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Informality in magistrates' courts as a barrier to participation☆

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ABSTRACT

Magistrates' courts are the workhorses of English and Welsh criminal process. Efficient processing of high caseloads in these courts depends on a cohesive network of co-operation among the parties. That co-operation depends on a culture of perceived informality among courtroom personnel, whilst proceedings are actually subject to nuanced uses of legal and procedural provisions. Those nuances are obscured by the seemingly informal way that the workgroup operates to keep magistrates' courts functioning so that they can manage high volume caseloads.

Here I argue that the veil of informality that falls over magistrates' court proceedings undermines defendants' abilities to participate in proceedings. Data gathered through observation of magistrates' court proceedings and follow up interviews with lawyers highlighted that the courtroom workgroup operates as a network perpetuating co-operative behaviours. That data suggests defendants cannot properly participate because a strong culture of workgroup co-operation both informalises the proceedings and obscures their complexity.

1. Introduction

Magistrates' courts are the factotums of English and Welsh criminal justice because they process, to conclusion, around 95% of all criminal cases in England and Wales. Magistrates' courts process summary cases[1] to conclusion, make decisions about whether they can deal with either way cases[2] or should send them to the Crown court for disposal, and send indictable only[3] cases to the Crown court for management. In the first half of 2021, magistrates' courts received 590,065 cases (Ministry of Justice, 2021a). Crown courts received 51,512 cases during the same period (Ministry of Justice, 2021b),

Despite the extremely high volume of cases processed summarily each year, 51% of magistrates' courts in England and Wales were closed between 2010 and 2020 (Sturge, 2020). Ward (2015) found that these closures, for magistrates, undermined the concept of local justice, while Adisa (2018) reported that closing magistrates' courts in Suffolk had a negative impact on access to the courts for defendants, and a negative impact on diversity among magistrates. Court closures were driven by the politics of austerity, with the Ministry of Justice budget being cut by a quarter in the decade from 2010 (Bellis et al., 2019). Closing and selling magistrates' court

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[1] Cases where the maximum penalty on conviction is 6 months imprisonment. These cases are usually - though not exclusively - processed by three non-legally qualified magistrates with the assistance of a legally qualified court officer.

[2] Cases which may be dealt with by either magistrates on a summary basis, or by Crown courts where the circumstances of the offence mean that they are too serious for magistrates' sentencing powers.

[3] Cases that are considered sufficiently serious by statute or common law that they can only be dealt with in a Crown court.

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buildings raised over £220 m in public funds in the same period (Sturge, 2020), and can be seen as part of a wider concern to make the process of summary justice less costly and more efficient. Demands for magistrates' courts to process cases with ever increasing speed have been made regularly since the early 2000s. In short, magistrates' courts are pushed to process in excess of a million cases a year as quickly and cheaply as possible. As Welsh et al. (2021) noted, the "essence of summary justice is a speedy procedure, uncluttered with elaborate judicial rituals. To try a case summarily in the magistrates' courts is to try it without many of the formalities required by the common law, though this does not necessarily mean that the cases it deals with and penalties handed down are trivial" (p390). Cases can, I argue, only be processed in this way with the co-operation of a professional workgroup that is so familiar with the formal legal rules and procedures that a more relaxed, informal approach can be taken to actual implementation of rules. Thus, while legal formalities may require particular legal rules to be followed, the effective implementation of those rules is – in magistrates' courts – dependent on a more informal style of case progression. As implementation of each rule occurs via different practices and behaviours associated with the workgroup, there is no formal/informal binary. The relationship between formality and informality can be dynamic, shifting between more and less informal implementation of rules. This article explores the ways in which demands to process cases speedily have altered the ways that informality is performed in magistrates' courts, thereby (further) obscuring the complex and formal nature of summary justice. This paper goes on to argue that this process of informalising legal rules continues to undermine defendant ability to participate properly in proceedings against them.

Traditionally, Western judicial proceedings are understood to be shaped by the formal application of laws and procedures (Dressel et al., 2018), although there is growing understanding of the role of emotions in judicial reasoning (Roach Anleu and Mack, 2021). In contrast, magistrates' courts – where non-legally qualified magistrates usually make decisions, assisted by a legally qualified adviser – have been described by the Secret Barrister (2018) as the "Wild West" of the English and Welsh court system, where cases are triaged with comparative informality (especially in terms of dress and language used[4]) to the Crown and higher courts. As McBarnet (1981a) identified, summary justice administered by the magistrates' court lacks many of the formalities required by traditional ideology of law. However, as she further observed, lack of observance of formal rules can have a debilitating effect on defence participation, especially in light of the games played by the workgroup to manage the legal requirements of the process while maintaining the ideology of summary justice. Governments have placed much value on the ability of lay magistrates to come to common sense conclusions about cases (Department for Constitutional Affairs, 2005), but none of this rhetoric should blind us to the fact that magistrates' courts remain places in which people are required to comply with the complex legal procedures that operate in the criminal justice system. Magistrates' courts have long been criticised as a place in which the rhetoric of justice is more significant than its performance, and a place where defendants have long been outside the process by virtue of the epistemic community operating to keep the wheels of justice turning (Carlen, 1976; McBarnet, 1981). I argue that demanding ever more efficiency further undermines the ability of defendants to understand and participate in the process of summary criminal justice. However, I do not argue that informality is performed with the intention of disabling defendant understanding and participation; it is rather a by-product of the culture in which actors in magistrates' court perform their roles.

There is general agreement that the defendant's ability to participate in the criminal process is an essential part of delivering justice (Jacobson, 2020), but the meaning of participation is not a topic that has received much scrutiny in recent years (Owusu-Bempah, 2018). Nonetheless, as Owusu-Bempah (2018) pointed out, courts require that the defendant can "maintain a level of general understanding and active engagement throughout the trial" (p325). This paper argues that the ways in which informality is performed, exacerbated by efficiency drives and the workgroup culture, undermines the defendant's ability to understand and actively engage in summary court proceedings. The argument is grounded in ethnographic data about magistrates' court proceedings, which was obtained via observation of magistrates' court cases from the public galleries in court buildings, and from interviews with both prosecuting and defending lawyers.

The argument that informality in magistrates' courts undermines the ability of defendants to understand and participate in the process is made in four parts. First, the paper addresses the method of conducting ethnographic work used in this study. Second, the ways in which speedy case progression have been encouraged are discussed, in order to contextualise the organisation within which the magistrates' court workgroup operates.[5] In this article, the workgroup consist of prosecutors, defence lawyers, court legal advisers to the magistrates and – to a lesser extent – magistrates themselves.[6] These actors feature most prominently in the way that legal rules are implemented, through continuous performance and negotiation, and therefore play a key role in producing informalisation in the courtroom itself. Third, key features of the modern magistrates' court workgroup are analysed to illustrate how informality is implemented in summary justice procedures. That discussion is developed by considering the particular impact of informality on two features of summary criminal justice; case management, and plea negotiations. Finally, I conclude that while informality is not necessarily an operational aim of magistrates' courts, it is ingrained in the organisational culture of summary justice in ways that obscure the complexity of procedures, and leaves defendants unable to fully engage in magistrates' court proceedings.

[4] In Crown courts, lawyers and judges are gowned and bewigged. In magistrates' courts, parties wear business attire without those additional accessories. In magistrates' courts, 'charges' are 'put' to defendants. In the Crown court, the defendant is 'arraigned' on the 'indictment'. For an excellent study of Crown courts, see Jacobson et al. (2015).

[5] According to Kozlowski and Bell (2003, cited in Ingram et al., 2013), workgroups consist of individuals who depend on each other in the performance of tasks and achievement of goals within boundaries that are defined by the organisation and their role within it.

[6] While part of the workgroup described above, magistrates appear to lack full membership of the organisational workgroup by virtue of their lay status. They do not appear to be fully consecrated into the same epistemic community as the legally qualified members of the group.

2. Method

The argument presented here is based on ethnographic data gathered for a case study of magistrates' courts in one local justice area of Southern England.[7] At the time of conducting the research, there were 11 firms which provided legally aided criminal defence representation in the area. One prosecutorial office served all of the five courts in the locale.

Case studies focus on a specific community with the aim of generating "an intensive examination of a single case" (Bryman, 2012, p71). As Allen and Blackham (2018) observe, case studies allow us to challenge assumptions about how the law operates in practice and provide insights into legal problems. While case studies are necessarily limited by their focus on a single community, many of the trends previously noted in other case studies demonstrate that common themes exist (Young, 2013; Newman, 2013; Carlen, 1976). It seems, therefore that this study presents findings that are close to the reality of modern summary justice.

The findings were also supported by my own experiences as a practitioner who represented clients in magistrates' courts. Throughout this study, I adopted the role of participant-observer.[8] As an insider approaching the field, it would be wrong to suggest that I was not informed by own experiences and beliefs. My beliefs were sometimes challenged by the research process, and on other occasions the beliefs were affirmed. The research is not, however, autoethnographic (Adams et al., 2017) in that the research was not about my experiences, but those experiences added further insight in places. While insider knowledge is never "more truthful or more accurate" than outsider knowledge (Adams et al., 2017, p3), it can produce a rich story with detailed depth and nuance. Furthermore, my own understanding of summary criminal justice allowed me to "articulate tacit knowledge that has become deeply segmented because of socialisation in an organisational system and reframe it as theoretical knowledge" (Brannick and Coghlan, 2007, p60).

The empirical research consisted of the equivalent of four weeks of observation,[9] followed by 19 semi-structured interviews. Observations assisted in uncovering the nature of relationships between court personnel and patterns of workgroup behaviour (Baldwin, 2000), and exposed that the social order of the magistrates' court is "an outcome of agreed-upon patterns of action that were themselves products of negotiations between the different parties involved" (Bryman, 2012, p19). This understanding allows us to appreciate the importance of workgroup culture to defendants' experience of the proceedings.

I observed the daily practices of the local magistrates' courts from the public galleries, and made notes of the proceedings using an observation template. My status as a participating observer, I think, minimised the risk of reactive effect by workgroup participants. I was able to "participate freely without drawing attention'" to myself (Brannick and Coghlan, 2007, p69). Similar to Flood's (2005) experience, participants commented that they did not feel a need to be on their best behaviour when they saw me conducting observations in court, which they acknowledged they would have felt if a stranger was present.[10] It seemed that my more usual position as a member of the workgroup itself led to less reactive effect as I conducted observation.

I observed 183 hearings across the five magistrates' courts that I visited. I observed all types of hearing that were being conducted, including administrative hearings at which pleas were being taken, case management hearings, breaches of bail, trials, and sentencing. Fieldnotes were created using a template form that recorded basic information about the case alongside freehand notes that were analysed thematically. Guilty pleas were entered in 41 per cent of cases observed. Not guilty pleas were entered in 27 per cent of cases. No pleas were entered in 31 per cent of cases because, for example, the defendant did not attend, the case was listed for a pre-trial administrative or procedural hearing, or because the hearing concerned the seizure of property. In the remaining cases, mixed pleas were entered (different pleas were entered to separate charges on the same charge sheet).

Having conducted courtroom observation, I conducted semi-structured interviews with 19 members of the courtroom workgroup; seven prosecutors and 12 defence lawyers. Especially given my own role, it was important to empirically explore perceptions of summary criminal justice held by advocates on both sides of the adversarial process. As Kemp (2010) suggests, it is valuable to understand "interactions between different legal agencies, particularly between prosecutors and defence solicitors, when they seek to deal with cases more efficiently and effectively in court" (p15). Unfortunately, HM Courts and Tribunals Service refused permission to interview court legal advisers.

I sampled every practising defence solicitor[11] and every prosecutor in the relevant area, hoping to achieve a broad range of opinion across the case study and avoid the pitfall of assuming that answers or perspectives were already known to me. I interviewed all lawyers who responded positively to my enquiry. Due to the voluntary nature of participation, the data had the potential to be affected by self-selection bias. For example, the participants could have been drawn from a particularly motivated sub-section of the profession. Triangulating the interview data with courtroom observations, alongside interviewing both prosecutors and defence lawyers, minimised this risk.

[7] There are 42 criminal justice areas across England and Wales (Ministry of Justice, *Transforming legal aid: delivering a more credible and efficient system* (Ministry of Justice CP14/2013, 2013)) which are further divided into 144 local justice areas (www.openjustice.gov.uk/courts/criminal-cases/).

[8] Although I viewed magistrates' courts from the public galleries, I remained a participant as a recent member of the workgroup.

[9] While this was a relatively short observation period, it was conducted in the context of 8 years' experience as a member of the workgroup.

[10] Most participants were known to me not as direct colleagues in the same firm but as people regularly appearing in those courts as either prosecuting or defending lawyers while I was also a defence lawyer.

[11] I decided, however, that I would not interview solicitors from my own firm as I felt that I was too familiar with the firm's procedures and client matters to be able to conduct an impartial interview. I also did not want to upset or encroach on designated hierarchical patterns in my office. In essence, I was too close to the material, and risked upsetting work roles too much, to be able to conduct an appropriate analysis of the data that would have been produced.

I conducted a thematic analysis of the data (Lange, 2005) via "recurring motifs in the text" (Bryman, 2012, p554). Themes that became apparent were the effect of changes to public funding, the ways law was used, matters related to speed/efficiency, and the use of documents in proceedings. One benefit of interview research is its ability to provide deep insights into participants' perceptions about how procedures operate in practice. However, it must also be remembered "that all accounts from interview can only be understood in the context of the interview and any information given cannot be taken to mean the 'truth'" (Bano, 2005, p103) because they reflect self-reported, post-incident behaviour, which may or may not match actual behaviour (Sommerlad, 1999). Again, that limitation is mitigated by combining the interview data with observation of actual behaviour, alongside analysis of studies (conducted by non-participant observers) which uncovered comparable data and reached similar conclusions.

3. Efficiency in magistrates' courts

As the workhorse of the criminal justice process, magistrates' courts have always been required to process cases with efficiency. In recent decades, the demands for efficiency placed on magistrates' courts have increased, reflecting some aspects of the broader neoliberal turn in public services (Bell, 2011). The 1997–2010 New Labour government developed a criminal justice policy focused on audit and target setting, which placed the demands of efficiency and case management above the needs of defendants (Sommerlad, 2008; Cape, 2006). Sommerlad (2008) demonstrated that neoliberal governments' preferences for decentralisation, privatisation, performance contracts in public services, and output measurements have led to the exclusion of marginalised welfare citizens from debates about citizenship - something that limits defendants' ability to engage with discussion about the criminal process. Consequently, debates about defendant engagement in the process continue to be lost in concerns about cost and efficiency.

The Criminal Procedure Rules (Cr.PR) - first introduced in 2005 – put magistrates under pressure to avoid delay, and to avoid granting adjournments. Those rules require the court to actively manage cases throughout the summary criminal process.[12] Cr.PR 3.3 of the Cr.PR 2020 also explicitly required members of the courtroom workgroup to co-operate and identify the issues in the case, thereby prioritising efficient, co-operative working practices over adversarial principles which would ordinarily simply allow the defence to make the prosecutor prove the case in its entirety.

Then, during 2006 and 2007, Criminal Justice: Simple Speedy Summary (CJ:SSS) was introduced to reduce delay in magistrates' court proceedings. The government of the time took the view that magistrates' courts ought be "a platform from which we deliver simpler, speedier justice for our communities" (Department for Constitutional Affairs, 2005, p4). CJ:SSS appeared to have been successful in reducing the number of court hearings that occurred per case. For example, when I interviewed defence solicitor D, they said that the number of hearings per case had reduced since the introduction of CJ:SSS, and there had been positive effects 'in terms of focusing people's minds at an early stage' of the case. Several interviewees also commented that case management measures introduced by CJ:SSS were useful to help focus the issues in cases. This data suggested that practitioners expressed a change in behaviour consequent to demands for increased efficiency. Building on CJ:SSS, the Ministry of Justice introduced the Stop Delaying Justice policy in 2012, then Transforming Summary Justice in 2015. Both initiatives were again designed to encourage greater co-operation among the parties, and to increase the speed at which cases progress through the magistrates' courts.

Ashworth (2012) was concerned that "the appearance of haste quickly becomes the appearance of unfairness, and of 'summary justice' at its worst" (p31). As lawyers were urged to manage cases as quickly as possible, there was a risk that principles of justice gave way to speedy case progression (Jones, 1993).The implementation of demands for further efficiency depends on how members of the workgroup, or street level bureaucrats (Lipsky, 1980), apply policy in practice (Barton and Johns, 2012). I suggest that demands for efficiency have relied on increased collaboration among the workgroup for implementation, valorising co-operative working relationships to encourage expeditious case management. Increasing co-operation among the workgroup potentially increases defendant marginalisation. As the workgroup culture has implemented efficiency drives, standardised and speedy case progression, maintaining professional relationships, and avoiding conflict can come to be valued more highly than defendants' unique experiences (Tata, 2019). As will be discussed at 4.2 below, the use of standardised responses demonstrates one way in which demands for increased efficiency have affected the way that informality is performed in magistrates' court. In consequence of standardisation and conflict avoidance, defendants are even less likely to be able to understand the nuances of courtroom behaviour, and therefore even less able to play a distinctive role in the proceedings.

Three of the defence solicitors who I interviewed felt that the court applies a desire to conclude cases at speed with too much rigidity, because recent demands for efficiency legitimised the view that defendants know whether or not they are guilty of a crime despite the technical and formal nature of the criminal process. That view of defendant knowledge about guilt is contrary to the evidence that they are often bewildered by the process itself, let alone the legal provisions behind it, and tend to assume a passive role in court (Carlen, 1976; McConville et al., 1994; Jacobson, 2020; Welsh, 2022). Nevertheless, introducing efficiency drives has been grounded in political narratives about undeserving criminals, arguably reflecting a lack of concern for defendants' needs, including a need for meaningful participation.

Efficiency has also been encouraged by removing cases from the physicality of magistrates' courts altogether through the Criminal Justice and Courts Act 2015. That Act introduced the Single Justice Procedure (SJP), which allows adults who have been charged with non-imprisonable offences to enter pleas without having to attend court at all. Once a plea has been entered, and if it is a plea of guilty,

[12] The overriding objective to the Cr.PR states that criminal cases must be dealt with 'justly'. Cr.PR 1.1(2) goes on to state that this includes a number of considerations such as dealing with parties fairly and recognising Art 6 ECHR obligations. It also specifically requires courts to manage cases 'efficiently and expeditiously'.

the case will then be dealt with by a single magistrate and legal adviser without lawyers attending court for either party. Prosecuting authorities identify which cases are suitable for that procedure, while defendants should be sent a notice that advises them about the procedure and their options (Welsh et al., 2021). Removing cases from the courtrooms themselves is perhaps the pinnacle of informalised proceedings, but it does not seem to encourage active defendant participation. The procedure is reduced to a series of documents and tick boxes based on assumptions that defendants both receive and understand the SJP. Over 80 per cent of people sent a SJP notice entered no plea at all (Transform Justice, 2019). Trivialising summary court cases in this way should be counselled against in favour of recognising both the ways in which legal provisions are used by the magistrates' court workgroup, and the ways in which use of the provisions can exacerbate the marginalisation of defendants and reinforce their status as 'outsiders' to proceedings (Carlen, 1976).

Another way that defendants have been (further) removed from active participation in the physical surroundings of magistrates' courts is via the rise of 'virtual' hearings. In these cases, defendants who have been remanded into police custody following charge appear in court via a TV live link between the court and the prison or, in some cases, the police custody area, instead of being physically transported to the court building. The lawyer, if the defendant has one, is either at the court (and able to consult with the client via another video link in a private consultation room) or at the police station. Reliance on virtual court hearings to save time and money is an important part of HM Courts and Tribunal Service vision of summary criminal justice (Ward, 2017). While this is often referred to a way of 'modernising' the summary court process, it is congruent with an overarching desire to 'improve efficiency'. But virtual courts also informalise proceedings (Rossner, 2021; Rowden, 2018) while making meaningful engagement and participation more difficult to achieve (Welsh et al., 2021; Welsh, 2022).

The use of virtual magistrates' courts was expanded during the Covid-19 pandemic. Provisions to permanently expand the use of live links in criminal cases have been included in Part 12, Police, Crime, Sentencing and Courts Act 2022. Benefits that have been reported from the use of virtual courts include increasing the speed at which cases progress (Ward, 2017). However, defence lawyers complain that it is more difficult to take instructions and build a rapport with a client who appears via video link (Ward, 2015), while a small sample of defendants reported that they experienced greater difficulty communicating with their lawyers, and felt unable to properly participate in proceedings when appearing via video-link (Fielding et al., 2020). Additionally, the Equality and Human Rights Commission (2020) found "that opportunities to identify impairments and make adjustments are lost or reduced when a defendant appears in court by video-link rather than in person". This way of conducting legal proceedings adds to the "surrealty [of proceedings] which atrophies defendants' abilities to participate in them" (Carlen, 1976, p19). Therefore, measures designed to increase efficiency seem to exacerbate defendant marginalisation.

4. Working culture in magistrates' courts

Lawyers – who represent around 70% of defendants in magistrates' courts (Welsh, 2022) - enable efficiency because they often form mutually convenient, co-operative groups to ensure swift case progression (Young, 2013; Newman, 2013). Snipes and Maguire (2007) noted that although actors in court "are from different institutions, have different goals and are formally arranged in an adversarial relationship, they often bind together in mutually convenient informal networks" (p30).[13] Young (2013) also notes how familiarity among a workgroup has a tendency to produce relatively stable networks who frequently and easily informally negotiate formal case outcomes. McBarnet (1981) and Carlen (1976) both referred to the games played by magistrates' court professionals used to negotiate outcomes, and the resultant marginalisation of defendants. As Newman (2013) argued, "the legal system does not work for outsiders. It is a member's only club, the world of lawyers and jurists" (p10). Through analysis of workgroup behaviour, we begin to see the importance of the structural/cultural intersection which affects defendants' experience of the criminal justice system: the way in which initiatives designed to improve efficiency are actually implemented is dependent on the behaviour of the courtroom workgroup. As greater pressure has been placed on the workgroup to behave more efficiently since the 1980s, actors in the courtroom have adapted the culture to make it easier for members of the group to negotiate, while further removing defendants from active engagement with the process (Welsh, 2022). For example, one prosecutor spoke of a desire to negotiate more often and more actively since CJ:SSS was introduced because it was helpful for statistics, which were considered important to demonstrate efficiency. Both Newman's (2013) and my own findings suggest that there remains a strong culture of co-operation among magistrates' court personnel and that this continues to marginalise defendants from proceedings.

4.1. Working efficiently and expeditiously (and obscuring legal formalities)

As discussed above, the volume of cases that make their way through the magistrates' courts mean that the workgroup is concerned "to progress through the work of the day with minimum levels of confrontation and maximum levels of speed" (Leverick and Duff, 2002 p44). Johnston (2020) reported that some defence lawyers he interviewed have actively embraced further calls for co-operation ushered in through the neoliberal managerial style that demands ever more efficiency from the magistrates' court workgroup.

At the same time, summary criminal justice has become subject to more complex legal provisions, such as changing rules about

[13] This is not to suggest that prosecutors and defence lawyer goals always align. Prosecutors will be concerned with securing convictions (Porter, 2020; Soubise, 2015), while defence lawyers will be concerned with securing acquittals or good sentencing outcomes, and their business needs (Welsh, 2017). All parties, however, have an interest in maintaining co-operative relationships and dealing with cases expeditiously (Eisenstein and Jacob, 1977; Newman, 2013; Welsh, 2022).

admissibility of character evidence and hearsay evidence under the Criminal Justice Act 2003, in addition to the introduction of the Cr. PR. However, the subtleties with which those provisions are deployed means that it is difficult for a participant who is not a member of the court workgroup to understand what the provisions entail, let alone be able to actively participate in the process. One difficulty with examining such practices in magistrates' courts is the ideology of triviality (McBarnet, 1981a) that persists there. As a result of more complex legal provisions that have been introduced in the early twenty-first century, combined with ever increasing demands for efficiency, there is perhaps greater pressure on defendants to participate than existed in the 1970s.[14] However, when adapting to efficiency drives (see 4.2 below), defendants are not afforded the tools to participate fully in these new demands for engagement in consequence of habitual informalisation adopted by the workgroup. Members of the workgroup are, however, unlikely to challenge the status quo of their epistemic community.

According to Darbyshire (2011), lawyers who raise so-called spurious legal issues are unwelcome in magistrates' courts as they represent a threat to what Carlen (1976) described as the uncomfortable compromise which typifies the relationships that exist between members of the court workgroup. As McConville et al. (1994) et al. reported, " … magistrates' court cases are not argued on legal issues, which are usually assumed to be inappropriate in such a forum" (p225). When conducting her earlier study, Carlen (2018) was told that she wouldn't see much law in a magistrates' court because they only dealt with "rubbish" (p178). Darbyshire (2011) acknowledges, however, that relatively infrequent use of legal argument does not mean that the law is not applied in summary proceedings, but rather that it is applied in routinised ways. Application of the law in routinised ways is entirely consistent with the negotiated culture of summary justice, but that routinisation is a way of obscuring complex decision-making, and potentially of shrouding the law in mystery. As an example of the importance of specialised knowledge, more than half of all advocates interviewed felt that proceedings involving unrepresented defendants take longer to conduct *because* the legal provisions and courtroom etiquette involved need to be explained. Interviewed defence solicitor F described unrepresented defendants as 'a loose cannon', interviewed prosecutor J was concerned about unrepresented defendants 'stich[ing] themselves up', while defence solicitor A felt that it was agony' watching unrepresented defendants in court. The number of people appearing in magistrates' courts without legal representation appears to have increased since 2010 from around 18% to around 30% of defendants (Welsh, 2022). This change appears to correlate with reductions in access to publicly funded legal advice. As will become apparent in the discussion of case management proceedings at 4.2, defendants are obliged to participate in proceedings, so informalising procedures in a way that makes them more opaque to non-members of the workgroup is a particular problem for unrepresented defendants. In this way, the magistrates' courts represent 'the paradox of a legal system which requires knowledge of procedural propriety in making a case, and a legal system that denies access to it.' (McBarnet, 1981, p124). As demands for efficiency have increased since the 1980s, the ways in which the paradox operates and is performed has changed (section 4.2, below).

Through negotiated use of legal and procedural principles, the co-option of lawyers into efficiency drives reinforces a particular epistemic community of informalised legal provisions which inhibit the ability of lay people to engage in the process. These performative aspects of magistrates' courts are a barrier which means, as Smejkalová (2017) says, the court is "fully accessible only to those duly consecrated" (p63). My observations suggested that there are frequent implicit and explicit references to particular points of law during the course of summary proceedings (Welsh, 2013). Ten of the 12 defence solicitors interviewed, and 5 of the 7 prosecutors interviewed stated that they tend to refer to the principles (implicitly) rather than the relevant case or statute (explicitly). An example of this issue was provided by prosecutor Q, who stated:

> So, for example, when a suspended [prison] sentence is to be triggered I would say 'you should do that unless it is unjust to do so' and I know that's the wording in the statute. I couldn't tell you actually now what that statute was but do you know what I mean? So yeah, I am trying to be technically accurate.

This supported my observational finding that legal issues tend to be referred to in informalised implicit terms but still employ the use of specialised formal legal language (Welsh, 2013). These practices manifest in the ways that advocates support the representations that they make to the court. Such behaviour supports the idea that magistrates' court proceedings operate with a veneer of informality (through implicit references to law), while also remaining subject to complex legal procedures that inhibit the ability of defendants to properly engage in the process. That legal provisions are informalised in this way is likely to make them less accessible to defendants, who may then fail to understand the importance of points that are made during their cases. As legal provisions became more complex in the twenty-first century, yet lawyers are required to work more efficiently, the risk of defendants being pushed further outside the process increases.

Specialist practitioners are equipped with the tools for progressing cases at greater speed because they can negotiate case outcomes and understand the procedural issues involved in case management. This encouraged informal standardisation of casework. As Leader (2020) notes, standardisation of practice is also key to professional identity in that it excludes the untrained newcomer from the commonalities that are woven into roles through repetition and negotiation in organisations, not least the courts. Repetitive negotiation of outcomes specialises the proceedings, allowing the workgroup to further routinise procedures (Castellano, 2009). Additionally, familiarity and co-operation among members of a workgroup are also likely to lead to standardised practices (Young, 2013). Through these processes, case facts become normalised and translated into particular types of knowledge to be managed throughout the criminal process (Tata, 2020). As practitioners have to more efficiently negotiate working culture, it may become more relaxed for the practitioners but arguably more bewildering for lay participants and defendants. That members of the workgroup are able to

[14] On defendant obligations to participate in light of changes to the law since the 1970s and 1980s, see Owusu-Bempah (2017).

informalise legal rules through implementation practices reflects a power imbalance between those who have the tools to interpret and negotiate rules, and those who do not.

All of the prosecutors interviewed felt that defence advocates, the court and Crown prosecutors often adopt co-operative working practices in which pleas and issues are agreed through informal discussion rather than through confrontational styles that require formal, lengthy legal argument and adjudication. This suggested that actors tend to avoid provocative forms of behaviour, preferring to maintain a more relaxed working culture. Prosecutor M explained "we've probably fallen into, not deliberately, but accidently, some sort of compromised way of working". Interviewed defence solicitor A did acknowledge the difficulty of this position, saying that the defence advocate's role is not really to facilitate the proceedings yet there seems to be a lot of scope for discussion and finding the best outcome even though "crime is not something that you can mediate". These comments potentially indicate a change in mindset among members of the workgroup, with greater attention being paid to focus on contested issues at an earlier stage in proceedings than prior to the mid-2000s. this potentially places further demands on already time poor lawyers (Newman and Welsh, 2019), with the potential to shift focus even further away from defendant needs. While magistrates' court workgroup behaviour may have been disturbed by external pressure for increased efficiency, patterns of negotiation appear to remain strongly influential in summary proceedings. Prime examples of increasingly informalised co-operative workgroup practices arise when we consider case management proceedings and plea negotiations.

4.2. Case management

Case management hearings evolved from the suggestion that pre-trial review hearings may help to alleviate the volume of ineffective trial listings that occurred in magistrates' courts (Narey, 1997). Auld (2001) supported the idea that prosecutors and defendants/their lawyers should take a more co-operative approach to case management. As the Cr.PR came into force, and Transforming Summary Justice was implemented (above), magistrates' courts came to expect that all parties would be in a position to conduct case management at the first hearing.

Case management is completed by reference to a standardised form called a Preparation for Effective Trial form (Welsh and Howard, 2019). The forms – first introduced in the 2000s - require the parties to narrow the contested issues at trial by stating what evidential issues and what factual and legal matters are in dispute, with the aim of using court time with maximum efficiency. The form thus describes and translates a problem into particular legal categories (Welsh, 2022; Smejkalová, 2017). Forms often represent processes of formalisation as procedural legal artefacts (Riles, 2006), yet the workgroup operates through comparatively informal socially negotiated practices. Thus, although the use of forms appears to be a formalising measure that requires workgroup members to engage with particular legal provisions and procedures, and to create a court record of the same, actual implementation through completion of the document becomes another socially negotiated practice. As the perceived need for efficiency is implemented through the form, legal rules are routinised and informalised through standardised application of legal principles. Standardisation transforms formal case management procedures into a process that is familiar and can be done quickly. The completion of case management forms therefore provides an example of standardisation in the name of efficiency, as questions are reduced to a series of tick box answers with limited space to explain the issues (Welsh and Howard, 2019; Welsh, 2022). The case management form thus provides us with an example of what Brenneis (2006) described as "frameworks for guided response" (p.49). Six of the seven prosecutors interviewed found case management to be a useful exercise, but only three of 12 defence advocates expressed a similar view. Defence solicitor G explained 'the system really is being forced through … for the sake of expediency as opposed to justice.' Standardisation in the completion of forms appears to be a recent cultural adaption in the behaviour of the magistrates' court workgroup,[15] and therefore seems to represent a more recent type of informalisation in proceedings. This process appears to create another way of marginalising an already excluded defendant.

Specialised legal knowledge is necessary to complete the form appropriately (Johnston, 2020; Welsh, 2022), betraying that the procedures administered through case management forms remain highly formal despite their informalised implementation. Around half of interviewees in this research supported the idea that specialised legal knowledge is necessary to properly complete a case management form, with defence solicitor C saying that specialised 'legal skill on dealing with witness requirements' is required, and prosecutor Q saying that case management forms can be completed very quickly *by experienced lawyers*. Defence solicitor F went on to explain 'I don't think that defendants themselves would be terribly well equipped either to fill out case management forms, or to fill out forms asking to adduce hearsay, or to fill out forms asking to introduce a co-defendant's or a complainant's bad character … '. The specialised understanding required to conduct case management is reduced to standardised answers, which – as described above - informalises the nature of legal proceedings while also limiting the ability of defendants to properly engage with technical procedural and legal issues. As prosecutor H acknowledged about case management forms, 'there is a risk that you can condense it [legal issues] too much.' This is especially problematic given that aspects of case management – such as indicating reliance on a 'no comment' interview, or of intention to rely on character evidence - require defendants to co-operate with the process of prosecution on pain of

[15] It is not a new phenomenon that lawyers translate their clients' problems into legal categories (Sarat and Felstiner, 1988; Riles, 2006), but the way the workgroup has adapted to the process of case management in magistrates' courts in particular seems to be a relatively recent manifestation of workgroup culture.

their answers later being held against them, or evidence becoming admissible, during a trial (Owusu-Bempah, 2017; Welsh, 2022).[16] As such, the forms do deal with highly technical and formal legal issues. However, the way the forms are actually implemented leads them to become familiar and a tool for expeditious case progression, thus translating technical legal provisions into a familiar tick box exercise (for the workgroup members). While the forms themselves may be formal devices to ensure efficient practices, the way that the workgroup adapts to the documents informalises them and obscures their importance. Thus, the presentational standardised informality of proceedings hides their complexity. Legal provisions become more informal among members of the workgroup, yet arguably more remote to defendants because they are completed by refence to a form rather than being argued in open court. At the same time, lawyers are able to deploy their specialised knowledge in form completion to preserve their own professional autonomy and identity. Although previous research suggests that defendants would have been marginalised even if the issues were openly adjudicated upon, defendants (usually through their lawyer) are obliged to engage in the process of case management. As such, the defendant is at once obliged to engage in this measure designed to improve efficiency despite being denied the tools to properly participate. This would be particularly problematic for the increased numbers of unrepresented defendants appearing in magistrates' courts. This issues seem to represent either a new level of defendant marginalisation, or exacerbation of existing issues. It also seems to add another dimension to the ways that proceedings are informalised. As such, case management procedures provide a good example of the tension between formality and informality in working practices.

Case management procedures place courts' need for efficiency above the ability of defendants to actively participate in the process. As can be seen from the above, the process of case management relies to a large extent on the specialised skills of co-operative lawyers, yet the routinisation of case management through standardisation means that the proceedings are obscured with a veil of informality that makes it more difficult for the full effects of summary criminal processes to be understood. Furthermore, as Welsh et al. (2021) note, "case management hearings do not just *legitimise* a pre-existing practice of furtive negotiation as standard practice, but rather *enable* it to take place on a wider basis … In much the same way as lawyers are asked to confirm that clients are aware of credit for an early guilty plea, the standardised case management forms specifically invite the parties to enter into plea negotiations" (p373). As such, even though plea negotiations have always been problematic in criminal cases, part of performing case management actively encourages parties to enter into plea negotiations as a way of maintaining efficiency. Such negotiations reflect the importance of the culture of the magistrates' court workgroup.

4.3. Plea negotiations

Unlike in the United States of America, there is no formal method of plea negotiation (also known as plea bargaining) in English and Welsh magistrates' courts. In consequence, although a frequent occurrence in summary criminal proceedings, all plea negotiations result from informal pre-court discussion between the prosecution and the defence. Plea negotiations have long been a feature of busy magistrates' courts, where Carlen (1976) noted that the police might offer a less serious charge to elicit an early guilty plea.

As a result of the need for magistrates' courts to operate with ever-more efficiency, and as part of case management, defendants are routinely expected to be in a position to enter their plea at the first court appearance. Half of all lawyers interviewed felt that pleas are forced too early in proceedings, and often at a time when the necessary evidence is not available. Several defence lawyers felt that long term benefits would flow from allowing defendants to delay entering pleas until a more informed decision could be made. Defence solicitor G said

> … they force it through and that is just again pointless. Just so they can say they've got a plea. Well great but that plea could change in three weeks time when I get that CCTV ….They'll say 'your client knows if he did it'. 'Well my client says he didn't do it. Shall we just walk out of court and dispense with you lot? Because that's what, if you're saying that's how much trust you put in my client's word, well let him go, drop the charges because he said he didn't do it'.

As a result of the expectation that pleas will be entered swiftly, and sometimes before all evidence has been disclosed, plea negotiations offer a very valuable tool for advocates in the magistrates' courts. The parties are aware that the system would be at risk of collapsing if a significant proportion of defendants entered not guilty pleas (Helm et al., 2021), so engaging in plea negotiations is important for the courts and their workgroups. Plea negotiations also highlight and reinforce the workgroup culture of co-operation manifest in the familiarity of a busy magistrates' court (Welsh, 2022). Indeed, entering a not guilty plea might be one way in which defence lawyers sometimes resisted demands to be efficient when they felt that due process protections were being too far undermined (Welsh, 2022). McConville and Marsh (2016) explained that plea negotiations increase "control over output through consistency of production methods" (p102), highlighting a further relationship between efficiency, plea negotiations and standardisation, or – as

[16] See also the discussion in Valiati v DPP; KM v DPP [2018] EWHC 2908 (Admin), which confirms that failure to complete a case management form properly may have a negative impact on a defendant's case at trial. This trend appears to have increased since the 1990s, exacerbating problems identified by Carlen (1976) and McBarnet (1981).

Hamani (2014) might put it – a kind of ordered informality.

Ultimately, interviewed prosecutors and defence advocates took a favourable view of plea negotiations. Plea negotiations were perceived as beneficial to the speed of proceedings, thereby reducing unnecessary cost, while also being able to improve outcomes for both parties. Prosecutors and defence solicitors both felt that victims and defendants could benefit from an appropriate plea negotiation. Both defence lawyers and prosecutors were keenly aware that there was a need to respect victims during the process of plea negotiations. However, these observations need to be set in the context, highlighted by Soubise (2015), that prosecutors are concerned to record expeditious guilty pleas in cases. Prosecutor P explained their position as follows:

> I'm not one of those prosecutors who would never accept a basis or a lower plea, or a mixture of pleas for example, particularly where you've got vulnerable victims, people who don't want to give evidence that have to come to court. If you can get another conclusion that will give the same sentence or near enough and it reflects the offence then I don't think that's a bad thing.[17]

Demonstrating the importance of the network, and in furtherance of plea negotiations, most defence advocates have been known to consult prosecutors about cases before speaking to their clients (Newman, 2013; Welsh, 2022). Prioritisation of the workgroup in this way might reflect that the culture of the magistrates' court is prioritised over the ability of defendants to actively engage in the process. Informal pre-court discussions risk producing plea negotiations that place undue pressure on defendants to plead guilty (McConville et al., 1994). Plea negotiations of this nature increase the likelihood that guilty pleas are "not always or even typically consensual admissions of guilt, but are rather tactical decisions based on forecasting the probability of conviction at trial and the likely outcomes of trial, and evaluating potential discounts in exchange for pleading guilty" (Helm, 2019, p162).

As Mulcahy (1994) noted, the heavy workload of magistrates' courts encourages routinisation of work and plea-bargaining, but these concerns may subordinate the needs of defendants to managerial imperatives. The informal incentives of time and cost – especially in light of legal aid funding cuts (Welsh, 2022) - appear to have a significant influence on defendant decisions to enter an early guilty plea (Helm et al., 2021). Practices of plea negotiation produce, according to Sudnow (1965), "a set of unstated recipes for reducing original charges to lesser offences" (p262) while also excluding defendants from the process (Baldwin and McConville, 1977). This favours efficiency over individual defendant needs, and can exclude defendants from actively participating in the plea decision because they do not know the 'ingredients' necessary for the recipe. These processes reinforce the informally co-operative but closed nature of the summary criminal court workgroup. The worst outcome of informally negotiated plea decisions is that, as McConville et al. (1991) argued, evidentially weak cases may also elicit (an improper) guilty plea. The entry of an improperly negotiated guilty plea may arise because defence lawyers become "*part of*, rather than challenger to, the apparatus of criminal justice" (McConville et al., 1991, p167).

In seems, therefore, that the informal negotiation that happens in magistrates' courts cases reinforces the workgroup culture, habituating lawyers to avoid performing "legal manoeuvres that would aggravate other members of the workgroup" (Young, 2013, p232). Whether to shield themselves from the negative connotations of informal plea bargaining or not, participants in the study recognised that there were some important benefits to informally negotiating plea agreements. Prosecutor M explained that

> … the defendants themselves like to feel as though they've got something. So even if it's just a slight movement they would've felt like they've won something and so would be more open to pleading to something, however little they got at the end of the day.

The importance of informal co-operation and negotiation to the magistrates' court workgroup is highlighted by the favourable view of plea negotiations taken by both prosecutors and defence lawyers who were interviewed. However, defendants, by virtue of their transitory engagement with summary criminal proceedings, appear unlikely to be able to actively participate in these processes. Thus, the familiarity of courtroom workgroup behaviour, coupled with ever more demands for efficient case management, appear to encourage magistrates' courts to operate with a veil of informality that serves to obscure the technical nature and complexities of summary criminal justice. Obscuring the true nature of summary criminal justice disables defendants from fully understanding the implications of their decisions, and thereby dilutes their role in the process.

5. Conclusion

Magistrates' courts, with their presentation of localised and common sense justice (House of Commons, 2019; Welsh, 2022), are undoubtedly the busiest of criminal courts in England and Wales. They process huge numbers of relatively low level offences alongside more serious matters, including assaults, thefts, and burglaries. The notion of common sense perhaps lends itself to idea of informality, and that is lauded for being a strength of magistrates courts, albeit challenged by the growth of virtual court proceedings. It should be noted, however, that concerns around informality of proceedings have tended to be expressed in relation to the use of virtual courts in Crown court proceedings, more than in magistrates' courts. This perhaps reflects the perception that magistrates' courts do not require the same level of formality as the more serious cases that tend to be dealt with by the legally qualified judiciary in the Crown courts. However, the reality of how magistrates' courts operate, as reflected in standardised case management procedures and informal plea negotiations, means that the perception that magistrates' courts are courts of common sense that do not require the same formalities as Crown courts is misguided. Focusing on the practices of plea negotiations and case management demonstrates the ways in which

[17] A 'basis' in this sense, is an amendment to the facts of the case - e.g. that a punch was provoked rather than unprovoked.

different courtroom actors continuously perform and negotiate (in)formality. Perceptions of common sense in magistrates' court do not, here, provide us with a fruitful form of informality because the veneer of nonchalance operating in magistrates' courts seems to hinder the accessibility of these proceedings to people who are not members of the workgroup. In magistrates' courts, informality operates as a barrier to accessibility in the very courts that are supposed to be more accessible than higher criminal courts. This misguided sense of informality seems to emanate from the speed with which proceedings are conducted, which is facilitated by efficient courtroom workgroup practices. The concrete implementation of formal legal rules in magistrates courts is reliant on informal social interactions among workgroup members while (further) disempowering lay participants. Magistrates' courts can, therefore, provide us with important examples of how the formality-informality continuum plays out in summary criminal proceedings. By examining these processes, we can analyse the presence of power asymmetries within magistrates' courts.

Consequently, as alluded to above, the notion that informality is beneficial in summary criminal courts is a complex and problematic concept. The way in which informality manifests is important. In its present form, informality in magistrates' courts reinforces Carlen's (1976) concern that "the judicial rhetoric of an adversary justice" (p46) is absurd in summary criminal proceedings. The English and Welsh system of criminal justice may be designed to be adversarial, but – in these magistrates' courts at least – co-operation was regarded as a necessary component of achieving a 'good' result. This degree of co-operative workgroup behaviour, coupled with the speed at which cases are processed, results in a level of informality that continues to undermine defendants' opportunities of comprehension and participation. This seems likely to result in less active defendant participation, despite defendant participation being recognised as an important element of due process in criminal justice.

It also seems clear, however, that increasing formality with which magistrates' courts operate is not the remedy to this problem. As Jacobson et al. (2015) found, the traditionally more formal arena in which Crown court proceedings are conducted is equally problematic in allowing defendants (and witnesses) the opportunity to understand and participate in proceedings. Increased formality can be as alienating as improperly exercised informality. The potential remedy to these problems instead lies in increasing the accessibility of magistrates' court proceedings by engaging defendants (and other parties) more actively, by actively ensuring that procedures have been correctly understood, and by the parties increasing their awareness of their role in perpetuating practices that alienate non-workgroup participants. Lawyers need to fully explain the practices of the courtroom workgroup to the participants before the courtroom itself is entered (and many lawyers likely do so, despite temptations to cut corners brought about by funding cuts (Welsh, 2017; Newman, 2013; Thornton, 2019)), but they also need to be aware of the way that conversations they have in the courtroom might exclude the other parties in the room once proceedings begin. Although unlikely to be a politically popular suggestion, slowing proceedings down to reduce pressure for speedy justice might allow participants time to discuss cases with all parties in a less hurried fashion, allow more time for reflection, and decrease professional reliance on the need for co-operation.

Ultimately, reflecting on the informality with which magistrates' court proceedings requires analysis of what principles we want summary criminal processes to represent. Informal justice is not necessarily problematic, as long as that informality is not a veil which undermines due process rights. If - given the volume of cases processed by magistrates' courts each year - informality is desirable, careful consideration must be given to ensuring that the very people subject to criminal prosecution are not excluded from being able to actively participate in the process.

References

Adams, T., Ellis, C., Holman Jones, S., 2017. Autoethnography. In: Matthes, J., Davis, C., Potter, R. (Eds.), The International Encyclopaedia of Communication Research Methods. John Wiley and Sons, New Jersey.

Adisa, O., 2018. Access to Justice: Assessing the Impact of the Magistrates' Court Closures in Suffolk. Institute for Social and Economic Research, Suffolk.

Allen, D., Blackham, A., 2018. Using empirical research to advance workplace equality law scholarship: benefits, pitfalls and challenges. Griffith Law Rev. 27 (3), 337–365.

Ashworth, A., 2012. Magistrates and the right to a fair trial. In: Faulkner, D. (Ed.), The Magistracy at the Crossroads. Waterside Press, Hook.

Auld, R., 2001. Review of the Criminal Courts of England and Wales: Executive Summary. The Stationery Office, London.

Baldwin, J., 2000. Research on the criminal courts. In: King, R., Wincup, E. (Eds.), Doing Research on Crime and Justice. Oxford University Press, Oxford.

Baldwin, J., McConville, M., 1977. Negotiated Justice: Pressures on Defendants to Plead Guilty. Martin Robertson, London.

Bano, S., 2005. 'Standpoint', 'difference' and feminist research. In: Banakar, R., Travers, M. (Eds.), Theory and Method in Socio-Legal Research. Hart Publishing, Oxford.

Barton, A., Johns, N., 2012. The Policy Making Process in the Criminal Justice System. Routledge, London.

Bell, E., 2011. Criminal Justice and Neoliberalism. Palgrave Macmillan, Basingstoke.

Bellis, A., Sturge, G., Robins, J., Zayed, Y., 2019. The Spending of the Ministry of Justice. https://commonslibrary.parliament.uk/research-briefings/cdp-2019-0217/. (Accessed 10 December 2021). accessed.

Brannick, T., Coghlan, D., 2007. In defense of being "native": the case for insider academic research. Organ. Res. Methods 10 (1), 59–74.

Brenneis, D., 2006. Reforming promise. In: Riles, A. (Ed.), Documents. Artefacts of Modern Knowledge. University of Michigan Press, Ann Arbor.

Bryman, A., 2012. Social Research Methods. Oxford University Press, Oxford.

Cape, E., 2006. Rebalancing the criminal justice process: ethical challenges for criminal defence lawyers. Leg. Ethics 9 (1), 56.

Carlen, P., 1976. Magistrates' Justice. Martin Robertson, London.

Carlen, P., 2018. Struggling for justice. Griffith Law Rev. 27 (2), 176–181.

Castellano, U., 2009. Beyond the courtroom workgroup: caseworkers as the new satellite of social control. Law Pol. 31 (4), 429.

Darbyshire, P., 2011. Sitting in Judgement: the Working Lives of Judges. Hart Publishing, Oxford.

Department for Constitutional Affairs, 2005. Supporting Magistrates' Courts to Provide Justice (Cm 6681).

Dressel, B., Sanchez-Urribarri, R., Stroh, A., 2018. Courts and informal networks: towards a relational perspective on judicial politics outside Western democracies. Int. Polit. Sci. Rev. 39 (5), 573–584.

Eisenstein, J., Jacob, H., 1977. Felony Justice: an Organisational Analysis of Criminal Courts. Little Brown, New York.

Equality and Human Rights Commission, 2020. In: 'Inclusive Justice: a System Designed for All' Equality and Human Rights Commission (London).

Fielding, N., Braun, S., Hieke, G., 2020. Video Enabled Justice Evaluation. (Accessed 21 December 2021).

Flood, J., 2005. Socio-legal ethnography. In: Banakar, R., Travers, M. (Eds.), Theory and Method in Socio-Legal Research. Hart Publishing, Oxford.

Hamani, O., 2014. We make do and keep going!" Inventive practices and ordered informality in the functioning of the district courts in niamey and zinder (Niger). In: Bierschenk, T., Olivier de Sardan, J.-P. (Eds.), States at Work: Dynamics of African Bureaucracies. Brill, Leiden, pp. p145–p174.
Helm, R., 2019. Conviction by consent? Vulnerability, autonomy and conviction by guilty plea. J. Crim. Law 83 (2), 161–172.
Helm, R.K., Dehaghani, R., Newman, D., 2021. Guilty plea decisions: moving beyond the autonomy myth. Mod. Law Rev. 85, 133–163.
House of Commons Justice Committee, 2019. The Role of the Magistracy: Follow-Up Eighteenth Report of Session 2017–19 HC 1654.
Ingram, J.R., Paoline III, E.A., Terrill, W., 2013. A multilevel framework for understanding police culture: the role of the workgroup. Criminology 51, 365–397.
Jacobson, J., 2020. Introduction. In: Jacobson, J., Cooper, P. (Eds.), Participation in Courts and Tribunals: Concepts, Realities and Aspirations. Bristol University Press, Bristol.
Jacobson, J., Hunter, G., Kirby, A., 2015. Inside Crown Court: Personal Experiences and Questions of Legitimacy. Policy Press, Bristol.
Johnston, E., 2020. The adversarial defence lawyer: myths, disclosure and efficiency—a contemporary analysis of the role in the era of the Criminal Procedure Rules. Int. J. Evid. Proof 24 (1), 35–58.
Jones, C., 1993. Auditing criminal justice. Br. J. Criminol. 33, 187.
Kemp, V., 2010. Transforming Legal Aid: Access to Criminal Defence Services. Legal Services Commission, London.
Kozlowski, Steve W.J., Bell, Bradford S., 2003. Work groups and teamsin organizations. In: Borman, Walter C., Ilgen, Daniel R., Kilmoski, Richard J. (Eds.), Handbook of Psychology: Industrial and Organiza-tional Psychology. Wiley, London, U.K.
Lange, B., 2005. Researching discourse and behaviour as elements of law in action. In: Banakar, R., Travers, M. (Eds.), Theory and Method in Socio-Legal Research. Hart Publishing, Oxford.
Leader, K., 2020. From bear gardens to the county court: creating the litigant in person. Camb. Law J. 79 (2), 260–287.
Leverick, F., Duff, P., 2002. Court culture and adjournments in criminal cases: a tale of four courts. Crim. Law Rev. 39, 44.
Lipsky, M., 1980. Street Level Bureaucracy: Dilemmas of the Individual in Public Services. Russell Sage Foundation, New York.
McBarnet, D., 1981. Conviction: Law, the State and the Construction of Justice. Macmillan, London.
McBarnet, D., 1981a. Magistrates ' courts and the ideology of justice. Br. J. Law Soc. 8 (2), 181–197.
McConville, M., Marsh, L., 2016. Factory farming and state-induced pleas. In: Hunter, J., Roberts, P., Young, S., Dixon, D. (Eds.), The Integrity of Criminal Process. From Theory into Practice. Hart Publishing, Oxford.
McConville, M., Sanders, A., Leng, R., 1991. The Case for the Prosecution. Routledge, Abingdon.
McConville, M., Hodgson, J., Bridges, L., Pavlovic, A., 1994. Standing Accused. The Organization and Practices of Criminal Defence Lawyers in Britain. Oxford University Press, Oxford.
Ministry of Justice, 2021a. Magistrates' Courts Cases Received, Disposed and Outstanding Tool. https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2021. (Accessed 10 December 2021). accessed.
Ministry of Justice, 2021b. Crown Court Cases Received, Disposed and Outstanding Tool. https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2021. (Accessed 10 December 2021). accessed.
Mulcahy, A., 1994. The justifications of 'Justice': legal practitioners' accounts of negotiated case settlements in magistrates' courts. Br. J. Criminol. 34 (4), 411.
Narey, M., 1997. Review of Delay in the Criminal Justice System. Home Office, London.
Newman, D., 2013. Lawyers, Legal Aid and the Quest for Justice. Hart Publishing, Oxford.
Newman, D., Welsh, L., 2019. The practices of modern criminal defence lawyers: alienation and its implications for access to justice. Common. Law World Rev. 48 (1–2), 64–89.
Owusu-Bempah, A., 2017. Defendant Participation in the Criminal Process. Routledge, Abingdon.
Owusu-Bempah, A., 2018. The interpretation and application of the right to effective participation. Int. J. Evid. Proof 22 (4), 321–341.
Porter, A., 2020. Prosecuting Domestic Abuse in Neoliberal Times. Palgrave Macmillan, London.
Riles, A. (Ed.), 2006. Documents: Artifacts of Modern Knowledge. University of Michigan Press, Ann Arbor.
Roach Anleu, S., Mack, K., 2021. Judging and Emotion. A Socio-Legal Analysis. Routledge, Abingdon.
Rossner, M., Tait, D., McCurdy, M., 2021. Justice reimagined: challenges and opportunities with implementing virtual courts. Curr. Issues Crim. Justice 33 (1), 94–110.
Rowden, E., 2018. Distributed courts and legitimacy: what do we lose when we lose the courthouse? Law Cult. Humanit. 14 (2), 263–281.
Sarat, A., Felstiner, W., 1988. Law and social relations: vocabularies of motive in lawyer/client interaction. Law Soc. Rev. 22 (4), 737–769.
Secret Barrister, The, 2018. Stories of the Law and How It's Broken. Macmillan, London.
Smejkalová, T., 2017. Legal performance: translating into law and subjectivity in law. Tilburg Law Rev. 22, 62.
Snipes, J., Maguire, E., 2007. Foundations of Criminal Justice Theory. Routledge, Abingdon.
Sommerlad, H., 1999. The implementation of quality initiatives and the new public management in the legal aid sector in England and Wales: bureaucratisation, stratification and surveillance. Int. J. Leg. Prof. 6, 311.
Sommerlad, H., 2008. Reflections on the reconfiguration of access to justice. Int. J. Leg. Prof. 15 (3), 179–193.
Soubise, L., 2015. Prosecutorial Discretion and Accountability: A Comparative Study of France and England and Wales. Doctoral Thesis (PhD). University of Warwick.
Sturge, G., 2020. Constituency Data: Magistrates' Court Closures. https://commonslibrary.parliament.uk/constituency-data-magistrates-court-closures/. (Accessed 10 December 2021). accessed.
Sudnow, D., 1965. Normal crimes: sociological features of the penal code in a public defender office. Soc. Probl. 12 (3), 255.
Tata, C., 2019. 'Ritual individualisation': creative genius at sentencing, mitigation and conviction. J. Law Soc. 46 (1), 112–140.
Tata, C., 2020. Sentencing: A Social Process. Palgrave Macmillan, London.
Thornton, J., 2019. The way in which fee reductions influence legal aid criminal defence lawyer work: insights from a qualitative study. J. Law Soc. 46 (4), 559.
Transform Justice, 2019. The Right to Know You Are Accused of a Crime. www.transformjustice.org.uk/the-right-to-know-you-are-accused-of-a-crime/. (Accessed 15 December 2021). accessed.
Ward, J., 2015. Transforming 'summary justice' through police-led prosecution and 'virtual courts' – is 'procedural due process' being undermined? Br. J. Criminol. 55 (2), 341–358.
Ward, J., 2017. Transforming Summary Justice. Routledge, Abingdon.
Welsh, L., 2013. Are magistrates' courts really a "law free zone?" Participant observation and specialist use of language. Papers from the British Criminology Conference 13, 3–16.
Welsh, L., 2017. The effects of changes to legal aid on lawyers' professional identity and behaviour in summary criminal cases: a case study. J. Law Soc. 44, 559–585.
Welsh, L., 2022. Access to Justice in Magistrates' Court. Hart Publishing, Oxford.
Welsh, L., Howard, M., 2019. Standardization and the production of justice in summary criminal courts: a post-human analysis. Soc. Leg. Stud. 28 (6), 774–793.
Welsh, L., Skinns, L., Sanders, A., 2021. Sanders and Young's Criminal Justice. Oxford University Press, Oxford.
Young, R., 2013. Exploring the boundaries of criminal courtroom workgroup. Common. Law World Rev. 42, 203.