Criminal Justice Alliance

Briefing

Structured mayhem: Personal experiences of the Crown Court

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‘It’s just very frightening, very daunting when you walk in and you see all the chairs and the benches and everything set out and then you see all these people with their wigs on and the gowns’

Julia – witness

‘Lawyers should remember: it’s not a game. They’re playing with people’s emotions and people’s lives, and they’re there to get a bloody prosecution. It’s not a human rights exercise or a game. With some of these barristers, I think they see it as a game’

Ron – victim

‘There’s just bundles of paper, box files overflowing under desks. And it makes you think: well if there’s all this unorganised stuff everywhere, how organised are people really? … That’s important paperwork – why is it just being thrown around?’

Jenny – defendant

‘Well, it’s posh innit? The courts are posh. It’s all posh to me, everyone in wigs. Everyone talks in this funky language’

Ali – defendant

Introduction

The Crime Survey for England and Wales confirms that two thirds of people have confidence in the fairness of the criminal justice system. Just under half have confidence in its effectiveness. The Ministry of Justice recently noted, with modest satisfaction, that these figures had very marginally increased. However, these metrics also mean that millions of people still *don't* have confidence in something so central to a healthy state.

The Crown Prosecution Service recently published its own survey, finding that half of all victims and more than a third of witnesses feel unsupported while giving evidence. This should be a grave cause for wider concern too.

This digest of a remarkable and insightful major piece of work by the Institute for Criminal Policy Research, funded by the Economic and Social Research Council and newly published by Policy Press as *Inside Crown Court*, illuminates brilliantly the actual impact Crown Court hearings have on victims, witnesses and defendants. While it acknowledges that many trials and other hearings are concluded satisfactorily, it also highlights the human distress and frustration caused by a courts system that too often appears to operate with all the efficiency of the nineteenth century in the first half of the twenty-first.

The Crown Court is, of course, just one part of our judicial ecology. However, as a crucible for the resolution of much of the worst criminal activity it has a particularly high profile in our public consciousness. That's why it matters so much.

The Criminal Justice Alliance – which works in partnership with our 90 member organisations promoting better outcomes across the criminal justice pathway – has added to these research findings its own recommendations for a range of agencies from the Ministry of Justice to the Courts and Tribunals Service. If each rose to the challenges this report offers, not only would the experience of thousands of court users improve but public confidence in our whole criminal justice system might well be materially enhanced.

Ben Summerskill
Director, Criminal Justice Alliance

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Key findings

1. Crown Court proceedings and much of the interaction and language of the courtroom are elaborate, ritualised and – in many respects – archaic. The wigs and gowns worn by legal professionals in court help, not least, to create a sense of other-worldliness.

2. Deployment of formality and ritual can be seen as, in part, a deliberate strategy to sustain the Crown Court's aura of authority for those who work in court but, especially, for those who enter the space as outsiders – victims, witnesses and defendants.

3. The undoubted drama of the Crown Court trial is one in which those who might be presumed to be key players – the witnesses, victims and defendants – are in fact side-lined and tend to play only minor roles.

4. While hearings, and particularly trials, are elaborate and formal, they are also often chaotic. Bringing a large cast of characters together over the requisite period of time – along with necessary documentation and evidence in the form of video or audio recordings and physical artefacts – is a challenging task that can, and often does, go wrong.

5. The consequent delays, adjournments and scheduling problems often cause frustration, anxiety and inconvenience to victims, witnesses and defendants.

6. Other types of Crown Court hearings (e.g. for pre-trial hearings and sentence) tend to be more straightforward, and involve far fewer participants. They are typically conducted in quick-fire fashion, one after another, in busy and congested courtrooms, which itself gives rise to mishaps and a level of chaos.

7. Among the 'structured mayhem' of the courtroom, hearings of all kinds almost always – eventually – proceed in accordance with the pre-ordained rules and legal conventions, and reach some sort of conclusion.

8 Victims and witnesses are often frustrated that they have little 'voice' within the courtroom. Even on the stand, what they say is heavily circumscribed by the rules of evidence. And they are upset to discover that their own viewpoint is not represented in the courtroom by any lawyer.

9 Prosecution and defence counsel often seek to outdo each other with displays of eloquence, quick-wittedness and legal knowledge. But many aspects of these performances, aimed at judge and jury, serve to underline the marginalised outsider position shared by victim, witness and defendant.

10 Notwithstanding many distressing, stressful and perplexing aspects of the Crown Court experience the vast majority of court users are highly compliant, turning up when told and conducting themselves in line with the social rules of the courtroom. This is true as much for defendants as it is for victims and witnesses.

11 The court's legitimacy is reinforced when a court's actions are seen as consistent with court users' own moral or ethical code. Most witnesses and victims appear to take for granted a sense of moral alignment with the work of the courts. Securing justice in their own case was seen as something that could contribute to the public good.

1. The system

As well as 'professionals and practitioners', a Crown Court trial often includes an array of lay participants

The core business of the Crown Court, in 76 locations across England and Wales, is the contested criminal trial before a jury, and sentencing. For the most part cases heard at the Crown Court involve relatively serious offences. These include those that can be dealt with either by magistrates' courts or at the Crown Court – for example, theft, burglary and assault occasioning actual bodily harm – thus usually referred to as 'either-way offences'. The most serious 'indictable only offences' – including robbery, rape and murder – can only be dealt with by the Crown Court. Less than ten per cent of all criminal cases actually come to the Crown Court for trial or sentencing; the remainder both start and end at magistrates' courts.

In many respects – and certainly in terms of public profile – the contested criminal trial is the central event of the Crown Court. However, the large majority of defendants who appear at the Crown Court do so for sentencing only, having pleaded or been found guilty at the magistrates' court and then 'committed for sentence' to the Crown Court, or having pleaded guilty at the Crown Court.

In 2014 the Crown Court dealt with a total of around 95,000 defendants in trial cases, of whom around 64,000 subsequently pleaded guilty to all counts, while just under 28,000 entered a not guilty plea (around 3,000 defendants did not enter a plea). The Crown Court dealt with a further 32,000 cases involving defendants committed for sentence by magistrates' courts.

This means that 28,000 out of around 127,000 defendants dealt with in total at the Crown Court – or just over one fifth – went through a trial. But of those tried, 16,500 – almost three in five – were subsequently acquitted, while 11,500 were found guilty.

As well as 'professionals and practitioners', a Crown Court trial often includes an array of lay participants – the defendant(s), non-expert witnesses for the prosecution (including, sometimes, the victim) and the defence, 12 members of the jury and members of the public observing proceedings from the public gallery. (We use the term 'victim', rather than the technical term 'complainant', throughout this report to refer to individuals who attended court in relation to alleged offences of which they, according to their own accounts, were the victim.)

The launch of the Witness Service at the Crown Court in 1994 was one of the first significant developments designed to help both victims and witnesses as they prepared to give evidence. The Service, staffed largely by volunteers, offers support to all witnesses before and during their attendance at court. This support includes the hosting of pre-trial visits, which enable witnesses to see a courtroom prior to the trial, the provision of quiet places for witnesses to wait before giving evidence and accompaniment to the courtroom. The use of the Witness Service across the court system expanded rapidly and by 2003 it had a presence across all criminal courts – magistrates' and Crown – in England and Wales.

Subsequently the 1999 Youth Justice & Criminal Evidence Act introduced 'special measures' for vulnerable and intimidated witnesses (both prosecution and defence) to improve the quality of the evidence they are able to provide, and to relieve some of the stresses associated with giving evidence. Vulnerable witnesses are defined as all those under the age of 18 and those whose quality of evidence – in terms of its 'completeness, coherence and accuracy' – is likely to be impacted by a mental disorder, physical disability or 'significant impairment of intelligence and social function'. Intimidated witnesses are those whose quality of evidence is likely to be impacted by fear or distress – including fear relating to potential intimidation by the accused.

Victim Personal Statements were introduced in 2001. These provide a means by which victims can express how they have been impacted – physically, emotionally or in any other way – by the offence. While the content of a statement cannot be cited as evidence in a trial, it may be read out or referred to by the judge at the sentencing hearing, in which case it helps to provide clarification about the extent of harm caused by the offence.

Witness Care Units were established in 2005 as a single point of contact for victims and witnesses to offer guidance about the criminal justice system, information about case progress and outcomes and to assess witnesses' support needs to give evidence. But notwithstanding this range of initiatives, a 2011 study by Victim Support still found that victims were only being kept updated to a satisfactory level in some half of all reported incidents.

Difficulties faced by victims, witnesses and defendants at court extend far beyond readily definable vulnerabilities

The long-standing principle in criminal law that defendants must be able to understand and participate effectively in proceedings of which they are a part is reflected in the right to a fair trial enshrined in Article 6 of the European Convention of Human Rights. The requirement for effective participation is reflected also in the criteria generally used to determine 'fitness to plead': namely that the defendant can plead with understanding, can follow the proceedings, knows a juror can be challenged, can question the evidence and can instruct counsel.

However, in spite of the fundamental importance of effective participation of defendants at court the developing interest in supporting vulnerable victims and witnesses has not been reflected – at least initially – in equivalent measures for vulnerable defendants. Of course, some individuals who come to court have obvious mental health, comprehension or communication problems that may make it impossible for them to give evidence, or otherwise participate in the court process, without help. But – as we will demonstrate – the difficulties faced by victims, witnesses and defendants at court extend far beyond these readily definable vulnerabilities.

2. Court process and performance

At the heart of the court process is the tension between the purported aim of finding out 'what really happened' in relation to an alleged offence, and the practical impossibility – in many cases – of ever establishing a definitive version of events. In a criminal trial, defence and prosecution battle over their competing accounts of 'the truth' – neither of which may be grounded in objective reality. Indeed, the complexities and messiness of much alleged offending is such that the very existence of an objective reality can, in some cases, be called into question.

Very often court proceedings seem to be not so much about establishing 'what really happened' but, rather, are an arena for *managing conflict* between alleged wrongdoers and those allegedly wronged by them, and between their wildly different accounts of the same event. This process of conflict management, moreover, is undertaken through the medium of a highly ritualised public performance.

When the case for the prosecution is presented in a Crown Court trial, the jury is usually given a clear-cut account of the event or series of events that allegedly made up the criminal offence. The defence, in turn, may counter the prosecution account by presenting an equally clear-cut alternate version of events – although sometimes the defence proceeds by undermining the prosecution version rather than developing its own alternative, given that its essential task is to introduce a 'reasonable' level of doubt in the jurors' minds.

Often little of what the jury is told – from either standpoint – does justice to the complex and convoluted realities of the events with which the case is concerned. The highly chaotic circumstances of many offences, and alleged offences, is such that distilling the essence of 'what really happened' may seem a near impossible task.

Often little of what the jury is told – from either standpoint – does justice to the complex and convoluted realities of the events

In one case observed for this study a 21-year-old defendant, Emmanuel, was charged with inflicting grievous bodily harm on a fellow player at a Sunday morning football match. The assault had occurred in the course of what was variously referred to (by both prosecution and defence counsel and the judge) as a 'mass brawl', 'mass confrontation', 'melee' or 'general hubbub' that broke out among a large number of players. There was no dispute that the victim had been severely assaulted – a punch to the side of the face had fractured his skull – or that Emmanuel had been involved in the brawl. The question for the jury was whether it was Emmanuel who had thrown the damaging punch.

Over two and a half days, eight prosecution witnesses (the victim, five other players, the match referee and one of the team managers) gave evidence about what they had perceived to be the ethnicity, height, build, hairstyle and clothing of the attacker. There was enough inconsistency between these accounts for the prosecution counsel to feel compelled to acknowledge it. He told the jury: '[A case doesn't come] in a neat and tidy package with a legal bow on top of it …

That is not life …' Nevertheless, the jury found Emmanuel guilty after more than a day of deliberation.

Gaps and flaws in memory further limit the comprehensiveness of witness accounts of the events under scrutiny in a trial. Lawyers examine and cross-examine witnesses as if a perfect memory is the norm – asking them about the tiniest details of past events and vigorously challenging any inconsistencies.

A prosecution witness in another observed case unwisely remarked, when pressed on what she had meant by a particular Facebook entry she had made some 20 months before, that she could not remember because: 'I have an awful memory, to be fair.' Defence counsel leapt on this and repeated gleefully: '*You have an awful memory!* …'

Lawyers examine and cross-examine witnesses as if a perfect memory is the norm

We've noted before that the bulk of defendants sentenced at the Crown Court have pleaded guilty to their offence or offences. On the surface, it might seem that the court's acceptance of a guilty plea means that a relatively straightforward or unambiguous account of 'what really happened' has been established.

In fact, guilty pleas often reflect a contingent and highly contested version of events too. 'The truth' can be just as elusive in cases in which there has been a guilty plea as in cases that have gone to trial. This is because guilty pleas are frequently the product of a process of negotiation.

One repercussion of a system in which guilty pleas are strongly encouraged is that defendants frequently change their plea from not guilty to guilty at a late stage in the prosecution process. Guilty pleas when a trial is about to start or is already in progress can provoke mixed feelings for victims and witnesses expecting to give evidence. On the one hand, they may be happy to hear of the conviction and relieved that they no longer face the possibly very daunting prospect of giving evidence and being cross-examined. On the other, they may be frustrated that they have been denied the opportunity to 'have their day in court' and to provide their own account.

If a late guilty plea follows a charge- or fact-bargain and, as a result, is perceived by the victim as reflecting a very incomplete or minimised version of 'what really happened', this can add considerably to the victim's frustration. So too can perceptions that the defendant has been 'game-playing' – for example, by waiting to see whether key witnesses turn up at court before deciding to plead guilty.

One witness respondent, Debbie, had witnessed two men making their escape from a burglary, both of whom were subsequently arrested, but only one of whom pleaded guilty. Debbie was willing to give evidence against the defendant pleading not guilty, but described being discourteously treated by the police and Witness Care Unit in the run-up to the court case and facing some considerable inconvenience because of its repeated rescheduling.

She finally attended court and spent the day in the Witness Service waiting room. In the late afternoon she was told that the defendant had changed his plea to guilty. Debbie was left disillusioned with the court process:

> 'What I've taken away from it is, it's all like a big game really. And what shocked me at the time was that … I was very surprised that one person had pleaded guilty and somebody had pleaded not guilty. I assumed: well, clearly they're together … Then it was explained to me how sometimes people come to court because they kind of hedge their bets, because they know how difficult it is to get witnesses to court and they know how difficult it is to make everything work.'

The parallels between theatre and court proceedings – and particularly the adversarial trial – are many and have always been a subject of comment. They include the fact that court cases are played out, or are potentially played out, in full public view. The content of many cases is in itself dramatic. They deal with extremes of behaviour and emotion, or at the very least with difficult, disturbing and unusual circumstances and situations.

Some of the defendants and defendants' family members we interviewed had evidently been unprepared for the public nature of court proceedings and found it objectionable that the serious business of their lives could seemingly be treated as a source of entertainment or casual interest.

> 'We had a nosey neighbour from the estate, which was just so horrible … Horrible because it is like, this is my life, it is not something on TV. I don't like that.' Trish – defendant's partner

> 'It's not right that people can just come in to court because they feel like it … to listen to people's stories.' Danny – defendant

Many cases deal with extremes of behaviour and emotion, or at the very least with difficult, disturbing and unusual circumstances and situations

The ritual and formality of the Crown Court left a profound impression on several of our defendant and witness interviewees.

> '[Judges are] very old-fashioned and it comes from years and years ago from where people used to be beheaded.' Jerome – defendant

> 'It's just very frightening, very daunting when you walk in and you see all the chairs and the benches and everything set out and then you see all these people with their wigs on and the gowns. It's just very, very frightening.' Julia – witness

Some parties might enjoy taking centre stage in court. More frequently victims, witnesses and defendants appeared to be disillusioned or disturbed at the theatre-like aspects of court proceedings.

Faris, for example, had been the victim of a robbery committed by four men. He had felt very nervous about giving evidence and even about entering the area in which the court was located. Once in court he was perturbed by what he perceived to be play-acting by the defence lawyer:

> 'I noticed that every time he asked me a question, he'd have the stance of putting his elbow on the table and looking at the time, and so I felt it was as if to mock me. I didn't like him doing that. And he definitely kept the face of disbelief throughout the whole thing, in my opinion.'

Elaine had gone through the exceptionally difficult and painful experience of acting as a prosecution witness in the trial of her son who was charged with

sexually assaulting her young daughter (the defendant's half-sister). One of very many upsetting aspects of the case – which resulted in a not guilty verdict – was that she felt that the entire judicial process was about 'trickery' rather than seeking the truth:

Frequently victims, witnesses and defendants appeared to be disillusioned or disturbed at the theatre-like aspects of court proceedings

> 'The justice is a law unto itself. It doesn't make any rhyme nor reason. You can't possibly know the facts that I know … we *are* telling the truth … Being a simple-minded person, I suppose, I don't understand. It's all trickery. If you say this, if you make up this lie then you can get off.'

Notwithstanding the gravity and sometimes highly distressing nature of much of what the court dealt with, a certain level of humour often emerged in court interactions – sometimes unwittingly. Sometimes it was an intentional device by judge, counsel or even a witness to lighten the mood, reinforce a point or, perhaps, to 'play to the gallery' – the jury or any observing friends or family.

> Counsel: 'Anything stick in your mind about your conversation with her?'
>
> Witness: 'Yeah, we were playing on the fruit machine and she said – excuse my language – "If you asked me for a fuck, I wouldn't say no".'
>
> Counsel: 'What did you take that to be a reference to?'
>
> Judge: 'I think we can work that out for ourselves!'

These are some of the multiple and profound incongruities that characterise court proceedings – in which, for example, informality is mixed with high levels of formality, the most intimate and sordid details of personal lives are publicly and elaborately recounted and grief and trauma coincide with (black) humour.

3. ‘Them and us’

The greatest divide in the courtroom is not between victim and defendant, or prosecution and defence, but between the ‘us’ of the professionals and the ‘them’ of the lay court users

Within the theatre of the courtroom victims, witnesses and defendants might be assumed to be the main players. In practice, however, these individuals tend to play only marginal parts in proceedings. The starring roles are played by the legal professionals: the judge and, particularly, the prosecution and defence counsel. Other professionals such as the police, court staff and expert witnesses, play supporting roles.

The greatest divide in the courtroom, therefore, is not between victim and defendant, or prosecution and defence, but between the ‘us’ of the professionals and the ‘them’ of the lay court users. Jurors straddle this divide. On the one hand they are members of the public, have no professional expertise and are deliberately excluded from aspects of what goes on in court. On the other hand, in a trial, the responsibility for determining guilt lies with them alone.

As highlighted before, recent decades have seen an increased focus on victims’ and witnesses’ rights. Key developments have included ensuring that each Crown Court has a designated Witness Service office, the introduction of special measures procedures to help vulnerable and intimidated witnesses give evidence, the development and revision of the Victims’ Code and the introduction of Victim Personal Statements.

Nevertheless, it became evident from our own interviews with victims and witnesses that many continue to feel marginalised throughout the court process. Many struggle to understand why they should be denied representation.

> ‘Yes, we just briefly spoke to [prosecution counsel]. He didn’t actually discuss the case with us … Maybe legally he’s not allowed to. But I didn’t think it was very good. That’s the one thing I wasn’t happy with. I would have thought I’d have been sitting down with him for maybe an hour, maybe 45 minutes, before the case… It didn’t happen.’ Ron – victim

Prosecutors are now obliged to introduce themselves to the victim or a family member of the victim and answer any questions they may have about the court process and procedures. Where prosecutors did introduce themselves to respondents, this was usually highly valued by both victims and witnesses. However, because the 2005 Prosecutor’s Pledge only covers victims and their family members, a wide variety of other prosecution witnesses – who may have their own anxieties and fears – are excluded from this obligation.

For many witnesses, arriving to give evidence will be the first time they have been to court. Fear of the unknown environment can add to feelings of isolation they may have been experiencing already. And the evident lack of provision for victims and witnesses to remain at court after giving evidence supports claims made elsewhere, including by the Commissioner for Victims and Witnesses, that victims cease to be supported through the criminal justice process once they have given evidence.

> ‘So often witnesses, as far as we’re concerned, just give their evidence and disappear from the process.’ Judge

Further, a subsequent absence of information about verdict and sentencing can leave them feeling that they are in a perilous situation, especially if the defendant is known to them.

> ‘We weren’t even in court when he got the [verdict]. I got phone calls immediately after from one of the [defendant’s friends] just reeling off abuse at me really… When I phoned the police officer involved in the case to report the abusive phone call he hadn’t even heard the verdict.’ Rhona – witness

However, several ways in which victims’ and witnesses’ feelings of marginalisation can be alleviated also emerged from our interviews. The Witness Service proved to be an important source of support and information for those attending court, with its staff and volunteers described as ‘amazing’, ‘brilliant, ‘approachable’ and ‘reassuring’.

For many witnesses, fear of the unknown environment can add to feelings of isolation they may have been experiencing already

A further source of frustration and disappointment for victims and witnesses is that even at the very moment when they take centre stage to give evidence, they often feel that they are unable to tell their own, full story of the alleged offence as they might wish to.

> ‘As soon as you start trying to give an explanation, the other guy stands up and says: “Is this relevant, Your Lord or Your Honour?” or whatever. And that’s quite frustrating. Because you think it’s relevant.’ Tracey – witness

> ‘I did feel that I hadn’t done my part. I’d not said what I needed to say. I felt that I’d let everybody down because I don’t feel that I’d got my part of the story across.’ Amanda – witness

Limits to self-expression and the bafflement this may cause victims and witnesses was something that legal professionals were aware of.

> ‘The process of giving evidence is, many people might think, quite artificial. The questions might restrict you from comment; you are being asked about matters of fact. Most of us, when we are giving an account of something, will sprinkle it with our impressions or what we thought about it or how we felt about it. [Giving evidence] is not a natural story-telling process.’ Judge

And where a not guilty verdict is the outcome, the sense of ‘not being believed’ – even if, in fact, the verdict may simply reflect the jurors’ inability to determine guilt ‘beyond reasonable doubt’ – can be highly upsetting.

> ‘I was absolutely devastated about the not guilty because that makes you feel like someone doesn’t believe you and it’s horrendous.’ Natasha – victim

> ‘The only thing that helps me is that as [my daughter] grows up she will know that I believed her 100 per cent. That’s the only thing that keeps me sane.’ Elaine – mother of victim

If victims and witnesses occupy a walk-on role in proceedings, defendants could be said to take on the part of ‘ever-present extras’. Rather than being the focus of events they often appear to be the least important character at court: almost incidental to the proceedings that, in fact, largely revolve around them.

One manifestation of this paradoxically central but marginal status of the defendant in court is the largely passive role they tend to play in proceedings, and their evident disengagement from the process, which was frequently expressed in our research interviews:

> 'I wasn't really taking much of it in, I was just worried about what I was going to get sentenced to … I weren't listening to the talking. Actually when the judge sentenced me I still didn't hear what he said fully.' Charlie – defendant

> Interviewer: 'Can you remember what your Defence Counsel said in mitigation?'
>
> Jonathan: 'Not really.'
>
> Interviewer: 'And can you remember what the judge said when they passed sentence?'
>
> Jonathan: 'No. I just remember what sentence he gave me.'

> 'Very often a trial looks a bit like an argument between two lawyers with another lawyer refereeing. And very often it's very easy to forget that the defendant's sitting at the back watching all of this.' Lawyer

A defendant's own account of this was offered by Ali, who had many convictions for violent and drugs offences:

> 'Well, it's posh innit? The courts are posh. It's all posh to me, everyone in wigs. Everyone talks in this funky language.'

Counsel walk briskly and purposefully into different parts of the court – heels clicking and gowns swishing – while court users sit restlessly or slouched on benches outside courtrooms waiting to be let in

The marginal or passive role of court users is in stark contrast with the active, central role of the legal professionals in the courtroom. The 'them and us' relationship is defined, in part, by the imperatives for professionals to keep a 'safe' distance from court users – that is, 'safe' both in terms of avoidance of physical danger, and in terms of protecting the integrity of the legal process.

The gap between the 'us' and the 'them' is apparent even in the way the two groups present themselves physically and in the personas they adopt within the court building. Counsel walk briskly and purposefully through corridors into different parts of the court – heels clicking and gowns swishing – while court users sit restlessly or slouched on benches outside courtrooms waiting to be let in.

> 'The guys are overpaid barristers getting big money. They don't really care about the victim. But they should remember: it's not a game. It's not a human rights exercise. With some of these barristers, I think they see it as a game. They go out drinking champagne afterwards, all pals together.' Ron – Victim

> 'Every time we were paused for a break, [defence counsel] … would laugh and talk to my barrister as if they were friends.' Faris – victim

Echoing these comments, some defendants also expressed frustration at the sense that the lawyers in court are all on the same side; that signs of combat are merely part and parcel of their performance or play-acting.

> 'They're all in cahoots … they sit at the same Bar. They see each other every day. It's a joke. It's an absolute joke.' Steve – defendant

In an adversarial justice system the jury occupies the status of the 'controlled audience' in the courtroom: controlled in that they are present throughout proceedings but not privy to the whole story. For example, they are shielded from hearing any evidence deemed inadmissible and are required to leave the courtroom during certain legal arguments. They also remain unaware of any negotiations taking place between lawyers and judge in the judge's chambers.

Some defendants believed that jurors' supposed independence was in fact subverted by the judge or the structure of the court process

The unique status of jurors as representatives of 'ordinary people', given the ultimate decision-making responsibility, can provoke mixed feelings among lay participants in court. A number of defendants voiced a profound mistrust of jurors. Some believed that jurors' supposed independence was in fact subverted by the judge or the structure of the court process:

> 'The judge shouldn't speak to the jury; no one should speak to the jury. They should find people guilty or not guilty themselves. But to be honest, I think judges are bent. They say, find them guilty, or not guilty.' Christian – defendant

Sometimes defendants' mistrust of jurors also seemed to reflect concerns about the latter's class or ethnic make-up and associated prejudices.

> 'They're supposed to be your own people – but they don't know people from this neck of the woods … They don't know what it's like in your vicinity … they ain't the same class as me. Not in my circle.' Patrice – defendant

> 'As far as the jury goes – let me tell you something … when you come into the courtroom with *The Sun* tucked under your arm – I'm in trouble [Laughs] … big trouble!' Steve – defendant

The victims and witnesses we interviewed were largely positive about the concept of the jury, but a few shared defendants' concerns about jurors' lack of attentiveness or broader cynicism.

> 'Some of them were sort of sitting there looking as if all they really want to be doing is going home and watching *The Jeremy Kyle Show*, and they don't really want to be there at all.' Tina – mother of sexual assault victim

4. Structured mayhem: the organised yet chaotic nature of proceedings

There are many chaotic aspects to the public performances played out in court. The rhythm and momentum of a case frequently shifts, with delays and periods of tedium giving way to bursts of tense and even frantic action. And yet, despite the apparent disorganisation and disruption, cases progress through their various stages in an innately structured and logical manner. We use the term 'structured mayhem' to describe this juxtaposition of order and disorder in the business of the Crown Court.

The investigation of a reported offence is usually a complicated process in itself. Once a defendant is charged the complexities of bringing the case to court – especially where the defendant has pleaded not guilty and a trial is to be scheduled – can hardly be overstated, given the legal and administrative procedures that must be followed, the evidence of varying kinds that must be collated, prepared and disclosed and the array of different characters who must be brought together for proceedings to commence.

The intricacies of executing proceedings in the Crown Court are such that court hearings are bound to have their glitches. The main reason we bring attention to them here is the significant human costs they bring to bear on the court users involved. Court users' anxiety, uncertainty or frustrations relating to attending court can be exacerbated by delays and confusion.

Among the cases in which our victim and witness respondents were involved, the period of time from when they first reported the offence to sentencing ranged from three months to nearly two years. The average time from offence to case completion in England and Wales in 2014 was 44 weeks.

Court users' anxiety, uncertainty or frustrations relating to attending court can be exacerbated by delays and confusion

The period of waiting between being told that they will need to attend court and the eventual trial is something court users find difficult. And the scheduling of trials caused considerable inconvenience to many of our victim and witness respondents.

> Barbara's 97-year-old mother had been a victim of theft at her sheltered housing complex. Barbara had urged the police and Crown Prosecution Service to speed up progress: 'I kept saying, "Your chief witness will be dead if you don't get a move on with this".'

The scheduling of trials caused especial inconvenience to those who found themselves placed on a 'warned list' – when a witness is advised of a possible period of time, usually a week, for a case to be heard. Other respondents reported facing difficulties fitting court appearances around childcare, work and hospital appointments.

> Debbie, a witness to a burglary, was not called until the 'eleventh hour' of a fourth warned list, meaning that she had spent eight weeks in limbo: 'I'd just started university, and I felt like I was going to get taken out of lectures potentially to sit around for hours. And I felt I couldn't make appointments, couldn't go to the dentist …'

First-time defendants unfamiliar with the court process also found it confusing and disconcerting that they were required to attend court for several different hearings.

> 'Going through the magistrates' four or five times … why have I got to go back there for another date and another date before it actually went to the Crown? It was pointless.' Dominic – charged with possession of an offensive weapon

In the end, Dominic's case was thrown out by the judge on the first morning of his Crown Court trial. The judge deemed the evidence to be entirely inadequate.

Even once a case reaches court for trial there is no guarantee that it will go ahead. Only 50 per cent of Crown Court trials in 2014 were 'effective', meaning that they proceed as planned. 'Cracked' trials (35 per cent) are those in which the case is stopped without the need for the trial to be re-scheduled; for example, because the defendant changes his or her plea to guilty. 'Ineffective' trials (15 per cent) are those which do not go ahead and require rescheduling for a wide variety of reasons such as the failure of the defendant or witnesses to appear at court or missing paperwork or exhibits that are crucial to the case. In these circumstances victims and witnesses may be required to turn up and wait around, only to find that they are no longer required.

In her 2011 book *Sitting in Judgement* Penny Darbyshire vividly described the administrative, staffing and other systemic problems that hamper judges' efforts to ensure that cases are completed:

> 'The building is gloomy, overcrowded and decrepit and rain comes in. Electronic facilities often do not work; staff are overworked, underpaid and ill-trained; files are a mess … and post takes eight days to get to [the judge]. The probation service cannot keep up with the demand for reports.'

Court staff, lawyers and even judges are often kept waiting at court too, as are professional witnesses, including police officers. Professionals we interviewed expressed their sympathy for victims and witnesses.

'The building is gloomy, overcrowded and decrepit and rain comes in. Electronic facilities often do not work; staff are overworked, underpaid and ill-trained; files are a mess …'

> 'People imagine it's all going to be a lot more exciting … in reality, the whole thing tends to go really slowly. There's loads of waiting around … That's another thing people aren't told about before they come.' Victim Support employee

Much waiting must also be endured by defendants, whether they are at home on bail or obliged to come to court from prison where they are on remand. Their presence in the courtroom is usually required throughout a trial and for sentencing, as well as at plea or other hearings.

Several barristers voiced their concerns about the frantic manner in which shorter hearings – for example, bail applications and plea hearings –

are conducted and particularly about how this potentially impacts on defendants' understanding of and engagement with the process.

> 'Outside Court 4 on a Friday can be like Piccadilly Circus. And it's difficult sometimes to find your defendant, to find your opponent, all of that. I think that must be quite intimidating for a lot of defendants.' Barrister

Defendants were arguably the group most likely to be missing for some or all of proceedings. We heard a wide array of reasons for the absence of both bailed and remanded defendants. Many who were on bail simply turned up late to court. Explanations cited for tardiness included work commitments, transport delays, engagement in prayer and medical appointments or problems.

One defendant due to be sentenced had not turned up on the allotted date because, he said, he had not wanted to ask his new employer for time off work. At the rescheduled hearing a week later he was severely reprimanded by the judge:

> 'I'm not running some health club … I am not going to be put second to the defendant's employment … If you are telling me he made a deliberate decision not to come on Friday afternoon then that is a very serious matter.'

However, while they might very frequently be late – or even miss a hearing altogether and have to come to court on a new date – very rarely would defendants absent themselves from court indefinitely.

Delays could also be caused by professional and practitioner participants such as the prosecution barrister let down by public transport or the six police officers who, because of a poor hand-over when there had been a change of prosecution counsel, had not received the necessary instructions to attend court.

Missing paperwork and errors in documentation are also a common feature of court proceedings. Legal professionals and court staff can frequently be seen carrying cumbersome paper files around the courts with them

And even when the diverse cast required for a court hearing – and particularly a trial – has finally been assembled, progress may be disrupted by practical problems. Aspects that many might expect to be both vital and routine to the court process often caused great difficulty. For example, technical equipment failed, was of poor quality or was missing. In one example, counsel discovered that a Blackberry mobile phone to be used as evidence would need charging because it had been out of use – while stored at a police station – for several months. There followed a panicked realisation that no one in the court had a Blackberry charger.

Practical and technical problems relating to the use of 'special measures' for vulnerable or intimidated witnesses were commonplace. This has a certain irony given that the intention behind 'special measures' – 'Rolls Royce treatment' in the words of one barrister – is to ease the process of giving evidence for those most anxious about it. In one court building the structure of the court was such that the upper level public gallery had to be cleared if a witness was giving evidence from behind a screen, as the witness could otherwise be seen from above.

Some victims and witnesses spoke of the added strain and uncertainty caused by having to participate in a retrial. Some were hesitant about asking their employers for further time off on a second or third occasion following an aborted trial

Missing paperwork and errors in documentation are also a common feature of court proceedings. This may, in part, reflect the slowness of progress towards digitisation of court records. Legal professionals and court staff can frequently be seen carrying cumbersome paper files around the courts with them.

> 'There's just bundles of paper, box files overflowing under desks. And it makes you think: well if there's all this unorganised stuff everywhere, how organised are people really? …That's important paperwork – why is it just being thrown around?' Jenny – defendant in fraud trial

Some victims and witnesses spoke of the added strain and uncertainty caused by having to participate in a retrial. Samantha, a witness in an assault and criminal damage case, found the first trial stopped because a juror had overheard a conversation about the offence between the defendants.

> 'When we'd given all our evidence, we went home feeling all relieved that it was done, just for them to call up again and be like, "Look, no, you've got this all over again". Oh, I felt sick.'

Some victims and witnesses were hesitant about asking their employers for further time off to attend court on a second or third occasion following an aborted trial.

We were told by criminal justice professionals, and observed for ourselves, how recent funding cuts have impacted on the efforts to maintain adequate levels of staffing and ensure cases progress as scheduled at court.

We were conducting observations at one court over the period when loggers – those responsible for recording and transcribing proceedings – were made redundant. They were present on a Friday afternoon but gone by Monday.

Many courts operated with either a clerk or an usher per courtroom rather than, as had been normal until recently, both. This had ramifications for other services. For example, Witness Service staff and volunteers were now required to be present in video-link rooms from which witnesses under 'special measures' gave evidence – a task hitherto carried out by an usher. Bearing this level of responsibility was described as 'terrifying' by one Witness Service volunteer.

5. Reluctant conformity

Victims, witnesses and defendants alike can find appearing in court terrifying, humiliating or frustrating – or any combination of these. Cross-examination poses particular challenges for victims and witnesses, many of whom find it deeply troubling that they are seemingly 'not believed'. Those defendants who are habitual attendees in court, in contrast, frequently adopt a resigned or even entirely passive stance towards proceedings.

'Worried', being 'a nervous wreck' or 'feeling sick to the stomach' were among the emotions mentioned by victims and witnesses

But what characterises the response of the vast majority of lay participants is a reluctant conformity. They comply with the expectations and social rules of the process, and rarely do they actively disrupt it – notwithstanding the extreme circumstances and hostilities at the heart of most court cases.

Almost without exception victims and witnesses interviewed were nervous about the prospect of going to court. For some, attendance was linked to a particularly difficult or traumatic event in their lives. But they were also anxious because the court was an unknown environment. 'Worried', being 'a nervous wreck' or 'feeling sick to the stomach' were among the emotions mentioned.

Elaine attended court to give evidence against her son, charged with the sexual assault of her daughter. Inevitably the court case had had huge repercussions for the extended family, and while Elaine's daughter was to receive 'special measures' to help her give evidence, Elaine was worried about chance meetings with her son outside the strictures of the court room. In fact, unintended encounters between defendants and witnesses in the public areas of the Crown Court – in the entrance hall, the canteen and in the smoking areas outside the court building – were commonplace and often caused considerable distress to victims and witnesses. As Elaine explained:

> 'I could hardly stand; I wanted to die; it was just awful. I threw up when we got out the car and my whole body was shaking. It was just awful. It was the worst of the worst of the worst things that anyone would ever want to do.'

Yet what is striking is that in the face of these very real anxieties, most victims and witnesses attended court voluntarily – 41 of 44 of those we interviewed – and did not need to be compelled through a witness summons. Their motivations for so doing were variously reported to be a sense of duty to protect others from becoming victims or their desire to secure justice for themselves or for others. Amanda was a witness in a case concerning the alleged sexual abuse of her sister:

> 'For myself, it was pretty clear-cut, do you know what I mean? It was: we've got three children and that's what should be done … But obviously, I appreciate the fact of how difficult it was for everybody in the family to bring the case forward to start with.'
>
> Similarly, Donna commented of the case in which she acted as a witness: 'I believe in justice. I was anxious but I knew it was something I had to do, regardless of how I felt'.

The criminal justice professionals we interviewed, including judges and lawyers, understood without exception that attending court is anxiety-provoking for most victims and witnesses:

> '[Witnesses] would say it's a complete fucking nightmare. I hope that's the answer you've had because that's the truth. It's an absolutely horrible experience.' Barrister

There seems little doubt, however, that the introduction of a range of provisions for supporting victims and witnesses through the criminal justice process – and particularly at court – has helped to lessen some of the strains associated with giving evidence. The Witness Service, for example, was regularly mentioned as a positive development, as were the options for 'special measures' afforded to vulnerable and intimidated witnesses.

Nevertheless it was clear that for many victims and other witnesses, cross-examination in particular can still be harrowing and undermining:

> '…The way it was – we were feeling like we have done an offence. And because of that, we are ended up in this box… And at the end of the day, the way they keep on asking you the same question repeatedly … So that 40 minutes, when I was in the witness box and when I left the court – oh my God. It was literally draining me out. And I was just thinking, "Why should I have reported this?"' Masood – victim

> 'I was very nervous. You think "I'm going to say this, I'm going to say that". But you start to forget things. You forget dates and things. Because the nerves kick in and you feel like you're being on trial even though you're not.' Julia – witness

The introduction of a range of provisions for supporting victims and witnesses – and particularly at court – has helped to lessen some of the strains associated with giving evidence

Defendants can also struggle on those occasions when they give evidence. In one of the cases observed for this study the cross-examination revealed an obvious educational and intellectual disparity between prosecution counsel and the defendant. This disparity was ultimately used to good effect by the defence. While prosecution counsel cited the angry and frustrated demeanour of the defendant as evidence of his aggression and volatility the defence counsel, in closing, presented the defendant as himself a victim of a complex and daunting court process that necessarily disadvantaged someone with limited education and evident learning difficulties:

> 'So put yourself in his shoes … Having to defend yourself in words, where words are not your strong point … Having to stand in a public courtroom and deal with clever questions from an experienced barrister … How would you do? … He's not a polished performer. He's not an actor. He's not a politician.'

The jury eventually delivered a not guilty verdict on all counts.

To be actively engaged with the judicial process all court users must understand what is going on in court. Victims and witnesses who have problems understanding are likely to feel all the more marginalised, or powerless.

The socio-economic backgrounds of those in the legal profession and the language they use do not always make things easy. Lay court users are,

in the main, both socially and educationally 'poles apart' from the criminal justice professionals.

And while this is true of most victims and witnesses, it applies to a greater extent to defendants:

> 'They used very long, powerful words where if you're not well educated, if you didn't do well at school or didn't go to university or college or anything like that … it's very hard to take in and understand … If you are a bit common you are going to find it very hard to understand what they're saying.' Jerome – convicted of various driving offences

The language of the courtroom is often complex and includes legal terminology likely to exclude most lay participants. This is accepted by legal professionals:

> 'Any lay person sitting there hearing barristers discussing "hearsay" and "abuse of process" is going to find it difficult. But it's up to us to explain it to them properly. And also to the judge as well to explain what's going on.' Defence lawyer

In court a victim or witness with learning difficulties or needs may be assigned a witness intermediary to facilitate communication, under 'special measures' provisions. But a witness intermediary described the reluctance of some barristers to adapt their language to meet the needs of the witness as they can see this as 'taking away the tools of their trade'. It is their role after all to challenge, to question, to confuse and thereby to undermine witness testimony.

Lay court users are, in the main, both socially and educationally 'poles apart' from the criminal justice professionals

During one interview our respondent, a barrister, was called back into court. The jury was being instructed by the judge to reach a majority verdict on 'the two counts' involving dangerous driving. After the judge and jury had left the courtroom the defendant called over the barrister and asked him to explain what were 'the two counts'. This question came after two days of trial and provides a clear example of a defendant's limited comprehension of a fundamental aspect of the case – the precise charges he was facing. A particular irony was that this barrister, in interview, had highlighted his own skill at helping court users to understand court proceedings.

While the court process poses many challenges for victims, witnesses and defendants very few fail to comply with it.

Victims and witnesses (almost invariably) attend court when told to do so. They rearrange their work and other commitments, sometimes on more than one occasion if required. They wait for long periods to give evidence, and sometimes it emerges after a lengthy wait that they are not even needed.

Defendants, of course, attend court under compulsion; but here too it is notable that those who are not on remand make the necessary effort to turn up at court to face their fate when told to do so (albeit sometimes late) and hardly ever challenge social rules and etiquette of the courtroom once there.

There is no doubt that while many victims and witnesses are unprepared for the rigours of the court process, and nervousness and tears are common in the witness stand, there are few serious disruptions to procedure. In an often

emotionally charged atmosphere compliance with the authority of the courts is the norm in the public gallery too.

There are certain points of high tension in the court process, particularly when the jury pronounces the verdict and the judge passes sentence. But rarely, even at these moments, does the order of the courtroom come under serious threat. The setting, the ritualised procedures that must be followed and the formality of the official dress and language of the court seem largely successful at containing hostilities and emotion. People comply with the rules and etiquette of the courtroom.

There are certain points of high tension, particularly when the jury pronounces the verdict and the judge passes sentence. But rarely does the order of the courtroom come under serious threat

This, in the view of one resident judge, demonstrates a 'general acceptance' of the authority of the court process:

> '… given that we are dealing with people under stress … it is remarkable how the system works. You very, very rarely get a very unpleasant incident happening in the courtroom. It's quite rare that anyone either actually gets out of the witness box and assaults counsel or that a defendant tries to escape … or even that the defendant starts shouting abuse when sentenced … I think what I draw from that is that there is a general acceptance that the system is working.'

Recommendations from the CJA

Victims and Witnesses

- The 'special measures' procedure adopted for vulnerable and intimidated witnesses already successfully reduces the stress and anxiety of many attending court. However, there remains too much uncertainty about whether and when applications for special measures have been granted. Witnesses should be informed of the service immediately if it is thought they might be eligible, and whether they meet the required criteria determined well in advance of a trial. The Courts and Tribunals Service (HMCTS) should set out clearer eligibility guidelines and specific target periods for determining applications.
- The time it takes – up to two years in some circumstances – from reporting an offence to the first day of trial in the Crown Court remains too long. Further court delays during the trial process itself enhance anxiety and frustration among victims and witnesses, ultimately reducing confidence in the system. An individual officer in the court administrative office should be responsible for monitoring delays and communicating these to all court users. Lay users should be able to go directly to this individual and ask for updates.
- Witnesses' employers should be able to request from Witness Care Units information about the length of a case or the time an individual will be missing from work.
- Police & Crime Commissioners should be made responsible for monitoring local implementation of guidelines and ensuring that Witness Care Officers are keeping victims and witnesses informed of the progress and outcomes of their cases. As trial outcome and sentence have significant impact on witnesses and victims, judges, along with the prosecution, should be prepared to explain the outcome (and the specific reasons why such an outcome has been reached) in detail to lay users.
- Victim Personal Statements have helped give some victims the opportunity to feel listened to in court. Police & Crime Commissioners should be tasked to ensure that police are better trained in taking statements and informing victims about the scope and role of the statement.
- HMCTS should require all courts to minimise the risk of victims and witnesses meeting defendants in or around court before entering the courtroom itself. There should be a presumption that a victim or witness does not wish to see the defendant prior to court proceedings unless they specifically indicate otherwise. If victims complain about the inadequacy of such provision, HMCTS should respond and share with them details of where improvements have consequently been made.

Defendants

- Given the largely successful adoption of special measures for vulnerable victims and witnesses, including those with mental or physical disabilities, and the high levels of vulnerability among defendants, the Ministry of Justice should ensure equivalence of provision across all groups of court users in order to enhance engagement with the court process.
- Increased use of restorative justice should be encouraged to help further offenders' opportunities to address their offending behaviour and engage with the court process. The forthcoming Victims' Bill should offer all victims an entitlement to restorative justice. Communication and interaction between judges and defendants should be encouraged through increased use of problem-solving principles and approaches.
- The criminal dock, which isolates defendants and further alienates them from proceedings, should only be used on a discretionary basis where deemed appropriate by the judge for reasons of safety. The norm should be that the defendant sits next to his or her legal representative in court.

Legal professionals

- Given that the Crown Court remains ceremonial and highly stylised, and that the use of wigs, gowns and other formalities make it seem 'other worldly' to too many lay users, the appropriateness of each of these conventions should be reviewed by the Lord Chief Justice and HMCTS with independent input. Where they do no more than uphold tradition, continued use should be reconsidered.
- Greater emphasis must be placed on the need for professionals to explain technical terms, jargon and 'legalese' to lay users, given that they can make trials almost incomprehensible to victims, witnesses and defendants. The Judicial College and CPS should improve training in 'plain English' for judges and prosecutors.
- Since victims' and witnesses' negative experiences during a trial can outweigh the benefits of positive and respectful interaction during the rest of the prosecution process, access to CPS Victim Liaison Units should be extended. A national model based on the new pilot programme, placing CPS paralegal staff at Crown Court centres, should be developed if the pilot proves successful. Extending the Prosecutor's Pledge to all witnesses should also be a priority.

About the study

This digest summarises the findings of a 20-month qualitative study of the Crown Court funded by the Economic and Social Research Council. There were three key strands to the empirical work:

- Semi-structured in-depth interviews with 57 professional and practitioners working in or around the Crown Court
- Semi-structured in-depth interviews with 90 adult court users (45 from the prosecution side and 45 from the defence)
- 200 hours of observations of a variety of Crown Court hearings

The work focused on two Crown Courts; one was a large court in an ethnically diverse urban area, the other a medium-sized court in a small provincial city with a predominantly white British population. Seven trials were observed in their entirety (although one was halted after three days and listed for retrial). They featured:

- Assault occasioning bodily harm: not guilty verdict
- Inflicting grievous bodily harm: guilty verdict
- Perverting the course of justice (false allegation of rape): guilty verdict
- Armed robbery: trial halted following alleged contact with witness by one defendant
- Sexual assault and abduction of a child: guilty verdict on assault charge, not guilty on abduction charge
- Robbery: guilty verdict
- Dangerous driving: not guilty verdict

Useful reading

- Courting Violence: Offences against the person cases in court, Nigel Fielding (Oxford University Press, 2006)
- Defendants in the criminal process, A. Bottoms and J. D. McClean (Routledge & Kegan Paul, 1976)
- Review of Complaints and Resolution for Victims of Crime, Helen Newlove (Victims' Commissioner, 2015)
- Sitting in judgement: the working lives of judges, Penny Darbyshire (Hart Publishing, 2011)
- The Social World of an English Crown Court, Paul Rock (Oxford University Press, 1993)
- Victims at court: Necessary accessories or principal players at centre stage?, J. Shapland & M. Hall in Hearing the Victim: Adversarial justice, crime victims and the State, edited by A. Bottoms and J. V. Roberts (Routledge, 2010)

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The **Institute for Criminal Policy Research** carries out multi-disciplinary research into all aspects of crime and criminal justice. Its aim is to improve criminal justice policy and to contribute to academic knowledge and public debate about crime and criminal justice. ICPR is grateful to the Economic and Social Research Council for its support in funding this work.

The full book can be purchased from Policy Press at
www.policypress.co.uk/display.asp?K=9781447317050

The Criminal Justice Alliance

The **Criminal Justice Alliance** is a coalition of 90 organisations – including charities, research institutions, staff associations and think tanks – committed to delivering more effective outcomes across the criminal justice pathway. The views in this paper are not necessarily those of individual **CJA** members.

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Criminal Justice Alliance

Structured mayhem: Personal experiences of the Crown Court

'I'm glad I did it via video-link. I think I would have passed out if I'd have gone down there into the courtroom because I felt really bad; I thought I was going to pass out. I felt sick. I was frightened, shaking'

Nikki – victim

'We laid everything on the line, everything we said was the truth – just to get it thrown back'

Maggie – witness

'That 40 minutes in the witness box was painful. But at least the outcome is good and I am happy'

Masood – victim

'In a court, a trial is like a play. The defence say a story, the prosecution tell a story and then the jury make up their own story – and the truth never comes out in court'

Sidney – defendant

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