept asking questions about it: 'what was happening? why was he doing that to my mummy, what was that all about? how did you feel?' And it is very embarrassing for the parents because he was asking these questions and talking about it in what they regarded as inappropriate situations when other people were present or when they were doing something with the family and not wanting to talk about that at all. And there is this dreadful dilemma that you so often find - how much do you actually talk to the child about it, encourage them to talk, encourage them to bring out and share their feelings and get them into some perspective?

One of the other things that I think I ought to mention is that whilst I have talked about the invisibility of these crimes I have not said a great deal about what the adults in this situation are thinking and feeling. What we have to bear in mind quite often is that the adults sometimes feel extremely guilty themselves about what has happened. Quite often parents or a teacher will feel that they should have been able to do something to prevent it. One of the reasons why they don't take it any further is that they feel that they are responsible and that they feel that if they were better parents or

better teachers they could prevent it happening in the future. Once again this doesn't come to light.

So I am going to end this section of what I am talking about by just telling you about one case which really stood out in the survey. And that was the case of a young girl who reported to her teacher, after what appeared to be something of a struggle inside herself, that she had been having some rather unpleasant experiences with a neighbour, but had been too frightened to tell her parents about. She told the teacher and the teacher encouraged her, quite rightly, to speak. She talked about it and what emerged was that she had been kept in somebody's house and was interfered with - what virtually amounted to a rape. I say that because it is sometimes pretty unclear to say whether something reached a legal definition but certainly a very, very serious offence and it was either rape or attempted rape. Well the teacher worried about it. She worried that the girl might have been imagining things. She worried that the girl might have seen something on television and been fantasising. She worried about whether or not she was being set up in some way and she worried about it for two weeks before she told the headmistress. The headmistress advised her not to over-react and to think about it a little while longer while they sleep on it and consider what to do about it. The headmistress eventually told the school chaplain and talked it over with him and he advised, again, that they should think very carefully about what they were doing but really they probably ought to tell the parents. So the parents were eventually brought to the school and they were told what the girl had reported and they reacted very strongly because they knew the neighbour and said that it couldn't possibly be true. She must be imagining things. Then they pondered about it for another two weeks and eventually it was two months before the police were informed about that crime and we don't know how long it had taken before the girl had told the first adult. There was a whole series of adults not being quite sure what to do about what we would regard as a very serious crime.

I am going to move on now to the process of prosecution or first of all deciding whether or not there is going to be a prosecution. I am not going to give you very many details about the decision to prosecute because we don't have very many details. They should have collected information but the research has not been done. To the best of my knowledge there hasn't been a detailed study of decision-making in prosecution in relation to child witnesses. Is that right? I am looking to the more informed people from the academic community. I don't know of one if there has been. Not amongst children anyway. We do know that there have been studies about sexual crime and the huge rate of fall-out in sexual crimes that still exists. I am sure you will know of a very recently published report that said that only 10% of all rapes that were reported to the police - and bear in mind how many have fallen out before you get to reporting it to the police - end up with a conviction. And this just shows that at every stage along the way these cases are falling through the net.

Now with children and indeed other probable victims and witnesses. I think there is an additional issue and I know this because I know a lot of prosecutors, I know a lot of judges, one of my tasks in life is to go and speak on a judge's refreshers course which is organised by the Judicial Studies Board, so four times a year I have ninety judges, or thereabouts, and I have to talk to them about what I think might be going wrong in their courts and what I think they might do about them. So I have quite a bit of feedback about what is going on in these cases as I do get a chance to chat to

people individually as well. Now what I have discovered is that a lot of people in the judicial establishment know that it isn't very pleasant coming to court. You know, the message has got through that standing in a witness box, giving evidence and being cross-examined isn't very pleasant.

I don't know how many of you have actually been to a court and experienced cross-examination? Have many of you? Quite a few. You should. I think it is terribly important. I went right through university and didn't witness a trial until I was 23 and in the Probation Service, and I can remember to this day how shocked I was watching a young rape victim being cross-examined. The court was full of men and there was this young girl standing in the witness box - I was the only other woman in the court - and she was being asked the most intimate details - things to do with taste and smell and how she recognised certain feelings - had she experienced them before? Deeply intimate, intrusive questions in cross-examination to test her evidence. And what of course was happening in that place - it was a long time ago. I won't tell you how long ago I was 23, a very long time ago - and she was reduced to tears and I asked if I could take her outside as an officer of the court and I was shouted at for being absurd in court. That case I remember to this day was thrown out because the witness couldn't complete her evidence on cross-examination. And I think things are a little bit better now - I think the message is getting through gradually and we are told that the Bar Code of Conduct is constantly being improved, although I frequently find that barristers don't know about recent improvements that we have negotiated into the Bar Code of Conduct, for example meeting your witnesses in advance of court, just to say hello and that you are going to be the person who is going to be asking the questions. That has now been accepted by the Bar but I find that a lot of practising barristers don't know that we have changed the Code, but there we are.

What I find is that a lot of people in the judicial establishment will say it is such an appalling experience for the victim or witness when they go to court, that this child is so young, so inexperienced, or this woman is so mentally fragile, she has been ill, she has been depressed, she has had a breakdown, whatever. And because they are vulnerable, some people think it would be better not to take the case to court at all. You might be surprised and you might not be surprised at how often that sort of thing is said. And it is said with the best will in the world, with great caring and concern. A judge actually recently came to a conference where I was talking about mentally vulnerable witnesses. He actually stood up to make a contribution and said that he found it very distressing hearing about the cases we discussed and surely it would be much, much better if we all recognised that where a witness was mentally vulnerable, it was better not to prosecute. You can imagine the outrage from MIND and MENCAP and all those organisations present, not to mention victims organisations like ourselves. The feeling was that you cannot simply drop a case because the witnesses are handicapped. My goodness, that recent case of sexual abuse in Wales and many others like it demonstrate that there is far too much of victimisation of mentally vulnerable people going on already. But this is the problem. The system of justice that we have got at the moment is known to be, dare I say it, brutal, particularly if people don't understand what is going on. They find it deeply distressing. I believe that as a result of that quite a lot of these cases do get dropped in the 'public interest'. As you know, the Crown Prosecution Service had two factors to establish before they take a case to court. One is that there is sufficient evidence to prove the charge and the other is that it is in the 'public interest' to pursue the

prosecution. I do think, probably, and it is very hard to prove this, but with the best will in the world, some of these cases have fallen through. So we suspect that there isn't a very high proportion of these cases actually getting into court at all.

But then what happens when they do get to court? Once again, we became concerned about this. Now I am going to pause briefly and say that to those of you who don't know about Victim Support, first and foremost some of the local members are present and I am sure they will be very happy to tell you exactly what is going on in your area, but just to tell you very briefly, there are now Victim Support schemes in every part of the country. They are usually run by one or maybe two paid members of staff, not paid very well, I might say, but paid members of staff. But most of the workers visiting and contacting victims are trained volunteers and we do have about 12,000 trained volunteers in this country. They have all gone through what we think is rather good, professionally developed training to help them not to be judgmental, to listen accurately and to know what sort of help might be available. A few years back Victim Support was so concerned about witnesses generally we mounted some more research - which I am not going to tell you about today because there are too many other things to talk about - to find out what was happening to witnesses in the court. We discovered that without any doubt at all that witnesses were having a hard time, and so we got together a project to demonstrate that we could help witnesses when they got to court, we can make the experience better for them so that they would make better witnesses and feel better about the whole experience with a bit of luck. But certainly we could sense some of them had terrible problems with insecurity and confusion about what was going on, but we were there to support them. So now, when this government backed us, eventually, we now have a Witness Service in every crown court in the country, including your own, in Leeds. And there will be a group of trained volunteers there, hopefully, if we are able to get the list from Crown Prosecution Service, we contact people in advance so that we can offer them a visit to the court, show them what a court looks like, either when sitting with a case going on that isn't their own, or taken into an empty courtroom; let them stand in the witness box; show them where people sit and so on. And then we can give them separate waiting rooms when they come along to court, a little bit of company on the day, talking about absolutely everything and nothing except the evidence and then we can go into the court with them if they wish us to so that we are there to see what happens, just to know that there is someone in the court for them, even though you are not allowed to look at them or make contact with them. We can help de-brief the witness if they didn't understand what was going on or to keep them up-to-date with what happens after court. That in a nutshell is what the Witness Services do.

Now I reckon Witness Services are becoming extremely concerned about what was happening to vulnerable witnesses generally. So two years ago, two of our Witness Service co-ordinators got together and decided that they were going to do another survey, this time what happens to children when they come to court to give evidence. And that survey was completed during last year - we in fact published it - I have got a copy of it here and I am going to leave one with the university, but others are available from us. This is Children in Court, a research document by Victim Support. This research is really unique, nobody has ever done this before. We managed to find information and we tracked cases through the court, or our court researchers did. 1,000 children who came to court to give evidence and this was done over three separate periods of three months at six months or more intervals but 1,000 cases were

tracked and quite a lot of detail about the age breakdown and types of crimes that they had experienced.

What I am going to give you is just three very short examples of some of the things we came across. First of all, this one is a six year old boy who had been a witness to a sexual assault, a very distressing event for him committed against one of his friends, another six year old boy. He was summoned to attend court at 10 a.m. and he had some preparation which was legal preparation, legally proved preparation which I will say something about in a moment, and he had a bit of support - Victim Support and the Witness Service were there together with his mother. But he was called in at 10 a.m. and he was kept waiting until 4 p.m., aged six, under stress. I don't know how very competent he was as a result - and I don't have children, but I know enough to know that a six year old is going to be pretty tired by that time. You know, the adrenaline will be flowing and dipping, flowing and dipping so many times during that period. As he went into court and was taken through his evidence and then the cross-examination began and he was picked up on certain details of his evidence, what he said about this little detail. I don't know what it was, it could have been the colour of a coat or the exact time of day: 'It isn't quite what you told the police officer at the time, is it?' And questions of this sort. The little boy became very confused and very distressed and he burst into tears and was unable to continue. He was caught out on two or three little details, neither points were substantive evidence at all, after preparing himself to go into court and do his duty, which is what children are told to do - an important job for society - and he got himself all geared up to doing this and then he couldn't continue and the case was thrown out. The mother said to us: 'What I can't get over is that my son was being so brave and now all he can say is that "Mummy, why didn't they believe me? I was doing what I was told to do, I was trying to tell them the truth, but they wouldn't believe me. The policeman told me he would go to prison and he isn't. What has happened?"' This little boy was in total confusion. How do you explain? What was the relevance of all that talk during the trial about 'justice'? What does it really mean? What does that experience add up to in relation to being protected by the adults in the community, by the criminal justice process generally?

Another case, three girls, older children this time. They were about 14 and again it was a sexual assault on one of them that the others had witnessed. They too were already to give their evidence and fully prepared to give their evidence. They had been told they mustn't talk to each other about their evidence. They had been trying to do their best to do this. What had happened in this case was that they were summoned to go into one court, sat all day, the case wasn't heard, and they were sent home again. They were recalled the next day, to be told it had been reconvened in another court. They went to another court after about two months and again it didn't happen. Eventually it went to three different courts in three different towns before they came to give their evidence, several months had elapsed from the first time they went to court to the time that they actually gave evidence. Many people would have given up. They didn't. They were determined to see it through. But again, just look at the stress that they were putting these young people through.

And finally, the cases I have selected to just give you some relative view of some of the problems - the problems that we have identified. A sixteen year old girl who had again been sexually assaulted by three youths and she was the only witness. She was

the only person present, so she was obviously going to be the main witness for the whole of the case. She had had some preparation - she had gone along to the court and she had been shown a screen - she had opted to use screens. There is the possibility of recording evidence on video which is used as the evidence in chief, which quite an advance. There is the possibility of giving your evidence live on the day but in a separate room with a video link and there is the possibility of having screens to protect you so that you can't see the defendants while you are giving evidence. Also they can't see you. And also if the screen is in the right place the public gallery shouldn't really see you either, although the jury can. That is the way it ought to be, it doesn't always work like that. For all that, she had been shown the screen, she was sitting in the witness box and shown where the screens were, where the defendants were going to be. When she got to court the judge said to the sixteen year old girl, 'You look a big girl for your age, I don't think you need that childish stuff, do you?' and the screens were not allowed. And I can't tell you how often that has been happening. We should be getting rid of these problems by now because decisions should now be made at clear directions hearings, but it is not quite working yet - I am not quite sure what is going on, but it is not quite working yet and prior to that there were lots and lots of these cases where people prepared in one way and not allowed to use it. This case was awful - quite tragic. She gave her evidence live. The boys were convicted, but afterwards she was visited by the three girlfriends of the boys concerned and beaten up so badly that she ended up in hospital. And they wouldn't have known her if they hadn't seen her in court. There are many other examples.

The conclusions of that research were that really three things were seriously wrong, needing urgent attention. First of all the preparation of child witnesses. There are some beautiful packs of information being prepared by the Children's Agencies and the Home Office for use of children giving evidence in court. It tells them their job, it tells them why it is important they do their duty well, it tells them about telling the truth, trying not to get confused and to ask the judge for help if they need help. It takes several hours to prepare a child to go through this - with little games to play, little courtrooms to assemble out of cardboard and they are marvellous things, or colouring books to colour in, they are really rather nice. We discovered that only a third of our witnesses in the sample had ever seen a pack or had any preparation. The other two-thirds had not. And what seems to be happening is that very high profile, serious cases of sexual abuse are getting good preparation from professional social workers or the NSPCC, but most of the other children who had different types of crime or who were just witnesses, had no preparation whatsoever, unless these days of course, the Witness Service pick them up in time. The waiting is a big problem which I think I have already demonstrated. Fast tracking is being brought in gradually, and I think things are improving, but we are still getting some cases taking over a year to get to court.

In court, in our survey, 25% of our young witnesses waited for more than one day; in other words they had to come back to court after waiting one day. We believe that young witnesses should be allowed to wait at home or somewhere else because with modern technology, we should be able to get a telephone call to them, with a suitable adult who is waiting with them, to bring them to court in time to give their evidence - even if there was a slight delay - 10-15 minutes of court's time - even that shouldn't be necessary, but surely that is better than having the young people sitting there, better than stress and not being able to do their job at all. That's my feeling.

In relation to their evidence, many of our children in our survey had to give evidence for four, five, six hours and I think there was one case, that was a day. It involved quite a young person. Is it reasonable to expect them to do justice in this way? Meeting the barrister is very important, for some barristers are still, as I think I indicated before, not thinking that was the proper thing to do. They always thought it was not the proper thing to do, but for some reason some still do.

And finally, the way in which they should give evidence - they must know in advance, well in advance, how they are going to give the evidence, how they are going to be sitting, where they are going to be, and in the video room. I don't know whether you know this, but repeated Lord Chief Justices have decreed that the only adult allowed in the video room is the usher, whether specially selected for that purpose or not. Some ushers are brilliant, I know I have met some, but it is not really their job, except to deal with the equipment. There are suggestions that somebody from the Witness Service or even someone from one of the children's agencies, should have the special job of going in with the child for a bit of moral support without contaminating the evidence. The Director of Public Prosecutions agrees with us, lots of other people agree with us, some judges agree with us and let it happen in their courts, but otherwise it is not allowed at the moment and we need to sort that one out. And of course there is the issue of screens. In our sample 25% of all young witnesses who asked for screens were refused permission to use them. I would like to say that I think it should be automatic below a certain age. Screens should be available for other sorts of witnesses as well, but there we are. That is what we have.

I must end because I have spoken for much too long. I said I wasn't going to speak for ever and I have done, so I apologise for that. But I will end by saying that a lot of good things are happening. There is a really brilliant video that has been made for judges - if you get a chance to see it, do see it - it was launched only two weeks ago and it is wonderful, showing judges how they ought to conduct a case with child witnesses. Lots of judges are in this film which has been sanctioned by the Judicial Studies Board so we hope that it won't be thrown out without question.

The witness packs are great - I have described those. The Witness Service is great, though you will forgive me saying it myself - I don't work in one but I think they are wonderful and I think so do most other people who work in court. I get fabulous feedback from judges and from all the administrators working in courts and all the fears that people had with interfering, I don't think have come to anything at all. And also, the new Trial Issues Group - does that name ring a bell with some of you? Do you know about the Trial Issues Group? I am not going to describe it but basically it involves all the departments who work in court, coming together to look at the procedures and how they can make them better. And that Group has just very recently made some interesting recommendations, but we will wait and see what is going to happen. The key to all this is training and flexibility. Training for everybody who works for the law to recognise not only what can go wrong but the very serious consequences if a whole group of young people in our community - particularly if they are vulnerable people - grow up thinking there is no justice in this country, that there are very, very serious consequences.

I am going to end by reading you a little bit of text that we put at the front of our report. We searched everywhere for literature to say what really fits this case - you

know it could have been Shakespeare, it could have been the bible. We came up with Lewis Carroll and it is rather nice:

"Alice had never been in a court of justice before which she had read about in books and she was very pleased to find that she knew the name of nearly everybody there - that is the judge, she said to herself, because of his great wig. The judge, by the way, was the king and as he wore his crown over the wig he didn't look at all comfortable, and it certainly was not becoming. And that is the jury box, thought Alice, and those are the jurors. She said this last word 2 or 3 times over to herself, being rather proud of it, so she thought, and rightly too, that very few little girls of her age knew the meaning of it at all. 'Bring your evidence', said the king 'and don't be nervous or I will have you executed on the spot!'"

"Making Sense of Paramilitary Style 'Rough Justice'"

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Introduction

Since the outbreak of the 'Troubles' in Northern Ireland the paramilitaries, in a crude and violent bid to police their own communities, have exacted over 2000 so-called 'punishment' shootings or kneecappings. Both Republican and Loyalist activists maintain that they are responding to a community demand to stem levels of anti-social and criminal activity in their respective neighbourhoods.

Paramilitary 'rough justice', misguided though it may be, is not simply a blank manifestation of naked violence. Embedded in this practice is a fundamental quest for legitimacy. In operating their system of 'policing' the paramilitaries lay claim to a mandate from the community. Misguided though it may be to ascribe paramilitary 'policing' to the ambiguous notion of 'community demand', it would equally be erroneous to simply impute it to coercion and violence. To understand the hold that paramilitary 'rough justice' has over certain communities in Northern Ireland, one must begin to examine both the claims to legitimacy of those who dispense this form of 'justice', and the views and attitudes of those who accept it.

The following exposition is an attempt to outline the extent of paramilitary style policing and to delineate the justification for internally directed forms of violence. By highlighting this issue I do not aim to fuel publicity or to add any semblance of credence or moral acceptability. The purpose, rather, is to enlighten in order to provide a basis for objective evaluation and discussion. The content will be mainly descriptive. Additionally, due to constraints of time and space I have limited the scope of the discussion to Republican 'rough justice', particularly that of the IRA. This is not

to suggest that Loyalist 'rough justice' is not a significant issue equally worthy of study.

Before commencing and due to the potentially contentious nature of the subject, it is vital to stipulate several important qualifications in order to place the following argument into context. Nomenclature and terminology in Northern Ireland are important. Phrases and words are frequently employed as political expressions of identity and are intentionally partisan in their implication. The term 'punishment', for instance, as employed by the IRA, is heavily value laden in that it somehow denotes that the victim is deserving of the treatment meted out. It would be both naive and beyond the jurisdiction of my ambit to argue or imply that this was the case. As such, 'punishment', is placed in inverted commas to denote the views and attitudes of one particular group.

Additionally, throughout the text I have employed a variety of terms (such as rough justice, alternative justice, popular justice, etc.) aimed at describing the 'extra-policing' function dispensed by the IRA. Again many of these terms are value laden particularly, I would suggest, the term 'justice'. Consequently, when the affix 'justice' is applied I am not suggesting or inferring any degree of legitimacy or moral acceptability.

Finally, it should be stressed that the views expressed in the following do not claim to be representative of the Catholic population in Northern Ireland. Nor are these views held by all nationalists. In the first instance no such homogeneous view point exists in that not all Catholics are nationalist nor are all nationalists republican. One generalisation that can be made about Northern Ireland without due fear of contradiction is that political consensus is in the minority. However, to place the argument into some kind of perspective, the views expressed could best be described as a form of republicanism.

The practice of 'punishment'.

Media representation of this form of 'alternative justice' has been, for the most part, sensational and distorted. The media's partial account would have us believe that 'alternative' policing in nationalist areas is simply about 'punishment' beatings or shootings. However, these represent but a small part of a much more comprehensive system of policing and control.

Nevertheless, 'punishment' shootings are continuously at the forefront of public attention and consequently it is appropriate to begin by quantifying the extent of this particular form of 'punishment'. Official statistics, supplied by the RUC, are available from 1973. In total paramilitaries in Northern Ireland have carried out over 2000 shootings of which nationalists have carried out just over 60%. Table 1 illustrates the level of shootings by Republican paramilitaries throughout the course of the troubles.

Internally directed violence is prevalent in working-class areas where the paramilitary support and hold is traditionally strongest. The majority of republican victims are parochially known as 'hoods'(see for example Thompson and Mulholland, 1995). Typical 'hooding' activities include, for example, joyriding, drug dealing and other

forms of 'anti-social' activity. Most victims, if not all, are male, working class, often unemployed and are mostly between 16 and 29 years of age (See Kennedy, 1995).

The process of determining 'sentence' (though not, of course, the nature of the punishment itself), it is interesting to note, references in many respects that of the state system. For example, the seriousness of the 'offence' is considered in conjunction with the offenders' perceived 'previous record'. Also considered are such mitigating factors as unemployment, social and familial background, and alcoholism (Morrissey and Pease, 1982). The IRA maintain that representatives will mediate and consult with parents in an attempt to arrive at more 'constructive' or 'socially acceptable' ways of dealing with the problem. It should also be pointed out that before anyone is subjected to physical 'punishment' they will usually have received several warnings, or a curfew may have been imposed. Except in the most serious cases, physical 'punishment' is reserved as a last resort. (See for example, An Phoblacht/ Republican News, Dec., 19, 1991)

Failing mediation, the extent of the 'punishment' is gauged according to the perceived seriousness of the crime. The above mentioned mitigating factors determine the number of limbs shot, the calibre of bullet used and even the entry point of the wound. For instance, the victim could be shot once in each leg. Alternatively, in more extreme cases the offender can be shot in both legs, the ankles and the elbows (euphemistically known as a six-pack). The IRA are keen to stress that resorting to physical methods is undertaken with great reluctance, an unfortunate result of the extraordinary situation and the lack of viable alternatives open to them.

As previously mentioned, the practice of kneecapping is only one small part of a much wider system of policing and control. Other sanctions include, for example, expulsions (both from the country and the neighbourhood), abductions, direct and indirect forms of intimidation, and a variety of community type sentences, much akin to recently publicised measures imposed on curb crawlers in the United States, aimed at publicly humiliating the alleged offender. On a more extreme level, of course, are summary executions (such as the shooting of 'alleged' drug dealers during the recent cease-fires) and, the highly publicised 'punishment' beatings.

Contrary to popular belief, 'punishment' beatings are not a new phenomenon. In fact so-called 'punishment' squads have operated throughout the course of the troubles. The RUC have officially recorded such assaults since the early eighties (although it should be noted that official figures represent a bare minimum, as victims often do not need hospital treatment and are unwilling to report the crime). Between 1991 and 1996 Republican paramilitaries have carried out over 400 such assaults (RUC statistics unit). The typology of the average victim is practically identical to victims of 'punishment' shootings. Often repeat offenders will graduate from being beaten, sometimes on multiple occasions, to getting 'capped'.

To the average reader a 'punishment' beating might sound less savage than a shooting. In many instances however the opposite is the case. Generally a beating will last longer and the assault would be less controlled. The attackers employ a variety of weapons including concrete blocks, hurley sticks, hammers, iron bars, baseball bats and sticks with protruding nails. Additionally press reportage of such attacks during

the cease-fire period demonstrated the increasing use of a variety of torture and terror tactics, as the following article illustrates.

"Six people - the youngest a 14-year-old boy - have been savagely attacked in a spate of so-called punishment beatings. Up to 10 hooded thugs hand-cuffed a 23 year old man before attempting to drown him in a bath. In the worst assault, between six and ten masked men abducted the 23-year-old, along with two youths, aged 14 and 16, from a house at Moyra Park in Jonesboro, Co. Armagh around 6.30 p.m. They were manacled with plastic handcuffs and bundled into a van before being driven to another house where they were interrogated separately. The oldest victim was beaten severely, breaking his jaw, and his head plunged into a bathful of water. The two teenagers were hit about the head before all three were driven to Mullaghbawn Primary School, where they were again assaulted." (Belfast Telegraph, Feb., 2, 1995)

The attacks are often more intense, violent and humiliating, and the injuries sustained are more grievous. A woman who spoke to one of the victims following the above attack illustrates the impact such attacks can have:

"I never want to see anything like it again. He was a strapping lad but he was crying his lungs out. I just wanted to be physically sick. He will need psychological help. He'll never get over it. And he was in no doubt it was the IRA. He kept saying: 'They're supposed to support us and they do this. He was slapped about on the face as well but it was mostly the water. It was just horrific'" (Belfast Telegraph, March 31, 1995).

Throughout the course of the recent cease-fires the levels of beatings rose dramatically. Table 2 gives some idea of the level of increase but it should be remembered that these figures represent a bare minimum. To put these figures into proper context, however, it is important to realise that this increase is in many respects the result of the fact that both the IRA and Loyalist paramilitaries had, in light of the cease-fires, given tacit assurances that kneecappings would no longer be carried out. As such the rise in beatings partly reflects the substitution of assaults for beatings.

The Republican Justification

In an article on crime and punishment in the Belfast Telegraph the author posed the following hypothetical question: "If you were robbed, violated, raped, mugged, battered, bruised and generally physically and/or mentally wrecked would you prefer your assailant/s to be jailed for six months or two years or kneecapped by paramilitaries?" (Feb., 6, 1996).

Whilst I would assume that most people would be appalled by the notion of forcibly taking a 16-year-old from his home and shooting him in the knees for stealing a car, in many working-class nationalist areas of Northern Ireland the reaction is not so easy to gauge. Any specific measure of communal support would be difficult to assess as it is prone to change given the exigencies of any particular situation. Nevertheless, there

does exist a considerable support base that allows for the continuation of these forms of 'punishment'.

To understand the tolerance accorded to IRA style 'rough justice', it is necessary to view the system in the social and political context within which it operates, and to be aware of the opinions, attitudes and experiences of those very people who demand it. The IRA generally justify employing extreme measures along three basic premises.

Firstly, they argue that the RUC are perceived as sectarian, partial and unrepresentative of the views of Catholics. From the Republican point of view such events as those on the Garvaghy Road at Drumcree over the past few years only serves to add credence to this view. (In an opinion poll in the Irish Independent, 3 February 1995, 45% of Catholic respondents voted in favour of disbanding the RUC.) Moreover Republicans argue that the RUC itself often applies extra-judicial means such as the much highlighted beatings at Castlereagh and the alleged shoot to kill policy (for a discussion of this issue see for example, Amnesty International's report, 1994). As such, the IRA maintain that they have an intrinsic duty to the community to fill the vacuum in policing which exists because of the lack of faith and confidence in the RUC as a police force.

Secondly, in line with any successful revolutionary organisation, it is essential to create alternative structures to that of the state. That is, in rejecting and contesting the legitimacy of the state, the creation of alternative structures is a requisite component of the overall strategy to affect political change.

And finally, the IRA maintain that the RUC employ criminals as part of their counter-insurgency strategy. They argue that the RUC deliberately ignores the petty criminal and anti-social activity of the 'hoods' for their own strategic advantage. By doing so the IRA argue that they are forced to employ valuable resources to deal with these offenders as failing to do so would reflect negatively on their image within the local community. More significantly, it is alleged that the RUC actively strive to recruit petty criminals as informers as the following statement in An Phoblacht/Republican News suggests:

"..... the fact [is] that the 'anti-social behaviour' which plagues the nationalist ghettos has been, and still is, encouraged by the various components of the British war machine with the twin objectives of diverting the resources of the IRA into trying to contain it, and at the same time undermining the IRA's credibility by its apparent inability to stamp it out. In such a case the IRA must be very careful how it responds to the problem. Since the IRA does not have institutions for rehabilitation, it is inevitably, and indeed reluctantly, forced into taking action against the more serious social offenders" (Dec., 10, 1981).

Conclusion

Although a few journalists (notably Malachi O'Doherty, Anne Cadwallader and John Cusack), and (even fewer) academics must be commended for both highlighting and informing this contentious issue (see for example McCorry and Morrissey, 1989, Munck, 1985, and Kennedy 1995), it would be fair to suggest that the debate on

'alternative justice' in Northern Ireland is still in its infancy. Coverage in national newspapers, for the most part, has been substantially shallow, tending to sensationalise and criticise without reflecting in any depth on the history, context, and opinions and attitudes of those living in the communities within which these forms of 'justice' are dispensed. By failing to do so they portray at best a partial but naive rendition. To be in a position to understand and objectively evaluate the system of social control operating in nationalist communities today, it is imperative to outline an account free from value laden traditional conservative morality.

The IRA are aware of the dangers of alienating public opinion by resorting to activities which do not hold at least the tacit consent of the nationalist community. To be fair, the issue of policing is one of perennial debate in republican circles. Few republicans would argue in favour of the intrinsic merits of current procedures. However the IRA claim that they are acting in response to community pressure. As I have already pointed out, the exact extent of this demand is difficult to ascertain accurately. Nevertheless it would be very naive to attempt to deny that any such demand does exist. IRA members are recruited from, known to, and operate within their local community. Should that community reject their activities, it is unlikely that the IRA could have been able to sustain and wage their 'war' for the past 25 years.

It is understandable that most of us would regard such practices as 'kneecapping' morally reprehensible and utterly unjustifiable. However, I believe it is simplistic for us to condemn those who tolerate such practices without considering what compels them to do so in the first place. Many people living in nationalist communities feel alienated, brutalised, stereotyped and discriminated against. The RUC is not deemed as either effective or acceptable. The British Government's presence is viewed as illegitimate. The loyalist community is perceived as a severe threat to life. And internally, the 'hoods' are regarded as an additional burden that the community should not have to tolerate. In these circumstances it is perhaps easier to understand why so many in Northern Ireland accept IRA 'rough justice'.

Given the current IRA and Loyalist cease-fires, and the beginning of the long awaited 'talks process' in the province, it is perhaps a befitting occasion to begin to take issue with one of the many criminological issues that have largely been neglected over the past years. In doing so, however, it is clear that this paper raises more questions than it answers. This is inevitable in that, as Garofalo points out, "part of the nature of complex social phenomena is that their complexity becomes apparent as they are examined more closely" (1981; p.839).

'Rough Justice' in Northern Ireland represents more than simply local *Mafiosi* exerting authority over territorial rights. It represents an important ideological arena in which issues of coercion and consent (or legitimacy) through locally perceived symbols of 'justice' merge. On a wider criminological level it throws into question the nature of the relationship between 'alternative' and state law, the ideological appeal of the 'alternative' and its justification, and notions of normative values and perceptions of 'justice'. To this point 'alternative policing' in Northern Ireland has been compartmentalised and treated as distinct from the wider discussion regarding alternatives to justice. More than anything it is hoped that this paper demonstrates that, although individual and unique in its own right, the Irish case merits assimilation into the mainstream criminological debate.

Appendix A

Table 1

Source: RUC statistics unit.

Appendix B

Table 2

'Punishment' beatings by Republican paramilitaries, 1991 - 1996.

Year	Number	Year	Number
1991	40	1994	32
1992	38	1995	141
1993	6	1996	172

Source: RUC statistics unit.

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"The Uses of Custody - A Judge's Perspective"

The Frank Dawtry Memorial Lecture, 7th November 1997

Lord Justice Paul Kennedy

Introduction by Professor Clive Walker

Can I welcome you all to this the 15th Seminar in honour of Frank Dawtry, who was the General Secretary of the National Association of Probation Officers. These seminars were established in 1973 to commemorate his work in criminal justice and previous speakers have included politicians such as Home Secretary Douglas Hurd, academics such as Professors John Smith and Roger Hood, and practitioners such as Ray Kendall, Secretary-General of Interpol. But this is the first time we have had a judicial figure, and to start with such an eminent representative from that world makes this occasion special indeed.

I am delighted to welcome a person who can give us wisdom and experience in this debate on "The Uses of Custody", Lord Justice Paul Kennedy. Lord Justice Kennedy was born in Sheffield and read Law at Cambridge before entering the Bar in 1960. He was appointed as a High Court judge in 1983 and became known to many practitioners in the criminal justice field in this locality as the Presiding judge of North East Circuit 1985 to 1989. He went on to become, until recently, Chair of the Criminal Committee of the Judicial Studies Board and was appointed a Lord Justice to the Court of Appeal in 1992 where he now sits as Vice President of the Queen's Bench Division. He has been associated with the Centre for Criminal Justice Centre here at the University of Leeds for a couple of years now as one of our very valued Advisers.

Lord Justice Paul Kennedy

1. INTRODUCTION

In November last year, when Professor Walker invited me to speak on this occasion, there was still a Conservative government, the White Paper "Protecting the Public" had been published the previous March, setting out in detail what the Home Secretary Michael Howard had proposed at the Conservative Party Conference, and the Crime (Sentences) Act 1997 had yet to be enacted. The White Paper had provoked an immediate reaction from Lord Taylor, still then Lord Chief Justice, and I have no doubt that it would have provoked a similar reaction from Frank Dawtry had he survived that long. He died in 1973, but as the General Secretary of the National Association of Probation Officers he could hardly have welcomed the proposals set out in the White Paper, some of which are now to be found in the 1997 Act. In his introductory note to that Act in Current Law Statutes Dr David Thomas QC says:

"The Government which brought the Bill forward has since been rejected by a large majority at a general election. It is to be hoped that

the new administration will repeal the Act without bringing it into effect."

The present administration does not seem to be minded to repeal the Act, and indeed has decided to implement some parts of it, so it seems to me that today it may still be useful to do a little stock-taking as to the uses of custody, even though happily the topic is not quite so contentious as it was a year ago. I am very conscious of the honour of being asked to speak on this occasion. My predecessors have included distinguished academics and politicians but not, I believe, any serving judge, so it is perhaps appropriate to emphasise that my remarks as to the uses of custody are made from a judicial perspective - they express one judge's point of view.

2. HISTORICAL ACCIDENT

Almost up to the time that Frank Dawtry died, judges were still going round the country on assize, and when at each assize town the Commission was read the judge was reminded of his duty to "deliver" the jails, that is to say to empty them, not to fill them. It was a healthy reminder, because it made the point that incarceration is not a long-established and carefully evaluated response by society to the problem of crime, a sort of all-purpose antibiotic with no side effects. Rather it is a relatively recent backup form of disposal which has increased in prominence as other forms of disposal have become unavailable. Medieval jails were places where prisoners were held pending a trial, but not generally thereafter. By the mid 16th century there were work houses or Houses of Correction nationwide, administered by local justices, following the pattern of the London Bridewell, but their purpose was to provide work for vagrants or the unemployed, and only gradually did they come to be used to imprison petty offenders. Until the early 19th century all felonies except mayhem and petty larceny were in theory capital, but the rigor of the law was to some extent tempered by the use of benefit of clergy, by the reluctance of juries to convict, and by transportation. The Marshalsea and the Fleet prisons were used mainly for debtors, and in the late 18th century John Howard began his crusade against the misery and degradation which existed within prison walls. The Prison Act 1778 can be regarded as the starting point of the system which we know today, but when it was enacted transportation to Botany Bay was still being offered as an alternative to imprisonment. That was condemned by a Parliamentary enquiry in 1837, and another enquiry condemned the hulks or floating prisons which, as readers of "Great Expectations" we all recall. That is no doubt why even today there is something very disturbing about the decision to hire an American vessel to act as a floating prison. It was not until 1857 that the colonial territories refused to accept transported convicts, and thus forced the United Kingdom authorities to provide for substantial numbers of convicted prisoners whom it was considered inappropriate either to release or to execute. Many new prisons were then built and I suspect that Armley was one of them. Penal servitude was introduced, and in due course the report of the Gladstone Committee of 1894 led to the Prison Act 1898. It abolished hard labour, and divided prisoners by reference to their offence. It provided for remission of up to one sixth of the sentence, and so we can see present patterns beginning to take shape.

Early in this century there was a move to take adolescents out of the adult prisons and the first Borstal institution was opened at the village of that name in Kent in 1908. Probation came on to the scene in the United Kingdom at about the same time. It was

introduced in 1907, and in 1948 penal servitude and hard labour were abolished. In 1963 it became possible to get parole after serving one third of a sentence of imprisonment, and in 1965 capital punishment effectively came to an end. So, with transportation and penal servitude no longer available, when a court had to sentence for a serious offence a substantial sentence of imprisonment became, not the disposal of choice, but in reality all that was left.

3. REACTION TO CRIME

I have spent a little time on a topic which may be familiar to many of you, namely the history of our present prison system because it seems to me that having regard to the almost accidental way in which imprisonment has become the most common way of dealing with really serious offenders it would be surprising if it should also have turned out to be society's most valuable response to the problem of crime, and I venture to suggest that although for political and other reasons politicians and journalists have vociferously suggested otherwise in reality it is no such thing.

For the purposes of this talk it is fortunately not necessary for me not to get involved in the question of what conduct is or ought to be regarded as a crime. Suffice to define a crime as any act or omission which may result in the perpetrator being brought before a criminal court, and I think we can agree that most but by no means all acts or omissions of that kind would be regarded by most people as morally wrong. That, as it seems to me, must be society's first and most significant line of defence. So it follows that in our complex society it is vital to do all that can be done to ensure that as many people as possible, and especially the young, share our perception as to what is unacceptable, and with that aim in view it is important not to cast too wide the bounds of unacceptability. In relation to very basic matters, such as respect for the lives of others, the problem is not great, but in relation to other matters it is interesting to see examples of the public being educated away from offending. Most people now use seat-belts in cars, and a great many, especially the young, refrain from driving after taking alcohol, not so much because they are afraid of being caught as because they and their friends accept that to act otherwise would be wrong.

In a wholly stable society, such as an agricultural village before the first World War, almost everyone would have recognised the boundaries of acceptable conduct. Those boundaries might not have been quite the same as elsewhere, but they were honoured and if there was a transgression that type of society had its own response. In Cider with Rosie, Laurie Lee said in relation to his sexual transgression:

"We knew ourselves to be as corrupt as any other community of our size - as any London street, for instance. But there was no tale-bearing then or ringing up 999; transgressors were dealt with by local opinion, by silence, lampoons, or nicknames. What we were spared from seeing - because the village protected itself - were the crimes of our flesh written cold in a charge sheet, the shady arrest, the police-court autopsies, the headline of magistrates homilies."

Of course a large conurbation cannot be expected to operate in that way, but that passage can also be used to illustrate the danger of too much reliance being placed on criminal statistics. Is incest, for example, a more common crime in rural communities

than it used to be 50 or 100 years ago? I doubt if the statistics would really help about that.

And as Christopher Nuttall, the Home Office Director of Research and Statistics, is always careful to explain, there are many other caveats to be applied, often to specific types of offences, before meaningful comparisons can be made. For example, there has been a substantial rise in home ownership since World War 2, and a commensurate rise in domestic insurance. Before a claim can be made against an insurer a burglary must be reported to the police, and most people now have telephones so the police record of burglaries for 1997 is probably a more accurate reflection of the number of offences committed than it was 50 years ago. Similarly whereas, for obvious reasons, offences of dishonesty tend to increase during a recession, offences of violence decrease - probably because people have less free money to spend on alcohol. The pattern is reversed when there is a boom, so little of value is likely to be learnt by lumping together statistics in relation to different types of crime.

That said I see no reason to challenge the general view that our society is becoming more lawless. The police were recording about half a million offences per year in the mid 1950s, two million in the mid 1970s and 5.3 million in 1994. How then should we react? If we fail in our attempt to persuade a criminal to eschew his proposed course of conduct on moral grounds we can often make it unattractive in other ways. If he is well housed and clothed and fed and has a job to occupy his time and satisfy his need for self-esteem and has decent leisure facilities criminal activity should be less attractive. It is not surprising to find that in 1993 when unemployment was 12%, among those convicted it was 60%. Having said that I recognise that deprivation is relative, and so to some extent it continues to exist when basic needs are satisfied; but that is no excuse for not satisfying basic needs. It is well known that most crime is committed by teenagers and young men. For males the peak age for offending is about 18-21 and for girls 14-16 so there is no doubt as to the group within society which needs extra support. Even within a particular age group it is not difficult to detect those who are most likely to offend. If they have delinquent friends or siblings, if they are excluded from school, or play truant, if their attachment to school or their family is weak they are particularly at risk, and these days the difficulty of offering support to the vulnerable young is compounded by the presence of drugs. A 1996 survey in four English cities showed that drugs other than alcohol and nicotine were present in the urine of more than 70% of those arrested. The level of heroin varied between 16% and 32%. Some voluntary organisations, such as Youth at Risk, try to meet that challenge. They gather up limited numbers of vulnerable young and give them intensive training for a limited period of time followed by a much longer period of support..

At a more mundane level crime can be made more difficult if potential victims take precautions and many people now do so. They lock their doors and windows, they fit burglar alarms, and when environmental agencies permit it they put bollards in front of shops which have been ram-raided. Mothers accompany their children when they go to play in a park, or travel to school, and women try to avoid walking home alone at night. Preventive measures can be very effective. I am sure that concrete bollards do reduce ram-raids, and when the German authorities required all cars to be fitted with steering wheel locks on the same day car thieves in that country received a body-

blow from which they have never really recovered. Our car thieves were given more time to master the new technology, with all too obvious results. One very important way of controlling violent crime is by control of weapons. It is comforting to know that because our gun laws are strict the homicide rate in London is one-fifth of that in San Diego and one-thirtieth of that in Washington D.C.

Another obvious and potent disincentive to crime is the possibility of detection. If you drive along a road where the police have set up cameras which are known to be operating the effect is obvious. Even young men in drop-head BMWs can be seen to be driving at 40 miles per hour, and there is much to be said for the micro-chips which help to trace a stolen car, but the hard fact is that for most offences the risk of detection is rightly perceived to be small. Here too it is dangerous to generalise because, for example, homicide detection rates at any rate in this country are high.

4. THOSE WHO REACH COURT

It is estimated that overall about 7% of offences are detected, 3% result in a conviction or a caution, and 2% are convicted, so it is very important for judges at all levels, and for the general public, to recognise that for the vast majority of offences there is no possibility of a sentence being passed by any court. Also a significant section of the population do themselves commit offences at some stage in their lives. I am not talking only about minor motoring offences. About one third of males born in 1953 had been convicted of an offence other than a routine motoring offence by the age of 30, so any approach to sentencing founded upon the premise that offenders are a tiny minority to be identified and outlawed is misconceived. They are, whether we like it or not, part of the fabric of society so, to borrow a phrase from David Faulkner's paper "Darkness and Light" the approach must be inclusive not exclusive.

5. OBJECTIVES OF SENTENCING

When it comes to pass sentence every court realises that one of its prime objectives is to mark the gravity of the offence, to denounce it, to show society's disapproval of it, and thus in some cases to provide a safety valve which canalises and controls the desire for vengeance enkindled by the offence in the victim. But the value of this punishment objective can be over-stressed. In the 1996 White Paper it was said that:

"It is important for society and for individual victims that those who break the law are suitably punished. If punishment is not imposed, or if the punishment is generally perceived as too lenient, the victim will be left with a sense of injustice and grievance, and public confidence in the criminal justice system will be eroded."

In most cases no punishment can be imposed because no one has been brought before the court to be sentenced, and that is not because our detection rates as a nation are poor.

A second objective of a court when passing sentence must be, so far as possible, to try to prevent a repetition of the offence, either by the offender in the dock or by others. The court will also want, if possible, to provide recompense for the victim, and in

justice to the offender the court must always try to see that comparable offenders are treated in substantially the same way.

6. DOES CUSTODY SATISFY THE OBJECTIVES?

Although it might be thought that a custodial sentence would always meet the first objective of sentencing in that it would demonstrate society's disapproval of the crime, it has often been asserted that the sentences actually imposed are not sufficiently severe. Indeed that would seem to be the only rational justification for part 1 of the 1997 Act which requires the imposition of certain minimum sentences. A sentencer must of course be alive to public opinion, and the statistics do show that in recent years (for example in relation to domestic burglary) sentences have increased, but it is my experience that in almost every case where the media has expressed outrage and indignation a careful look at the circumstances has revealed that the sentence imposed was entirely appropriate. If an irresponsible youth drives too fast and kills a child, the child's parents will understandably regard any sentence as inadequate, and it is difficult to see what good it does to anyone for television or newspaper reporters to seek their comments just after sentence has been imposed. The same applies where, as often happens, a parent is asked to comment on the sentence passed in respect of a sexual offence against a child.

Turning to our second objective, for as long as an offender remains in custody he will probably not be able to commit the type of offence for which he has been sentenced, but in almost every case he will eventually be released, and what then? Will the fact of imprisonment have taught him a lesson, or merely put him in touch with criminals more sophisticated than himself? Many burglars and petty thieves, for example, are young, ill-educated, feckless and inadequate, and hardened criminals often have serious personality defects. It would be nice to think that in prison they will receive much needed basic education and character building support, but at the present time that is unlikely, so the possibility of their experience of prison acting as a deterrent for the future is remote. That is not the way they think, nor is it likely to deter others, who will not even know what has happened to them. Indeed Home Office figures show that the reconviction rate for 17 to 20 year olds, at about 80% within 2 years, is much the same whether or not a custodial sentence is imposed, so it can be argued that a sentence of imprisonment just increases the costs without yielding anything of significance in return.

Certainly anyone sent to prison is unlikely to be in a position to pay any compensation to a victim, but because of the need to demonstrate society's disapproval of the offence, and to keep the balance between one offender and another, the sentencer may often feel obliged to impose a custodial sentence which he knows is unlikely to benefit the offender or anyone else, except to the extent that it keeps the offender out of circulation for a short period of time.

7. ALTERNATIVES TO CUSTODY

Quite apart from those considerations each one of us knows that it is a serious matter to deprive someone else of their liberty. It is necessarily the last resort, and that is still the approach required by Section 1(2) of the Criminal Justice Act 1991 as amended:

"The court shall not pass a custodial sentence on the offender unless it is of the opinion -

(a) that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or

(b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him."

Of course the wording of the statute begs the question - when is an offence so serious that only a custodial sentence can be justified? The answer, it has been said by the Court of Appeal, is when it is "the kind offence ... which would make all right thinking members of the public, knowing all the facts, feel that justice had not been done by the passing of any sentence other than a custodial one" (Cox (1992) 14 Criminal Appeal Reports (Sentencing 479)). Note that it is only when he or she knows all the facts that the hypothetical right thinking member of the public can come to a conclusion about whether or not justice has been done.

8. RELEVANT FACTS

What then are the facts which have to be known? First of all there are the circumstances of the offence itself, and its consequences. Some offences, such as murder, armed robbery and rape are clearly very serious. Others, such as manslaughter and causing death by dangerous driving, derive much of their seriousness from an undesired and unintended result. The culpability of the offender will vary considerably having regard to the facts of the case. If during the course of a silly quarrel under severe provocation one old man pushes another so that he falls backwards, hits his head and dies, it may well be possible to think in terms of a non-custodial penalty for the offence of manslaughter, but there will be many cases of manslaughter for which the penalty must be very substantial indeed. In almost any case there will be aggravating or mitigating features also to be considered. A plea of guilty will obviously mitigate, but the extent of the mitigation will vary considerably, depending upon the strength of the prosecution case, the vulnerability of prosecution witnesses, when the plea is offered and what if any degree of remorse is actually involved. The 1997 Act seems to pay scant regard to that. A lack of previous convictions, coupled perhaps with a positively good character, is again a matter to be taken into consideration, but what if any weight should be attached to previous convictions, bearing in mind that no one should be punished twice for the same offence? There may be many other matters to be considered. For example the offence, although grave, may have happened a long time ago. In some circumstances that may be thought to mitigate it. The offender may be young, or female with responsibility for children or elderly parents. Should that be a mitigating factor? Much may depend upon the circumstances of the offence, and necessarily all of those factors inter-relate.

Sometimes an offender may provide valuable information in relation to more serious crimes committed by others. If the information is really valuable that has often resulted in a substantial adjustment to the sentence, not only to reward the informer

but also to encourage others who may be minded to assist in a similar way. It is difficult to see how that approach by the courts could be sustained where the mandatory minimum sentence provisions of the 1997 Act have been brought into force.

I do not attempt an exhaustive view of possible mitigating circumstances because that would be impossible, but when all the relevant facts are known the sentencer, and the right thinking member of the public, will necessarily look at any recommendation in the pre-sentence report prepared by the probation officer, or in any medical report, especially if it relates to mental health, and he or she will also look at sentences imposed in other cases. There may be a guide-line decision of the Court of Appeal which will assist, but more often help can be gained by looking at a number of decisions to establish a bracket. This approach, as it seems to me, is what justice demands because, as I have said, comparable offenders should be treated in a comparable way.

9. CONCLUSION AS TO SENTENCE

Thus it is possible to reach a rational conclusion as to the sentence to be imposed in the individual case - whether or not it can be non-custodial, and if it has to be custodial how long it needs to be (save in the exceptional case of murder, for which the sentence is at present fixed by law).

Individual stages in the process by which a conclusion is reached as to the sentence to be imposed can usefully be made the subject of debate. I have hinted at some of the possibilities already, such as whether certain offences are really more serious than others, our approach to women, young offenders and informers, and I do not exclude the guide-line or tariff sentence itself. For example, in a case of rape, it is well known that the starting point in a contested case with a first offender is five years, but why five years rather than, as in some other countries, seven or four? There is nothing self-evidently correct about the figure at which we have arrived, and the same can be said in relation to other crimes.

10. MANDATORY SENTENCES

That brings me to what I regard as the most serious objection of the new legislation requiring in some cases mandatory minimum sentences, namely that it is simplistic and potentially unjust. Without any sufficient regard to the fact that with 63,000 inmates our prisons are already over crowded and acting as it would seem upon the dubious premise that longer sentences reduce crime in ways other than by keeping the individual offender out of circulation for longer, it requires courts to impose sentences which would not otherwise have been imposed because they would not have been considered to be just. Section 2 of the 1997 Act requires that where an offender is convicted of a serious offence, as listed in Section 2 (5), and has previously been convicted of any other offence in the list he must, unless the court finds that there are exceptional circumstances, be sentenced to imprisonment for life. Manslaughter is one of the offences listed, so if the old man who pushed his friend so that he fell and died had been convicted forty or fifty years ago of say intercourse with a girl under 13 (another listed offence) he would now have to be sentenced to life imprisonment unless the court could persuade itself that the circumstances of the manslaughter were

exceptional. I am inclined to doubt whether they could be so regarded, although the offence would of course be not a grave offence of its kind. For each of the offences listed in Section 2 (5) the court already has the power to impose a life sentence and that power is exercised where the criteria set out by the Court of Appeal in Hodgson (1968) 52 Criminal Appeal Reports 113 are satisfied, namely where the offence for which the sentence has to be imposed is grave enough to warrant a very long sentence, or (although the instant offence is not particularly grave) it seems that the offender is a person of unstable character likely to commit offences in the future which will have a serious effect on others. If in any given case the Attorney-General considers that a life sentence should have been imposed he can seek leave to refer the case to the Court of Appeal which, if persuaded that he is right can then impose the appropriate sentence (Section 36 of the Criminal Justice Act 1988) and the Attorney-General can also adopt that procedure if he considers that the tariff sentence for the offence in question is too low. The virtue of that approach is that it is selective and seeks to do justice on the facts of the case, but the existence of that remedy for under-sentencing does make it difficult to discern a convincing rationale for the new provisions.

11. PUBLIC MISUNDERSTANDING

My belief, for what it is worth, is that the source of this barren legislation can be found in the way in which and the extent to which the media in recent years has reported violent crime. It has roused emotions, and that sells newspapers, so such reporting receives star billing. The public in general becomes aware of the problem which almost inevitably it considers to be worst than it is. Politicians, desperate for votes, offer an apparently attractive solution - to lock up offenders for even longer - conveniently, for the time being, ignoring the many facets of the problem to which I have already referred. And you and I are left to pick up the bill and make what we can of the result.

The extent of public misunderstanding was well illustrated in a study conducted last year under the auspices of the Nuffield Foundation. It disclosed a public belief that less than half of convicted rapists are sent to prison. In fact the figure is over 90%, and there were similar misconceptions in relation to burglars and muggers. I am inclined to think that that sort of popular misconception will only be made worse if, as proposed, what is said in court has to indicate more clearly than at present the period in custody actually to be served.

12. CONCLUSIONS

Nothing that I have said is intended to indicate that I regard custody as anything other than a vital sentencing option, or that I regard the judiciary as free in the sphere of sentencing to disregard the will of Parliament or public opinion. Quite the reverse. But custody is not a panacea, and I do venture to suggest that there is an urgent need for the public and for parliamentarians to be properly informed and to explore other options with some degree of enthusiasm. The evidence that "prison works", is fragmentary, and, when applied to individual offenders, is frequently unconvincing. The best cure for criminality in an individual in most cases is likely to be the passing of time, because most criminals seem to retire at an early age, under 30% of those sentenced over the age of 40 re-offend within 2 years, but the real focus, as it seems to

me, ought to be on crime prevention, and that will be a difficult and expensive long-term job. Where crime prevention fails, and offenders are caught and brought to court we all know what we want to achieve - a sentence which marks the gravity of the crime and, so far as possible, offers hope for the future. So long as a substantial sentence of imprisonment is represented as the only real punishment the value of imprisonment is exaggerated, and too little attention is paid to other possibilities. For example, if a young man who has committed sexual offences against boys agrees to submit himself to a demanding period of therapy in a recognised institution lasting for many months, followed by supervision, there may be persuasive evidence to show that the risk of him re-offending will be reduced. Furthermore if a non-custodial order is made in his and other similar cases the pressures within prisons will be to some extent reduced so that more can be done to help those who have to be there. In one American state serious sex offenders can now be given life time probation, subject to secret surveillance, with what are claimed to be encouraging results. Here in Leeds, as well as in the Thames Valley, very useful work has been done in the sphere of mediation between victims and offenders as a possible alternative to prison. But if every non-custodial order made in relation to a significant offender is greeted with a scream of indignation in the press, echoed by members of Parliament, it will not be surprising if relatively few such orders are made. In 1910 Mr Winston Churchill, as Home Secretary used words which many of you may have heard before:

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country".

My fear is that, measured by that test, we have, in the last few years, become less civilised, and we should now try to put things right. I am sure that Frank Dawtry would wish us well in that endeavour.