

**CENTRE FOR CRIMINAL
JUSTICE STUDIES**

**SEVENTH ANNUAL
REPORT**

1994-95

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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 (Appendix 2).

This Annual Report provides a brief résumé of some of the activities of the Centre from 1 July 1994 to 30 June 1995. The past period of two years has witnessed some notable achievements for the Centre, including the appointment of full-time lecturing staff specifically to aid its work, the successful conclusion of two major projects and the commencement of a taught postgraduate course. Further details may be obtained from me at the address below.

Further details on all matters connected with the Centre may be obtained from me at the address below. Previous reports may also be viewed on our world wide web address at: <http://www.leeds.ac.uk/law/ccjs/homepage.htm>.

- ***Professor Clive Walker***

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1 October 1995

THE WORK OF THE CENTRE

A Research projects

The following substantial research projects are currently in progress:

(a) Reporting of Criminal Proceedings in Scotland and the Contempt of

Court Act 1981.

This project was originally funded by the Leverhulme Trust and investigated the frequency and nature of orders under sections 4 and 11 of the Contempt of Court Act 1981. That phase of the research has now been fully reported (see: Clive Walker, Ian Cram, and Debra Brogarth, 'The reporting of Crown Court proceedings and the Contempt of Court Act 1981' (1992) 55 *Modern Law Review* 647). Related research is now under way into the corresponding practices in Scotland conducted by Ian Cram and Clive Walker and comparative responses in the USA (which has involved research by Clive Walker based at the University of Louisville, Kentucky and at George Washington University, Washington DC). Out of this research a book is currently being written for Oxford University Press.

(b) The Administration of Legal Aid in the Magistrates' Courts: Access to Criminal Justice.

This is the culmination of research carried out in the centre upon criminal legal aid and funded by the E.S.R.C. in which four courts and their corresponding Criminal Legal Aid Committees were surveyed. The research commenced in January 1992. The research team obtained a further grant from the ESRC to consider the impact of the Criminal Justice Act 1991 on legal aid. A draft report was lodged with the ESRC for consideration in March 1994. In August 1995 the ESRC research panel assessed the research as of being of 'good quality'. Some of the research findings are being published in a forthcoming book co-edited by David Wall and Richard Young (of the University of Birmingham) entitled *Access to Criminal Justice: lawyers, legal aid and the pursuit of liberty* and published by Blackstone Press. Further academic publications are in process.

(c) Urban Crime Fund

Ian Brownlee and Clive Walker of the Centre, together with colleagues from 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. 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. To that effect a paper was presented at the British Criminology Conference in July 1995.

(d) The diversion of mentally disturbed offenders

Following a conference organised in Harrogate in June 1992 a number of projects were established within West Yorkshire. A postgraduate student (Judith Laing) has investigated this work and is about to submit a PhD, from which a full report will be drawn. Seminars have been held with project workers.

(e) Victim and offender mediation and reparation in comparative criminal justice cultures: A comparison of England and France.

Following from a pilot study in West Yorkshire, funded by the University's Academic Development Fund, Adam Crawford is conducting research into comparisons between England and France in the forms, aims and provision of mediation and reparation. The research is being conducted with the support of the Institut des Haute Etudes sur la Justice, in Paris. An application for further research funds has been made to the ESRC.

(f) Family contact centres

A pilot study is being conducted by Clare Leon, Norma Martin-Clement and Clare Furniss into the operation of such schemes, particularly in West Yorkshire.

(g) Political violence and Commercial victims

Following the IRA bombings of the City of London in 1992 and 1993, action was taken by the Government to steady the insurance market in Britain so as to ensure that insurance remained available for commercial properties. The Airey Neave Trust has now funded research into the working of these arrangements and into the security aspects, such as traffic management and contingency planning, which have arisen. A researcher, Martina McGuinness, is assisting Professor Clive Walker with the study.

(h) Police National Legal Database Consortium

A team from the West Yorkshire Police has established a wide-ranging database of legal information of relevance to police officers. The Centre's staff continue to act as auditors of the data being entered. It is hoped in due course to evaluate the impact of the database. Very similar work is to be undertaken for the British Transport Police.

(i) The Role and Appointment of Stipendiary Magistrates.

A working party (Chaired by Roger Venue) 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. Seven magistrates' courts were chosen as being representative of magistrates' courts across the country. Relevant personnel at these courts were interviewed. In addition, 11 different questionnaires were designed and sent to the relevant personnel at all magistrates' courts where there are existing stipendiaries or where visiting stipendiaries were used in 1994. A questionnaire was also sent to all acting stipendiary magistrates. Despite the extremely short time restraints imposed by the Lord Chancellor's Department, the information

gathered was analysed and presented to the Lord Chancellor's Department in a 150 page draft Report. The 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.

(j) An Evaluation of Transfer for Trial in the Magistrates' Courts.

The Home Office is commissioning research to evaluate the impact of the abolition of committal for trial in the magistrates' courts and its replacement by transfers for trial. The project is funded for 2 years from June 1995. The empirical research will be located in 14 courts around the country. The team of researchers include Ian Brownlee, Clare Furniss and Professor Clive Walker. A research assistant, Eve Peacock (M.A. University of Keele) has been appointed to work on the project.

(k) The Imprisonment of TV Licence Evaders:

An ongoing study, conducted by David Wall (with Jonathan Bradshaw, University of York), into the disproportionate number of women who are imprisoned annually for fine default arising from not paying the television licence fee. Further funding is being sought from the Nuffield Foundation.

(l) The Local Governance of Crime: Appeals to Community and Partnerships.

Over the past five years Adam Crawford has been researching the growing appeals to 'community' and 'partnerships' in criminal justice policy and the involvement of actual communities and partnerships in criminal justice practices. He is currently writing a book which considers the nature and effects of a number of recent social trends and tendencies which are transforming the governance of crime and personal security. The book will seek to theorise these changes, drawing upon empirical research conducted by the author. It will be published as part of the Clarendon Studies in Criminology, by Oxford University Press.

(m) The Chief Constables of England and Wales 1985 - 1995.

This is the final part of a long term project, conducted by David Wall, which looks at every appointment to Chief Constable in England and Wales since 1835. This work will be published as *The Chief Constables of England and Wales 1835-1995: The Home Office, The Police Authority and the Selection of Chief Constables*, by Dartmouth (intended for publication in 1997).

(n) Computer Theft

An ongoing study, by David Wall, of the impact of investment in information technology upon the victimisation of large organisations and the police response. In addition, a pilot study of the implications of the introduction of

information technology upon the criminal justice system. This research is linked to a wider project concerned with the impact of IT upon the legal profession (with the assistance of Jennifer Johnstone, MA University of Leeds), which involves an eight month study funded by the University of Leeds into the use of information technology by the legal profession. This project is in the final stages of completion.

B Postgraduate study

(a) Study facilities

The new postgraduate student annexe, with computing and social facilities, was opened by Chief Constable Keith Hellawell on 1st November 1994. In addition, we have received a major bequest of books from Kenneth Elliott, who lectured in criminal justice matters at the University of Leeds. Our gratitude is expressed to his widow, Mrs. A Elliott, and to Professor Jepson, who was a colleague of Mr Elliott. The Law Library has now created a special Criminal Justice Studies Room within the library, including this important collection.

(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, criminology and penology, criminal law and terrorism. 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 instructions in research methodology 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.

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 ordinances and regulations governing the above degree schemes are set out in the prospectus of the Faculty of Law which is available on request.

(c) Current postgraduate research students

O'Gorman, Christopher, LL.B. - The detention and questioning of suspects by the police: safeguarding the suspect and the role of the legal adviser (Ph.D., October 1989)

Pinkney, Ian, LL.B. - The taking of motor vehicles without consent (M.A., October 1991)

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)

Laing, Judith, LL.B. - Mentally disordered offenders and their diversion from the criminal justice system (Ph.D., September, 1992)

Boland, Fay, B.C.L. - Diminished responsibility as a defence in Ireland having regard to the law in England, Wales and Scotland (Ph.D., October 1992)

Palfrey, Terry, B.A., - The development of an inquisitorial system in fraud investigation and prosecution (Ph.D., April 1993, part time)

Gagic, Leanne, B.A. - A study of young women whose mothers are in custody (M.A., April 1993, part-time)

Glew, Nigel, LL.B. - The evidence of children in the criminal justice system (M. Phil, September 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)

Ellison, Louise, LL.B. - A comparative study of the rape trial within adversarial and inquisitorial criminal justice systems (Ph.D., November 1993)

Murray, Jade, LL.B. - A study of post-appeal procedures for dealing with miscarriages of justice (MA, September 1994)

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

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

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

Wade, Amanda - Children as Witnesses (Ph.D., January 1995)

McCracken, Michael, LL.B., - The banking community and paramilitary money laundering (M.A., September 1995, part-time)

Douglas, Stephen LL.B., M.Phil. - Rural Crime: The Study of Crime in Three Rural Sites in North Yorkshire (Ph.D., pending October 1995)

Mukelabai, Nyambe LL.M. - The relationship between universal human rights doctrine and basic rights and freedoms in Zambia (Prov. PhD, October 1995)

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

Akdeniz, Yaman, LL.B., - The Internet: Legal implications for free speech and privacy (M.A ., October 1995)

Barton, Patricia LL.B., M.A. - Police accountability, consumerism and commercialism (Ph.D., pending October 1995)

Peacock, Eve B.A. M.A. - The principles of pre-trial justice (Ph.D., pending October 1995)

(d) Postgraduate research degrees recently awarded

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)

(e) Postgraduate taught courses

The MA graduates from the 1994-95 course are as follows:

Al-Bader, Khulood
Astin, Bill
Barton, Patricia
Bristow, Clare
Carroll, Sandra
Clarke, Deborah
Damalidou, Eleni
Edwards, John
Langston, Susan
Proctor, Penny

To be awarded a Certificate in Criminal Justice Studies:

Nawaz, Shareen

The programmes will be as follows for 1995-96.

M.A. (Criminal Justice Studies)

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.

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.

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 (20 credits)
5. Philosophical aspects of criminal law (10 credits)
6. Proof (10 credits)
7. Emergencies and emergency laws (10 credits)
8. European aspects of criminal justice (10 credits)
9. International law aspects of criminal justice (10 credits)
10. Forensic medicine and forensic science (10 credits)
11. Theories of Crime and Punishment (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.

Certificate in Research Methods and Skills for Socio-Legal Studies

Duration: 9 months part time.

Entry requirements: This course is designed to train postgraduate research students in research skills.

C. Relevant papers and publications by members of the Centre during 1994/5

(a) Courts and court procedures

Bell, J.S. (1994) 'Corruption et *sleaze*: comparaisons franco-britanniques', Conference paper presented at Le Mans, January 1995.

Brownlee, I.D. (1994) 'Hanging Judges & Wayward Mechanics: a Reply to Michael Tonry' in Duff, A., Marshall, S., Dobash, R.P. and Dobash, R.E. (eds.) *Penal Theory & Penal Practice*, pp 84-92, Manchester U.P.

Brownlee, I.D., Mulcahy, P.A. and Walker, C.P. (1994) 'Pre-Trial Reviews, Court Efficiency and Justice: a Study in Leeds and Bradford Magistrates' Courts' in *The*

Howard Journal of Criminal Justice 33: 2, 109-124.

Brownlee, I.D., Mulcahy, P.A. and Walker, C.P. (1994) 'Pre-Trial Reviews and Efficiency in Magistrates' Courts', *Justice of the Peace*, 158, 234-237, 250-251.

Crawford, A. (1994) 'Les Acteurs de l'Acces: Actors and Participants in Informal Dispute Processing, a Comparative Perspective'. Paper presented to the 'Culture Judiciaires d'Europe: Justice et Societe' conference jointly organised by Institut des Hautes Etudes sur la Justice and l' Ecole Nationale de la Magistrature, Lille University, 9-10 December.

Crawford, A. (1995) 'Victim/Offender Mediation in Comparative European Legal Cultures: A Comparison of France and England' Socio-Legal Studies Association Annual Conference, University of Leeds, 27-29 March.

Crawford, A. (1994) 'Access to Justice and Alternatives to Litigation in England and Wales', conference proceedings 'Culture Judiciaires d'Europe: Justice et Societe', jointly organised by Institut des Hautes Etudes sur la Justice and l' Ecole Nationale de la Magistrature, Lille, 9-10th December.

Crawford, A. (1995) 'La Justice Douce? A Comparative Analysis of Victim/Offender Mediation in France and England' British Criminology Society Conference, Loughborough University, 18-21 July.

Seago, P.J., Walker, C.P. and Wall, D.S. (1995) *The Role and Appointment of Stipendiary Magistrates*, Report submitted to the Lord Chancellor's Department, Centre for Criminal Justice Studies, University of Leeds.

Wall, D.S. (1994), 'Report of a Visit to the Centre for Criminal Justice Policy and Criminal Law Reform: To conduct research into The international crisis in legal aid delivery systems in common law jurisdictions', Leeds: Centre for Canadian Studies Newsletter.

Wall, D.S. (1995) 'Legislation and Practice: The effects of the Criminal Justice Act 1991 and other recent policies upon the administration of Criminal Legal Aid,' Socio-Legal Studies Association Annual Conference, University of Leeds, 27-29 March.

Wall, D.S. (1995), 'The International Crises In Legal Aid: Lawyers and Legal Aid in Common Law Jurisdictions,' Proceedings of the Law and Society Annual Meeting, Toronto, June.

Wall, D.S. (1995), 'Comparing Access to Criminal Justice: Comparative research and the debate over legal aid policy'. Canadian Law and Society Annual Meeting, Montreal, June.

Wall, D.S. (1995) 'Legal Aid, The Green Paper and the Architecture of Criminal Justice', British Criminology Conference, Loughborough University, 20 July.

(b) Criminal law

- Brownlee, I.D. and Seneviratne, M. 'Killing with Cars after Adomako: Time for Some Alternatives' [1995] *Criminal Law Review* 389-392.
- Hilson, C (1994) 'Negligence and Child Abuse', *Solicitors Journal* 138, 422-3.
- Hilson, C 'Negligence and Child Abuse', *Practitioner's Child Law Bulletin* 7, 56-8.
- Reed, A. (1994) 'Recent Developments in the Criminal Law', *The Criminal Lawyer*, 48, 1-4.
- Reed, A. (1995) 'A Commentary on Hunt v Severs', *Oxford Journal of Legal Studies*, 15: 1, 133-141.
- Reed, A. (1995) 'Strict Liability Offences: The need for careful legal advice to corporations and individuals', *The Criminal Lawyer*, 52, January 1995, 3-6.
- Reed, A. (1995) 'Rape, fraud and consent' *Solicitors Journal* 139: 2, 44-46.
- Reed, A. (1995) 'Involuntary intoxication does not negative criminal intent'. *The Journal of Criminal Law* 59: 1, 76-78.
- Reed, A. (1995) 'Contra bonos mores' *New Law Journal* 145, 174-176.
- Reed, A. (1995) 'Offences against the person: the need for reform' *The Journal of Criminal Law* 59: 2, 187-198.
- Seago, P.J (1994) 'Criminal Law' in *All England Law Reports Annual Review* 132-152.
- Seago, P.J, Hogan, B. and Bennett, G. (1994) *A Level Law Cases and Materials* (3rd ed) Sweet and Maxwell.
- Seago, P.J (1994) *Criminal Law* (4th ed), Sweet and Maxwell.
- Seago, P.J (1994) *Submission by the Centre for Criminal Justice Studies to the Law Commission on the Law of Involuntary Manslaughter* Centre for Criminal Justice Studies, University of Leeds.
- Storey, H (1994) 'International Law and Human Rights Obligations' in Spencer (ed.) *Strangers and Citizens*, IPPR/Rivers of Oram Press.
- Walker, C.P. (1995) 'Review of Campbell, C. "Emergency Law in Ireland 1918-1925"', *Legal Studies*, 15: 2, 311-22.
- (c) Criminology and penal matters**
- Brownlee, I.D. (1995) 'Intensive Probation with Young Adult Offenders: a Short Reconviction Study', in *British Journal of Criminology* 35.
- Crawford, A. (1994) 'The Partnership Approach: Corporatism at the Local Level?'

Social and Legal Studies, 3:4, 497-519.

Crawford, A. (1995) 'Review of Nelken, D. (ed.) "The Futures of Criminology"' *Legal Studies*, 15:2, 322-28.

Crawford, A. (1995) 'The Local Governance of Crime: Whither Social Justice, Organisational and Democratic Accountability?', International Conference, 'Democracy and Justice: Re-viewing Crime in Theory and Practice', Brunel University, 13-14 June 1995.

Wall, D.S. and Bradshaw, J.R. (1994) 'The Message of the Medium: The social impact of the TV licencing system,' *New Law Journal*, 144: 6662, 1198-9.

Wall, D.S. and Bradshaw, J.R. (1995) 'The Hidden Impact of the TV Licencing System,' *The Magistrate*, February, 7 & 25.

Wall, D.S. (1995) *Reconstructing the Soul of Elvis*, Refereed Working Papers in Law and Popular Culture, Series Two, No. 2. Manchester: Manchester Institute for Popular Culture.

(d) Policing and police powers

Brownlee, I.D. and Walker, C.P. (1995) 'Towards Community Policing', paper presented at the British Criminology Conference, University of Loughborough.

Crawford, A. 'Social Values and Managerial Goals: Police and Probation Officers' Experiences and Views of Inter-Agency Co-operation', *Policing and Society*, 4:4, 323-39.

Crawford, A. (1995) 'The Transferability of Crime Prevention Initiatives' British Criminology Society Conference, Loughborough University, 18-21 July 1995.

Crawford, A. and Jones, M. (1995) 'Inter-Agency Co-operation and Community-Based Crime Prevention: Some Reflections on the Work of Pearson and Colleagues' *British Journal of Criminology*, 35:1, 17-33.

Crawford, A. (1995) 'Appeals to Community and Crime Prevention', *Crime, Law and Social Change: An International Journal*, 22, 97-126.

Crawford, A. and Jones, M. (1995) 'Kirkholt Revisited: Some Reflections on the Transferability of Crime Prevention Initiatives' *Howard Journal of Criminal Justice*, 34.

Walker, C.P. (1994) Review of Kirk and Harwood, *Serious Fraud*, *Law Quarterly Review*, 110, 152-154

Walker, C P, (1994) 'The Prevention of Terrorism Acts and the European Convention on Human Rights' in *WG Hart Workshop*, pp59 Institute of Advanced Legal Studies

Walker, C P, (1994) 'Terrorism', in XIV International Congress of Comparative Law,

Athens

Walker, C.P., (1994), 'Terrorism' in Bridge, J.W. et al, *UK Law in the Mid-1990s* (UK Comparative Law Series) pp170-220

Walker, C.P. and Moraitou, A., (1995) 'Under my skin: the police and the politics of personal searches' Socio-Legal Studies Association Annual Conference, University of Leeds, 27-29 March 1995.

Wall, D.S., (1994) 'The Ideology of Internal Recruitment: The Chief Constables of England and Wales and the Tripartite Arrangement', *British Journal of Criminology*, 34: 3, 322-338

Wall, D.S. (1995), 'The Policing of Popular Culture', Canadian Law and Society Annual Meeting, Montreal, June 1995.

Wall, D.S. (1995) 'Technology and Crime: Increased capital investment in information technology and changes in victimisation patterns', *International Yearbook of Law, Computers and Technology: Volume Nine*, Oxford: Carfax Publishing. pp. 97-109.

Wall, D.S. (1995) 'Responding to Hi-tec Crime: Towards Policing the Virtual Community,' Proceedings of 'A Growth Industry: The first national conference to address the theft of computer hardware and component parts, Henry Fielding Centre, University of Manchester, September 1995.

(e) Evidence.

Walker, C.P. and Stockdale, R. (1995) 'Forensic Evidence and Terrorist Trials in the UK', *Cambridge Law Journal* 69-99.

(f) Miscellaneous

Walker, C.P. 'A Realistic Call for a Lasting Peace?' in (1994) *Irish Law Times* 12, 80-84.

Walker, C.P. and Weaver (1994) 'A peace deal for Northern Ireland? The Downing Street Declaration of 1993', *Emory International Law Review*, 8, 817-844.

D. Seminars, Conferences and Continuing Education

STAFF, STUDENTS AND VISITING SPEAKERS

"Involuntary Manslaughter: A Response to the Law Commission Paper (No. 135)"

A workshop chaired by **Peter Seago**, Faculty of Law, University of Leeds. Thursday 29th September 1994.

"International Obligations and Criminal Justice in the UK: A Case Study of Torture and Degrading Treatment" **Hugo Storey**, Faculty of Law, University of Leeds. Wednesday 26th October 1994.

"Contemporary Policing" **Keith Hellowell**, Chief Constable, West Yorkshire Police. Tuesday 1st November 1994.

"The Privatisation of Prisons" **Stephen Shaw**, Director of the Prison Reform Trust. Wednesday 23rd November 1994.

"The Release of Life Sentence Prisoners and the Victim's Charter" **Peter Johnston**, Senior Probation Officer, West Yorkshire Probation Service. Wednesday 30th November 1994.

"Some Aspects of Japanese Criminal Justice" **Professor Masami Sato**, Faculty of Law, Kobe Gakuin University, Japan. Wednesday 7th December 1994.

"Racial Harassment, Space and Localism: Qualitative Aspects of the Keighley Crime Survey"

Colin Webster, Bradford and Ilkley College. Tuesday 14th February 1995.

"The work of INTERPOL" **Ray Kendall**, Secretary General of INTERPOL (The Frank Dawtry Memorial Lecture) Tuesday 21st February 1995.

"Restorative Justice?" **Mick Cavadino**, Centre for Criminological Research, University of Sheffield, Tuesday 28th March 1995.

"Miscarriages of Justice and the Post-Appeal Process" **Michael McColgan**, Solicitor and Chair of Liberty, Yorkshire branch. Wednesday 15th March 1995.

"The Role of the Interpreter in the Courts" **Paul Jolliffe**, Researcher, Centre for Criminal Justice Studies, University of Leeds, Wednesday 22nd March 1995.

"The Governance of Special Powers" **Professor Clive Walker**, Director of the Centre for Criminal Justice Studies, Inaugural Lecture, Thursday 11th May 1995.

"Conspiracy to Defraud: The Law Commission Report (No. 228)" **Terry Palfrey**, Department of Law, Leeds Metropolitan University & Researcher at the Centre for Criminal Justice Studies, University of Leeds, Tuesday 23rd May 1995.

"Criminal Liability of Corporations in Japan: A Comparative View" **Professor Masami Sato**, Faculty of Law, Kobe Gakuin University, Japan & Visiting Research Fellow in the Faculty of Law, University of Leeds, Wednesday 31st May 1995.

CENTRE FOR CRIMINAL JUSTICE STUDIES POSTGRADUATE SEMINARS

"An Investigation into Magistrates' Views of Unit Fines" **James English**, Research Student, Centre for Criminal Justice Studies, University of Leeds, Friday 16th June

1995.

"Police Surgeons: Practitioners at the Gatekeeping Interface" **Dakshina Gammanpila**, Research Student, Centre for Criminal Justice Studies, University of Leeds, Friday 16th June 1995.

"The Origins and Objectives of the Reinsurance Act 1993" **Martina McGuinness**, Research Student, Centre for Criminal Justice Studies, University of Leeds, Wednesday 21st June 1995.

"Miscarriages of Justice and the Criminal Appeal Bill" **Jade Murray**, Research Student, Centre for Criminal Justice Studies, University of Leeds, Wednesday 21st June 1995.

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

CENTRE FOR CRIMINAL JUSTICE STUDIES CONFERENCES

Socio-Legal Studies Association Annual Conference 27-29th March 1994

Nearly 300 delegates attended the conference entitled 'Value and Commitment in Diversity', jointly organised with the Faculty of Law and the School of Sociology and Social Policy. There was a considerable representation of overseas delegates at the conference. In all some 170 papers were presented in the various workshop sessions. The criminal justice theme was strongly represented in the choice of the three plenary speakers, Christopher Nuttall (Director of the Home Office Research and Statistics Unit), Professor Clifford Shearing (Centre for Criminology, University of Toronto, and Community Peace Foundation, University of the Western Cape) and Nicola Lacey (New College, Oxford University). By all standards the conference was a great success. Copies of the conference programme and abstracts of the papers presented can be obtained from Adam Crawford.

Indian Police Senior Command Course, August 1994:

Funded by the British Council 13 senior Indian police officers spent a week at the Faculty of Law, as part of their 10 week course, based at the Detective Training School in Wakefield. The programme covered lectures on subjects including, the English Legal System, Terrorism and Human Rights, DNA and issues of management. As part of the course the police officers visited the Crown and Magistrates' courts, the Forensic Science Laboratory in Harrogate and the Forensic Pathology Department at the University of Sheffield. The programme ended with a lecture from former graduate Sir Lawrence Byford (former Chief Inspector of Constabulary) on policing and the role of the HM Inspectorate.

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

APPENDIX 1

CONSTITUTION OF THE CENTRE

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 members of the academic staff of the Department of Law may be a member of the Centre.

2.2 Other individuals may be appointed to 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 membership of the Centre.

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.

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 a Deputy Director.

3.4 The Executive committee shall consist of the Director and the Deputy Director together with the Head of the Department of Law, and up to six others who shall be appointed by the Director, Deputy Director and head of the Department of Law and up to two of whom may be members of the teaching staff 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.

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 FOR CRIMINAL JUSTICE STUDIES

1. Executive Committee

Professor C.P. Walker (Director)
Mr A. Crawford (Deputy Director)
Mr D Wall (Deputy Director)
Professor B. Hogan
Emeritus Professor N. Jepson
Mr I.D. Brownlee
Dr C Leon
Mr P Seago (Chair of the Advisory Committee)
Professor John Bell (ex officio Head of Department of Law)

2. Advisory Committee

Emeritus Professor N. Jepson
His Honour Judge G. Baker
Sir L. Byford (former Chief Inspector of Constabulary)
Mr I. Dobkin (Barrister)
Dr D. Duckworth (Leeds University)
Professor M Green (University of Sheffield)
Mr. K. Hellowell (Chief Constable, West Yorkshire Police)
His Honour Judge D Herrod
Councillor P Jarosz (W. Yorks Police Authority)
Mrs P. Hewitt (Stipendiary Magistrate)
Professor E. Jenkins (Leeds University)
His Honour Judge G. Kamil
Lord Justice P. Kennedy
Mr G. Kenure (Probation Service)
Chief Spt. D Lloyd (Commandant, W. Yorks Police Training School)
Mr P.D.G. McCormick (Solicitor)
Miss A.E. Mace (Probation Service)
Rt. Hon. M. Rees (M.P.)
Mr JS Robertson (Assistant Chief Crown Prosecutor)
Professor C. Smart (University of Leeds)
Mr P. Whitehead (Clerk to Leeds Justices)

Mr. J. Whitty (Prison Governor)

3. Visiting scholar

Professor Sato, Kobe Gakuin (University), Kobe, Japan

APPENDIX 3

SEMINAR PROGRAMME FOR 1995/6

TERM ONE 1995/6

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

Tuesday 17th October 1995 - 5.45 p.m.:

Organised in association with the Northern Branch of the British Society of Criminology

"The Local Governance of Crime: Whither Accountability and Social Justice?"

Adam Crawford, Centre for Criminal Justice Studies, University of Leeds.

Wednesday 25th October 1995 - 1.00 p.m.:

"Private Security and the Demand for Protection in Contemporary Society"

Ian Loader, Department of Criminology, Keele University.

Tuesday 7th November 1995 - 1.10 p.m. The Great Hall, University of Leeds.

The Anne Spencer Memorial Lecture

"The Peace Process in Northern Ireland and the Role of Women"

Angela Hegarty, Chair of the Committee on the Administration of Justice, Northern Ireland.

Wednesday 22nd November 1995 - 1.00 p.m.:

"Repeat Victimisation: Fashion or Future?"

Professor Ken Pease, University of Huddersfield.

Wednesday 6th December 1995 - 1.00 p.m.:

"Managing Sex Offenders in the Community - A Comparison of Experiences in the UK and USA"

Terry Thomas, Leeds Metropolitan University.

Wednesday 13th December 1995 - 1.00 p.m.:

"The Growth of Legal Consciousness in China"

Dominique Healey, Amnesty International, and Research Student, Centre for Criminal Justice Studies, University of Leeds.

TERM TWO 1995/6

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 14th February 1996 - 1.00 p.m.:
David Wall, Centre for Criminal Justice Studies,
University of Leeds on "Legal Aid,
Lawyers and the Architecture of Criminal Justice".
Tuesday 7th March 1996 - 1.00 p.m.:
Mike Nellis, Department of Social Policy and Sociology,
University of Birmingham, on "Probation Values".
Wednesday 13th March 1996 - 1.00 p.m.:
Karamjit Singh, Centre for Research in Ethnic Relations,
University of Warwick and ex-member of the Police
Complaints Authority, and current member of the
Judicial Studies Board and Parole Board, on
"Citizens Rights, Complaints and Criminal Justice in a Multi-Racial
Society".
Wednesday 20th March 1996 - 1.00 p.m.:
Les Johnston, Department of Criminology, University of Teeside,
on "Private Policing".

FORTHCOMING CONFERENCE:

"The Safer Cities Review"

A one day conference organised in conjunction with Leeds Safer Cities Project will be held in the University's Rupert Beckett lecture theatre and adjacent seminar rooms, on Monday 25th March 1996.

The conference aims to provide the opportunity to people of sharing experiences and disseminating good practice in community safety as widely as possible throughout the city. The target audience will be a mixed one of residents from estates and inner city areas as well as workers from a range of agencies including the police, local authority, probation, health and the voluntary sector. Keynote speakers will include Professor Ken Pease of Huddersfield University, Beatrix Campbell (freelance journalist and author of *Goliath: Britain's Dangerous Places*) and Colonel Roberts, Pro-Chancellor of the University of Leeds. Further information on the conference can be obtained from Adam Crawford.

APPENDIX 4 CENTRE PAPERS

"International Police Co-operation: The role of the ICPO-INTERPOL"

The Frank Dawtry Memorial Lecture, February 1995

Ray Kendall,

Secretary General of INTERPOL

HISTORY

The organisation can be traced to 1914, when we had the first meeting of the International Congress on Police Matters in Monaco. Behind the initiative was Prince Albert of Monaco, who asserted that there was then a problem of international criminality, and so his idea was that it would be useful to create an international data bank on travelling criminals. Most of the countries represented were European, but the United Kingdom did not attend officially though there was a police woman who travelled from Liverpool, paying her own expenses to be present.

The First World War did not lead to any developments immediately, but in 1923 in Vienna the International Criminal Police Commission (ICPC) took its shape. Its headquarters were set up there, and it was headed by the Chief of the Vienna Police. From that time on, the organisation's functions were almost like today's in the sense that it became a centre of international criminal records on individuals and international circulars were sent out about the criminally active from the international point of view and messages were exchanged between the then member countries who were mostly European. In 1939 when the Second World War broke out, there was a problem. Vienna was occupied by the Germans who were very interested in the records of the ICPC, because in those days religion was recorded. The Nazi authorities moved the headquarters from Vienna to Berlin (they did it, they claimed, constitutionally because they wrote to all members of the Commission and treated non-replies as assent). The organisation continued to function during the War years essentially to deal with criminal activities. One case we know of in the mid-40s concerned a pick-pocket arrested in Belgium; he was Jewish but because he was dealt with on the criminal side as opposed to the other side that probably saved his life. So, there was already perhaps an idea of respect instilled in some people arising from the organisation's constitution about the prohibition on dealing with primarily "racial, political, military or religious" matters.

After the war in 1946, the former member countries from the pre-war period, still essentially a European group, met together to decide how they were going to revive the organisation and where the headquarters was going to be located. At that time there were three countries who offered to house the headquarters: France, the Netherlands and Czechoslovakia. The only reason why France was chosen was because the central authorities were the first to give the necessary positive assurances. By 1955 there were 50 member countries, and it was in 1956 that the International Criminal Police Commission became the redesigned International Criminal Police Organisation and a new constitution was adopted. That was when the telegraphic address of INTERPOL, as its known today, was finally adopted as the general title by which the organisation is known to day.

Just after the War the organisation was located in the Headquarters of the French Judicial Police. In the late 40's and early 50's, it moved to a small hotel just off the Avenue Foch in Paris, and then in 1966 it moved into the first customised building in St Cloud in the western suburbs of Paris. By 1967 the number of member states had reached 100, and in 1989, given the impossibility for us to expand in Paris, we moved to Lyon. The main reason

for the move was simply because it was not possible to find suitable premises in Paris. After much searching around in different places in France, we finally set up in Lyon because of its international possibilities and its central position. The building was entirely financed from the organisation's own funds. At this date, we have 176 member countries, the second largest international organisation after the United Nations. More recent increases in the numbers come obviously from the changes particularly in Eastern Europe - in the space of two years Europe for us which was previously 32 countries went immediately almost to 44 or 45 because of the break-up in the Soviet Union.

CONSTITUTION

There are three basic articles in the constitution. Article 2 clearly says what is the purpose of the organisation:

"To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in its member countries and in the spirit of the Universal Declaration of Human Rights.

To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary crimes."

Unfortunately today we do not have any international legislative code to deal with the problem of international criminality. It is true that there are a certain number of international conventions which could be used as a basis for international co-operation, but most countries are unwilling to use international conventions as a legal basis for action unless those conventions have been incorporated into domestic law. I see that as a real barrier to truly efficient international co-operation, but we understand we have to recognise the limits of the law existing in the different countries and therefore to concentrate upon "ordinary law crimes", which is a term we simply use to cover basic crimes which do not present political difficulties.

By Article 3:

"It is strictly forbidden for the Organisation to undertake any intervention or activities of a political, military, religious or racial character."

Perhaps I should explain the interpretation of this. It would be easy to claim that a terrorist crime is politically motivated or that what is happening in the former Yugoslavia today its military therefore INTERPOL cannot intervene. Similarly, actions pursuant to fundamentalism and likewise racial activities raise similar exclusion possibilities. However, we have applied to the interpretation of this article the theory of "predominance", that is to say that the dominant issue really in whatever offence or crime is committed is the facts of the case and if the predominance is in favour of a criminal action then whatever motivation there is comes afterwards.

So in the case of a act of terrorism - hijacking or assassination and so on - you will look at the facts that exist and see the assassination as a murder or the

hijacking as an offence against the relevant international conventions. And so the political element comes second, and there is absolutely no problem at all for co-operation in those matters. For example, a recent such case we had to deal with was the hijacking in December 1994 of the Air France jet to Marseille, where the communications between the French Government and the Algerian Government passed through the INTERPOL channels. The last relevant arrest case we dealt with concerned the man who was arrested for the World Trade Building bombing; he was arrested in Pakistan and was extradited to the United States as the result of the international wanted notice.

Problems also potentially arise in relation to terrorism through allegations of state-sponsored terrorism. My answer to that is that we are a professional police organisation, and so we are not interested in the political aspect which should be appropriately dealt with through the organisation that is designed to deal with those issues, that is to say the United Nations. So, state-to-state sanctions, for example in connection with the Lockerbie bombing (assuming for the sake of argument that it was state sponsored) can only be dealt with by political, not police, organisations.

So, the test is predominance - we look at the circumstances of the offence before we look at the motivation. But remember that there is no real international applicable law in certain operational matters and therefore in those matters respect for national sovereignty must prevail. Consider again the case of the man extradited from Pakistan pursuant to the international wanted notice. If the Pakistani authorities had refused extradition him, they do not have to give a reason, and it is not possible to exercise pressure on countries to extradite or to even to co-operate. Co-operation is a matter of goodwill. We must restrict demands to crimes which have common elements, and we must respect universality, that is to say that every country within the organisation is equal. There also has to be co-operation with other agencies and by that we mean not only the United Nations but any other bodies that may be involved in the Customs Co-operation Council which is akin to the INTERPOL for customs services based in Brussels. There also has to be certain flexibility in working methods because of the complications of different legal systems, different police systems, and different languages.

As regards Article 3 and military cases, the United Nations has set up a Tribunal to deal with crimes against humanity and acts of genocide based in The Hague. Flowing from an exchange of ideas between myself and the UN Secretary General, we attempted to deal with the next problem, namely, how do we get people before the Tribunal if does not have the enforcement mechanisms belonging to a sovereign country? So, we have given to that Tribunal the same privileges as a country would have when it comes to searching for the accused persons, and so far we have issued about 20 international wanted notices against suspects who have allegedly committed acts of genocide in relation to the conflict in the former Yugoslavia. This Court now looks as though it will become a permanent institution because they are already conducting preliminary inquiries into the Rwanda situation, and so probably the beginnings of the permanent establishment of that body is taking shape.

FINANCE

The budget used to be calculated in Swiss Francs, but most of our current expenses are in French Francs, so that currency is now used. We work on Budget Units; one Budget Unit equals 71,300FF which is about the equivalent to [[sterling]]9, 000. The minimum number that a country can pay is two Units, and the maximum is one hundred. Consequently, there is a major difference between our system and that of the major co-ordinated international organisations such as the OECD and particularly the United Nations. The United States pays 25% of the budgets for most of those other organisations including the United Nations. But that is not the case for INTERPOL, and I think it is not desirable for one country to predominate. Few countries pay the maximum (which is about 4% of the total income) - only the United Kingdom, the United States, Italy, Germany, France and Japan. So, no country has a predominant position which might threaten the independence of our organisation.

The total budget is the equivalent of about [[sterling]]15 million. Now when you think we are dealing with international criminality, which, according to UN estimates, reaps benefits from international drug trafficking of the order of 500 billion US dollars, we seem a long way from balancing the resources available to INTERPOL and the resources available to the people we are supposed to be fighting.

FUNCTIONAL STRUCTURE

The structure is very similar to those of other international organisations. The General Assembly is the major governing body. It meets once a year usually in a different country; last year was in northern Italy, this year will be in Beijing, China. The delegates from member countries elect an Executive Committee which meets three times a year in between those meetings of the General Assembly and then these members elect a President for 4 years and the other members of the committee all representing different continents are elected for 3 years. They cannot be re-elected. The President at this moment is from Sweden, his predecessor was from Canada. The three Vice-Presidents represent each continent. The Secretary General is also elected by the General Assembly for the period of 5 years, and he is the permanent person responsible for the day-to-day running of the organisation and can be re-elected. The General Assembly makes the policy decisions concerning the budget or even the way in which we deal with particular types of criminality and decides on what will be actioned for the coming year. The Secretary General is responsible for the Secretariat which is in Lyon; there are approximately 300 hundred employed in the Secretariat; 100 of them are police officers from about 60 different countries of the world.

All continents are represented and all languages are represented, though the official languages of the organisation are French, English, Spanish and Arabic. In each member country there is a National Central Bureau, and it is through those National Central Bureaux that co-operation takes place. They are part of

a very modern system of communications which is very technically advanced, more modern even than the large majority of our member countries. The Bureaux centralise the information that needs to be exchanged from the international point of view. The National Central Bureau of the United Kingdom is situated now in the National Criminal Intelligence Service; it used to be in Scotland Yard. The reason for it being in Scotland Yard is historically simply; at the very beginning most of the inquiries concerned the criminal records of individuals and central criminal records and finger-prints systems were located in Scotland Yard. In the USA, the Bureau is in the Department of Justice; in France it is the Headquarters of the French Judicial Police; in Germany it is the Federal Police Headquarters.

THE SECRETARIAT

The Secretariat includes a General Administration Division (I) dealing with financial controls and so on, a Legal Affairs Division (III), and a Technical Support Division (IV) including departments dealing with communication. But it is the Liaison and Criminal Intelligence Division (II) where all the police activities go on and where the police officers are working. The staff there are monitoring the million or so messages a year which go through the communications systems; they are monitoring those messages to see whether, as a result of the bilateral exchange of information between two countries, there is any information which could link that activity with some other country or some other organised activity that we may be looking at. At the same time they are preparing information on current trends in criminality especially in terms of illicit drug trafficking - new routes, new ways of hiding drugs, *modus operandi* and so on - money laundering and other criminality. There is also a special analytical unit which is carrying out work into major types of crime.

The overall break-down of that Division in organisational terms comprises sections dealing with: general crime, organised crime and terrorism; economic and financial crime; and drugs. 60% of my work deals with illicit trafficking of drugs which is inseparable from these days from organised crime.

The Criminal Intelligence Department does analytical work, keeps all the criminal records and also produces all the international wanted notices. There are four types of these, according to a colour notation: red notices concern people who are wanted for arrest, green notices concern people whose activity are of interest but are not wanted for arrest, black notices deal with unidentified dead bodies, and then blue notices are designed to locate people, be they criminal or simply missing. The notices contain, where we have them, the finger-prints, photographs and all that's necessary to be able to identify a person. An example of the value of those notices may be when Ali Agca was arrested by the Italian police for the attempted assassination of the Pope in 1981. When he was arrested, nobody knew who he was or who his accomplices might be. In fact, he was already wanted in Turkey for having assassinated two journalists and because of that the Italians were in possession of his finger prints and photographs so within a very short time they were able to identify him, but not only him it was possible for them to look for his likely accomplice. The same notices were used in the World Trade Centre bombing

case to set in motion the extradition from Pakistan to the US of Ramzi Ahmed Yousef in February 1995 and to return Carlos (Ilich Ramirez Sanchez) from Sudan to France in August 1994.

With the recent development of telecommunications, the member countries now have 24 hours a day direct access to a part of the criminal record section, especially that relating to wanted persons, and they can immediately call up in any four of the languages of the organisation copies of those notices on their screens wherever they are in the world. This may lead us to rethink our structuring because up until now most enquiries are channelled through national central bureau. But more direct linkages are becoming possible, and already the Kent police in United Kingdom who control the security of the Channel Tunnel want direct access to this system, and airports are also calling for access. So we are having to change the perhaps over-centralised system.

How is the work of the Secretariat divided up? 60% is drugs related and 20% is spent on both money laundering and terrorism and organised crimes. Most of the co-operation (80%) takes place in Europe; that is why we have a European Liaison Bureau (including officers from most European countries). There is another bureau which deals with the liaison activity for the other continents.

We have a sophisticated telecommunications network. The central station is in Lyon, and then around the world we have a number of regional stations - for example, in Canberra, Australia and several in the South East Pacific, Tokyo, the eastern part of Asia, West Africa (Abidjan), East Africa (through Nairobi), Latin America (Buenos Aires), Puerto Rico for the Caribbean Area and then Canada and the USA with separate devoted lines. What seems to be happening now is that there is developing a series of regional centres, so that there is a certain de-centralisation of our activities with the development of the sort of liaison work which is being developed in Europe.

In relation to crime, the biggest threat has to come from the combination of organised crime with illicit drug trafficking, simply because of the amount of the proceeds which are available to them to conduct their "subversive" activity. Over the last 20 years there has been a dimensional change in the situation. One might recall the film, *The French Connection*, which concerned the consignment of a hundred kilos of heroine which in those days was considered to be enormous. Nowadays, it is almost negligible; in the space of five years the availability of those drugs in Europe has multiplied by four-fold. And the massive proceeds which are available to the criminals today are such that they have had to change their methods. In the days of the *French Connection* simply by bribing a couple of customs officers in Marseille and somebody else in New York they were able to shift their drugs. Today their proceeds are such that the only way they can launder their money is to introduce it into the international financial system - that means our banking system and our commercial business system. Furthermore, the vast dimension of the proceeds which are now available to them means that they can corrupt our institutions at the highest level, for example through the financing of political parties.

How do the activities of INTERPOL fit with regional political initiatives such as the European Union? You all no doubt have heard about EUROPOL. I see that as a sub-regional initiative, a political initiative in Europe, on the part of 15 countries which can only succeed by being a little closer to the operational than we would normally expect to be, but also can only succeed if it is integrated into a global strategy. The European Union in relation to international criminality cannot act in isolation. Most drug trafficking, at least in its origins, come into Europe from outside, so they are committed to fitting into a global strategy. There are a number of other initiatives of a similar type elsewhere in the world, often for reasons of economy, including a grouping in South America, a group within North America, and between the Russian Federation together with the Commonwealth of independent states and the ASEAN countries. But such developments will be counter-productive if they are not bought together under the umbrella of a global strategy. That is where our organisation can and does provide that global background against which the others can function. One might repeat the example of the attempted assassination of the Pope. In that offence a Browning automatic pistol was used. The Browning automatic firearm was made in Belgium, which is in the European Union. It was exported legally to Switzerland, which is not the European Union. It was then exported legally to Austria which was not then in the European Union. It came back into the European Union in Italy where it was used illegally.

DISCUSSION (extract)

Q How does it INTERPOL work in practice in relation to politically motivated crime?

First of all, the person who decides is me. And in those cases, I may say it's a personal decision, based on certain factors. When we receive a request for co-operation or for the issuance of an international notice, what we do on practically every single occasion is to enter into dialogue, a question and answer process, with the country or countries that are involved, and it is on that basis that we work out what is the predominance. Another criterion we use is to ask whether the crime is local or has occurred outside the area of conflict. So, for example, if the I.R.A. attempted to assassinate the British ambassador in The Hague, as they once did, their action leaves the area of conflict and becomes an international action and therefore we are interested. In the same way as in the recent hijacking of the Air France Airbus, whilst all that was going on was confined to Algeria, it was part of an internal conflict, but as soon as that plane landed in Marseille, the issue had become international.

We have been caught out once. It happened a long time ago. We received a request from Morocco, with a list of people saying these wanted people had kidnapped some French citizens in the southern part of Morocco. It seemed very clear to me that this went beyond internal warfare, because the victims came from another country, so this was clearly an international matter. Twenty four hours later, we found we had circulated all the members of the Western

Saharan government in exile who were being protected in Algeria at that time and this had been a subterfuge on the part of the Moroccans. How does a conflict like that get resolved? Well, first of all, my personal intervention immediately meant that these notices were withdrawn. If they protest as they did in this particular case, then it becomes a bi-lateral issue, between Morocco and Algeria and that issue went to the General Assembly, because it is at the General Assembly that these things are ultimately decided. Each country presented its position, and a decision was made that no follow-up action would be taken on the request.

Q In the fight against crime, are you winning or losing?

At the moment, I am an optimist. We are about even given the resources we have compared to the resources the criminals have. One of the main difficulties we have is how to convince people at a political level that we are dealing with a serious issue involving the threat of organised crime to infiltrate societies.

Studies tell us 50% or more of crime is drug related, but the tendency is to blame the drug producing countries when realistically we can never stop production by, for example, crop substitution. We must assume our own responsibilities in the West because we are the customers. Therefore, there should be much greater emphasis on the reduction of demand. It is a market situation. In terms of resources deployed against drugs in the US, 70% is spent on domestic law enforcement, 13% on illicit trafficking, 7% on frontier border control but only 7% on demand reduction. Whilst there is that imbalance, it is easy to show results by law enforcement - the more money spent, the more drugs seized and the more arrests made. But the number of drug abusers are also increasing, and the basic problem is not dealt with. So, the "war on drugs" is a misnomer - nowhere near as much money is put into dealing with drugs crime as is spent on defence, despite the threatened subversion of our society. The political problem with demand reduction programmes is that there is no immediate result - it may take 10 years, but the politicians are not around that long. Yet, bringing drug abuse into the criminal justice system does not help - it is a socio-economic problem.

Q Is there the potential for duplication or competition with EUROPOL and the Schengen initiative?

The Schengen initiative deals essentially with the problem of illegal immigration. But there is a problem with the arrangement in relation to the database. Because of data protection laws, the sort of information which can be kept cannot serve the purpose of the database. The Schengen group really wants to keep out "undesirables" - undesirable not only because they are criminals (they are already documented, so there is no real reason for a new database to be set up about them) but also for other reasons, political and so on. But information about the wider sense of "undesirable" is likely to infringe data protection legislation, and there is the potential for duplication with INTERPOL in regard to the collection of data about the narrower, criminal category of "undesirables".

As for EUROPOL, this grew out of the idea of a Federated Europe put forward under German influence. To avoid political opposition, the focus was first drugs, as no government can argue with the need to combat drugs. But it is strange that a Federal office is being set up without a Federation - until there is a European judicial space in the nature of a Federation with its own legislation, that unit will not be able to function as the operational unit it was intended to be.

It is true that EUROPOL also developed because of a certain element of dissatisfaction with INTERPOL in the early 80s. At that time, INTERPOL was not responding to the needs of Western Europe, especially in regard to terrorism - hence the TREVI group and so on. In my view, the European states who put their money into EUROPOL would have been better advised to have put money into the reform of INTERPOL.

The possibility of duplication with EUROPOL exists, but there is close co-ordination - I see the head of EUROPOL every month, who used to work for INTERPOL. An inventory of tasks for each organisation has been worked out in order to minimise any damage through duplication.

Q How large a problem is cross-border credit card fraud?

Today, there is a meeting in Lyon between a credit card representative and INTERPOL officers - it is one of a regular series of meetings about prevention. In fact, credit card crime has gone down 30% in the last three years because of preventive measures in construction, coding and so on. But it is a serious problem - certain crimes which are transnational leave the perpetrators with a degree of immunity. And it is often committed by organised groups.

Q What are the trends for terrorism?

INTERPOL produces regularly a composite list of people who have been involved in acts of terrorism. The overall number does not change very much (around 300). No terrorism organisation ever fully disappears - terrorism is ongoing and has its ups and downs. Movements will rebuild themselves even after the elimination of leaders. So the number prepared to kill or bomb is fairly constant but really very small. To be able to identify these few, the police will need to scrutinise a much broader range of people, for example, in nationalist or cultural or religious groups which provide the environment in which the terrorists are working. For example, investigations into bombings at the time of Prince Charles' investiture as Prince of Wales involved sifting through legitimate Welsh nationalist groups - it took three years to find the bombers.

INTERPOL itself has been the victim of two attacks - one from Basque separatists in the early 80s and in the mid-80s from Action Directe (when located in St Cloud).

Though the number is constant, the profile of the active terrorists does change. Today, most are Arab-speakers related to Muslim fundamentalist groups. There is also a build up of right-wing groups.

'The Actors in Informal Dispute Processing Across Europe'[1]

Adam Crawford

*Centre for Criminal Justice Studies,
University of Leeds.*

INTRODUCTION

Recent trends towards increasing access to justice through procedural reforms, have found different forms of expression across Europe. Taken together these developments represent a practice in search of a theory,[2] rather than a series of well-formulated and coherently implemented policies. Nevertheless, they do signify, to a greater or lesser degree, manifestations of two (inversely related) discursive appeals:

1. The first is a *critique* (implicit or explicit) of existing formal court procedures. Informalism is, after all, merely a movement away from traditional court proceedings. Thus the perceived failings of the formal court procedure define the characteristics of the 'informal' or 'alternative'. This is what we might call the 'negative attraction' of 'alternative dispute resolution' (ADR). The nature of the critique differs somewhat across substantive areas of law, and more importantly for our purposes, across judicial cultural contexts. Where the formal judicial cultures are different so, by implication, will be the specific nature of the 'informal'. This is particularly evident when comparing ADR mechanisms across countries with common and civil legal traditions. It has found expression in critiques at the levels of: *economy* (i.e. formal courts cost too much), *efficiency* (i.e. they are overloaded and operate too slowly), *effectiveness* (i.e. they fail to achieve their objectives) and *legitimacy* (i.e. they inadequately meet the demand for legal need and public expectations of universal and equal access to the law). Therefore, we need to bear in mind the extent to which the formal tradition of a given judicial system may serve both to construct the appeal to the 'informal' and yet at the same time may serve to impede genuine informal justice.

2. The second appeal to informal justice and ADR is a *quest to revive some notion of 'community'*, in which informal social institutions act to regulate conflict by means of social control processes. The perceived decline of a 'sense of community' and the fracturing of actual communal institutions, such as churches, trades unions, interest organisations, political parties and the extended family in the late twentieth century, are associated - in the minds of some - with a crisis of social regulation. Within the rhetoric of informal justice and ADR practices we find explicit and implicit appeals to both revive and regenerate 'communities'. [3] The norms and values of specific 'communities', it is argued, ought to be expressed in, and through, the conflict resolution process. [4] This we can call the 'positive attraction' of the informalisation of legal procedure.

Both of these appeals have different cultural meanings - within and between national

contexts - which influence the resultant policies, practices and their attraction. In order to understand the relative recourse to litigation across national boundaries in different areas of law and the cultural position that litigation is accorded, we need to be aware of the diverse institutions (both formal and informal) available for the processing of disputes. Whether a dispute is transformed into litigation is the product of the nature of the available institutions, organisational cultures, public attitudes and social behaviour. In turn, these will be influenced by the nature and type of social relations that exist between the disputing parties, and the interest constellations that the parties bring to the dispute. While the plurality of types of disputes suggests that different conflicts may be better handled in different ways and at different procedural levels, there remains the question as to whether there is anything intrinsic about cases which place them into one forum of justice or another. Therefore, we need to be sensitive to the extent to which the processing of a dispute, transforms it into a suitable subject matter by picking out what it chooses to treat as the salient features of a case for its purpose. Foremost among these salient features are the roles of, and nature of the inter-relationships between, the various actors to the dispute within the disputing process.

SOME TERMINOLOGICAL ISSUES

In reality forms of dispute processing do not exist as discrete and separate clusters with essential attributes. The differences among, and boundaries between, dispute processing techniques are blurred and often shifting. In practice mediators, arbitrators and judges move and slip between roles in the search for a settlement. Forms of mediation are to be found in much litigation and adjudication and, as much of the sociological research has shown, the reality of mediation often expresses subtle forms of settlement strategies more akin to adjudication.[5] It is more useful to conceptualise modes of disputing as part of a continuum. Rather than seeing them as distinct and independent of one another we need to envisage them as constitutive of, and constituted by, each other. Nevertheless, it is worth clarifying what I take to mean by ideal typical models of adjudication, arbitration and mediation as they together comprise the key prescriptions, if not the descriptions, of competing forms of dispute resolution.

Adjudication: involves the parties to the dispute in the presentation of their versions of the conflict (in the common law tradition, through adversarial proceedings) which results in a judgement of the rights and wrongs of a case through the application of universal rules. The third party should be impartial and should apply pre-existing norms to achieve a dichotomous decision in which one of the parties to the proceedings is assigned the legal right and the other is found wrong.[6] The judgement thus results in a 'winner and loser' situation, one party having their version of reality affirmed and the other side having theirs rejected. In this process the third party has considerable coercive powers, the choice of third party and the substance of the norms applied are not matters open to the disputing parties but are imposed, as if from above.

Arbitration: is a method of judging in which the third party's role is as a decision-maker with responsibility for determining the rights and wrongs of the dispute. However, arbitration differs from adjudication in that the parties enter into arbitration voluntarily, agreeing to be bound by the decision, and they are able to select their

arbitrators, the place of arbitration, the procedures, substantive rules and the time of arbitration. Finally, the arbitration process is usually a private one, although technically subject to the scrutiny of the courts.

Mediation: is a method of communication by which negotiations between the opposing parties are brought about by a third party who attempts to help the parties reach their own solutions to their problems.[7] The mediator acts as an intermediary - a conduit in communication - but has no authority to impose a decision or force a settlement. Roberts has defined mediation as, "the introduction of a third party who intervenes, in contrast to the partisan, from a position of at least apparent neutrality, with the purpose of helping the disputants towards an agreed outcome." [8] This definition is useful in that it is concerned solely with the process and structure of third party involvement, uncontaminated by outcome, and therefore excludes reconciliation, reparation, or restitution as pre-requisites of mediation.

All these forms of dispute processing are based upon a central 'triadic relationship', [9] in which the two parties in conflict call upon a third to resolve their dispute (see Appendix A). Yet this is an inherently unstable relationship. There exists always the threat that the triad will break down and turn into a relationship of two against one. This ever-present possibility raises questions about the legitimacy of disputing institutions for the parties in dispute and the nature of the social relationships within the disputing process. Further, when we consider the various actors within the triadic relationship of the disputing process, we encounter a number of questions which take us beyond these three ideal models and raise a number of deeper issues which structure and underlie the processing of conflicts. These issues concern; (a) the nature of the relationship between the third party(ies) and the diverse interest constellations which find themselves represented in the disputes brought before them (through the parties in conflict); (b) the constitution of the relations between the disputing parties; and (c) the nature and extent of involvement and participation of the disputing parties in the processing of their conflict. Let us now consider each of these in turn.

THE NATURE OF THIRD PARTY INVOLVEMENT

The nature and ambitions of third-party intervention beg the question: *who is the appropriate type of person to occupy the role of arbitrator or mediator?* Across Europe a range of existing professional groups - lawyers, accountants, surveyors, social workers, probation officers, family therapists, etc. - are in direct competition with each other and new voluntary and private sector agencies [10] to provide the staffing of, and/or the training for, third party involvement in ADR schemes. Different models of recruitment of the appropriate mediator or arbitrator exist. Largely, they revolve around a number of competing notions of the appropriate relationship between the third party and the interest constellations embedded in the dispute. These can be expressed by way of a series of dichotomies between:

- the 'legal expert' versus those without recognised 'legal expertise' (or the degree of legal knowledge that the third party should possess),
- the 'technical expert' versus the lay person (or the degree of technical substantive knowledge that the third party should possess), and

- the impartial neutral versus the representative of a given 'community' and its normative values (or the appropriate connection between the third party and the normative values of the 'community' out of which the dispute arises).

Let us consider each of these in turn.

1. The third party as professional legal expert:

There are a number of successful and well tested models of non-legally qualified yet skilled mediators, none more so than the service that is provided in Britain by the Advisory, Conciliation and Arbitration Service (ACAS), in the field of labour disputes. The skills identified as necessary in schemes like ACAS are more concerned with the process - i.e. facilitatory skills - than with the content - i.e. substantive normative rules whether legally recognised or not - of the dispute. Many of these schemes are discovering as they mature, that there are ways of introducing 'due regulation' of the process without invoking legal rules or lawyers. This (in)formal regulation occurs through the process of training, the dissemination of 'good practice' in mediator manuals,[11] the ongoing monitoring and evaluation of practice, etc.. However, as many commentators have acknowledged, the combined weight of such regulation tends to result in a re-formalisation and re-professionalisation of ADR initiatives.[12]

Many commentators regard the idea of the third party as a legal expert as bound up with the issue of procedural safeguards. They are concerned that the informalisation of legal procedure should not involve an abandonment, or a dilution, of the procedural protections of the formal court. The worry is that the emphasis upon forms of negotiation of the parties' common interests, rather than their legal entitlements, as the basis for settlement, runs counter to ideals embodied in the rule of law. This raises the real danger of individualised justice, as well as the concern that in the absence of adequate legal safeguards (through the lack of legal expertise on the part of the third party), differential social power relations between the parties will remain unchecked and may influence eventual settlements. The lessons of socio-legal research (both from Europe and North America) suggest that mediated settlements are inappropriate where there are considerable imbalances of power between the parties. The only way of guaranteeing 'equality of arms', it is argued, is through the neutral arbiter immersed in the legal culture of equal rights and due process.

However, mediation and arbitration within the court, conducted by the judiciary, often leads to ambiguity on behalf of the parties and to an over-emphasis on the authority of the mediator or arbitrator. In Britain, for example, research into consumer perceptions of mediation in family disputes, suggests that many participants thought they had been subject to adjudication.[13] Other research, in the same field, suggests that court-based mediation closely connected to the judicial process was less successful than that conducted outside of the sphere of the court. Furthermore, the researchers concluded that the fusion with judicial processes was one of the factors reducing the effectiveness of court-based mediation.[14]

The increasing involvement of the legal profession in mediation and ADR[15] raises, for our purposes, two inter-related questions:

(a) *is it wise to seek mediators from within a profession whose members' traditions and organisational culture are rooted in partisan advisory and representative roles?* and

(b) *to what extent does the involvement of lawyers and judges increase the likelihood that experiments in ADR will be co-opted by the requirements of adjudication and the courts?*

There are clear dangers in the assumption that lawyers, experienced in litigation and immersed in a culture which celebrates adjudication, can move unproblematically, with a minimum of retraining, into a mediatory role. Roberts has forcefully made this point:

‘As active, dominant professionals, accustomed to occupying partisan advisory and representative roles, lawyers should recognise that they may have great difficulty in adapting to the posture of impartial facilitator of other peoples' decision making’.[16]

This is particularly true in the UK given the prominence which adjudication enjoys in our adversarial legal culture.

In addition, the blurring of mediation and arbitration with the legal process, particularly in many of the court-based services, tends to shift these initiatives from the ‘shadow of the courts’ to a situation in which they are dominated by legal authority and the requirements of the adjudication process. This often occurs at the expense of ‘party control’ and the more therapeutic and forward-looking concerns which often constituted the original *raison d’être* upon which many of these initiatives were founded.

II. The third party as technical expert:

The massive expansion of agencies claiming expertise in diverse fields of party conflicts raises serious questions about professional groups' desires to colonise and maintain control over new markets for their services, for example, child welfare officers in relation to family disputes and social work or probation officers in relation to criminal disputes. But it also raises two inter-related questions:

- *which groups of people (members of a profession or otherwise) might offer third party intervention, compatible with, and supportive of party negotiations?* and

- *what are the motivations of the parties for using specific services offered by particular professional groups?*

The appeal of arbitration is often to be found in the claim that disputes are better solved, not by those knowledgeable in the law but, by those with a deep understanding of the technical attributes of a dispute and the substantive context in which the disputes arise. This is particularly the case in construction disputes. However, some commentators see this as problematic. For them, the notion of technical expertise in arbitration acts as a cover under which disputes are removed from certain aspects of court regulation. It is seen as a means of wresting control over the decision making process away from judges and courts. For, at the centre of the

attraction of arbitration lies the twin sanctuaries of 'privacy' and 'confidentiality'. Arbitration, ensures a shield from openness to public scrutiny. While arbitration in commercial fields often involves the participation of lawyers as part of negotiation the decision making process tends to lie outside of the legal field. The result is that under the apparently efficient and calm surface of arbitration, there are considerable struggles over who should control the arbitral process, that have been described as 'turf wars', in relation to the construction industry.[17] These struggles involve a confrontation between actors claiming to possess technical as against legal expertise. Here we find an antagonistic relationship between the motivation of many business people in going to arbitration - to avoid too great a degree of control passing to legal specialists - and central elements of the rule of law: i.e. openness and reviewability. This tension is alluded to by Mr Regner in his national report on the Swedish situation. It is also something that the French have partially resolved by conferring the process of adjudication to business people who render judicial decisions. Thus aspects of the rule of law are preserved (through a judicial process) without the control of legal specialists.

The considerable decision making powers of arbitrators and the fact that it is assumed to be a consensual process, in that the parties choose to go to arbitration (despite the imbalances of power that often lie behind the freedom to contract), raise a number of issues concerning the standpoint and role of the arbitrator. Given the instability of the 'triadic relationship' the question of the impartiality of the arbitrator is crucial to its wider legitimacy. The assumption that technical expertise equals impartiality is not a straight forward one. Within some fields of arbitration there is deep scepticism over the impartiality of arbitrators (a point Professor Chiarloni highlights in the Italian context).

Mediator specialisation versus integration:

This raises a sub-issue, that of mediator specialisation as against the integration of the mediation role with other tasks: *Can the third party occupy more than one role or should they only have allegiances to their role as mediator?* This debate is particularly prevalent in Germany in the field of victim/offender mediation.[18] In Germany victim/offender mediation is conducted by already existing institutions with other main fields of activity. Mediation is for the main part undertaken by agencies which are structurally offender-orientated.[19] Mediation is rarely a specialised or even partly specialised task. In a national German mail survey carried out in 1990 by the German Probation and Parole Association 78% of the institutions stated that their staff members in a given case not only act as mediators but are simultaneously charged with other tasks.[20] Mediators are mainly social workers who frequently combine mediation activities with offender assistance. This brings their neutrality into question (even if only at the level of perception). If mediation is an integrated part of the tasks of a 'mediator' it risks conflicting with the other tasks he or she fulfils i.e. offender assistance/diversion, counselling, therapeutic treatment or challenging the offenders' deviant behaviour. This raises concerns about role boundaries and role blurring and the subordination of one role to the other. It is the victim's point of view which tends to be neglected in this instance. This is even more acute in some French schemes where prosecutors themselves play the role of mediators in decentralised structures such as the Maisons de la Justice in Pontoise. In other French schemes part-time social workers are used as mediators (as in the Rennes mediation project).

Similar concerns have been raised in the field of family mediation in the UK. Most mediators are 'child care' professionals with many years of experience in child welfare. It has been difficult for many of them to adopt the role of neutral mediator rather than act as advocates for the children. The danger - as with the involvement of lawyers - is that mediation risks being co-opted as an accessory to an already existing professional role. This risks submerging the process of mediation to the demands of particular organisational requirements.

III. The third party as representative of the normative values of the professional, organisational or local, community:

One of the central aims of many mediation schemes is that conflicts should be handled by the disputant's social peers. In many professional communities, the dichotomy between impartiality and representativeness dovetails the dichotomy between technical expert and lay person. Thus in many arbitration disputes the fact that someone is a 'technical expert', maybe the same as saying that they represent the normative values of the professional community. Thus in the construction industry arbitrators' technical expertise is synonymous with their place within the construction 'community' and their relation to its normative values. This is not the case in 'local' community mediation where the mediator often aspires to represent a given community; to be *from* and *of* the community without any claims to expertise, in fact such schemes often seek to recruit 'ordinary lay volunteers'. The rationale for using community volunteers as mediators is the expectation that such people will be like the disputants and share their values and social practices (even if only at a symbolic level).

Across Europe we can see a number of different versions of this notion of mediator as 'community representative' which are expressed through different conceptions of 'community':

- (a) as a cohesive, locally based social system, or
- (b) as shared social space in which a diversity of interests co-exist.

(a) Community as a cohesive, locally based social system:

The dominant conception of 'community' in ADR is of a social system in which there broadly exists a consensus of norms and cultural assumptions. In some instances the very fact that an individual lives within, or belong to, a social system or locality is a sufficient criteria for selection. Here, community is conceptualised as a geographical, social or organisational location which is structured by homogenous values and shared interests. The mediator is supposed to represent the whole community and embody its values. Outside of high specialised professional groups and small scale rural villages, it is hard to see the place for this type of community in the contemporary world. In the modern metropolis these local bonds of community relations, do not exist. Such a conception of community, neglects intra-communal conflict or diversity of interests and value systems.[21] At the practical level, this poses serious problems for the balance between the independence and representativeness of the mediator in a triadic relationship, often leaving the mediator

falling between the two stools.

(b) *Community as shared social space in which a diversity of interest and value systems co-exist:*

Given the false assumption embodied in the above conception of community for a variety of contemporary contexts, many ADR initiatives have sought to address the issue of diversity within communities. This often translates into the recruitment of diverse mediators to represent the plural nature of the community. For example in the UK, industrial tribunals bring together representatives of both management and trade unions in the decision making process.

This tends to reinforce the view that individual mediators act as direct representatives of specific sectional interests, within a larger community. While this approach is laudable in that it recognises diversity, difference and conflict, it merely serves to problematise the issue of representation (particularly given the fragmentation of many traditional forms of representation). *Which interests should be represented? which interests should be excluded from representation?* Clearly the decision making process would become too cumbersome in attempting to accommodate all interests, particularly within community mediation. Nevertheless, community mediation schemes, as epitomised by the Boutique de Droit in Lyon, have

"chosen mediators from among residents, taking into account selection criteria favouring the most representative of the social and ethnic categories living in the neighbourhood. Among the selection criteria is the candidate's mode of insertion in the neighbourhood (e.g. the fact of belonging to a community group) or involvement with community life." [22]

However, there is a troublesome contradiction in both of the above appeals to community in the mediation role. The more attached to the community mediators are, the less likely they are to hold the required "detached stance" which constitutes a central value in establishing mediator neutrality and legitimacy. The more mediators represent interests or value systems the greater the danger that the triadic relationship will break down, or will be perceived to have broken down, into a 'two versus one' situation. As Harrington and Merry have commented in relation to the American experience:

"Precisely because of their participation and membership in the community, it is difficult for them to assume the required detachment." [23]

However, as they go on to suggest, ironically, it is the interest in providing neutral and detached mediators that increases the pressures to develop a core of professional mediators. The result of these pressures will tend towards re-formalisation and re-professionalisation.

The number of third parties and their inter-relations:

Some initiatives in ADR have sought to address these issues by seeking to introduce balance through the introduction of plural third party involvement. This allows a collective third party to embody a variety of expertise or interest representatives. For

example, in family mediation in Britain there are calls to establish co-mediation, including a welfare and a legal expert, as the accepted best practice. The danger here is that the mediation process become the site of a competition between different professional and organisational ideologies, strategies, discourses and capacity to authoritatively interpret and make sense of the social world.[24] In some cases this may be taken as far as constituting complex panels of arbitrators or mediators. However, where this mixture comprises lay and legal/technical expert there is always the danger that claims to expert knowledge (of the issues or the law) will grant the latter considerably greater power in the decision making process, leaving the lay participants as more passive and reluctant to. Research suggests that the experience of decision-making in tribunals in England and Wales is illustrative of this danger.[25]

THE RELATIONS BETWEEN THE DISPUTING PARTIES

Recourse to litigation may be more likely where ongoing inter-personal relations do not exist, so that the preservation of 'good relations' is less important. The opposite may be the case where the maintenance of future relations is an important factor in the conflict, such as in some family, employment, business, neighbour and landlord-tenant disputes. This raises the question regarding the nature of the interest constellations and social networks which structure and are embedded in a dispute. There is a greater incentive to settle where;

- close knit social networks link the two disputing parties,
- escape from a local social system and avoidance of a dispute are costly,
- the parties must deal with one another in the future or there are expectations of a future to the relationship,
- the cost of substituting the relationship is high, and
- the availability of avoidance of court is culturally acceptable and socially possible.

[26]

Negotiations in labour and commercial disputes build on a set of customs and past practices which create certain rules and expectations (therefore more normatively homogeneous). In addition, the need to restore relations is inherent in the structure of the situation. The inter-dependence of labour and industry or buyer and seller provides a greater need to arrive at an agreement.

A further issue concerns the relative power relations between the parties. The greater the power imbalances the greater the need for formal protection of the weaker party's interests. In order to combat this tension many initially informal forums have become (re)formalised, like the industrial tribunals in the UK. In addition, to the social power that structures the direct relations between the parties we also need to take into consideration the relative power relations structured by the parties' relation to the disputing forum. 'Repeat players' - those parties who return time and again to the disputing forum are likely to be considerably advantaged over 'one off' or 'first time users' of the service. Repeat players may learn how to use (or abuse) the procedures to their advantage. This is manifestly the case in debt tribunals and small claims courts

around Europe. It would be wrong to suggest that the same pressures do not exist within the formal courts - as our Italian colleagues continue to remind us - where court delays are often used to the advantage of one of the parties.

THE NATURE OF DISPUTANT PARTICIPATION AND INVOLVEMENT

A final issue concerns the nature and extent of the involvement and participation of the conflicting parties in the disputing process. This is influenced largely by the location of power in the negotiation and decision making processes. The reality of power for the parties, in this context, is not 'all-or-nothing', but is fluid. Rather, its location is to be found somewhere along a continuum between 'professional management' and 'party control' of a dispute.

'Professional management': This usually takes the form of legal representation, but may take the form of 'quasi-professional' representatives belonging to interest associations, like trade unions in labour disputes, consumer associations in consumer disputes, insurance companies for conflicts covered by insurance, etc.. It is often presumed that the lack of representation disadvantages many disputants, particularly if they are the relatively weaker party. While this is very often true in forms of adjudication, it is not necessarily the case for all forms of disputes, crucially it depends upon the third party's role, and their ability to facilitate communication.

'Party control': It is argued that greater participant control of the process and active party involvement in the resolution of their own disputes is both socially constructive and leads to longer lasting, more effective settlements. It is argued that such forms of ideal mediation create space for agency and voice.[27] However, there appears inevitably to be a tension between the idea of 'party control' and the imposition of a 'triadic relationship' upon what is, after all, a bilateral exchange. If full 'party control' were desirable and attainable it would most likely occur much further away from the long shadows of the court, in genuinely (private) informal social settings. In essence what is really at issue here, is the nature of third party conflict management, whether it is facilitatory or directive and coercive. The extent to which third party involvement empowers (rather than disempowers) the parties to actively participate in the disputing process lies at the heart of 'party control'. However, the levers and incentives used by mediators, in various fields of substantive law, to facilitate such participation and 'sense of control' often verge on undermining the notion of voluntariness which is so fundamental to the core aims of the mediation (and arbitration) process.

Who are the relevant parties?

In attempting to 'return disputes to the parties' ADR procedures, in the field of criminal justice, have allowed space for the victim to 'return' to centre stage in the disputing process. It has been forcefully argued, by Nils Christie that the modern state, through its involvement in the prosecution of criminal matters, has 'stolen' conflicts from the parties. In this 'theft' the victim is a double loser,

'first, vis-à-vis the offender, but secondly and often in a more crippling manner by being denied rights to full participation in what might have been one of the more important ritual encounters in life. The victim has lost the case to the state'.[28]

Against this background, some European countries they have sought to bolster the place of the victim within the formal court, by giving the victim: rights to initiate the procedure of investigation through the role of victim as 'partie civil' (in French criminal procedure), to be present at interviews (and make observations), to have access to the file, to challenge the indictment, to have the right charge made and to argue for sentence as well as civil damages for him/herself; general rights to prosecute (as in Finland in practice and in England and Wales in theory); rights to private prosecution (as in Austria, Denmark, Germany etc.); rights to legal representation (as in Sweden in rape, sexual abuse and assault and battery cases); the possibility of compensation through the courts as an independent sanction (as in England and Wales, Ireland and Greece);^[29] and, more controversially, the recognition of the harm done to the victim (through Victim Impact Statements as applied throughout many American states). Nevertheless, in all European countries the role of the victim in the court is severely limited; it is the court that passes the sentence not the victim. Victim/Offender mediation schemes - which have recently spread around Europe largely through localised experiments^[30] - have accorded a much more central place to the victim in the dispute resolution process. Some recent developments in New Zealand and Australia have sought to extend participation even further to include family and supporters of the parties in a mediated forum of Family Conferencing. In seeking to reaffirm community, and draw communities together in the mediation process these schemes have begun to go beyond the notion of community as structured by locality or the representation of specific interests. Rather, they are premised upon the idea that inter-personal relations take the form of social networks and inter-connections, dispersed across time and space. Family Conferencing in Australia and New Zealand builds on 'communities of care' and support linking individuals to one another, regardless of location.^[31]

CONCLUDING COMMENTS

European societies have increasingly recognised the need to offer a diversity of dispute resolution procedures, involving different actors and relations between them. The way societies handle disputes is culturally constructed, and the meaning of disputes and of resolution varies greatly from one cultural framework to another.^[32] The specific nature of ADR schemes, across Europe depends upon the social location of both the critique of existing formal disputing procedures and appeals to community. While the plurality of disputes suggests that different conflicts may be better handled in different ways, it is not self-evident what aspects of given disputes should be treated as salient and the manner in which they should be processed. We are left with the question whether the diverse developments that constitute the ADR movement, collectively represent a shift away from the formal court, or is part of a wider strategy for the rejuvenation and re-legitimation of adjudication. Alternatively, we may be witnessing a combination of these strands, through which a two-tiered or multi-tiered system of justice is developing, in which the degree of formality and the quality of justice is determined not by the merits of the case but by other extraneous considerations (including costs, professional interests, political expediency, etc.).

Across Europe ADR has found support from diverse interests with often conflicting motivations. Forms of ADR have met with enthusiasm from different quarters - both within professional and community groups and across the political spectrum. The

divergent nature of the interests and groups promoting 'alternatives to litigation' has resulted in ADR meaning different things to different people. On one level this has allowed the 'movement' to gain support from diverse sources and to fit into the prevailing political rhetoric at a given moment. However, it also means that specific can be pulled in different, and often competing, directions as they attempt to meet the multiple aims and objectives and to satisfy the divergent demands of the different constituencies. In attempting (or claiming) to do too much, the danger is that ADR initiatives can end up falling short on a number of fronts.

The Police Surgeon and Mentally Disordered Suspects: An Adequate Safeguard?

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ABSTRACT

This article examines the role of the police surgeon in identifying and assessing mentally disordered suspects in police custody. It suggests that police surgeons lack the relevant knowledge and expertise to deal with these people, and concludes that duty-psychiatrist schemes currently operating at magistrates' courts should be extended to police stations to ensure that mentally disordered suspects are assessed by medical professionals who possess the relevant psychiatric expertise.

Introduction

The range of duties undertaken by the police surgeon is extremely varied and important. In recent years however, they have come under increasing attack, and a certain dissatisfaction has been expressed with regard to specific aspects of their work. What little research that has been undertaken has indicated that there is

"...sufficient information already available on which to raise concerns about the role currently undertaken by police surgeons within the British system of criminal justice".[33]

This research identified particular concerns with regard to the independence and impartiality of their work and also in respect of the police surgeon's ability to certify the detainee's fitness to be interviewed.[34] This article will focus on mental instability as a cause of unfitness and will in that context firstly therefore explore the concerns which have been expressed about the ability of police surgeons accurately to identify and assess the mentally ill in police custody, and secondly suggest a possible solution.

The Problem of the Mentally Disordered in Police Custody

The role of the police surgeon has been transformed dramatically over the years.[35]

Initially, they were simply physicians to the police and their families, but nowadays, they are expected to perform a wide range of medical and forensic duties. The nature of their work no longer involves simply examining police injuries and illnesses at the request of the police. They may also be required to examine prisoners and the victims of their crimes, which may frequently lead them to being required to give evidence in court. Indeed, research conducted by Graham Robertson found that over 80% of the police surgeon's work today involves conducting medical or forensic examinations of prisoners in police custody.[36]

Recently, the work of the police surgeon has attracted much criticism, most notably from the Royal Commission on Criminal Justice.[37] Concern has particularly mounted over the ability of police surgeons to identify and deal appropriately with mentally disordered suspects. When a person in custody is believed to be suffering from a mental illness, the police must seek a medical opinion to assess whether s/he is fit to be interviewed, which may indicate that the presence of an "appropriate adult" is required to assist the detainee whilst being interviewed (as required under the Police and Criminal Evidence Act 1984)[38] or if the person is required to be taken to a "place of safety" under section 136 of the Mental Health Act 1983. Undoubtedly, the police rely upon the clinical expertise of the police surgeon to make this assessment.[39] The research conducted by Robertson found that whilst the majority of the police surgeon's work is confined to treating physical illness or injury, nearly 10% is concerned with identifying, diagnosing and assessing mental illness/handicap. Furthermore, an additional 19% involves dealing with drug/alcohol abuse problems, which may very well be related to an underlying mental illness. It is generally recognised that mentally disordered people are increasingly coming into contact with the criminal justice system, often as a result of the lack of care, support and treatment in the community.[40] Clearly therefore, the police surgeon will increasingly be called upon to provide on the spot medical opinion to the police.

This role raises doubts, as police surgeons are not required to receive any specific formal training, let alone require any specialist knowledge in the field of psychiatry. All that is officially required of them is that they are acceptable registered medical practitioners, and the vast majority of them are indeed busy general practitioners doing police work part-time. As the Royal Commission observed:

"...GP's receive little or no training in police work nor does their training include psychiatry".[41]

Similar concerns have also been expressed by NACRO's (National Association for the Care and Resettlement of Offenders) Mental Health Advisory Committee. In a series of policy papers on the subject of mentally disordered offenders, it concluded that there is considerable room for improvement with regard to the quality of assessments and examinations provided to mentally disordered suspects by police surgeons.[42]

Accordingly, the Royal Commission recommended that a Working Party should be established to consider the urgent need for national standards and training for police surgeons, particularly in the role of psychiatry and the availability of psychiatric assistance. Furthermore, the report urged that it is imperative that the police should have access to psychiatric assistance whenever required. This is essential, as studies have shown that the mentally ill are highly vulnerable and suggestible whilst in police

custody.[43] The revised Code of Practice accompanying the Mental Health Act 1983 stresses the need for all professionals involved to note the

"...vulnerability of people, especially those who are mentally disordered, when in police or prison custody. The risk of suicide or other self destructive behaviour should be of special concern".[44]

A recent joint Department of Health and Home Office Review of health and social services for mentally disordered offenders has echoed these sentiments.[45] It made sweeping recommendations to improve the treatment and provision of services. Amongst them was the proposal that the medical attention provided for mentally disordered offenders at police stations should be greatly improved.

A report conducted by the charity MIND into the use of s136 of the Mental Health Act 1983 by the police reached similar conclusions.[46] This section empowers a police officer to remove to a place of safety a person who is, or who appears to be suffering from mental disorder, for the purposes of carrying out a medical assessment and for making arrangements for that person's care and treatment. The study noted that the police routinely called out the police surgeon to make such assessments, but that the quality of advice provided was inadequate:

"Assessments by divisional surgeons were generally very brief and from officers' accounts provided little more information than they already knew".[47]

Furthermore, should the s. 136 detainee require hospital treatment, then the police surgeon cannot guarantee an admission - unlike a psychiatrist or a medical practitioner approved under the Mental Health Act 1983 (s. 12(2)) who have links with the local psychiatric services and are therefore in a better position to arrange admission. The vast majority of police surgeons are family doctors and not "approved" medical practitioners. The study urged that custody officers should routinely call out a psychiatrist or an approved doctor in these cases,

"...then the need for divisional surgeons should reduce, if not diminish".[48]

Finally, a recent article in *The Guardian* further highlighted the disquiet in this area. A consultant forensic psychiatrist in London speaking from years of experience, expressed his view that:

"Doctors in police stations often overlook mental illness....In many cases their knowledge of psychiatry tends to be minimal. Their reports are often a scribbled, irrelevant, illegible note. They often have no more than five minutes. Unless someone is raving there is no time in which to assess them".[49]

Since the publication of such reports however, little has happened, as the case of Travers Clarke, reported in *The Guardian*[50] in August last year illustrates. Clarke was a paranoid schizophrenic who vandalised his former wife's home and was consequently arrested by the police and taken into custody for questioning. Doubts were expressed regarding his mental condition, accordingly, the police requested the assistance of the police surgeon to make an assessment. Having examined Clarke, the police surgeon concluded that he was calm and "*perfectly logical*" and that there were

no indications that he would take his own life. Consequently, the police released him, and 12 hours later he set fire to himself and died in hospital suffering from 90 per cent burns.

Circumstances such as this, added to the findings of the Royal Commission, led the British Medical Association and the Association of Police Surgeons to conduct a full inquiry into the health care of detainees in police stations. The committee was critical of the increasing numbers of mentally ill being found in police cells.[51] One member of the report committee expressed the view that

"There's an increasing problem with having to care for people who seem to have fallen through the safety net...It reflects badly on the current community care system".[52]

Generally, the report expressed grave concerns that the standards of care were well below those in the NHS and that inadequately trained police surgeons were putting detainee's lives at risk. Detainees are entitled to the same standards of medical care as NHS patients in all respects, and this is clearly not the case at present.

The report findings were reinforced by an internal review conducted by Scotland Yard into the ability of police surgeons in London to recognise mental disorder and identify persons at risk during interview. The research found that the current situation was unsatisfactory as many police surgeons relied solely on a physical assessment which would not necessarily identify any mental health problems. Accordingly, Scotland Yard announced that it was recruiting an eminent forensic psychologist and a consultant psychiatrist to train the police surgeons to correctly identify such prisoners.[53]

Similar concerns have also been expressed about the inadequate level and quality of advice and protection currently afforded to suspects by their legal representatives at police stations.[54] In response, the Law Society and the Legal Aid Board have taken action, and as from October 1995, solicitors representing suspects in police stations will have to undergo a specific training regime before being registered by the Legal Aid Board.[55]

It seems therefore, that there is widespread dissatisfaction with the levels of advice and attention given by professionals to detainees in police stations. It must be effective since police stations are extremely unfamiliar and distressing places, thus the provision of adequate safeguards is paramount. Doctors and solicitors are the only outsiders the detainee is likely to meet; their role is therefore vital in ensuring that no abuse or oppression on the part of the police takes place. Relevant action has been taken in respect of solicitors. The same principles should apply to the relevant medical services.

A Possible Solution?

Whilst the developments outlined above are encouraging, much more needs to be done with respect to police surgeons to improve health care conditions in police cells.[56] The Royal Commission proposed that experiments should be set up to determine whether duty-psychiatrist schemes currently operating at magistrates'

courts to provide speedy psychiatric assessments could be extended to busy police stations.[57] This is indeed an attractive solution, which is clearly in line with current government policy. In 1990 the government issued a policy statement by way of Home Office Circular 66/90, which provided that mentally disordered offenders in need of psychiatric care and treatment should receive it from the health and social services as soon as possible.[58] Annexed to the Circular were examples of good practice which would enable this policy to be translated into practice. These included an account of a duty psychiatrist scheme operating at Bow Street and Marlborough Street Magistrates' Courts in London.[59] Basically, the scheme enables defendants to be pro-actively screened by psychiatrists at court for mental health problems and also ensures that psychiatric assessments are readily available to the magistrates to help them make therapeutic disposals.

A natural and necessary extension of this type of scheme is the routine provision of psychiatric assessments in the police station as soon as possible after the point of arrest, thereby saving both time and money and diverting mentally disordered offenders to receive health care at this earliest possible stage -

"It would greatly reduce prisoners' distress and save money if people were diverted at the point of arrest".[60]

Court psychiatric assessment schemes have been an extremely welcome development, but many mentally disordered offenders who are screened at court may have already spent damaging amounts of time in police custody. Extending the availability of psychiatric assessments to this earlier stage averts this, and enables mentally disordered defendants to receive appropriate psychiatric care at this early stage. This has indeed been found to be the case. A similar type of diversion scheme to the one outlined above was developed at the magistrates' court in Birmingham. This particular scheme involves Community Psychiatric Nurses attending the court every weekday morning to screen the defendants for mental health problems.[61] However, it was felt necessary to extend the scheme to cover the police stations to identify mentally ill suspects as soon as they came into police custody. Accordingly, in 1992, an assessment and diversion scheme was developed and is currently successfully operational at a busy inner city police station in Birmingham. This scheme involves a trained Community Psychiatric Nurse (CPN) who is present at Bournville Lane police station, to screen suspects for potential mental health problems. The scheme provides a 24 hour 7 day week psychiatric service whereby the CPN is present at the police station for part of the day and on-call for the remainder. Should the mental disorder warrant it, then appropriate care arrangements can be made. During its first six months of operation, of all the detainees assessed by the CPN, only one proceeded as far as the court appearance. The scheme has been so welcome and made such an impact that it has now been extended to operate at several other police stations in the area. In other areas, for example in North Humberside, a court assessment scheme has been successfully extended to include the three main police stations in Hull. This scheme involves the project team (a Community Psychiatric Nurse, an Approved Social Worker and a Probation Officer) attending the police stations early every weekday morning to pro-actively assess police cell detainees for any potential mental health problems.[62] Thus, identification and assessment at this earliest possible stage by a person who is both trained and experienced in dealing with mental disorder is imperative. The scheme ensures that the police have instant access to psychiatric

assistance and that detainees receive the appropriate level of care and treatment which they urgently need and to which they are entitled.

Conclusion

Police surgeons are being placed under mounting pressure today, particularly in light of the increasing numbers of mentally ill people coming into police custody. And it certainly seems that they are required to be a "Jack of all trades", dealing with a wide range of medical complaints and required to understand the laws of evidence, child neglect, driving offences, sexual offences and also the provisions of the Police and Criminal Evidence Act 1984. Furthermore, they are expected to be fully cognisant of court procedure, preparing witness statements and giving testimony, and to have a thorough knowledge of police organisation and structure.[63] Sadly, with so much required of them, they cannot also be expected to be "Masters" of all their trades.

As an alternative, the Reed Committee Review recommended that

"...wherever possible, a mentally disordered person should be assessed by a qualified psychiatrist who is able, where necessary, to provide medical reports for the Crown Prosecution Service and the court...and to arrange admission to hospital if this is required in the interests of the person's mental health".[64]

In this way, serious consideration should be given to ensuring, in the first place, that qualified and experienced psychiatric staff are made available to safeguard and provide the help required by the mentally ill in police custody, and, in the second place, that they are neither under-trained nor over-burdened like the generalist police surgeons they should supplant in this work. Indeed, this would be giving effect to official government policy. The Home Office Circular 66/90 expressly advises that

"In the case of mentally disordered persons, chief officers of police may find it helpful to arrange with their local health authorities for psychiatrists to fill the role of police surgeon".[65]

Adopting such a measure however, clearly has far-reaching implications, most notably from a financial perspective. Consequently, a more practical solution might be to finance training in this specialism for existing police surgeons. However, this would also involve resource implications which may be even graver than for duty-psychiatrist schemes, for which the government and other organisations, such as the Mental Health Foundation, have allocated specific funding. Furthermore, in line with the government's diversion policy, health and local authorities are becoming increasingly aware of their responsibilities to this category of offender.[66] Funding for police surgeon training, by contrast, is not readily accessible. As has been outlined, they receive little basic training as it is, and provision of the necessary finance is the responsibility of the police authority which employs them. It is doubtful whether police authorities would fund such intense training. Resources are limited, and, no doubt in their opinion and in the present climate, the funding of operational officers or crime prevention measures would prove more attractive.

Furthermore, psychiatrists and psychiatric nurses receive years of specialist training to equip them with the relevant skills and expertise to help the mentally ill. Most police

surgeons are physicians with a much broader interest and would require many more years of training to bring them up to the standard of the psychiatric personnel. Even then, however, training courses alone would not suffice, as most police surgeons are busy GP's and perhaps not sufficiently committed to this particular category of prisoners.

The development of duty psychiatrist schemes is further supported by the fact that such psychiatric personnel are likely to be based in local psychiatric hospitals or in the community and therefore have better and established links with local psychiatric facilities. Thus, having examined a detainee who is in need of psychiatric care, they are far better placed to secure that care and treatment, as the Reed Committee recommended. A further consequence is that the police are far more likely to negotiate over disposal where a prosecution does not clearly serve the public interest and care and treatment can instead be secured. This is clearly desirable and in line with government policy as expressed in the 1990 Home Office Circular

"In some cases the public interest might be met by diverting mentally disordered persons from the criminal justice system and finding alternatives to prosecution, such as admission to hospital...or informal support in the community".[67]

Moreover, the police are continually expressing concern about the increasing numbers of mentally disordered offenders in their custody, particularly those homeless mentally ill offenders who continually pass through the "revolving door" which leads to the cycle of homelessness, offending and imprisonment.[68] Many such offenders receive little or no support in the community and have lost touch with the psychiatric services. So, the presence of skilled and experienced psychiatric personnel at the police station would stop them from slipping through the net and undoubtedly go some way towards slowing down that "revolving door".

On balance therefore, it would seem that the case for psychiatric assessment at the police station is clear. However, it must be noted that this also option also involves many practical problems in relation to achieving the diversion and psychiatric care of such mentally disordered offenders. As the Reed Committee noted,[69] diversion is a viable solution provided that adequate facilities exist into which the mentally ill can be diverted. Established links with local psychiatric services, although a distinct advantage, is clearly not satisfactory if the appropriate facilities do not exist in the first place. Mental health services have always been regarded as the "Cinderella of Services". Until the government provides greater resources to fund community, hospital and secure psychiatric provision for the mentally ill, they will still be remanded and sentenced to periods of imprisonment, no matter how well-meaning the intention of the medical and criminal justice professionals to the contrary.[70]

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1. This paper was originally presented to the 'Justice et Société' conference, organised by the

Institut des Hautes Etudes sur la Justice, Lille 9-10 December 1994.

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3. See Nelken, D. (1985) 'Community involvement in crime control', *Current Legal Problems*, 38, p. 239-67.

4. Bonafé-Schmitt, J-P. (1992) *La Médiation: une justice douce*. Paris: Syros-Alternatives.

5. See for example, Silbey, S. and Merry, S.E. (1986) 'Mediator settlement strategies', *Law and Policy*, 8, p. 7; and Piper, C. (1988) 'Divorce conciliation in the UK: how responsible are parents?' *International Journal of the Sociology of Law*, 16, p. 477-94.

6. Shapiro, M. (1981) *Courts: a Comparative and Political Analysis*. Chicago: Chicago University Press, p. 1.

7. See Eckhoff, T. (1966) 'The mediator, the judge and the administrator in conflict-resolution', *Acta Sociologica*, 10, p. 158-66.

8. Roberts, S. (1983) 'Mediation in family disputes' *Modern Law Review*, 46, 5, p. 537-57, at 545.

9. Shapiro, M. (1981) op cit., p. 1.

10. For example, in England and Wales the Centre for Dispute Resolution and IDR Europe Ltd. offer mediation training and assistance.

11. See for example, Quill, D. and Wynne, J. (eds) (1993) *Victim & Offender Mediation Handbook*. Leeds: Save the Children/West Yorkshire Probation Service, as an attempt to address these issues in the comparatively new field of Victim-Offender mediation.

12. Sarat, A. (1988) 'The new formalism in disputing and dispute processing', *Law and Society Review*, 21, p. 695-715.

13. Davis, G. and Bader, K. (1985) 'In court mediation: the consumer view', *Family Law*, p. 42.

14. Conciliation Project Unit (1989) *Report of the Conciliation Project Unit on the Costs and Effectiveness of Conciliation in England and Wales*. Newcastle: University of Newcastle-upon-Tyne, p. 357-9.

15. In the UK the Beldam Committee (1991) *Report of the Committee on Alternative Dispute Resolution* London: Law Society., p. 11, recommended that lawyers should be involved in ADR, and that mediators should be drawn from experienced litigation specialists.

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17. Flood, J. and Caiger, A. (1993) 'Lawyers and arbitration: the juridification of construction disputes', *Modern Law Review*, 56, 412-40, at 413.

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28. Christie, N. (1977) 'Conflicts as property', *British Journal of Criminology*, 17, 1, 1-15, at p. 3.

29. For a more general discussion, see Joutsen, M. (1994) 'Victim participation in proceedings and sentencing in Europe', *International Review of Victimology*, 3, p. 57-67.

30. Particularly well established schemes are to be found in Britain, and Germany, see Davis, G. (1992) op cit., and Wright, M. and Galaway, B. (eds) (1989) *Mediation and Criminal Justice: Victims Offenders and Community*. London: Sage.

31. See Alder, C. and Wundersitz, J. (eds) (1994) *Family Conferencing and Juvenile Justice*. Canberra: Australian Institute of Criminology; and particularly Maxwell, G.M. and Morris, A. (1993) *Family, Victims and Culture: Youth Justice in New Zealand*. Wellington: University of Wellington.; and Morris, A. et al (1994) 'Giving victims a voice: a New Zealand experiment', *Howard Journal of Criminal Justice*, 32, 4, p. 304-21 on developments in New Zealand; and Braithwaite, J. and Mugford, S. (1994) op cit., on Australian developments. While Family Conferencing has only succeeded in establishing itself in particular areas of Australia, in New Zealand the Children, Young Persons and Families Act 1989 placed Family Conferencing for juvenile offenders on a statutory footing.

32. Harrington, C. and Merry, S. (1988) 'The ideology of community mediation', *Law and Society Review*, 22, 4, 709-35, at p. 731. ³³ Kelly K et al, The Role of the Police Surgeon (1993) *Policing* 9(2) 148-159

33. Kelly K *et al*, The Role of the Police Surgeon (1993) *Policing* 9(2) 148-159.

34 *Ibid.* p. 158

35 See further Summers R J, *History of the Police Surgeon* (Association of Police Surgeons of Great Britain 1988)

36 *The Royal Commission on Criminal Justice* (Cm 2263) Research Study No 6, *The Role of Police Surgeons* (HMSO 1993) p. 9

37 Cm 2263 (HMSO 1993)

38 Code of Practice C (issued in pursuance of s. 66 of PACE 1984 which governs the treatment of detained persons) stipulates that the custody officer must immediately call the police surgeon if the detainee appears to be suffering from mental disorder/physical injury, does not show signs of sensibility or awareness or is failing to respond normally to questions or conversation (Para. 9.2)

39 The Police and Criminal Evidence Act 1984 Code of Practice C Para. 9.2 states that where the custody officer suspects that the detainee is mentally disordered he/she must call a police surgeon for a medical opinion.

40 See for example NACRO Mental Health Advisory Committee, *Mentally Disturbed Offenders and Community Care Policy Paper No. 1* (NACRO Publications 1993)

41 Para. 90

42 *Diverting Mentally Disturbed Offenders from Prosecution Policy Paper No. 2* (NACRO Publications 1993) pp. 15-16

43 See Gudjonsson G H, *The Psychology of Interrogations, Confessions and Testimony* (Chichester John Wiley & Sons 1992) p. 301; Gudjonsson G H *et al*, *Persons at Risk during Interviews in Police Custody: The Identification of Vulnerabilities*, Royal Commission on Criminal Justice Research Study No. 12 (HMSO 1993)

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⁵¹ *Health Care of Detainees in Police Stations* (BMA 1994) pp. 3, 24

⁵² "Doctors warn on police cell care" *Independent* 21st June 1994

⁵³ See *The Times* 6th June 1994 p. 10

⁵⁴ See for example the research conducted by McConville M *et al*, *Standing Accused: The Organisation and Practices of Defence Lawyers in Britain* (Clarendon Press Oxford 1994) Chapters 4 & 5; See also Royal Commission on Criminal Justice (Cm 2263) Paras. 55-63; Recommendations 65-69; Baldwin J, *The Role of Legal Representatives at the Police Station*, Royal Commission on Criminal Justice Research Study No. 3 (HMSO 1993)

⁵⁵ See further McLeod J, Station nous - moves afoot to strengthen training of solicitor's representatives (1993) *L.S.G.* **90**(12) 9; Ames J, Front-line defence -- legal advisers test a crash course in standing to the police (1993) *L.S.G.* **90**(20) 7; *The Daily Telegraph* 30th August 1994 "Testing time for lawyers' clerks".

⁵⁶ *Health Care of Detainees in Police Stations op cit*

⁵⁷ Cm 2263 Para. 92

⁵⁸ Circular 66/90, *Provision for Mentally Disordered Offenders*

⁵⁹ Joseph P, *Psychiatric Assessment at the Magistrates' Court* (HMSO 1992); Joseph P, Mentally Disordered Homeless Offenders - Diversion from Custody (1990) *Health Trends* **22** (2) 51-53

⁶⁰ See above *The Guardian* 30th November 1993

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⁶² Staite C & Martin N, What else can we do? New Initiatives in Diversion from Custody (1993) *J.P.* **157**(18) 280-281

⁶³ *Health Care of Detainees in Police Stations op cit* p. 41

⁶⁴ Community Advisory Group Report *op cit*

⁶⁵ *Provision for Mentally Disordered Offenders* Para. 4 (iv)

⁶⁶ Reed Committee Report (Cm 2088) Para. 5.4

⁶⁷ *Ibid.* Para. 4 (iii)

⁶⁸ See Clarke M, The Job that Nobody Wants (1993) *Police Review* 26 November pp. 26-28; Cherrett K A, Place of Safety (1994) *Police Review* 14 October pp. 16-17; See further NACRO, *Revolving Doors* (NACRO Publications 1992) pp. 10-12

⁶⁹ Cm 2088 Paras. 5.3, 5.4, 5.10-5.21, Annex E

⁷⁰ See for example Brindle D, "Cash urged for mental health care in crisis" *The Guardian* 20th April 1994