Effectively engaging victims, witnesses and defendants in the criminal courts: a question of "court culture"?

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Introduction

The adversarial court system of England and Wales gradually came into being in the eighteenth century; pivotal to its development was the Treasons Trial Act of 1696 which for the first time afforded defendants the right to counsel. During this period, the adversarial system emerged based upon three main features: a neutral and passive decision-maker; the production of persuasive evidence on behalf of the prosecution and "an elaborate set of rules" to regulate the trial and the conduct of advocates.[2] Over time advocates "took increasing command of the conduct of the trial" and thus the previously more dominant role of defendants (and also the judge) diminished; whilst the advent of a system of public prosecutions was crucial in reducing the role of the private victim.[3]

There is, however, a "natural tension" between the adversarial nature of the system and ensuring that witnesses and defendants receive "appropriate treatment".[4] Recent years have seen an increased focus on the need for complainants, other lay witnesses and defendants (hereafter 'court users') to be able to effectively participate and engage within this adversarial system – for example, through being able to understand proceedings and express themselves adequately. The Youth Justice and Criminal Evidence Act (YJCEA) 1999 introduced the first major legislative support for victims and witnesses at court. Provisions set out in the Act enable vulnerable and intimidated witnesses to give their best evidence by using a variety of "special measures" such as pre-recorded evidence-in-chief; giving evidence via live link outside the courtroom; giving evidence from behind a screen; the removal of wigs and gowns in the courtroom and the granting of registered intermediaries to assist those with speech, language and communication difficulties. Other significant developments include the launch of the Witness Service in 1994; the introduction of Victim Personal Statements in 2001, which allow victims to describe how a crime has affected them; the publication of the (revised) Code of Practice for Victims of Crime (Victims' Code) in 2015 which sets out victims' entitlements within the criminal justice process and the piloting of pre-recorded cross-examination (Section 28 of the

YJCEA) in four areas of England and Wales in serious cases involving vulnerable witnesses, which is scheduled to be rolled out to all Crown Courts by the end of 2017.[5] The Crown Prosecution Service (CPS) has also recently issued guidance for prosecutors with regard to their role in ensuring that witnesses are able to give their best evidence.[6]

A defendant's need to be able to effectively participate in criminal proceedings is reflected in Article 6 of the European Convention of Human Rights, the right to a fair trial, and the supporting case law.[7] The importance of defendants being able to engage in a meaningful way in proceedings appears to have received less attention in comparison to that of victims and witnesses and, as with victims and witnesses, much of the focus that has been afforded to defendants has been directed towards those who are deemed to be vulnerable.[8] In addition to the adjustments it affords to victims and witnesses, the YJCEA also includes provision for vulnerable defendants to give evidence via live link; and a yet to be enacted measure to afford defendants with speech, language and communication difficulties with access to a registered intermediary. On "rare" occasions the court can exercise its common law powers to grant access to an intermediary for vulnerable defendants with communication difficulties.[9] The 2015 Criminal Practice Direction sets out several court adaptations to assist vulnerable defendants including the removal of wigs and gowns; allowing defendants be seated with a family member or supporter in a position that facilitates communication with their legal representative; the use of clear and understandable language; allowing for regular breaks in proceedings and, in cases where a defendant with communication needs is to give evidence, a discussion of the ground rules.[10] In addition to this, The Advocate's Gateway (hosted by the Inns of Court College of Advocacy) provides various online toolkits aimed at assisting legal professionals in cases involving vulnerable court users.[11]

This focus on the ways in which levels of engagement among court users can be enhanced comes at a time of increased pressure and strain within the court system.[12] The climate of national austerity has brought to bear a number of reforms in recent years which may impede efforts to ensure that court users are able to meaningfully participate in criminal proceedings. These include, but are not limited to, legal aid reforms implemented as a result of provisions set out in the Legal Aid Punishment and Sentencing of Offenders Act and the closure of a number of courts as a result of falls in the number of cases coming before the courts.[13]

In the context of this juxtaposition between policy developments aimed at supporting court users during proceedings and the various economic constraints which may inhibit this, this paper examines the ways in which "court culture" can impact upon court users' ability to engage effectively with the court process by drawing on the findings of two recent courts-based studies in which the author has been involved.

Methods

The first study upon which this paper draws is a twenty-month ethnographic study of the public's experiences of the Crown Court, funded by the Economic and Social Research Council.[14] The aims of this study (hereafter the Crown Court study) were to examine the essential features of the Crown Court process, as experienced by victims[15], witnesses and defendants; to explore the nature of the interplay between the different players in the courtroom; and to examine the extent to which court users' regarded court processes and outcomes as fair and legitimate. The empirical research was conducted in 2011 and 2012 at two Crown Courts, selected to be contrasting in terms of the areas they served: one was a large court in an urban area and the other was a medium-sized court in a provincial city. The empirical research primarily involved i) in-depth interviews with court users and professionals and ii) observations of court proceedings.

A total of 90 adult court users were interviewed; this included 45 from the prosecution side (including 14 victims, 30 other prosecution witnesses and one mother of a victim who observed proceedings from the public gallery) and 45 from the defence side (including 37 defendants who were convicted of at least one charge; 4 defendants who were acquitted on all charges and 4 family members of defendants). Victims, other prosecution witnesses and their family members were recruited via the Witness Service; convicted defendants were recruited via probation and acquitted defendants via defence lawyers. In interview, participants were asked about the offence, or alleged offence, in relation to which they were appearing at court; their experiences and feelings before, during and after their court appearance; their perceptions of their treatment by criminal justice professionals and practitioners; and their views about the fairness, or otherwise, of the court process and outcome.

Interviews were also carried out with 57 professionals and practitioners who worked in or around the two Crown Courts, including judges, advocates, court staff, Witness Service staff and volunteers and registered intermediaries. Professionals and

practitioners were asked about their perceptions of which aspects of the court process pose the greatest difficulties to court users; the availability and effectiveness of measures to support court users' engagement in proceedings and the factors that shape court users' perceptions of fairness, or otherwise, of court processes and outcomes. In addition to this 200 hours of observation of a variety of hearings, including seven full trials (for cases such as assault, robbery, sexual assault, perverting the course of justice and dangerous driving) and a number of other hearings such as sentencing and pre-trial hearings.

The second study upon which this paper will draw is a review of advocacy in youth proceedings, commissioned by the Bar Standards Board and CILEx Regulation and conducted in 2014 and 2015.[16] The aim of this study (hereafter the Youth Proceedings study) was to assess the effectiveness of advocacy in proceedings involving young people in both the youth court and the Crown Court. It was a mixed-method study which began with a survey of advocates (barristers and chartered legal executive advocates) which explored respondents' levels of experience, training and knowledge in relation to youth proceedings. The survey, which was available in both online and paper-based formats and was widely publicised, was completed by 215 respondents. Further to this 34 follow-up telephone interviews were conducted with advocates who had participated in the survey. These interviews explored advocates' experiences of youth proceedings and their views of the factors that could support or inhibit effective advocacy.

Interviews were also carried out with 25 young defendants who were recruited through youth offending teams and secure establishments; 3 young witnesses, who were recruited via the Witness Service at two Crown Courts; and 30 other practitioners such as magistrates, district judges, legal advisers, specialist prosecutors, intermediaries and youth offending team officers across 18 contrasting youth courts. In interview young court users were asked about their experiences of attending court and about the quality of the advocates in court; practitioners were asked about their perceptions of the quality of advocacy in cases involving young court users and about the factors which contributed to good and poor advocacy. Finally observations of court proceedings, including trials, sentencing hearings and breach hearings, were carried out at four youth courts and five Crown Courts across the country.

Broadly speaking, both pieces of research were small-scale studies which sought to generate an in-depth understanding of the experiences of court users; this means, however, that there are limits to the extent to which the findings are representative of court users across England and Wales. Moreover, neither study included a focus upon court users who appear in the adult magistrates' courts.

What is court culture?

Organisational culture has been the subject of debate, theorisation and research in a number of criminal justice settings including policing, prisons and probation.[17] With respect to the criminal courts, Church expressed criticism of the "inherent vagueness" and "lack of definitional clarity" in discussions of the concept of culture in the court setting.[18] However, drawing on the work of Church, "court culture" has since been defined by Hucklesby as:

> "A set of informal norms which are mediated through the working relationships of the various participants".[19]

Existing empirical examinations of the concept have centred on *local* court cultures which emerge in relation to specific aspects of decision-making within a small number of courts,[20] or have focused upon a single actor within the court, usually members of the judiciary.[21] From a policy perspective, the potential impact of "court culture" on vulnerable court users has been identified on a number of occasions in recent years. For example, in relation to the treatment of complainants in trials involving sexual violence, the Ministry of Justice stressed the need for "cultural change in the courtroom"; the Carlile Inquiry cited "Crown Court culture" as a barrier to the implementation of adaptations set out in the 2013 CPD for child defendants; and Lord Rook pointed to the presence of a "culture of resistance" among advocates with regard to accommodating special adjustments for vulnerable court users.[22] However, such discussions have been of a general nature and have failed to define or fully examine the concept. The work of Emily Henderson offers the most significant contemporary contribution to this discussion. Her work examines the concept of culture specifically in relation to cross-examination, within which she argues that cultural change is required in order to ensure that recent legislative and policy reforms become a reality.[23]

This article seeks to explore "court culture" at a broader level than the existing empirical studies which have been of a local nature, while seeking to provide a detailed examination of what this culture comprises - something which has been largely absent from existing policy-oriented discussions. Three features of court culture have been identified from the findings of the two studies: the ritualised and formal nature of court proceedings; the presence of a "them and us" relationship between legal professionals and court users; and the organised yet chaotic nature of court proceedings.

i. Ritualised and formal nature of proceedings

The ritualised and formal nature of court proceedings is an intrinsic feature of the court setting.[24] Key aspects of this include the architecture of the courtroom, namely the positioning of members of the judiciary and the magistracy on raised benches and the positioning of the defendant in the (often secured glass) dock at the back of the courtroom; formal attire which usually includes, in the Crown Court, the wearing of wigs and gowns by judges, advocates and court staff; and the use of highly formal, technical and often theatrical language. It has been argued that such a ceremonial form of interaction, particularly in the Crown Court, creates "an aura of authority and a sense of detachment from the mundane world outside".[25] However such features have a corresponding impact on court users which may affect their ability to engage with the court process.

Findings from both the Crown Court study and the Youth Proceedings study indicate that court users frequently find the ritualised and formal nature of proceedings to be intimidating, as the following quotations from interviewees illustrate:

> "It just seems very scary when you go in because of the way the setup is and everything. It has to be that way, I know. But 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 – Crown Court study)[26]

> "There were loads of emotions running through my head, and it was all enclosed, I was in a glass box with my co-defendant, loads of people are watching you from the galleries, you've got papers there, press there, loads of

> people walk in that you don't know, it's all mad." (Jabir, young defendant – Youth Proceedings study)

The following advocate, who was interviewed as part of the Youth Proceedings study, reflected upon the impact that such formality and ritual of the courtroom environment could have upon a young defendant's ability to engage with proceedings:

> "I don't personally – although it still is super common – like the idea of appearing in front of young defendants robed up as if I've just walked in from the 1600s; with a judge that is sitting 20 foot higher than the rest of the court and my defendant miles behind me in a dock. … I don't think it's the best way for [children] to sit through hearings which might have a very serious impact on their future life."

Provisions are set out in the YJCEA 1999 and the 2015 CPD for the removal of wigs and gowns by legal professionals in cases involving vulnerable court users (within which children are automatically included) and for vulnerable defendants to be seated with family members or supporters in close proximity to their advocate (i.e. outside of the dock); while the youth court was created with the specific intention of removing some of the formality from proceedings. However the Carlile Inquiry found that such adaptations are not always adhered to and, as noted above, "Crown Court culture", was cited as a possible reason for this.[27] Meanwhile, recent research has found that the YJCEA legislation that enables vulnerable defendants to give evidence via live link is seldom implemented.[28] Findings from our interviews with young defendants also suggest that the special adaptations for young defendants are not routinely implemented. For example, in interview, several young defendants referred to "capes" being worn by legal professionals during proceedings and others, like Jabir as quoted above, spoke of being seated in a secure glass dock.

It has been argued that the positioning of defendants in docks at the back of courts inhibits communication between the defendant and their advocate because the advocate is positioned with his or her back to the defendant; communication is further constrained when the defendant is situated in a secure glass dock.[29] Findings from both of our studies, in particular the Youth Proceedings study, suggest that such positioning can prevent a defendant from being able to adequately express themselves. Several defendants spoke of being scared to interrupt proceedings

(either to ask for clarity on certain points or to provide further clarity to the matter being discussed); while others spoke of feeling "caged in" (Riley) or "isolated" (Habib) by the dock. Jackson, described how the formality of the setting made it difficult for him to actively participate in proceedings:

> "It's like a big play that we're not in but you're watching but it's about your life. … You feel like you can't even speak to the judge at certain times because even like the way you've got to address the judge it's very formal … When you've got to address the judge [do you say] 'Your Honour', I can't even remember, [or] 'Your Majesty'?"

The elaborate and antiquated language of the courtroom, which is another manifestation of the formality and ritual of the courtroom, often impedes court users' understanding of, and thereby their engagement with, the proceedings. Our Crown Court observations highlight how legal professionals often adopt ceremonial and theatrical styles of communication and make regular use of complex words and concepts which court users may find difficult to understand.[30] Examples of this include:

> "Discourtesy to the court by arriving late hardly instils the court with confidence about a non-custodial sentence." (Judge, sentencing hearing)

> "May I turn my back, Your Honour? [Consults the police officers behind him], I'm sure the endeavours Your Honour has referred to can be put into play again." (Prosecution advocate, trial)

> "I would submit that whilst Your Honour must commensurate with Your Honour's public duty impose a custodial sentence, that Your Honour can properly suspend that sentence." (Defence advocate, sentencing hearing)

A significant number of the young defendants interviewed as part of the Youth Proceedings study spoke of the difficulties they encountered in following court proceedings. This is particularly well demonstrated by the following extract from a focus group conducted with young people who had experience of attending court as defendants:

Jackson: My last case was the most difficult because it was the most serious one and basically the prosecution wanted me to get imprisonment for public protection and so there was the language that they were using and things like that, it was just all foreign. It was loads of words like 'ying' and 'yang'.

Asif: They said ying yang?

Jackson: That's the actual words that I heard in the courtroom. I mean I don't know what that means.

Felicity: Probably Latin…

Across both the Crown Court and Youth Proceedings study, there were some similarities in how defendants described courtroom language, with repeated references to "posh", "big" or "fancy" words:

> "I didn't really understand what they were saying … they used big words and stuff." (Casper, young defendant)

> "Some of the words were too posh, adults might get the words but to teenagers like me it was all like long posh words and that." (Peter, young 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, adult defendant)

ii. The "them and us" divide

A significant finding of the Crown Court study was that the main divide in the courtroom is not between the prosecution and the defence (or between victim and defendant), as might be expected, but between lay court users and the professionals (judges, advocates and court staff) in court. This divide can be described in terms of a "them and us" relationship between courts users, who occupy the position of "them", and professionals, who assume the position of "us" in the courtroom. This section argues that though there is a clear need, for both legal and security reasons,

to keep a "physical and metaphorical"[31] distance between "them" and "us" – or "outsiders" and '"insiders"[32]– this divide can also serve to limit the extent to which court users are able to effectively engage in court proceedings.

"Them and us": assembling the cast

Jacobson and colleagues deployed the oft-used "court as theatre" analogy in describing the "them and us" divide.[33] In doing so, it was argued that court users, rather than assuming main roles within the performance, play minor "walk-on" or "extra" parts, in proceedings in which the legal professionals (the judge, and principally, the prosecution advocate and defence advocate) take on the starring roles. The "walk-on" role of victims and witnesses within the court process is well-documented[34] and the resulting sense of marginalisation is evident at various points in proceedings. For example, findings from the Crown Court study show that victims and witnesses can feel side-lined by the fact that the prosecution advocate acts on behalf of the state and is not their own lawyer. This is something many were unaware of prior to their court appearance, as the following quotation from Masood, a victim of racially aggravated abuse, highlights:

> "When I went in the court, I don't know who is my solicitor? Who is going to defend me? Who is going to look after me? I don't know anything"

Furthermore, victims and witnesses are often only present in court at the point at which they give evidence (unless they decide to observe proceedings from the public gallery once their evidence has concluded). This absence from the entirety of proceedings means that they tend not to be present at the time at which important concepts – such as the burden of proof – are explained to other lay members of the courtroom. Having an understanding of the burden of proof can be instrumental in a witness's sense of whether or not they have been believed, as the following quotation from a CPS advocate conveys:

> "I have a duty when opening a case to mention the burden of proof. So the jury hear it, the defendant hears it, but does the victim and witness hear it? No … I will definitely before a trial go and speak to [a victim] and say, 'And I want you to understand that just because [the defendant] doesn't get convicted it doesn't mean that people are saying this didn't happen.' And I explain to them something about the burden of proof or the standard of proof; if you don't explain that to them they will think the process is unfair."

Defendants, meanwhile, can be said to assume the position of "ever-present extras". Defendants are central yet marginal players in criminal proceedings: they are (usually) present throughout, and have the power to entirely change the course of proceedings – for example by changing their plea – yet they are rarely the focus of the court's attention and can appear to be incidental to proceedings. This is well-illustrated by the young defendant, Reuben, who described feeling surprised at being spoken to directly during his most recent court appearance:

> "I've never been spoken to by anyone at the magistrates' [court] apart from the last time I went to court. [Being spoken to] feels good and bad at the same [time]; bad because you're put on the spot, but good because you're [not] … pretending you're not there, even though they're talking about your future."

The peripheral role occupied by defendants in court proceedings is something that had not gone unnoticed by several of the advocates interviewed. For example, when asked to describe how a defendant might find appearing in court, one advocate interviewed for the Crown Court study responded:

> "As if they have no power in the situation. So everything is sort of going on around them. And sometimes there's something that can be done about it – that they can do about it – but quite often there isn't ... And, you know, it all sort of passes them by really, with them occasionally chipping in."

The "dummy player"[35] status of defendants was also manifest in a passive attitude displayed by defendants interviewed for the Crown Court study, demonstrated by frequent use of phrases such as wanting to "get it over with" or "forget about it", in response to questions about the court process.

The passivity of defendants and the marginalisation of victims and witnesses mirror each other and underpin the divide in the relationship between "us" (the professionals) and "them" (the court users). This sense of passivity and marginalisation is likely to limit the extent to which court users are able to meaningfully partake in court proceedings. The findings of the Crown Court study suggest that court users can feel particularly marginalised by their exclusion from the *relationships* between professionals at court – namely, the judge and advocates –

who assume central status in the courtroom performance. The "them" status of court users was often most strongly felt when they were exposed to the seemingly "chummy" relationships between defence and prosecution counsel. This is demonstrated in the following quotations from court users interviewed during the Crown Court study:

> "I just felt like [the defence counsel] didn't look happy; he looked miserable: a face of disbelief at what I'm saying. But it's funny, because every time we were paused for a break that face would just go and he would laugh and talk to my barrister as if they were friends." (Faris, victim)

> "[The] prosecutor and your barrister – they're all friends. When I got the gist of that [after overhearing my advocate and the prosecutor discuss being invited to the same Christmas lunch] I was very unhappy …How can you be friends with the opposition?" (Danny, defendant)

As noted during some of our court observations, displays of "insider" status on the part of professionals were also apparent in exchanges of banter between the judge and advocates in the courtroom; a camaraderie which was often overlaid by class differences between legal professionals and court users. This is underlined by the following exchange between a judge and a (pale and, by his own admission, slightly overweight) prosecutor:

Judge:	If you play outdoor sports you know when…
Prosecutor:	[Interrupting] Your Honour can tell from my svelte physique that I don't play outdoor sports
Judge:	[Smiling] Yes, and from your sun tan

Further displays of the "them and us" relationships between court users and professionals were also evident in the different players' occupation of space within the court building.[36] As the previous section highlighted, the physical layout of the courtroom and legal attire worn by professionals serves to separate court users from legal professionals. In the wider court building and waiting areas, the divide was represented by the visible contrast of the purposeful way in which professionals ("insiders") – usually donned in legal regalia – moved through the building with the

restless or bored-seeming demeanour of court users' ("outsiders") who often sat, stood, paced around – or even lay down – in the waiting areas.

Giving evidence: whose "story" is it?

In addition to experiencing marginalisation through their exclusion from parts of the process, through the physical and aesthetic features of the court environment and in displays of camaraderie between advocates, court users also face exclusion from the world occupied by courtroom professionals at the point at which they might expect to take centre stage; that is when giving evidence in the witness box. In the Crown Court study, witnesses were often unable to express themselves fully or in a manner of their choosing, in part because of the limits imposed on what they could say by the rules of evidence.[37] As Ron, a victim of assault, described:

> "I was angry that certain things weren't allowed to be said in the court that I did think were relevant to the case … I was told by the judge they weren't relevant. Or they were relevant, he said, but they weren't allowed to be said. Like the witness intimidation [allegation] and all that, I wasn't allowed to say. … And yet the [defence] barrister was able to say things that weren't relevant to the case, like the fact the fellow [who] attacked me, that his wife had died six months before that and that he had seven kids."

Court users' unfamiliarity, and often unease, with the court environment generally – and perhaps with public speaking more broadly – is in direct contrast with the familiarity and ease with which trained legal professionals communicate with them in the courtroom. As Ron, continued:

> "After all you're just a normal person dealing against very skilled, very manipulative barristers. … If you're not a good public speaker, and you're trying to talk in front of people, it's all right talking on a one-to-one basis, but when you're up there and you're nervous, and you're talking, you need help, and if people are going to start cutting angles in it and try to manipulate your statement and what you're saying, you need help don't you?"

Moreover, court users may find themselves – by virtue of the case in which they are involved – discussing highly private and often intimate matters in the public arena of the courtroom.[38]

Meanwhile cross-examination, particularly aggressively styles of cross-examination, can exacerbate differences in communication styles and abilities between legal professionals and court users. Cross-examination has been described as the "fundamental feature"[39] of the adversarial process and there is no dispute that evidence should be subject to rigorous and robust challenge.[40] Early forms of cross-examination in the eighteenth century, have since been variously described as: "aggressive", "sarcastic", "acerbic", "rude" and "intimidating"[41]; many of these terms could arguably be used to describe cross-examination in the present day.[42] There have been various reports in the media in recent years which challenge the acceptability of defence advocates being permitted to question complainants about their sexual history in cases involving sexual offences, or which question the extent to which an advocate who chooses to make personal remarks about the demeanour or lifestyle of complainants in such cases is appropriate.[43] Likewise the acceptability of certain cross-examination techniques has come under increasing scrutiny from academics and members of the senior judiciary.[44] This coincides with a number of Court of Appeal decisions that have challenged certain forms of questioning in cases involving vulnerable witnesses.[45]

Findings from both of our studies point to the occurrence of what could be described as aggressive and sarcastic cross-examination, which both strengthens the divide between professionals and court users and also lends support to existing research findings which suggest that such forms of cross-examination are a product of court culture.[46] For example, as part of the Youth Proceedings study we partially observed a Crown Court rape trial involving two defendants, Kwame (aged 16) and Benjamin (aged 18), and a complainant, Isabelle (aged 16), who gave evidence via video-link. Isabelle was cross-examined separately by both defence advocates over the course of an afternoon. Benjamin's advocate, in particular, questioned Isabelle acerbically; Isabelle was asked to account for the fact that she did not scream when the alleged incident occurred in a public place; she was asked about her clothing, in particular the type and fit of jeans she was wearing – questions included, "are skinny jeans tight?" – and about why she had not told anyone about the alleged incident straight away. Isabelle was also asked "tag" questions, such as: "The thing about it, Isabelle, is that you weren't being forced at all, *were you*?", and had a number of statements put to her, such as: "This is quite an important event, obviously, if what you are saying is the truth". This is despite a plethora of calls for children to be asked questions, rather than merely given statements to respond to.[47]

In a similar vein, victims and witnesses who participated in the Crown Court study spoke in interview of how they had felt upon being cross-examined, and were evidently affected by not only the questions that they were asked, but by the *manner* in which they were spoken to. Several witnesses made reference to what might be described as belittling and theatrical gestures used by advocates while they were being cross-examined. For example:

> "I noticed that every time [the defence advocate] asked me a question he'd have the stance of putting his elbow on the table and look at the time – I felt it was as if to mock me; I didn't like him doing that. He definitely kept the face of disbelief throughout the whole thing in my opinion." (Faris, victim)

> "I [knew the defence advocate had] to cross-examine me but he was a bit smarmy like making faces and stuff. He didn't really need to do that. Like obviously he's defending [his client] but you don't need to pull faces when you ask me questions." (Freya, victim)[48]

However, it would appear that cross-examination styles, particularly as far as vulnerable witnesses are concerned, may be in a state of transition. Henderson's interviews with advocates, judges and intermediaries suggest that there have been "marked improvements" in cross-examination practice in a relatively short period of time; in particular, advocates and judges were increasingly likely to oppose the use of "highly coercive question types", including tagged questions and closed questions.[49] Likewise, several intermediaries in Plotnikoff and Woolfson's research also noted a keenness among advocates to alter their approach to cross-examination.[50] Nevertheless, questions remain as to whether and how change to cross-examination practices should be achieved. A recent study of cross-examination techniques in rape cases in Australia and New Zealand found that the strategies and tactics deployed by advocates at the turn of the twenty-first century remained similar to those used in the 1950s.[51] Others have pointed to the mismatch between the perceptions of policy-makers, researchers and lay audiences and those of the legal profession with regard to cross-examination. Henderson, for example, pointed to a "discrepancy between the lawyers' and the researchers' and witnesses' definitions of harsh and humiliating treatment"[52] – and the findings from both the Crown Court and Youth Proceedings studies support this.

"Doing their job"?

The awareness that the legal professionals in court were "doing their job", in contrast to the lay status of victims, witnesses and defendants, was regularly expressed by court users in both studies. In fact, the phrase "doing their job" (or variants thereof) was the most frequently used phrase by court users in the Crown Court study and was also used with striking frequency by young defendants in the Youth Proceedings study. Examples include:

> "There was two [defence advocates] firing stuff at me … and I was just getting so confused … they were saying stuff to me as though I was lying. I know it's their job but I was just getting so frustrated … I ran out of the courtroom." (Samantha, witness – Crown Court study)

> "[The prosecutor] done his job well, so fair play to him." (Zadie, young defendant – Youth Proceedings study)

> "[The prosecutor is] doing their job because they're … defending the victim [but] they make you feel small and make you feel like everyone in the room hates you … I suppose they're just doing their job, but they do make you feel uncomfortable." (Dexter, young defendant – Youth Proceedings study)

As several of the above quotations illustrate, court users often used this phrase to justify – or explain – any negative treatment that they felt they had received from professionals – for example, while being cross-examined; this negative treatment, it was suggested, was simply a reflection of the advocates' professional duty to pursue certain outcomes. The use of this phrase by court users highlights the contrast between the personal and the professional in the "them and us" divide: advocates are in court to "do a job", whereas court users' (particularly victims' and defendants') presence in court is often the result of a highly significant and even potentially life-changing event in their lives. Nevertheless the use of this phrase, particularly among some of the defendant respondents in the Crown Court study, points to the absence of active engagement within the court process, which is instead underpinned by a "passive acceptance" of the courts as "a world in themselves, on which outsiders have little impact".[53] For example, Sam, an adult defendant with numerous previous convictions, described the prosecutor in his most recent trial as:

> "[A] pretty stereotypical, TV drama, sort of prosecutor. Say something, and then not let you get the answer to it sort of thing. But he did his job well and got a conviction."

Overall, it would seem that the nature of the "them and us" relationship between professionals and court users can inhibit the extent to which court users are able to meaningfully participate in court proceedings. The studies' findings suggest that this divide is not solely borne out of structural factors, such as the design of the court building, or the need to protect the legal integrity of proceedings; it is part and parcel of the culture of the court, manifest in the tone, manner and style adopted by legal professionals.

iii. The organised yet chaotic nature of proceedings: structured mayhem

The final defining feature of court culture evident from the Crown Court and the Youth Proceedings studies is the organised yet chaotic manner in which cases progress through the court. Jacobson and colleagues used the term "structured mayhem" to convey the idea that, while chaos and confusion can arise at each stage of proceedings, a sense of structure prevails which allows cases to progress in a logical manner to an eventual conclusion. This "structured mayhem" can be evident throughout the court process. Perhaps the most common theme for victims, witnesses and defendants alike, is that court proceedings involve considerable amounts of waiting, delay and interruption.[54]

The period between a defendant being charged and the case appearing before the court for a trial or sentencing hearing can involve lengthy periods of waiting, which witnesses often found difficult to balance with their other commitments. Ernie, an elderly victim of assault described what, in his view, was a lack of consideration on behalf of the court, as to the impact that waiting to give evidence had on him: "I'm sure that more thought could have been given to how it was impact[ing] on my work and life and the way I was trying to conduct things". Likewise, defendants often described feeling frustrated about the length of time that it took for their cases to be dealt with and, ultimately, for their fate to be decided upon:

> "[My case was] adjourned six times in six months, once the sentence was passed there was a lot of relief because it was over and done with. I knew what I was facing and how long I'd have to stay in prison; the worst side of it

> is the length of time and the amount of adjournments that could go on." (Alistair, adult defendant who entered a guilty plea at the first opportunity)

> "I honestly think there should be a time limit on certain things instead of it taking nearly three years to get to a second trial." (Andy, acquitted adult defendant)

Even once cases get to court and the trial begins, court users often endure a further period of waiting due to the "start-stop" nature of proceedings.[55] We observed, and were informed of during interviews with court users, a number of reasons for the "start-stop" nature of proceedings. Key players (such as witnesses, defendants, jurors and advocates) were often absent or late arriving for hearings; short breaks in testimony could be required so that legal arguments could take place; and practical or technical hitches frequently arose (for example, paperwork could be missing or there could be problems with technical apparatus), resulting in breaks in proceedings while these issues were resolved. The length of time witnesses in the Crown Court study were required to wait at court to give evidence ranged from minutes to several days. In interview, victims and witnesses often spoke of how this waiting and uncertainty added to their feelings of trepidation about their court appearance:

> "We went up to the [Witness Service waiting] room … and you're just a bag of nerves because you're just sat there waiting. You don't know what's going on in court: you know it's started but you don't know what's happening." (Natasha, victim)

> "[Waiting to give evidence was] horrible … I think when it is something to do with people that you love and that you are close to, you want to know what is going on at all times – [it was] a bit nail-biting." (Michelle, witness)

In the Youth Proceedings study, young defendants described waiting periods at court as "long", "ridiculous" and "not good". Our observations, particularly those which took place in the Crown Court, highlighted a number of examples of young defendants having to wait either for a number of short intermittent periods throughout the day or for long periods of unbroken time. One young defendant waited at court for several hours in order for his case to be heard and was visibly restless in the waiting area. By way of response to this, the young defendant's mother – who had accompanied him to court – suggested that he run up and down the stairs of the court building in

order to “let off some steam”; “this is a Crown Court not a play pit”, was his reply. As the above examples demonstrate, the varying degrees of restlessness, uncertainty and nervousness that waiting periods can inspire may have a corresponding impact on the ability of court users to engage with, or participate in, proceedings once they do get underway.

The length of time which it takes for cases to progress through the system has not gone unchallenged by the government and recent years have seen marked efforts to ensure that cases are dealt with as “swiftly” and “efficiently” as possible; this includes promoting a “no adjournment culture”, making “better use of technological and other advances” – such as virtual hearings – and the use of early guilty plea schemes.[56] Such endeavours should be considered in the context of funding cuts and constraints which are having ripple effects across the criminal justice system – for example, as legal aid reforms and court closures are implemented. Despite these efforts, findings from the Youth Proceedings study suggest that, in some circumstances, a focus on “speedy justice” can undermine court user engagement, as the following quotations illustrate:

> “In practical terms, courts don’t want special [adjustments] for defendants to be in place because they just slow things down, they cost money and it takes time to put them in place … The whole system, these days, is not geared up, necessarily, for justice, fairness and taking time to get reports and check that people are participating in trials and cases effectively.” (Advocate)

> “What you find in the youth court, if you’re not careful is that you get sausage-factory justice, where they don’t permit any sort of delay…. There is an increasing awareness that delay is a bad thing in the justice system but it needs to be applied with a balanced hand.” (Advocate)

Commentators have raised concerns about recent policies designed to promote efficiency within the justice system. Ward argued that measures aimed at promoting efficiency may “undermine” procedural due process[57]; while others have cautioned that programmes aimed at increasing efficiency also come at a cost.[58] Similarly, proposals designed to “encourage” early guilty pleas have attracted concern among some legal academics.[59]

Overall, it would seem that there is a balance to be struck between promoting a culture that focuses on efficiency during times of austerity – and comes with the associated laudable intention of seeking to meet the needs of court users by reducing unnecessary delay – and at the same time, one which ensures that sufficient attention is paid to other fundamental aspects of the court process. This includes ensuring that measures aimed at promoting effective participation are implemented adequately and making sure that due process remains uncompromised.

Conclusion: promoting a culture of engagement

This paper has identified and examined three features of "court culture", namely: the ritualised and formal nature of court proceedings; the "them and us" relationship that exists between court users and legal professionals; and the organised yet chaotic nature of criminal proceedings. Together, it is argued, these features can undermine recent legislative and policy reforms aimed at promoting meaningful participation in proceedings. Henderson has specifically argued that legislative and policy reform alone are unlikely to achieve longstanding change in practice, asserting that: "the single most important factor in achieving any sort of change in trial practice is not legislation or governmental policy declarations but the attitude of the judiciary and the legal profession".[60] The most promising way of enhancing effective engagement among court users is, therefore, to "work from within the culture"[61] in order that the changes sought by policy and legislative developments can properly take root.

Procedural justice theory offers a way of thinking about the extent to which small but significant shifts in attitude by the legal profession can foster meaningful engagement among court users within the confines of the adversarial system. Proponents of the theory emphasise the role that fair and respectful treatment (alongside fair decision-making) can play in boosting the perceived legitimacy of justice systems and consequent cooperation with authorities.[62] Four principles of procedural justice have been identified in relation to the court setting. These are:

i. "Voice": court users should have an opportunity to "tell their side of the story";
ii. "Neutrality": decisions should be made by neutral decision-makers who follow established rules;

iii. "Respect": court users should be treated with respect by all those involved in the court process;

iv. "Trust": court users should feel as though they are treated in a sincere and considerate manner and as though they are listened to and treated without prejudice.[63]

Discussion of what this might entail in practical terms for those professionals who occupy the "starring roles" in court proceedings is growing within the research literature. With regard to the role of the judiciary, it has been argued that "judgecraft" requires:

> "An ability to communicate decisions in a way that both those affected by the decision and those simply interested in it perceive as reflecting serious and deep consideration. That is, the judge needs to be able to convey a sense of caring and concern."[64]

The role of the prosecutor, Cheng argues, should focus upon bringing about a "just" decision rather than simply on "winning" the case; therefore a main part of the prosecutor's role should be to "treat everyone, including defendants and opposing witnesses, with courtesy and respect and … ensure that everyone has the opportunity to meaningfully tell their side of the story".[65] Recent research has found that perceptions of legitimacy in the justice system are enhanced when defendants feel as though they have been treated in a procedurally just way by their advocate.[66]

The findings of the two studies at the crux of this paper lend support to the tenets put forward by procedural justice scholars because, though they indicate that court users do tend to place a high degree of importance on outcomes (such as the verdict or sentence severity), the treatment received at the hands of legal professionals was also very important to them. This was indicated in comments made by a number of interviewees during discussions about advocates. Interestingly, in line with the preceding discussion, this was again often framed in terms of what it meant for legal professionals to "do their job":

> "The [prosecutor's] job is to make you out to be bad … but I would tell them to remember that [the defendant is] still a person" (Austin, young defendant)

> "Obviously the [defence advocate is] there to do a job and I fully understand that … they do whatever they can to get the right decision for [their client]. But I felt … that [the defence advocate] was picking on me a little bit. And that it went over and above maybe what he should have done." (Chloe, victim)

> "I suppose they are just doing their job. But at the end of the day they should at least let us explain what's going on and stuff, instead of just firing questions at us." (Kai, young defendant)

> "I know [that the defence advocate has] to do their job but I think they go overboard a bit because he just obviously wasn't listening to what I was saying … Even the judge did have a go at him in the end." (Sarah, witness)

It follows, therefore, that more consideration should be given not just to the role of professionals in "doing their job" but on what it means for them to "do their work *better*"[67] and on how to promote a culture which supports this. The quotations above demonstrate how court users largely attributed the negative aspects of advocates "doing their job" to the pursuit of the desired outcome; one way in which the engagement of court users could be enhanced is by focusing on the ways in which legal professionals can do their job "better" at a procedural level. The following quotations from Freya, a victim of sexual assault and other violent offences, and Austin, a young defendant, highlight the value that considerate interactions can have on court users' feelings of engagement in the court process:

> "I felt comfortable in the surroundings. … I felt comfortable with all the staff. They were very polite, kind. They explained everything that happened. The judge was very fair. … I think overall it was – I can't say a good experience, but I think it was fair and I don't think I would change anything within the actual process really apart from obviously it being prolonged for so long. But I understand things happen, and evidence has to be thorough." (Freya)

> "I really like [my advocate] because she's just straight talking. … She always keeps me updated, always sends letters out saying what's happening ... I like to be informed. … I went to see her before I went to court. It was a good thing because I got to build a rapport before I got to court and I knew she was acting in my best interests. … When she's in court, it's all court language and

> stuff like that so I don't really get it but when she talks to me one-on-one in meetings, she always simplifies it down so that I can understand everything she is saying." (Austin)

It is encouraging to conclude by noting that there are, in fact, some emerging signs of cultural shift. Recent research carried out by the author document the occurrence of procedurally just interactions between court users and legal professionals.[68] These include examples of prosecutors introducing themselves and explaining their role to witnesses before they give evidence; efforts being made by some defence lawyers to put the defence case to witnesses without adopting aggressive or belittling styles of communication; and judges and magistrates communicating in a direct and empathetic manner with defendants at the point of sentencing. In a similar vein, Carline and Gunby, in their study of barristers' perceptions of advocacy in rape cases, found receptiveness among advocates to improving procedural elements of the court process; such a response was also echoed by judges and advocates interviewed by Henderson.[69] The aforementioned challenges posed by the economic strains within the criminal justice system should be acknowledged; with the notable caveat that the kind of change called for in this paper – particularly that which focuses on the promotion of respectful, considerate and empathetic interactions – can, for the most part, be achieved without any substantial cost to the public (or indeed the individual legal professional's) purse.

Endnotes

[1]I am very grateful to Dr Jessica Jacobson, Alexandra Wigzell, Professor Nigel Fielding, Dr Paul Hodkinson and Professor David Ormerod for their insightful comments upon earlier drafts of this paper and to the Economic and Social Research Council who funded the Crown Court study.

[2] S Landsman "The rise of contentious spirit: adversary procedure in eighteenth century England" (1990) 75 Corn. L.R. 497 pg. 500.

[3] J H Langbein, *The Origins of the Adversary Criminal Trial*, (Oxford: Oxford University Press, 2003), p. 6; J Hostettler, *Fighting for justice* (Hook: Waterside Press, 2006); P Rock "Victims, prosecutors and the State in nineteenth century England and Wales" (2004), 4(4) *Criminology & Criminal Justice* 331.

[4] Lord P Rook, *Advocacy and the Vulnerable*, Speech at the Advocate's Training Council Conference (June 2015).

[5] http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-11-01/51414/ [accessed 07/03/17].

[6] Crown Proseuction Service, *Speaking to Witnesses at Court CPS guidance* (March 2016).

[7] J Jacobson with J Talbot, *Vulnerable Defendants in the Criminal Courts: a review of provision for adults and children,* (London: Prison Reform Trust, 2009).

[8] See, for example, P Cooper and L Hunting (eds.) *Addressing Vulnerability in Justice Systems*, (London: Wildy, Simmonds & Hill Publishing, 2016); L Hoyano, "Reforming the adversarial trial for vulnerable witnesses and defendants" (2015) 2 Crim. L.R. 107.

[9] Criminal Practice Direction 2015, Amendment 1, [2016] EWCA Crim 97, para 3F.12-13. For a critique of this approach to the provision of intermediaries for defendants see L Hoyano and A Rafferty "Rationing defence intermediaries under the April 2016 Criminal Practice Direction" (2017) 2 Crim. L.R. 93.

[10] [2015] EWCA Crim 1567

[11] Available at: http://www.theadvocatesgateway.org/toolkits [accessed 08/12/15].

[12] Central government spending on the courts has reduced by 26% since 2010/11 (National Audit Office, *Efficiency in the criminal justice system*, 2016).

[13] Ministry of Justice, *Transforming legal aid: delivering a more credible and efficient system* (2013); Ministry of Justice, *Response to the proposal on the provision of court and tribunal estate in England and Wales* (2016).

[14] J Jacobson, G Hunter and A Kirby, *Inside Crown Court: Personal experiences and questions of legitimacy* (Bristol: Policy Press, 2015).

[15] "Victims" refers to individuals who had attended the Crown Court to give evidence in relation to alleged offences of which they, according to their own accounts, were the victims.

[16] A Wigzell, A Kirby and J Jacobson, *The Youth Proceedings Advocacy Review: Final Report* (London: The Bar Standards Board, 2015).

[17] Such as, J Chan, "Changing police culture" (1996) 36 Brit. J. Criminology 109; A Liebling assisted by H Arnold, *Prisons and their Moral Performance* (Oxford: OUP, 2004); R Butter and J Hermanns "Impact of Experienced Professionalism on Professional Culture in Probation" (2011) 3(3) European Journal of Probation 31.

[18] T W Church, "The 'old and the new' conventional wisdom of court delay", (1982) 7(3) Justice System Journal 395, pp. 401, 407.

[19] A Hucklesby "Court Culture: An Explanation of Variations in the Use of Bail by Magistrates' Courts", (1997) 36(2) The Howard Journal 129, p.130.

[20] Hucklesby "Court Culture: An Explanation of Variations in the Use of Bail by Magistrates' Courts", (1997) 36(2) The Howard Journal 129; P Duff and F Leverick, "Court culture and adjournments in criminal cases: a tale of four courts" (2002) Crim. L.R. 39.

[21] M Galanter, F Palen and J Thomas, "The crusading judge: judicial activism in trial courts" (1979) 52 Southern California L. R. 699; NG Fielding, "Judges and their work" (2011) 20(1) Social & Legal Studies 97; P Darbyshire, "Judicial case management in ten Crown Courts" (2014) 1 Crim. L.R. 30.

[22] Ministry of Justice, *Report on review of ways to reduce distress of victims in trials of sexual violence* (March 2014), p.12; Lord A Carlile, *The Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court* (London: National Children's Bureau, 2014), p. 42; Lord P Rook, *Advocacy and the Vulnerable*, Speech at the Advocate's Training Council Conference (June 2015).

[23] E Henderson, "Theoretically speaking: English judges and advocates discuss the changing theory of cross-examination" (2015) 12 Crim. L.R. 929; E Henderson, "Taking control of cross-examination: judges, advocates and intermediaries discuss judicial management of the cross-examination of vulnerable people" (2016) 3 Crim. L.R*,* 181.

[24] P Carlen, *Magistrates' justice*, (London: Martin Robertson, 1976); P Rock *The social world of an English Crown Court*, (Oxford: OUP, 1993); T Scheffer, K Hannken-Illjes, and A Kozin, *Criminal defence and procedure: Comparative ethnographies in the United Kingdom, Germany, and the United States*, (Basingstoke: Palgrave Macmillan, 2010).

[25] MS Ball, "The play's the thing", (1975) 28(1) Stanford L.R. 81; Rock *The social world of an English Crown Court*, (1993); Jacobson, Hunter and Kirby, *Inside Crown Court: Personal experiences and questions of legitimacy* (2015), p.65.

[26] All respondents have been assigned pseudonyms in order to protect their anonymity.

[27] Lord A Carlile, *The Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court* (2014), p.42.

[28] S Fairclough, "'It doesn't happen … and I've never thought it was necessary for it to happen': Barriers to vulnerable defendants giving evidence by live link in crown court trials" (2016) International Journal of Evidence & Proof, advanced online access.

[29] L Mulcahy (2013) "Putting the defendant in their place: Why do we still use the dock in criminal proceedings?" (2013) 53(6) Brit. J. Crim. 1139.

[30] This is perhaps particularly so for young defendants, a substantial proportion of whom are likely to have extensive needs and vulnerabilities. See Jacobson with Talbot, *Vulnerable Defendants in the Criminal Courts: a review of provision for adults and children,* (2009); Lord A Carlile, *The Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court* (2014); A Wigzell, A Kirby and J Jacobson, *The Youth Proceedings Advocacy Review: Final Report* (2015).

[31] J Jacobson, G Hunter and A Kirby, *Inside Crown Court: Personal experiences and questions of legitimacy* (2015), p.83.

[32] Rock *The social world of an English Crown Court*, (1993).

[33] Cf. Ball, "The play's the thing", (1975) 28(1) Stanford L.R. 81; Rock *The social world of an English Crown Court*, (1993); JS Peters, "Legal performance good and bad" (2008) 4 *Law, Culture & the Humanities* 179.

[34] See, for example, J Doak, *Victims' rights, human rights and criminal justice*: *Reconceiving the role of third parties* (Oxford: Hart Publishing, 2008); J Shapland and M Hall, "Victims at court: Necessary accessories or principal players at centre stage?", in A Bottoms and JV Roberts (eds.) *Hearing the victim: Adversarial justice, crime victims and the State* (Abingdon: Routledge 2010), pp. 163–99.

[35] Carlen, *Magistrates' justice*, (1976)

[36] Cf. Rock *The social world of an English Crown Court*, (1993); Fielding, *Courting violence: Offences against the person cases* in court (2006).

[37] See also Fielding, *Courting violence: Offences against the person cases* in court (2006).

[38] Carlen, *Magistrates' justice*, (1976); Jacobson, Hunter and Kirby, *Inside Crown Court: Personal experiences and questions of legitimacy* (2015).

[39] S Zydervelt, R Zajac, A Kaladelfos, and N Westera, "Lawyers' strategies for cross-examining rape complainants: have we moved beyond the 1950s?" (2016) Brit. J. Crim. advance online access, doi:10.1093/bjc/azw023.

[40] However, for a discussion of the extent to which cross-examination is, in fact, an effective method of evidence testing, see Henderson, "Bigger fish to fry: should the reform of cross-examination be expanded beyond vulneralble witnesses" (2015) 19(2) Journal of Evidence & Proof 83.

[41] Landsman "The rise of contentious spirit: adversary procedure in eighteenth century England" (1990) 75 Corn. L.R. 497; Langbein, *The Origins of the Adversary Criminal Trial*, (2003); Hostettler, *Fighting for justice* (2006).

[42] See, for example, J Plotnikoff and P Woolfson *Measuring up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings*, (London: NSPCC, 2009); Zydervelt, Zajac, Kaladelfos, and Westera, "Lawyers' strategies for cross-examining rape complainants: have we moved beyond the 1950s?" (2016) Brit. J. Crim. advance online access.

[43] See, for example: Mark Townsend, 'Ched Evans case: exceptional nature must be made clear, says legal expert', *The Observer*, 15 October 2016, https://www.theguardian.com/society/2016/oct/15/ched-evans-case-exceptional-nature-deter-women-reporting-rape [accessed 09/03/17].

[44] See, for example, JR Spencer and ME Lamb (eds.) *Children and cross-examination: Time to change the rules?* (Oxford: Hart, 2012); Lord Judge 'The evidence of child victims: The next stage', *Bar Council Annual Law Reform Lecture*, (November 2013); Lord P Rook, "Sea-change in advocacy", Counsel, (February 2015). Notwithstanding such concerns, it is important to note Hoyano's observation that there is evidence of "lop-sided publicity" in relation to examples of negative practice – "it is rare to find publicity given to good practice", she argues. (Hoyano, "Reforming the adversarial trial for vulnerable witnesses and defendants" (2015) 2 Crim. L.R. 107, p.108.)

[45] See, for example, R v Barker [2010] EWCA Crim 4; R v Lubemba, R v JP [2014] EWCA Crim 2064.

[46] Cf. Plotnikoff and Woolfson, "'Kicking and Screaming' – the Slow Road to Best Evidence" In JR Spencer and ME Lamb (eds.) *Children and cross-examination: Time to change the rules?* (2012): 21-41; Henderson, "Theoretically speaking: English judges and advocates discuss the changing theory of cross-examination" (2015) 12

Crim. L.R. 929.

[47] See, for example, Advocate's Gateway *General principles from research, policy and guidance – planning to question a vulnerable person or someone with communication needs: Toolkit 2*, (The Council of the Inns of Court, 2015); Lord Judge 'The evidence of child victims: The next stage', *Bar Council Annual Law Reform Lecture*, (November 2013); J Plotnikoff and P Woolfson, *Intermediaries in the criminal justice system* (Bristol: Policy Press, 2015).

[48] Intermediaries have also reported the presence of such gestures, described by one intermediary as "tut, blow, roll eyes, sigh" (Plotnikoff and Woolfson, *Intermediaries in the criminal justice system* (2015), p. 210).

[49] Henderson, "Communicative competence? Judges advocates and intermediaries discuss communication in the cross-examination of vulnerable witnesses" (2015) 9 Crim. L. R. 659, p. 688; Henderson, "Theoretically speaking: English judges and advocates discuss the changing theory of cross-examination" (2015) 12 Crim. L.R. 929, p. 936.

[50] Plotnikoff and Woolfson, *Intermediaries in the criminal justice system* (2015).

[51] Zydervelt, Zajac, Kaladelfos, and Westera, "Lawyers' strategies for cross-examining rape complainants: have we moved beyond the 1950s?" (2016) Brit. J. Crim. advance online access.

[52] Henderson, "Communicative competence? Judges advocates and intermediaries discuss communication in the cross-examination of vulnerable witnesses" (2015) 9 Crim. L. R. 659, p. 672.

[53] Jacobson, Hunter and Kirby, *Inside Crown Court: Personal experiences and questions of legitimacy* (2015), p.197.

[54] Church, "The 'old and the new' conventional wisdom of court delay" (1982) 7(3) Justice System Journal 395; Rock *The social world of an English Crown Court*, (1993); P Darbyshire, *Sitting in judgement: The working lives of judges*, (Oxford: Hart Publishing, 2011); House of Commons Committee of Public Accounts, *Efficiency in the criminal justice system: First Report of Session 2016-17* (2016).

[55] Jacobson, Hunter and Kirby, *Inside Crown Court: Personal experiences and questions of legitimacy* (2015), p.116.

[56] Ministry of Justice, *Swift and sure justice: The government's plans for reform of the criminal justice system* (2012); Ministry of Justice, *Transforming the CJS: A Strategy and Action Plan to Reform the Criminal Justice System* (2013), p. 14; Rt. Hon. Sir, B Leveson, *Review of the Efficiency in Criminal Proceedings*, (2015), p. 2.

[57] J Ward, "Transforming 'Summary Justice' through police-led prosecution and

'virtual courts'" (2015) 55 Brit J. Crim. 341.

[58] N Padfield, "Editorial: Efficiency in criminal proceedings", (2015) 4 Crim. L.R. 249; A Edwards, "The other Leveson Report – the Review of Efficiency in Criminal Proceedings" (2015) 6 Crim. L.R. 399.

[59] Sentencing Council, *Reduction in Sentence for a Guilty Plea Guideline: Consultation* (2016), p. 6; E Johnston, 'The Early Guilty Plea', *Criminal Law & Justice Weekly*, 180 (15), 15th April 2016.

[60] Henderson, "Taking control of cross-examination: judges, advocates and intermediaries discuss judicial management of the cross-examination of vulnerable people" (2016) 3 Crim. L.R. 181, p. 182.

[61] Henderson, "Theoretically speaking: English judges and advocates discuss the changing theory of cross-examination" (2015) 12 Crim. L.R. 929, p.948.

[62] See, for example, TR Tyler, "Psychological perspectives on legitimacy and legitimation" (2006) 57 Annual Review of Psychology 375; Jackson, J., Bradford, B., Hough, M. Myhill, A., Quinton, P. and Tyler, T.R. (2012) 'Why do people comply with the law? Legitimacy and the influence of legal institutions' (2012) 52(6) Brit. J. Crim. *British Journal of Criminology* 1051.

[63] TR Tyler "Procedural justice and the courts" (2007) 44 Court Review 26, pp. 30-31.

[64] HM Kritzer, "Towards a Theorisation of Craft" (2007) 16(3) Social & Legal Studies 321, p.337.

[65] KK Cheng, "Prosecutorial procedural justice and public legitimacy in Hong Kong" (2017) 57 Brit. J. Crim. 94, p. 106.

[66] WH Chui and KK Cheng, "Perceptions of Fairness and Satisfaction in Lawyer-Client Interactions among Young Offenders in Hong Kong" (2016) Journal of Mixed Methods Research, advance online access.

[67] Kritzer, "Towards a Theorisation of Craft" (2007) 16(3) Social & Legal Studies 321, p.337.

[68] A Kirby, *An examination of lay participation in the criminal courts,* (University of Surrey PhD Thesis, forthcoming).

[69] A Carline and C Gunby, "'How an Ordinary Jury Makes Sense of it is a Mystery': Barristers' Perspectives on Rape, Consent and the Sexual Offences Act 2003" (2011) 32 *Liverpool L.R.* 237; Henderson, "Communicative competence? Judges advocates and intermediaries discuss communication in the cross-examination of vulnerable witnesses" (2015) 9 Crim. L. R. 659.